IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

WEICHERT CO. OF PENNSYLVANIA, Plaintiff, v. JAMES F. YOUNG, JR., COLONIAL REAL ESTATE SERVICES, LLC and COLONIAL REAL ESTATE GROUP, LLC, Defendants.	)	C.A. No. 2223-VCL

MEMORANDUM OPINION AND ORDER

Submitted: February 21, 2008
Decided: May 1, 2008

Patricia R. Uhlenbrock, Esquire, MORRIS JAMES LLP, Wilmington, Delaware; Carmen J. DiMaria, Esquire, OGLETREE, DEAKINS, NASH SMOAK & STEWART, P.C., Morristown, New Jersey, *Attorneys for the Plaintiff.*

Jim Young, *Pro Se Defendant.*

LAMB, Vice Chancellor.

A plaintiff corporation applies for attorneys' fees and costs incurred in connection with successfully enforcing a non-solicitation provision against a former employee. That dispute was the subject of a memorandum opinion, which granted the corporation injunctive relief and $7,541.39.[1] In that decision, this court also found that the corporation was entitled to its reasonable attorneys' fees pursuant to a contractual fee shifting provision in the employment agreement. For the reasons set forth below, the court finds that the fees submitted by the corporation's counsel are reasonable and will award the full amount requested.

I.

The plaintiff in this action, Weichert Co., is a Pennsylvania corporation engaged in the real estate sales business. The defendant, James F. Young Jr., is a former Weichert employee.[2] As noted, this court previously determined that Weichert is entitled to an award of reasonable attorneys' fees and costs incurred in enforcing the non-solicitation provision against Young under paragraph 17(f) of the Manager's Employment Agreement–the controlling contract between the parties.[3] That provision states:

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[1] *See Weichert Co. Of Pennsylvania v. Young*, 2007 WL 4372823, at *7 (Del. Ch. Dec. 7, 2007).
[2] On April 7, 2006 Young stopped working at Weichert and opened his own real estate office in Middletown, Delaware. Young operated this business through two corporate entities, Colonial Real Estate Services, LLC, and Colonial Real Estate Group, LLC. These two companies were also named as defendants in the litigation underlying the current fee application, but Weichert abandoned its claims against those entities. *See id. at 2.* The relevant restrictive covenants were repeated in the severance agreement Young signed before leaving Weichert on April 7, 2006. *Id.* at 3. This court found that these provisions were also enforceable. *See id.*
[3] *See id.* at 6-7. That agreement is dated August 27, 2004.

> If [Weichert] brings any action(s) (including an action seeking injunctive relief) to enforce its rights [under the restrictive covenant] and a judgment is entered in [Weichert's] favor, then [Young] shall reimburse [Weichert] for the amount of [Weichert's] expenses, including reasonable attorney's fees, incurred in pursuing and obtaining judgment.[4]

Thus, the only issue for this court to decide is whether the amount of Weichert's application is reasonable.

Weichert retained two law firms in connection with this litigation. Ogletree, Deakins, Nash, Smoak & Stewart, P.C. served as Weichert's primary counsel and began working on the matter in May 2006. Morris James, LLP was retained in June 2006 to act as Delaware local counsel and to assist Ogletree Deakins. In connection with their fee application, Ogletree Deakins and Morris James submitted several billing invoices, which total $89,490.81.[5]

Young contends that, under Rule 1.5 of the Delaware Lawyers' Rules of Professional Conduct, the attorneys' fees submitted by Weichert's counsel are unreasonable. In support of this position, Young argues that the billing statements submitted by Ogletree Deakins and Morris James are excessive, duplicative, and include items unrelated to the dispute. Young also asserts that the relatively small judgment awarded to the plaintiff makes the comparatively high fee amount

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[4] Mgr.'s Empl. Agmt. ¶ 17(f).

[5] Carmen J. DiMaria of Ogletree Deakins and Patricia R. Uhlenbrock of Morris James were the primary attorneys involved in this matter and each submitted an affidavit attaching their applicable billing invoices.

inappropriate. Finally, Young states that the Ogletree Deakins hourly rates were "high for the Wilmington Metro market based on the fees being charged by Morris James."[6]

II.

In order to determine whether Weichert's attorneys' fees are reasonable, the court must consider the following eight factors delineated in Rule 1.5(a) of the Delaware Lawyers' Rules of Professional Conduct:

> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal services properly;
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> (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
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> (3) the fee customarily charged in the locality for similar legal services;
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> (4) the amount involved and the results obtained;
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> (5) the time limitations imposed by the client or by the circumstances;
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> (6) the nature and length of the professional relationship with the client;
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> (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
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> (8) whether the fee is fixed or contingent.

[6] Df.'s Opp'n 7.

In addition to these factors, and relevant Delaware case law, "a court also should consider whether the number of hours devoted to litigation was 'excessive, redundant, duplicative or otherwise unnecessary.'"[7]

III.

Young primarily challenges the reasonableness of the fees submitted by Ogletree Deakins under the first factor of Rule 1.5(a), arguing that the invoices submitted were unnecessarily high in relation to the work performed. To support this argument, Young purports to list over 100 hours of "excessive unexplained time and labor."[8] A discussion of each specific invoice item that Young contests would neither be useful nor practicable. Indeed, Young's arguments are vague, conclusory, and unsupported by the record. For example, Young identifies a particular invoice item and merely states "seems rather excessive and unreasonable" or "Ogletree billing is wrought with unreasonable time."[9] Young also wrongly challenges several invoice items as duplicative merely because several discrete tasks, such as preparing Weichert's summary judgment motion, appear in multiple billing entries. These allegations and the similar arguments advanced in Young's opposition are completely devoid of substance and cannot support a reduction in the fee award.

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[7] *Mahani v. Edix Media Group, Inc.*, 935 A.2d 242, 247 (Del. 2007) (citing *All Pro Maids, Inc. v. Layton*, 2004 WL 3029869, at *5 (Del. Ch. Dec. 27, 2004)).
[8] Df.'s Opp'n 4.
[9] *Id*. at 2.

However, recognizing that Young is a *pro se* litigant, this court reviewed the Ogletree Deakins invoices to ensure they were not excessive or redundant. This examination yielded no evidence that Ogletree Deakins improperly billed Weichert. While the fee sought by Weichert's attorneys may seem comparatively high given the lack of complexity involved in the dispute, Young's own improper conduct greatly contributed to the length and cost of the litigation. Young purposefully delayed and ignored Weichert's written discovery requests,[10] he filed a motion to dismiss that was "wholly without merit,"[11] and he declined Weichert's attempts to resolve this matter out of court.[12] In addition, he exacerbated the dispute by continuing to improperly hire Weichert's employees, even seemingly after signing a stipulation and consent order agreeing not to do so.[13] Young's conduct imposed significant additional burdens on Weichert's counsel, and this is properly reflected in the invoices.[14]

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[10] *See Weichert Co. of Pennsylvania v. Young*, 2006 WL 3742594, at *1 (Del. Ch. Dec. 13, 2006).
[11] *See id.*
[12] *Cf. EDIX Media Group, Inc. v. Mahani*, 2007 WL 417208, at *2 (Del. Ch. Jan. 25, 2007) ("With ample opportunity to minimize the cost of litigation, defendant at every step chose to draw out the conflict.").
[13] *See Weichert*, 2007 4372823, at *2 n.4.
[14] *Cf. EDIX Media Group*, 2007 WL 417208, at *2 ("In essence, defendant's conduct during the trial process represented a gamble in which defendant balanced the possibility of reducing (or even avoiding) an eventual judgment on the merits with the chance that he would have to pay for a more expensive trial. If the final damages seem disproportionately small in comparison to attorney's fees and costs, it is only because he doubled-down on that bet too many times.").

Young also challenges several billing items as unrelated to the dispute. First, he contests a billing entry referencing preparation for a June 20, 2006 hearing concerning Weichert's then pending motion for a temporary restraining order against Young, stating "we never had a hearing."[15] That hearing was cancelled when the parties entered into a stipulation and consent order immediately beforehand.[16] Time billed in preparation for the hearing is therefore reasonable. Second, Young contends that invoices related to the "possible termination of [an] agent in the [B]ear office" and the "Bear Office closing" are unrelated to the current dispute.[17] Contrary to Young's assertions, these invoices are reasonable because they pertain to work done on arguments asserted by Young during the course of this litigation. Specifically, Young's challenge to the validity of the restrictive covenants in his employment contract based on the alleged deterioration of Weichert's office in Bear, Delaware.[18] Last, Young argues that the time Ogletree Deakins billed reviewing a personnel file for Dan Zitofsky, a former independent contractor employed by Weichert, was unnecessary because Zitofsky was not an actual Weichert employee. The controlling Manager's Employment Agreement, however, expressly covers independent contractors,[19] and Zitofsky was

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[15] Df.'s Opp'n 3.
[16] *See Weichert*, 2007 WL 4372823, at *2.
[17] Df.'s Opp'n 3.
[18] *See* Df.'s Br. In Opp'n to Mot. for Summ. J. 8-10.
[19] Paragraph 17(a) states, in pertinent part: "[Young] shall not . . . [s]olicit, induce, or attempt to solicit or induce, any employee or independent contractor of [Weichert] . . . ." Pl.'s Mot. For

named in Weichert's complaint as having an improper business relationship with Young.

In addition, Young argues that, under the fourth factor of Rule 1.5(a) ("the amount involved and the results obtained"), the reasonableness of attorneys' fees should be commensurate with the level of success achieved in the litigation. Thus, according to Young, Weichert's purportedly modest monetary judgment should limit the amount of attorneys' fee Weichert can recover. In *Mahani v. EDIX*,[20] the Supreme Court rejected this reasoning, stating that the "reasonableness of attorneys' fees and other expenses in a contractual fee shifting case 'should be assessed by reference to legal services purchased by those fees, not by reference to the degree of success achieved in the litigation.'"[21] Moreover, while Weichert received a relatively small monetary award, this court also granted Weichert an injunction enforcing the restrictive covenants in the Manager's Employment Agreement until April 7, 2008. Clearly, this aspect of the judgment was the critical award and represents a substantial factor weighing in favor of granting the full amount of the fee application.

Summ. J. Ex. C.

[20] 935 A.2d 242.

[21] *Mahani*, 935 A.2d at 248 (quoting *Comrie v Enterasys Networks, Inc.*, 2004 WL 936505, at *3 (Del. Ch. Apr. 27, 2004)).

Finally, Young argues that much of the work performed by Ogletree Deakins should have been done by a paralegal at a substantially lower hourly rate. While this court has previously considered the ability of counsel to defray costs through the use of a paralegal in some limited circumstances,[22] the record here does not support a reduction in the fee award on that basis. Based on the work performed in connection with this dispute, the court cannot, even with the benefit of hindsight, identify any significant tasks that should have reasonably been performed by a paralegal. The work performed by the attorneys in this case largely involved tasks reserved solely for a lawyer, including legal research, writing, and engaging in discovery.[23]

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[22] *See Elite Cleaning Co., Inc. v. Capel*, 2006 WL 3393480, at *3 (Nov. 20, 2006) (noting that a small scale document review could be performed by a litigation paralegal to defray costs).

[23] The work performed by Ogletree Deakins was done almost entirely by Carmen J. DiMaria. Another attorney at Ogletree Deakins, Sharon P. Margello, performed only ten hours of work on this matter. Young argues that Margello's work was duplicative because she "just reviewed [documents]" for DiMaria. Young Opp'n 1. However, almost all of Margello's work, 8.80 hours, was done in June 2006. Since Morris James did not begin working on the matter until June 8, 2006, Margello performed preliminary work to assist DiMaria in drafting the complaint. After Morris James began working on the matter, Margello performed only 1.2 hours of work and her work does not appear to be duplicative or unnecessary. Young also asserts that the plaintiff "had in-house counsel that was capable of handling many issues" and that Weichert had a responsibility to "defray" some of the costs of this case due to involvement in a similar action with another entity "within the past 3 years." Young Opp'n 6. Young misunderstands the role of a general counsel. While a general counsel overseas litigation involving the company, this position rarely, if ever, involves actually performing the legal work directly involved in prosecuting or defending a case. In addition, Weichert's prior involvement in a purportedly similar dispute with another party cannot serve to reduce the time Weichert's counsel spent on this matter. This case involved a unique factual record that was specific to Delaware law.

With respect to the invoices submitted by Morris James, Young asserts they are duplicative, arguing that hiring two firms in connection with this litigation was unnecessary. While hiring two law firms in connection with the same matter may lead to unreasonable attorneys' fees,[24] in this case, Morris James served as both Ogletree Deakins's local counsel and as an expert on Delaware law. Thus, Morris James played an important role in this litigation that was independent from and complementary to the work performed by Ogletree Deakins. Moreover, nothing in the invoices submitted by Weichert's counsel indicates that these two firms performed unreasonably duplicative work.

Further support for granting Weichert's counsel their full fee award is found in other factors of Rule 1.5. The attorneys that handled this matter are experienced and they competently prosecuted this action for nearly two years. In addition, the hourly rates charged by the attorneys are reasonable. The affidavit submitted by Morris James represents that the fees charged to Weichert were reasonable in the Wilmington, Delaware market and Young does not dispute this assertion.[25] Young

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[24] *See Judge v. City of Rehoboth Beach*, 1994 WL 198700, at *7 (Del. Ch. Apr. 29, 2004) (declining to award the full amount of attorneys' fees because "[t]he amount requested reflects the services of two Delaware law firms hired by plaintiffs, who worked simultaneously on the same issues. As this is not a case where a non-Delaware law firm was retained as 'Of Counsel' or where one firm had expertise the other did not . . . . I think the services of one firm would have been adequate in this matter.").

[25] *Cf. Elite Cleaning Co.*, 2006 WL 3393480, at *3 (finding an hourly rate submitted by an attorney reasonable because there was no challenge to the rate and the attorney represented that it was reasonable in an affidavit).

does challenge the $290 rate charged by the attorneys at Ogletree Deakins as unreasonable. According to Young, this fee is impermissibly high given that the attorneys at Morris James charged $275 per hour. Not only is this difference *de minimis*, the lead attorney at Morris James on this matter began charging other clients $305 in January of 2007, making her $275 hourly rate appear below market for a significant portion of this dispute. In addition, the $290 hourly rate that Ogletree Deakins charged was set at a substantial discount.[26]

IV.

For the foregoing reasons, Weichert's fee application for fees and costs in the amount of $89,490.81 is GRANTED. IT IS SO ORDERED.

[26] DiMaria Aff. 3-4.