

**IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

**JACK MAYHORN and
GEORGIA MAYHORN,**

Plaintiffs,

v.

SININA TALLEY-SIDERS,

Defendant.

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C.A. No. CPU4-16-000219

Submitted: February 20, 2018

Decided: April 2, 2018

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Pro se Defendant

DECISION ON ATTORNEY'S FEES

WELCH, J.

I. PROCEDURAL POSTURE

On September 5, 2017, the Court issued its *Memorandum Opinion & Order* in this matter (“Substantive Opinion”), finding for Plaintiff in the amount of \$17,236.60.¹ The Court’s Substantive Opinion also directed Mr. Gouge to file a petition for attorney’s fees as the contract that both parties signed allowed the awarding of attorney’s fees. Mr. Gouge was allowed fifteen (15) days to submit the affidavit and Defendant was allowed fifteen (15) days to respond.

On September 18, 2017, Mr. Gouge submitted his affidavit to the Court requesting \$13,800.00 in attorney’s fees for work performed in this case from December 9, 2015 to September 18, 2017, and \$1,169.42 in litigation costs for work performed from January 22, 2016 to August 4, 2017.² On September 19, 2017, while Defendant was contesting the fees and costs, and before this Court issued a decision on attorney’s fees, Defendant appealed this Court’s Substantive Opinion to the Delaware Superior Court.

On October 17, 2017, Defendant responded to Mr. Gouge’s request for attorney’s fees, disputing certain billing calculations and deeming the overall amount excessive given its proximity to the damage award amount.³ On October 23, 2017, Plaintiffs filed a reply to Defendant’s response.⁴ Mr. Gouge disputes the majority of Defendant’s contentions; however, he failed to properly credit Defendant \$724.50 when calculating his attorney’s fees.⁵ On January 3, 2018, the Delaware Superior Court dismissed Defendant’s appeal without prejudice, as it was premature.⁶

¹ See *Mayhorn v. Talley-Siders*, 2017 WL 4122580 (Del. Com. Pl. Sept. 5, 2017) (hereinafter “Substantive Opinion”).

² Plaintiffs’ Affidavit for Attorney’s Fees (Sept. 18, 2017) (hereinafter “Plaintiffs’ Affidavit”).

³ Defendant’s Response to Plaintiffs’ Affidavit for Attorney’s Fees (Oct. 30, 2017) (hereinafter “Defendant’s Response”). Defendant claims she did not receive Plaintiffs’ Affidavit until October 13, 2017. Plaintiffs claim that it was sent to Defendant’s New York address first, which they did not know was an old address until the Plaintiffs’ Affidavit was returned. The Court will not delve into this dispute, as Plaintiffs have not raised a timeliness objection.

⁴ Plaintiffs’ Reply (hereinafter “Plaintiffs’ Reply”).

⁵ *Id.*

⁶ *Talley-Siders v. Mayhorn*, C.A. No. N17A-09-007 (Del. Super. Jan. 3, 2018) (ORDER).

And on February 20, 2018, the Superior Court returned the appropriate documentation to this Court. This is the Court's decision on attorney's fees and litigation costs in this case.

II. DISCUSSION

This Court recently discussed the law surrounding attorney's fees and litigation costs:

In Delaware, the general rule—the venerable “American Rule”—is that each party is responsible for its own costs and attorney's fees unless there is a contractual or statutory basis for the award of such fees. When such an appropriate basis exists—as in the present case—the United States Supreme Court has held that “even for work performed on the successful claim, the court ‘should award only that amount of fees that is reasonable in relation to the results obtained.’ ” The determination of whether attorney's fees requested in a particular case are reasonable is within the discretion of the Court. Delaware precedent requires the Court to consider the following factors:

(a) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (b) The likelihood, if apparent to the client, that the substance of the particular employment will preclude other employment by the lawyer; (c) The fees customarily charged in the locality for similar legal services; (d) The amount involved and the results obtained; (e) The time limitations imposed by the client or by the circumstances; (f) The nature and length of the professional relationship with the client; (g) The experience, reputation, and ability of the lawyer or lawyers to perform the services; (h) Whether the fee is fixed or contingent; (i) The employer's ability to pay; and (j) Whether claimant's counsel has received or expects to receive compensation from any other source.⁷

In the case *sub judice*, Mr. Gouge has a contractual right to collect attorney's fees and litigation costs. The Agreement of Sale states, “[i]n the event a dispute arises under this Agreement between Seller and Buyer resulting in any litigation, and/or arbitration, Buyer or Seller, whichever is unsuccessful, shall also be liable for the other [party's] court costs and attorney's fees.”⁸

⁷ *New Castle Auto Auction & Consignments, Inc. v. Riley*, 2017 WL 2676966, at *1-2 (Del. Com. Pl. Apr. 17, 2017) (Welch, J.) (footnotes omitted) (quoting *Dixon v. Council of Cliff House Condo.*, 2009 WL 5455537, at *4 (Del. Com. Pl. Dec. 8, 2009)).

⁸ Joint Exhibit 2, Tab 1, at 7 (Agreement of Sale).

Concurrently, 10 *Del. C. § 5101* and *Court of Common Pleas Civil Rule 54* grant Plaintiffs the right to seek litigation costs.⁹

A. Attorney's Fees

Mr. Gouge has requested \$13,800.00 in attorney's fees for 40.0 hours billed at \$345.00 per hour.¹⁰ Defendant has objected to Mr. Gouge's request on the following grounds.¹¹ First, she argues that she was double-billed in the amount of \$724.50 for attorney's fees related to the June 10, 2016 motion hearing.¹² Second, she claims that all attorney's fees incurred prior to June 10, 2016 for motions work have been paid and/or resolved.¹³ Third, she argues she should not be charged for four sheriff subpoenas and telephone calls to Plaintiffs' key witness because of her unavailability.¹⁴ Fourth, Defendant argues that \$13,800.00 for attorney fees is "terribly excessive" in comparison to the \$17,236.60 awarded in this case.¹⁵ Mr. Gouge disagrees with the majority of Defendant's assertions; however, he admits that he double-billed Defendant related to the June 10, 2016 motion hearing.¹⁶

The Court will address Defendant's contentions in turn. First, the Court agrees with both parties that Defendant was double-billed for work performed in relation to Defendant's motion for a protective order and Plaintiffs' motion to compel. On June 14, 2016, Mr. Gouge filed an affidavit of attorney's fees related to the June 10, 2016 motion hearing. The affidavit stated that Mr. Gouge sought \$724.50 in attorney's fees relating to Defendant's motion for a protective order and Plaintiffs' motion to compel. On June 15, 2016, the Court granted Plaintiffs' request for attorney's

⁹ 10 *Del. C. § 5101*; Ct. Com. Pl. Civ. R. 54(d).

¹⁰ Plaintiffs' Affidavit, Exhibit 1.

¹¹ Defendant's Response.

¹² *Id.* ¶3.

¹³ *Id.* ¶4.

¹⁴ *Id.* ¶5.

¹⁵ *Id.* ¶6.

¹⁶ Plaintiffs' Reply.

fees and Defendant paid the same on July 6, 2016.¹⁷ Thus, Slip ID #s: 99524, 99754, 100034, 100035, 100038, and 100042—totaling **\$724.50**—will be deducted from Mr. Gouge’s request for attorney’s fees.

Second, the Court agrees with Defendant that attorney’s fees incurred prior to June 10, 2016 related to motion filing, preparation, or litigation before this Court have been satisfied. Defendant has provided sufficient evidence that she paid the \$724.50 in attorney’s fees related to the motions. Likewise, Mr. Gouge specifically states in his June 14, 2016 letter to this Court that he is “not seeking attorney’s fees” for opposing Defendant’s motion to dismiss. Defendant filed her motion to dismiss twice, once on May 23, 2016 and again on July 20, 2016. Based on Mr. Gouge’s admission, he has waived the right to collect attorney’s fees for his time spent representing Plaintiffs against the first motion to dismiss. Thus, Slip ID #s: 99949, 100031, 100032, and 100033—totaling **\$379.50**—will be deducted from Mr. Gouge’s request. Accordingly, regarding Defendant’s second motion to dismiss, Mr. Gouge’s August 10, 2016 response is nearly identical to his June 6, 2016 response to Defendant’s first motion to dismiss. Since Defendant simply refiled her motion to dismiss, the similarity between Plaintiffs’ responses is logical. However, the Court will not award **\$310.50** in fees for a duplicative response.¹⁸ Thus, Slip ID #s: 100959 and 100864 will be deducted from Mr. Gouge’s request.¹⁹

Third, the Court does not agree with Defendant that Mr. Gouge is precluded from collecting attorney’s fees related to telephonic contact with Plaintiffs’ primary witness, Real Estate Broker Stefanie Morris (“Ms. Morris”). Specifically, Defendant argues that Plaintiffs cannot charge fees

¹⁷ Defendant attached a money order receipt for a payment of \$724.50 to her response. Defendant’s Response, Exhibit B.

¹⁸ The fact that Mr. Gouge waived his right to collect fees related to his defense of Defendant’s first motion to dismiss is of no moment. In defending Defendant’s identical second motion, Plaintiffs are still relying on duplicative work, regardless of whether he received attorney’s fees in the first matter.

¹⁹ The Court did not deduct fees for reviewing the second motion or for the second motion hearing. These charges did not rely on duplicative time, labor, or work product.

when Ms. Morris' deposition was not utilized by Plaintiffs at trial and Ms. Morris was prevented from appearing for trial because of mandatory employment training. Contrary to Defendant's assertion, Plaintiffs did utilize Ms. Morris' deposition at trial as her employment precluded her attendance. Further, Defendant not only agreed at trial that she voluntarily declined to participate in person, or by telephone, at said deposition, but—despite the opportunity—Defendant did not object to Ms. Morris' deposition testimony being submitted into evidence. Therefore, the Court will not deduct attorney's fees related to Ms. Morris.

Fourth, the Court is not persuaded by Defendant's argument that the Court should restrict Mr. Gouge's attorney's fees to a less "excessive" figure in light of its proximity to the award of damages. This Court has previously rejected this argument.²⁰ Therefore, the Court declines to adjust Mr. Gouge's request solely for this reason.

Finally, in reviewing Plaintiffs' requested attorney's fees, the Court finds that Slip ID # 99796—totaling **\$207.00**—is duplicative of Slip ID # 99795. Therefore, the former will be deducted from Mr. Gouge's request. The Court also notes that Slip ID # 99232—totaling **\$69.00**—includes time spent drafting a letter to the Justice of the Peace Court regarding a Form 50 agent. As Mr. Gouge has not provided the Court with a reason for this fee, and this case does not concern an appeal, the Court will deduct this fee from Mr. Gouge's request. The Court will also deduct one hour—totaling **\$345.00**—from Slip ID # 105722, which charged for a four-hour trial, as the trial lasted less than three hours. In addition, the Court will deduct 0.4—totaling **\$138.00**—from Slip ID # 106251 since Mr. Gouge did not support his affidavit with legal research. Granted, he directed the Court's attention to a Delaware Superior Court opinion as general guidance; however,

²⁰ *New Castle Auto Auction & Consignments, Inc.*, 2017 WL 2676966, at *1-2 (footnotes omitted) (quoting *Shoppes of Mount Pleasant, LLC v. J.M.L., Inc.*, 2015 WL 4755491, at *4-5 (Del. Com. Pl. Aug. 4, 2015)).

he was the attorney of record. The Court does not believe such a search warrants billing nearly a quarter of an hour. The remaining calculations strike the Court as correctly determined.

Turning to this Court's fair and reasonable review of attorney's fees, the Court finds as follows.

1. Time & Novelty Prong

This case only concerns the breach of an agreement of sale, however, its shelf life in this Court has exceeded two (2) years.²¹ In addition, the subject matter has been fact-intensive and delved into issues concerning corporate advertising. Further, Defendant was intensely focused on claims and affirmative defenses that—while unavailing—required time and effort to refute properly. The docket indicates that four motions were involved, and Plaintiffs were required to defend against a Motion to Dismiss on two separate occasions. Trial was rescheduled four times. On two of those occasions, trial was postponed because Plaintiffs' main witness, Ms. Morris, was unavailable due to her wedding and medical issues.

2. Employment Preclusion Prong

While Mr. Gouge was likely not prevented from simultaneously handling other matters, the Court notes that Mr. Gouge is a sole proprietor. Hence, he would not have the privilege of junior employees handling the matter on his behalf.²²

3. Customary Fees Prong

The Court does not find that Mr. Gouge diverged from communal billing standards. This Court has noted that an hourly rate of \$400 is "entirely reasonable for a partner in a firm in

²¹ Plaintiffs' Affidavit does not request attorney's fees for defending against Defendant's premature appeal; however, the Court considered the premature appeal because it is relevant to the consideration of time. *See New Castle Auto Auction & Consignments, Inc.*, 2017 WL 2676966, at *2 (awarding attorney's fees for the defense of a premature appeal); *Gould v. Wien*, 2009 WL 2436594, at *2 (Del. Com. Pl. Aug. 6, 2009) (holding that the Court would not require the plaintiff to use her judgment to pay her attorney's fees for defending defendant's unsuccessful appeals).

²² *See Shoppes of Mount Pleasant, LLC v. J.M.L., Inc.*, 2015 WL 4755491, at *4 (Del. Com. Pl. Aug. 4, 2015).

Delaware, and is at or below the hourly rates charged by similarly situated partners in firms.”²³ Here, Mr. Gouge charged only \$345 per hour. This amount seems entirely appropriate for a sole proprietor.

4. Amount & Results Prong

Plaintiffs were granted nearly a full judgment award.²⁴ They requested \$17,726.51 and were awarded \$17,236.60—a \$489.91 difference. Thus, as Plaintiffs’ received essentially all of their requested relief, Plaintiffs succeeded.

5. Time Limitations Prong

The Court will not attribute weight to this prong, as it is inapplicable.

6. Professional Relationship Prong

The Court will not attribute weight to this prong. The Court professes no knowledge as to the nature and length of the professional relationship present here.

7. Attorney’s Ability Prong

Mr. Gouge is an experienced, well respected member of the Delaware bar. He is a sole proprietor who regularly appears before this Court. His representation of Plaintiffs was in accordance with the zealous representation this Court has come to expect from him; a persuasive orator who is thoroughly prepared and meticulously organized.

8. Fixed or Contingent Fee Prong

The fee was based on an hourly rate in this case. After deducting the duplicative charges indicated above, the Court finds the remaining time billed appropriate for this case.

²³ *See id.*

²⁴ *See Dreisbach v. Walton*, 2014 WL 5426868, at *5 (Del. Super. Oct. 27, 2014) (noting that the Plaintiffs’ general monetary success in the case, and, specifically, the number of successful claims, could be considered in determining attorney’s fees).

9. Employer's Ability to Pay Prong

The Court will not attribute weight to this prong, as it is inapplicable.

10. Other Source Compensation Prong

The Court will not attribute weight to this prong, as it is inapplicable.

Turning to Plaintiffs' Affidavit and request for attorney's fees, the Court has reviewed the attached billing pursuant to its "independent duty to award a fair and reasonable fee."²⁵ Mr. Gouge has failed to articulate specific reasons for his attorney's fees request, pointing the Court instead to its own damage award.²⁶ Conversely, as noted above, Defendant has raised issue with a few of the charges. Based on the Court's own review, the Court has accordingly trimmed **\$2,173.50** from the attorney's fees request. After dissecting Mr. Gouge's time increments, analyzing the above factors, and considering Defendant's arguments, the Court finds Mr. Gouge's remaining descriptions to be detailed and the time increments appropriate. Therefore, the Court finds the remaining attorney's fees fair and reasonable.

B. Litigation Costs

Mr. Gouge has requested \$1,169.42 in litigation costs.²⁷ The Delaware Superior Court has held that "ordinary court costs are awarded to prevailing parties in Delaware as a matter of course."²⁸ Nevertheless, a litmus test is required to determine whether the costs could have been avoided with reasonable effort.²⁹ Ultimately, the awarding of attorney's fees is a matter of judicial discretion.³⁰ Defendant has objected to Mr. Gouge's request for litigation costs on one ground—

²⁵ See *In re Sauer-Danfoss Inc. S'holders Litig.*, 65 A.3d 1116, 1137 (Del. Ch. 2011).

²⁶ Plaintiffs' Affidavit.

²⁷ *Id.*, Exhibit 2.

²⁸ *Smith v. Greif*, 2015 WL 1598084, at *2 (Del. Super. Apr. 10, 2015) (quoting *Dreisbach v. Walton*, 2014 WL 5426868, at *5 (Del. Super. Oct. 27, 2014)) (internal quotation marks omitted); accord 10 Del. C. § 5101; Ct. Com. Pl. Civ. R. 54(d).

²⁹ *Dreisbach*, 2014 WL 5426868, at *4.

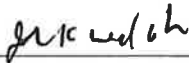
³⁰ See *id.*

she should not be charged in relation to the deposition of Plaintiffs' primary witness, Ms. Morris, since the deposition was not utilized at trial.³¹ As the Court has previously stated, Defendant's position is inaccurate. Ms. Morris' deposition was utilized by Plaintiffs at trial. Hence, the Court will not deduct litigation costs related to Ms. Morris. Therefore, the Court finds the litigation costs reasonable and necessary.

III. CONCLUSION

In summary, after deducting the amounts noted in subsection (A) and considering all relevant factors, the Court **AWARDS** attorney's fees to Plaintiffs' counsel in the amount of **\$11,626.50**. Furthermore, for reasons discussed above, the Court **AWARDS** litigation costs to Plaintiffs' counsel in the amount of **\$1,169.42**.

IT IS SO ORDERED this 2nd day of April, 2018.



John K. Welch, Judge

cc: Ms. Tamu White, Chief Civil Clerk

³¹ Defendant's Response.