



ENTERED

TAWANA C. MARSHALL, CLERK
THE DATE OF ENTRY IS
ON THE COURT'S DOCKET

The following constitutes the order of the Court.

Signed December 30, 2003.

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE: §
§
HAROLD EUGENE O'CONNOR, § CASE NO. 99-36662-SAF-7
§
DEBTOR(S). §

MEMORANDUM OPINION AND ORDER

By order entered November 12, 2003, the court directed that H.C. Ruparelia file a brief addressing whether he may recover attorney's fees under applicable non-bankruptcy law for the relief granted in the claims allowance litigation. The court further directed that Ruparelia include a compensation request applying the lodestar standard for the allowed claims and judgment. The court established a briefing schedule for the objecting parties. Ruparelia filed his brief and compensation request on November 21,

2003. The objecting parties filed their responsive briefs on December 4, 2003. In their responsive briefs, the objecting parties reserved filing supplemental briefs. The court did not provide for supplemental briefs and will not consider further briefing.

The parties agree that Virgin Islands' law provides that a prevailing party may be awarded attorney's fees and reimbursement of expenses in the discretion of the court. Wenner v. Government of V.I., No. 129-1988, 1993 WL 661182, at *2-*3 (D. V.I. Dec. 30, 1993); Melendez v. Rivera, 24 V.I. 63 (Terr. Ct. of V.I., Div. of St. Croix 1988). Technically, Ruparelia prevailed against the bankruptcy estate on his claim for the release of the \$40,000 escrow and for his claim of tortious interference. Technically, Ruparelia prevailed against O'Connor on his claim of breach of contract for delay in executing lien releases.

Under Virgin Islands' law, courts consider the following factors in determining attorney's fees for a prevailing party: time and labor required, the novelty and difficulty of the questions involved, the skill required, the customary charges of the bar for similar services, the amount involved in the controversy, the benefits resulting to the client from the services and the contingency or

certainty of compensation. Wenner, 1993 WL 661182, at *2 29 V.I. at *3. These factors mirror the lodestar standard applied in federal court.

Under the lodestar standard, the court must determine the "nature and extent of the services supplied by" the professional persons. 11 U.S.C. § 330(a)(3) (2002); In re First Colonial Corp. of Am., 544 F.2d 1291, 1299 (5th Cir.), *cert. den.*, 431 U.S. 904 (1977). The court must also assess the value of the services. These two factors comprise the components for the lodestar calculation. See Cobb v. Miller, 818 F.2d 1227, 1231 (5th Cir. 1987). Generally, the lodestar is calculated by multiplying the number of hours reasonably expended by reasonable hourly rates. Hensley v. Eckerhart, 461 U.S. 424 (1983). The court may then adjust the compensation based on Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974), factors. Blanchard v. Bergeron, 489 U.S. 87, 91-92 (1989).

The attorney has the burden to show that his requested compensation is reasonable and was necessary for the proper administration of the estate. In re Beverly Mfg. Corp., 841 F.2d 365, 371 (11th Cir. 1988). To assist the court in determining the reasonableness of the requested fees, the attorney is ethically obligated to exercise reasonable

billing judgment. He must make a good faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise not necessary. Hensley, 461 U.S. at 434. The court cannot find that services have been reasonably rendered where an attorney provides only vague descriptions of the work. Time descriptions lumping activities must be construed against counsel, as he has the burden of establishing the reasonableness of compensation.

Ruparelia's compensation request does not comply with the lodestar standard. Attorney Watlington is on a general monthly retainer with Ruparelia and submitted no statement of hourly rate or hours of services on the prevailing claims. The court does not consider Watlington's fees. Attorney Gutman provided a range of hourly rates and an estimate of hours of services. Attorney Gutman conceded that he has no time records to demonstrate or document the work performed on the prevailing claims.

In the exercise of its discretion, the court may draw inferences from the record regarding the lodestar factors. The court must focus only on Ruparelia's prevailing claims. Ruparelia prevailed on his claims against the bankruptcy estate for the release of the \$40,000 escrow and the tortious interference. Ruparelia prevailed against O'Connor

for the lien release delay. Those claims were neither difficult nor novel. The skill required the services of an attorney at the lower end of the range of hourly rates charged by Attorney Gutman. The court finds that rate to be \$200 per hour. The amount involved in two of the claims was relatively small, if not de minimus. Ruparelia has a \$1,200 claim against the bankruptcy estate and a \$7,400 claim against O'Connor. The parties knew the escrow amount of \$40,000. For these claims, the customary charges of the bar would have been in proportion to the actual and known damages and to the escrow amount. Indeed, one claim and possibly two claims would have been appropriate for a small claims court-type proceeding. Had Ruparelia limited the proof of claim in the bankruptcy case and the claim against O'Connor to the actual damages and the escrowed funds, the court infers that those disputes would have been resolved with minimal time for all parties, considering the scope of the bankruptcy case.

With regard to the escrowed funds, in an alternative claim, Ruparelia asserted that he was entitled to a refund of the \$40,000. The trustee could not agree to a release. The trustee took the position that the funds belonged to the bankruptcy estate. The trustee proposed to pay \$20,000 to

the real estate broker involved in the transaction and retain the remaining \$20,000. The parties, consequently, had a live dispute that had to be adjudicated.

But the dispute became subsumed in Ruparelia's breach of contract claim for over \$700,000. Both Ruparelia and the trustee asserted that the other breached a contract, causing damages. But, with regard to the escrowed fund claim, the court must focus its analysis on the time required to present the parties' competing positions regarding the escrowed funds. That issue involved a focused assessment on whether the parties entered a contract. Without a contract, the escrowed funds must be released to Ruparelia. With a contract, the issue would have been resolved by a finding that one or the other party breached the contract. Thus, while there is an overlap of the escrow issue with the breach of contract claim, a trial limited to only the escrow fund issue should have been presented in no more than eight hours of court time. The court triples that time to a total of 24 hours to account for discovery and trial preparation. At \$200 per hour, that yields a lodestar fee of \$4,800.00. That compensation is proportional to the amount in controversy and the difficulty of the issue. The court

therefore finds reasonable attorney's fees for the escrow issue of \$4,800.00.

Ruparelia has provided no breakdown of out of pocket expenses associated with that claim. The court therefore awards no recovery of out of pocket expenses.

With regard to the \$1,200 claim, that is de minimus. Had Ruparelia limited the amount of his claim to his actual damages, there likely would have been no objection to that portion of the proof of claim. In the exercise of its discretion, the court awards no attorney's fees for that claim.

In a separate motion, the trustee contended that the bankruptcy estate should not have been burdened with Ruparelia's proof of claim. The trustee requests that the court reimburse the bankruptcy estate for its legal fees by imposing sanctions on Ruparelia. The court finds no basis to impose sanctions. The trustee could not agree to release the escrow funds because the trustee believed that Ruparelia breached a contract for the sale of the second tract. Ruparelia believed that O'Connor breached any such contract. As the court has found, the parties had a live controversy concerning the second tract of land. Ruparelia had an

arguable basis to support a proof of claim for breach of contract.

With regard to the \$7,200 claim against O'Connor, Ruparelia did have to document and present the chronology of events concerning O'Connor and Marie O'Connor's probate estate. The issue should have required two hours of court time, which the court triples to six hours for discovery and trial preparation. At \$200 per hour, that results in a lodestar calculation of \$1,200.00. That fee is proportional to the amount of damages. Ruparelia has provided no breakdown of out of pocket expenses associated with that claim. The court therefore awards no recovery of out of pocket expenses.

In its order entered November 12, 2003, the court further directed that the parties address whether a setoff issue raised by Ruparelia was ripe for consideration, and, if so, the merits of that issue. Ruparelia has filed a brief recognizing no mutuality of offsetting claims between Ruparelia and the probate estate. Instead, Ruparelia requests that the court use the setoff request as a basis to provide protection to Ruparelia in the nature of relief pending appeal. For relief pending appeal, Ruparelia must file a timely notice of appeal from an appealable order, and

then request relief pursuant to the applicable rules and demonstrating the applicable standards. The setoff claim is disallowed.

The court observed in an order entered December 10, 2003, that it would address the issue of pre- and post-judgment interest at the time of the entry of a final order or judgment. Interest on a claim against the bankruptcy estate is governed by 11 U.S.C. § 726(a)(5). Accordingly, the court awards no interest on the claim against the bankruptcy estate as part of the claims allowance process. Interest, if any, on the escrowed funds, is governed by the parties' escrow agreement. The court awards post-judgment interest at the applicable federal rate on the claim against O'Connor. The court declines to award pre-judgment interest on that claim.

Based on the foregoing,

IT IS ORDERED that the court allows H. C. Ruparelia a claim for attorney's fees of \$4,800.00 against the bankruptcy estate, for a total claim of \$6,000.00 against the bankruptcy estate, without interest but without prejudice to interest if applicable pursuant to 11 U.S.C. § 726(a)(5).

IT IS FURTHER ORDERED that the court allows attorney's fees of \$1,200.00 against Harold O'Connor for a total judgment of \$8,600.00, with post judgment interest at the applicable federal rate.

Counsel for Ruparelia shall submit a proposed final order regarding the claim against the bankruptcy estate and a proposed final judgment regarding O'Connor, both consistent with this order and the order entered November 12, 2003. Counsel for the probate estate shall submit a proposed final order regarding the claim against the probate estate. Counsel shall provide opposing counsel an opportunity to review the form of final orders before submission to the court. The orders shall be submitted through the court's electronic order program. Any dispute regarding the form of the order shall be submitted in writing to the court to the attention of the court's courtroom deputy.

###END OF ORDER###