

Marie O'Connor filed motions for an award of attorney's fees against Ruparelia and Innovative Asset Group. On December 15, 2003, and January 5, 2004, Ruparelia filed responses to the motions. On January 14, 2004, the court entered a "final judgment" on the Ruparelia and Innovative Asset Group claim. The judgment did not, however, adjudicate the motions for attorney's fees filed by the trustee, O'Connor and the Marie O'Connor probate estate. This memorandum opinion and order addresses those motions.

Ruparelia contends that fees should not be awarded to the trustee, O'Connor, or the probate estate because the court had previously directed Ruparelia to submit a fee application, without addressing the other parties. That does not preclude the instant motions pending before the court. The briefing schedule for Ruparelia's fee request does not state that the court "would only review and consider a fee application from Ruparelia," as asserted by Ruparelia. In the pretrial order entered September 23, 2003, the parties preserved the following issue for resolution: ". . . should the Objecting Parties prevail, are the bankruptcy estate and/or the estate of Marie O'Connor entitled to recover attorney's fees from Claimants." Pretrial order, ¶ III.15. The trustee, O'Connor and the probate estate were the objecting parties. They filed their motions for attorney's fees on November 26, 2003. The court acknowledged the motions in the

final judgment but did not decide the motions. The final judgment provides that "[a]ll relief not specifically granted herein is hereby denied." This provision does not adjudicate the motions because the court had not entered findings of fact and conclusions of law on the motions as required by Bankruptcy Rules 7052 and 9014. The court must now decide the motions.

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). As previously held, Ruparelia prevailed against the bankruptcy estate on his claim for the release of the \$40,000 escrow and for his claim of tortious interference. Ruparelia prevailed against O'Connor on his claim of breach of contract for delay in executing lien releases.

Under Virgin Islands' law, a "prevailing party" may be a defendant who defeats claims brought against it. See Thorstenn v. Barnard, 883 F.2d 217, 218 (3rd Cir. 1989). The trustee prevailed on Ruparelia's breach of contract claim against the bankruptcy estate, on Ruparelia's rejection of executory contract claim and on Ruparelia's breach of contract for delay in executing lien releases claim. O'Connor prevailed on Ruparelia's defamation claim, on his trespass claim and on his fraud claim.

The probate estate prevailed on Ruparelia's fraud claim and 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 *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. 1977), *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).

Each applicant has the burden to show that its 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)(addressing fees paid by a bankruptcy estate). To assist the court in determining the reasonableness of the requested fees, the applicant is ethically obligated to exercise reasonable billing judgment. It 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 applicant provides only vague descriptions of the work. Time descriptions lumping activities must be construed against the applicant, as the applicant has the burden of establishing the reasonableness of compensation.

The trustee requests that the court award attorney's fees for the work of Baker & McKenzie in connection with analyzing and objecting to Ruparelia's claims, and for the work of Bruce Cole of Hunter, Cole and Bennett for litigating the Ruparelia claims on behalf of the estate in the Virgin Islands and before this court.

The trustee's motion does not present a question of the reasonableness of the fees for the administration of the bankruptcy estate. Rather, the motion presents the question of

the reasonableness of the fees as a prevailing party for an award against Ruparelia under Virgin Islands' law. Accordingly, of the \$47,748 of fees presented by Baker & McKenzie, the court addresses the \$43,608 associated with the claims litigation itself. By doing so, the court does not include bankruptcy administration work, such as representation of the trustee and preparation of employment applications. The court also does not include settlements and other litigation or disputes with Ruparelia or his counsel.

The court finds that counsel charged reasonable hourly rates. The court finds that counsel's work resulted in a substantial benefit to the bankruptcy estate, disallowing all of Ruparelia's claims for \$938,511 except for \$6,000.

Nevertheless, the trustee did not prevail on all claims. The breach of contract claim overlapped significantly with the escrow fund claim. Ruparelia prevailed on the escrow fund claim. Counsel's descriptions regarding general investigation of the claims objection and general discovery does not address this overlap nor does it separate work by specific claim. Similarly, work on the pretrial order, scheduling order, trial preparation, court hearings and similar work does not differentiate among the claims nor address the overlap issue. Work on litigation in the Virgin Islands does not factor into the litigation before this court. Balancing these factors with the magnitude of the

trustee's success in the litigation, the court finds that one-half of the Baker & McKenzie litigation fees should be awarded. That amounts to \$21,804.00.

The court awards the associated out-of-pocket expenses of \$6,851.25.

The trustee requests that Cole recover \$82,104.92 for fees and expenses. The court finds that counsel charged reasonable hourly rates. Cole's work contributed to the substantial benefit found above. The descriptions of the work performed are often vague or incomplete. In addition, the application reflects the same problem as the Baker & McKenzie application, namely, not differentiating among claims, and not accounting for the overlap and interplay of the breach of contract claim with the escrow fund claim. As with the Baker & McKenzie application, work on litigation in the Virgin Islands does not factor into the litigation before this court.

Nevertheless, the court observed Cole's work during three days of litigation before this court as well as the deposition transcripts tendered to this court as part of the record. The court also observed and considered Cole's work on briefing the issues and Virgin Islands' law, compiling exhibits, and other trial work. As with the work of Ruparelia's counsel, the court can infer necessary time from the magnitude of the work observed by the court. Similarly, the court may consider a proportion-

ality factor, weighing the \$6,000 claim against the estate with the \$938,511 requested and the lack of an interest in the \$40,000 escrow fund.

Weighing all these factors, the court finds that one-half of Cole's request should be awarded. That amounts to \$41,052.46.

The trustee shall recover \$69,707.71 as fees and expenses from Ruparelia and Innovative Asset Group, Inc.

In their motion, as amended, O'Connor and the probate estate request an award of their attorney's fees and expenses. In the first amended motion, they complain about the actions of Ruparelia and his attorney, Greg Gutman, suggesting that Ruparelia and Gutman vexatiously increased the cost of the underlying bankruptcy case. Those alleged actions are not before the court on the instant motion. Rather, the court must determine reasonable attorney's fees for O'Connor and the probate estate to the extent they were prevailing parties on the claims litigation. The motion, as amended, does not comply with the lodestar standard.

Nevertheless, the court adopts the same analytical methodology as used to award fees for Ruparelia where he was the prevailing party. See Memorandum Opinion and Order entered December 31, 2003. The court applies the \$200 per hour rate used in the Ruparelia award. O'Connor prevailed on the defamation, trespass and fraud claims. Those claims should have taken two

hours of court time each to present, which the court triples to six hours each for discovery and trial preparation. Ruparelia's approach to those issues, however, required more time by counsel, by a factor of at least two. Accordingly, the court finds 12 hours of attorney time for each of the three claims, for a total of 36 hours. O'Connor has provided no breakdown of out of pocket expenses associated with the three claims.

O'Connor shall recover \$7,200.00 as fees from Ruparelia and Innovative Asset Group, Inc.

The probate estate prevailed on the fraud and delay claims. The court applies the same standards to those two claims. The court finds 12 hours of attorney time for each of those two claims, for a total of 24 hours. The probate estate has provided no breakdown of out of pocket expenses associated with the two claims.

The Probate Estate of Marie O'Connor shall recover \$4,800.00 as fees from Ruparelia and Innovative Asset Group, Inc.

Based on the foregoing,

IT IS ORDERED that Daniel J. Sherman, the Chapter 7 trustee of the bankruptcy estate of Harold O'Connor, the debtor, shall have a judgment against H. C. Ruparelia and Innovative Asset Group, Inc., for \$69,707.71.

IT IS FURTHER ORDERED that Harold O'Connor shall have a judgment against H. C. Ruparelia and Innovative Asset Group,

Inc., for \$7,200.00.

IT IS FURTHER ORDERED that the Probate Estate of Marie O'Connor shall have a judgment against H. C. Ruparelia and Innovative Asset Group, Inc., for \$4,800.00.

END OF ORDER