

Heating Supply Co. v. Contemporary Construction Co., Inc., 464 A.2d 741 (R.I. 1983) and its progeny.

Plaintiff was represented by three attorneys over the course of the action: Chip Muller, Esq. (Attorney Muller), James Kovach, Esq. (Attorney Kovach) who was Attorney Muller’s associate, and Mark Gagliardi, Esq. (Attorney Gagliardi). Attorney Muller’s requested fee is \$107,650, (Am. Pet., Ex. 1 Muller Aff. ¶ 19), Attorney Kovach’s requested fee is \$62,326, *id.* ¶ 25, and Attorney Gagliardi’s requested fee is \$10,100, *id.* ¶ 30. Plaintiff is therefore seeking a total of \$180,076 in attorneys’ fees and an additional \$2,454.15 in costs for a total award amount of \$182,530.15. *Id.* ¶¶ 31-33.

II

Assessment and Award of Reasonable Attorneys’ Fees

A

Prevailing Party

It is well-settled in Rhode Island that attorneys’ fees “may not be appropriately awarded” to a prevailing party absent statutory or contractual authority. *Kells v. Town of Lincoln*, 874 A.2d 204, 214 (R.I. 2005) (quoting *Insurance Co. of North America v. Kayser-Roth Corp.*, 770 A.2d 403, 419 (R.I. 2001)). The Rhode Island Civil Rights Act of 1990 (RICRA or the Act) allows for an award of attorneys’ fees. *See* G.L. 1956 § 42-112-2. As part of RICRA’s statutory scheme, “[a]n aggrieved person who prevails in an action authorized by this section . . . is entitled to an award of the costs of the litigation and reasonable attorney’s fees in an amount to be fixed by the court.” Section 42-112-2.

In *Keystone Elevator Co., Inc. v. Johnson & Wales University*, 850 A.2d 912, 918 (R.I. 2004) the Rhode Island Supreme Court noted that the “prevailing party” as defined in *Black’s Law*

Dictionary, is “[a] party in whose favor a judgment is rendered, regardless of the amount of damages awarded.” *Black’s Law Dictionary* 1145 (7th ed. 1999). The Rhode Island Supreme Court further stated that determining the “prevailing party” is well within the authority of the trial justice after considering the circumstances of the case. *Keystone Elevator Co.*, 850 A.2d at 920.

In *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983), the Supreme Court of the United States held that with regard to federal fee-shifting statutes, “plaintiffs may be considered ‘prevailing parties’ for attorney’s fees purposes if they succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit.” Plaintiff need not achieve a total victory to be a “prevailing party.” *See id.* “All that is required is success on a significant issue that achieves an appreciable measure of the relief sought.” *Pontarelli v. Stone*, 781 F.Supp. 114, 119-20 (D.R.I. 1992) (citing *Nadeau v. Helgemoe*, 581 F.2d 275, 278-79 (1st Cir. 1978)) (internal quotation marks omitted). Therefore, “a ‘prevailing party’ is one who has been awarded some relief by the court[.]” *Buckhannon Board and Care Home, Inc. v. West Virginia Department of Health and Human Resources*, 532 U.S. 598, 603 (2001).

B

Purpose of Awarding Reasonable Attorneys’ Fees

As the United States Supreme Court stated in *Hensley*, fee-shifting statutes are designed to “ensure ‘effective access to the judicial process’ for persons with civil rights grievances[.]” *Hensley*, 461 U.S. at 429. In *Lipsett v. Blanco*, 975 F.2d 934, 938 (1st Cir. 1992), the United States Court of Appeals for the First Circuit recognized that “[f]ee-shifting statutes are designed to ‘ensure effective access to the judicial process for persons with civil rights grievances,’ not to serve as full employment or continuing education programs for lawyers and paralegals.” (Quoting *Hensley*, 461 U.S. at 429).

The United States Court of Appeals for the Second Circuit explained in *Green v. Torres*, 361 F.3d 96, 100 (2nd Cir. 2004), that “[t]he general purpose of fee-shifting statutes . . . is to permit plaintiffs with valid claims to attract effective legal representation and ‘thereby to encourage private enforcement of civil rights statutes, to the benefit of the public as a whole.’” (Quoting *Quarantino v. Tiffany & Co.*, 166 F.3d 422, 426 (2nd Cir. 1999)).

C

Calculation of Reasonable Attorneys’ Fees

The United States Supreme Court in *Hensley* asserted that, “[t]he most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate.” *Hensley*, 461 U.S. at 433. This amount is referred to as the “lodestar.” *See id.* The Supreme Court reasoned that “[t]his calculation provides an objective basis on which to make an initial estimate of the value of a lawyer’s services.” *Id.*

When calculating this starting point, there are two steps courts generally take. First “a court proceeds to compute the lodestar amount by ascertaining the time counsel actually spent on the case ‘and then subtract[ing] from that figure hours which are duplicative, unproductive, excessive, or otherwise unnecessary.’” *Lipsett*, 975 F.2d at 937 (quoting *Grendel’s Den, Inc. v. Larkin*, 749 F.2d 945, 950 (1st Cir. 1984)). Second the court “applies hourly rates to the constituent tasks, taking into account the ‘prevailing rates in the community for comparably qualified attorneys.’” *Id.* (quoting *United States v. Metropolitan District Commission*, 847 F.2d 12, 19 (1st Cir. 1988)). “Once established, the lodestar represents a presumptively reasonable fee, although it is subject to upward or downward adjustment in certain circumstances.” *Id.* (citing *Blum v. Stenson*, 465 U.S. 886, 897 (1984)).

D

Factors Considered for the Reasonableness of Attorneys' Fees

The Rhode Island Rules of Professional Conduct states that the following factors are to be considered in determining the reasonableness of attorneys' fees:

- “(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
 - (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
 - (3) the fee customarily charged in the locality for similar legal services;
 - (4) the amount involved and the results obtained;
 - (5) the time limitations imposed by the client or by the circumstances;
 - (6) the nature and length of the professional relationship with the client;
 - (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
 - (8) whether the fee is fixed or contingent.”
- Sup. Ct. R. Prof. Conduct, Art V, Rule 1.5.

An attorney's fee should be “consistent with the services rendered, that is to say, which is fair and reasonable . . . [which] depends, of course, on the facts and circumstances of each case.” *Colonial Plumbing & Heating Supply Co.*, 464 A.2d at 743.

“‘Reasonable fees are to be calculated according to the prevailing market rates in the relevant community,’ that is ‘those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation.’” *Grendel's Den, Inc.*, 749 F.2d at 955.

E

Evidence Required for the Court's Determination of Reasonable Attorneys' Fees

“‘[D]ocumentation [submitted by the attorneys seeking fees] must be a full and specific accounting of the tasks performed, the dates of the performance, and the number of hours spent on

each task.” *O’Rourke v. City of Providence*, 77 F.Supp. 2d 258, 266 (D.R.I. 1999) (quoting *Weinberger v. Great Northern Nekoosa Corp.*, 925 F.2d 518, 527 (1st Cir. 1991)). “In the absence of such detailed information, it becomes impossible for the court to ‘gauge whether the task performed was warranted’ or ‘determine if the time factor allocated was appropriate or excessive.” *Rhode Island Medical Society v. Whitehouse*, 323 F.Supp. 2d 283, 288 (D.R.I. 2004). Also, the hourly breakdown must be attested to by the attorney seeking fees. *See id.*

Furthermore, in *Colonial Plumbing & Heating Supply Co.*, the Rhode Island Supreme Court stated that “affidavits or testimony [from disinterested attorneys] establishing the criteria on which a fee award is to be based should be required.” *Colonial Plumbing & Heating Supply Co.*, 464 A.2d at 744. In *Tri-Town Construction Co., Inc. v. Commerce Park Associates 12, LLC*, 139 A.3d 467, 480 (R.I. 2016), the Rhode Island Supreme Court, reaffirming the principles of requiring an affidavit for attorney’s fees in *Colonial Plumbing & Heating Supply Co.*, added that the affidavits “must be from [disinterested] counsel who is a member of the Rhode Island Bar and who is not representing the parties to the action in which fees are sought.”

F

Block Billing

Block billing is “defined as the time-keeping method by which an attorney lumps together the total daily time spent working on a case, rather than itemizing the time expended on specific tasks.” *Conservation Law Foundation, Inc. v. Patrick*, 767 F.Supp. 2d 244, 253 (D. Mass. 2011) (quoting *Torres-Rivera v. Espada-Cruz*, Civil No. 99-1972 CCC, 2007 WL 906176, at *2 (D.P.R. 2007)) (internal quotation marks omitted). In *Torres-Rivera v. O’Neil-Cancel*, 524 F.3d 331 (1st Cir. 2008), the United States Court of Appeals for the First Circuit upheld a district court judge’s fifteen percent global fee reduction for block billing. *Torres-Rivera*, 524 F.3d at 340. A reduction

for block billing may be reasonable when a time record lumps time together and sufficient explanation as to the hours expended is not provided. *See id.* The reasonableness of the fee reduction for block billing is within the trial justice's discretion. *Id.*

III

Analysis

A

Plaintiff's Counsel's Fee Documentation

Plaintiff submitted affidavits from Attorney Muller, Attorney Kovach and Attorney Gagliardi as part of his Amended Petition. Plaintiff also submitted an affidavit from Richard A. Sinapi, Esq. (Attorney Sinapi) as a disinterested attorney familiar with civil rights litigation and the rates charged in the Rhode Island legal community as required by *Colonial Plumbing & Heating Co.* and its progeny². The Court will address the affidavits from Attorney Muller, Attorney Kovach, and Attorney Gagliardi *seriatim*.

1

Reasonable Hours Expended

On May 7, 2024, Plaintiff initially filed a petition for attorneys' fees and costs requesting an amount of \$205,530.15. *See docket.* On May 9, 2024, Plaintiff filed an amended petition for attorneys' fees and costs requesting a total of \$182,530.15.³ *See id.* According to Attorney Muller,

² The Court accepts Attorney Sinapi as qualified pursuant to the *Colonial Plumbing & Heating Supply Co.* criteria.

³ The discrepancy between the May 7 petition and the May 9 petition involves a forty-six-hour entry. Defendants argue that this discrepancy should call into question other aspects of Attorney Muller's Time Record. At the June 25, 2024 hearing, Plaintiff's counsel stated that the May 7 petition improperly contained the forty-six-hour entry. Plaintiff's counsel further stated that the inclusion of the forty-six-hour entry was an inadvertent error and once he saw the error it was corrected. Defendants argued that there was not a sufficient explanation as to why the forty-six-hour entry was in the initial fee petition even though it was removed in the Amended Petition.

the total amount of time he and his associate spent on this case through May 6, 2024 was at least 518.8 hours. (Am. Pet., Ex. 1, Muller Aff. ¶ 13.) Attorney Muller attests that he needed his associate, Attorney Kovach, to assist him with the instant matter. *Id.* ¶ 20. Attorney Muller also attests that he needed the assistance of Attorney Gagliardi. (Am. Pet., Ex. 1, Muller Aff. ¶ 26.)

i

Core v. Non-core Hours

Defendants seek a reduction of the hours expended for failure to differentiate “core” and “non-core” activities. In *Matalon v. Hynnes*, 806 F.3d 627, 638 (1st Cir. 2015), the United States Court of Appeals for the First Circuit explained that “core” tasks include the traditional legal activities such as “legal research, writing of legal documents, court appearances, negotiations with opposing counsel, monitoring, and implementation of court orders” whereas “non-core” tasks, are those “which are ‘less demanding,’ such as ‘letter writing and telephone conversations.’” This Court believes that when attorneys reasonably spend time to make phone calls, write emails, travel, and perform tasks that are not traditionally “core” tasks, the attorneys lose out on the opportunity to perform “core” tasks on the case before the Court or on other cases. *See Matalon*, 806 F.3d at 639 (holding that there are a variety of ways for a trial court to determine the lodestar and a distinguishment between core and non-core hours is not a mandatory way to determine the lodestar).

The Court believes that nothing submitted in the affidavits by the attorneys makes the distinction between “core” and “non-core” activities relevant to this case. Thus, this Court analyzes the hours spent without regard for whether a task is defined as a “core” or “non-core”

After considering Attorney Muller’s explanation, and considering that the Amended Petition was filed a mere two days after the original Petition, this Court finds Attorney Muller’s explanation sufficient and does not weigh the inadvertent error against Attorney Muller’s Amended Petition.

task. Generally, the reasonable actions attorneys have taken to pursue their client's claim should be included in the fee the attorney takes for himself or herself.

ii

Attorney Muller's Hours Expended

a

Attorney Muller's Involvement and Time Record

Attorney Muller is responsible for 215.3 hours of the total 518.8 hours. (Am. Pet., Ex. 1 Muller Aff. ¶ 17). According to Attorney Muller, the amount of time he spent on this case is justified because of Defendants' vigorous litigation and their refusal to compromise. *Id.* ¶ 14. Attorney Muller attests that over the course of discovery, Defendants refused to produce all the information they were required to under Rules 26, 33, and 34 of the Superior Court Rules of Civil Procedure. *Id.* He states that this required Plaintiff's counsel to draft and argue a motion to compel, which was granted in large part. *Id.* Attorney Muller also argues that Defendants filed their Motion for Summary Judgment which Plaintiff's counsel needed to research, oppose, and argue. *Id.* He further states that Defendants' egregious intentional acts with respect to Mr. Maloney's employment justified Plaintiff's research, drafting, and arguing of Plaintiff's Motion for Partial Summary Judgment on Defendants' desire to argue an un-pled affirmative defense. *Id.* Attorney Muller notes that although the Court did not grant Plaintiff's Motion for Partial Summary Judgment, it informed the Court that Defendants' assertion of an un-pled "direct threat defense" was not proper in this case, resulting in the Defendants not pursuing the defense at trial. *Id.*

Over the course of litigation, Attorney Muller documented his conduct in a time record. *See* Am. Pet., Ex. 1 Muller Aff., Ex. C Time Record of Chip Muller, Esq. (Muller Time Record). As part of his time record, Attorney Muller documented various phone calls, drafting of a demand

letter and the Complaint, various email correspondences, various office meetings, reviewing of work submitted to him by Attorney Kovach, preparation for and the taking of depositions, drafting of an objection to Defendants' Motion for Summary Judgment, legal research on relevant issues including whether the Rhode Island Civil Rights Act allows for individual liability, a 4.5 hour log for drafting of a letter regarding an intention to introduce medical records, drafting of trial subpoenas, questions for voir dire and witness examinations, and attending the trial among other events. *See id.*

b

The 4.5 Hour Letter

Defendants highlight an issue with an entry dated December 27, 2023. (Defs.' Opp'n Mem. at 1.) Defendants argue that the time entry of 4.5 hours is excessive for a one-page letter. *Id.* At the June 25, 2024 hearing, Attorney Muller stated that the time entry may have included other related tasks, but no further explanation was given as to why the time entry was for 4.5 hours. With their Opposition Memorandum, Defendants provided the letter that Attorney Muller's records reflect took 4.5 hours to draft. *See* Defs.' Opp'n Mem., Ex. A Medical Records Statute Letter. The letter contains two substantive paragraphs and seven total sentences. *Id.* This Court agrees with Defendants' concern over the excessiveness of the hours stated for the drafting of this letter. No sufficient explanation—either in Attorney Muller's affidavit or from Attorney Muller's comments at the June 25, 2024 hearing—has been provided for the amount of time Attorney Muller spent drafting this letter. Although the letter was drafted, the amount of time spent is excessive and any additional action has not been documented. This Court therefore finds it reasonable to discount this time entry by four hours.

Attorney Muller’s Hours Expended on Plaintiff’s Motion for Partial Summary Judgment

Defendants also object to Plaintiff’s inclusion of hours spent on Plaintiff’s Motion for Partial Summary Judgment regarding the “direct threat defense.” Defendants highlight 17.5 hours Attorney Muller spent on Plaintiff’s Motion for Partial Summary Judgment that the Court ultimately denied. *See* Defs.’ Opp’n Mem. at 10-11. Upon this Court’s review of Attorney Muller’s time records, it identifies 17.8 hours spent on Plaintiff’s Motion for Partial Summary Judgment. *See* Am. Pet., Ex. 1 Muller Aff., Ex. C Muller Time Record at 4-5, 7-8. Defendants argue that Plaintiff is not entitled to these hours, or in the alternative, that the hours should be reduced because the hours logged were for Plaintiff’s Motion for Partial Summary Judgment that was “lost, renewed, and lost again.” (Defs.’ Opp’n Mem. at 10.) Although arguing that the hours were excessive, Defendants provide no evidence regarding the excessiveness of these time entries to rebut Attorney Muller’s affidavit stating that the time spent was reasonable. Upon reviewing the quality of Plaintiff’s Motion for Partial Summary Judgment, the Court finds that the 17.8 hours logged is reasonable.

Furthermore, this Court reiterates the holdings of the United States Supreme Court that has recognized that a “prevailing party” is “one who has been awarded some relief by the court[.]” *Buckhannon Board and Care Home, Inc.*, 532 U.S. at 603. Although Plaintiff did not succeed on his Motion for Partial Summary Judgment, Plaintiff ultimately received a jury verdict in his favor and was awarded \$225,000 in relief on his claim under the Rhode Island Civil Rights Act. The precedent regarding “prevailing parties” does not require a party be successful on every motion or on every aspect of litigation, only the “success on a significant issue that achieves an appreciable measure of relief sought” is important to a determination of whom is a prevailing party. *Pontarelli*,

781 F.Supp. at 120 (citing *Nadeau*, 581 F.2d at 278-79). Here, after achieving a substantial jury verdict, Plaintiff is clearly entitled to attorneys' fees for those reasonable hours expended on his Motion for Partial Summary Judgment that was "lost, renewed, and lost again."

The Court also believes that awarding reasonable hours for Plaintiff's Motion for Partial Summary Judgment regarding the "direct threat defense" is further justified in the instant case because the legal research and writing related to Plaintiff's Motion for Partial Summary Judgment were of great importance to Plaintiff's motion *in limine*, and the work on the issues related to the Motion for Partial Summary Judgment ultimately contributed to the jury verdict for Plaintiff. This Court therefore finds the amount of time logged for Plaintiff's Motion for Partial Summary Judgment to be reasonable and does not discount any time for the motion.

d

Attorney Muller's Total Reasonable Hours

This Court hereby reduces Attorney Muller's hours by four hours because of the excessive 4.5-hour entry for a letter with two substantive paragraphs and a total of seven sentences. After reviewing the Muller Time Record, this Court finds all other hours presented in the Muller Time Record were reasonably expended. Therefore, this Court finds Attorney Muller reasonably expended a total of **211.3 hours** litigating this matter.

iii

Attorney Kovach's Hours Expended

While the Defendants did not have an issue with Attorney Kovach's \$220 an hour rate, Defendants object to the number of hours Attorney Kovach's records reflect. *See* Defs.' Opp'n Mem. at 9-12. Defendants argue that Attorney Kovach's hours are excessive. *See id.* According

to Attorney Kovach's affidavit, he spent 283.3 hours on Plaintiff's case. (Am. Pet., Ex. 2, Kovach Aff. ¶ 13.)

a

Attorney Kovach's Involvement and Time Record

Attorney Kovach was an associate at Muller Law from March 2021 to January 2023. (Am. Pet., Ex. 2, Kovach Aff. ¶ 8.) Attorney Kovach is a relatively new attorney, having been a 2020 graduate of Roger Williams University School of Law. *See id.* ¶ 5; *see also id.* Ex. A Kovach Resume. As an associate for Muller Law, Attorney Kovach worked exclusively on the instant action. (Am. Pet., Ex. 2, Kovach Aff. ¶ 9.) As part of Attorney Kovach's duties his affidavit states that he worked on discovery, conducted a deposition, prepared Attorney Muller for other depositions, drafted Plaintiff's Partial Motion for Summary Judgment, and conducted other motion practice. *Id.* ¶ 10. Attorney Kovach attests to having worked in a reasonably diligent and efficient manner on the instant action and that those reasonable working hours are reflected in his time log. *Id.* ¶ 12. He attests that he spent a minimum of 283.3 hours on the instant case and that the time log reflects a reasonable amount of time spent on Plaintiff's action. *Id.* ¶¶ 13-14. As part of his affidavit, Attorney Kovach submitted a time log detailing the date work was done, the amount of time elapsed, an activity category, a description of the work being done, and the entry date for the time entry. *See* Am. Pet., Ex. 2 Kovach Aff., Ex. B Time Record of James Kovach, Esq. (Kovach Time Record). Attorney Kovach currently works for Cope Ehlers, PC in Chicago, Illinois. Am. Pet., Ex. 2, Kovach Aff. ¶ 7; *id.* Kovach Aff., Ex. A Kovach Resume.

b

Attorney Kovach's Hours Spent on Discovery Issues

Defendants highlight 23.5 hours that were spent on discovery. *See* Defs.' Opp'n Mem. at 11. According to Defendants "[t]here was nothing particularly difficult about the initial discovery sent to the Defendants in this matter." *Id.* Attorney Muller attests to the contrary. *See* Am. Pet. Ex. 1, Muller Aff. ¶ 14. Attorney Muller states that over the course of discovery, Defendants refused to produce all the information they were required to under Rules 26, 33, and 34 of the Superior Court Rules of Civil Procedure. *Id.* He avers that this required Plaintiff's counsel to draft and argue a motion to compel, which was granted in large part. *Id.*

Defendants also highlight nine hours of Attorney Kovach's time spent on work for various motions. (Defs.' Opp'n Mem. at 11-12.) Defendants argue that these time entries are excessive for the size and content of the motions. *See id.* Defendants do not provide any evidence as to a reasonable length of time that the drafting of these motions should have taken. Attorney Kovach attests that he worked reasonably, diligently, and efficiently on this case. (Am. Pet. Ex. 2, Kovach Aff. ¶ 12.) Although it is clear that Attorney Kovach spent time on discovery, it is not clear that the time expended was reasonable due to the lack of specificity in his time record. The Court addresses this issue *infra*. *See* discussion *infra* Section III.B.2.

c

Attorney Kovach's Hours Expended on Plaintiff's Partial Motion for Summary Judgment

Defendants also object to Plaintiff's inclusion of hours spent on Plaintiff's Motion for Partial Summary Judgment regarding the direct threat defense. *See* Defs.' Opp'n Mem. at 10-11. Defendants highlight 46.1 hours Attorney Kovach spent on Plaintiff's Motion for Partial Summary Judgment that the court denied. *See id.* Upon this Court's review of Attorney Kovach's time

records, the Court identifies 46.5 hours spent on Plaintiff's Motion for Partial Summary Judgment. *See* Am. Pet., Ex. 2 Kovach Aff., Ex. B Kovach Time Record at 6-10. Defendants argue that Plaintiff is not entitled to these hours, or in the alternative, the hours should be reduced because the hours logged for Plaintiff's Motion for Partial Summary Judgment are excessive for a motion that was "lost, renewed, and lost again." (Defs.' Opp'n Mem. at 10.) Defendants provide no evidence regarding the excessiveness of these time logs to rebut Attorney Kovach's affidavit stating that the time spent was reasonable. Although it is clear that Attorney Kovach spent time on Plaintiff's Partial Motion for Summary Judgment, it is not clear that those hours are reasonable due to the lack of specificity in his time record. The Court will address this issue *infra*. *See* discussion *infra* Section III.B.2.

Furthermore, as stated above, although Plaintiff did not succeed on his Motion for Partial Summary Judgment, Plaintiff ultimately received a jury verdict in his favor and was awarded \$225,000 in relief on his claim under the Rhode Island Civil Rights Act as stated above. The precedent regarding "prevailing parties" does not require a party be successful on every motion or on every aspect of litigation, only the "success on a significant issue that achieves an appreciable measure of the relief sought" is important to a determination of whom is a prevailing party. *Pontarelli*, 781 F.Supp. at 120 (citing *Nadeau*, 581 F.2d at 278-79). Here, after achieving a substantial jury verdict, Plaintiff is clearly entitled to attorneys' fees, including for those reasonable hours expended on his Motion for Partial Summary Judgment that was "lost, renewed, and lost again."

Additionally, as stated above, the hours expended were directly related to the "direct threat defense" which was the basis for Plaintiff's motion *in limine*, which was granted by the Court.

Attorney Gagliardi's Hours Expended

a

Attorney Gagliardi's Time Records

On January 11, 2024, Attorney Gagliardi filed a Limited Scope Entry of Appearance. *See docket*. This Limited Scope Entry of Appearance was “for the limited purpose of assisting lead counsel in jury selection.” (*Docket*, Limited Scope Entry of Appearance, filed Jan. 11, 2024.) According to Attorney Gagliardi’s affidavit, he spent 20.2 hours on the case. (Am. Pet., Ex. 3, Gagliardi Aff. ¶ 10.)

Attorney Gagliardi attests to having worked in a reasonably diligent and efficient manner on Plaintiff’s case. (Am. Pet., Ex. 3 Gagliardi Aff. ¶ 9.) In his time log submitted as an attachment to his affidavit, Attorney Gagliardi entered eight entries totaling 20.2 hours. *Id.*, Gagliardi Aff., Ex. F Time Log (Gagliardi Time Record). His time record includes a four-hour entry for reviewing of the case docket, a 1.5 hour entry for reviewing voir dire questions, a .4 hour entry for drafting of the scope of appearance motion, a four-hour entry for attending the first day of trial in Washington County⁴ and meeting with Attorney Muller and Mr. Maloney to discuss trial strategy and voir dire, a .3-hour entry for a status conference in Washington County, a one-hour entry for a status conference in Kent County, a one-hour entry for attending a motion *in limine*, and an eight-hour entry for day one of the trial in Kent County and participation in voir dire during the first day

⁴ The Court notes that the case was originally scheduled for trial before Associate Justice Taft-Carter in Washington County. Associate Justice Taft-Carter recused herself from the case resulting in the case being relocated to Kent County Superior Court. Attorney Gagliardi’s time records reflect a time entry of a trial beginning in Washington County before Associate Justice Taft-Carter.

of the trial. *Id.* The Court notes that voir dire was concluded after approximately four hours on the first day of the trial.

b

Attorney Gagliardi's Reasonable Hours Expended

As noted above, Attorney Gagliardi's Limited Scope Entry of Appearance was "for the limited purpose of assisting lead counsel in jury selection." (*Docket Limited Scope Entry of Appearance*, filed Jan. 11, 2024.) Because of this limited scope purpose, the Court does not find it reasonable to hold Defendants responsible for hours Attorney Gagliardi worked outside the scope of this limited purpose. Attorney Gagliardi attests to having worked in a reasonably diligent and efficient manner on Plaintiff's case. (Am. Pet., Ex. 3 Gagliardi Aff. ¶ 9.)

In his time record submitted as an attachment to his affidavit, Attorney Gagliardi entered eight entries totaling 20.2 hours. *Id.*, Ex. F Gagliardi Time Record. According to that time record, he spent one hour attending a motion *in limine* that Attorney Muller argued. *Id.* The motion *in limine* was not part of the jury selection process, and as such Attorney Gagliardi did not need to be present for the motion *in limine*. The Court therefore reduces Attorney Gagliardi's hours worked by one hour as it relates to the motion *in limine*.

Furthermore, the Gagliardi Time Record includes an eight-hour entry for attending day one of the trial in Kent County and participating in voir dire. *See id.* Voir dire was concluded after approximately four hours. Voir dire was the only portion of the trial that was related to Attorney Gagliardi's limited appearance. Furthermore, on the first day of trial at side bar Attorney Gagliardi attempted to argue an issue outside the scope of his limited appearance. The Court reminded Attorney Gagliardi that his entry in the case was limited to jury selection and that if he desired to enter the case to argue other motions or issues that he should file an entry of appearance. Attorney

Gagliardi declined to do so. Because of his limited entry of appearance, it is not reasonable to have Defendants reimburse Plaintiff for additional legal services that Attorney Gagliardi rendered outside the scope of his limited appearance. Therefore, the Court reduces Attorney Gagliardi's hours by an additional four hours.

c

Attorney Gagliardi's Total Reasonable Hours Expended

The Court, upon review of Attorney Gagliardi's limited appearance in the case and after reviewing the Gagliardi Time Record, hereby reduces Attorney Gagliardi's hours expended by a total of five hours, representing a one-hour reduction for attending the motion *in limine* and a four-hour reduction from attending the entire eight hours of the first trial day where only four were spent on voir dire. The Court, therefore, determines that **15.2 hours** represents Attorney Gagliardi's reasonably expended hours.

2

Reasonable Hourly Rate

Plaintiff requests a reasonable hourly rate of \$500 for the legal services Attorney Muller and Attorney Gagliardi rendered. *See* Am. Pet. at 10. Plaintiff requests a reasonable hourly rate of \$220 for legal services Attorney Kovach rendered. *Id.* at 10-11.

i

Attorney Muller & Attorney Gagliardi's Reasonable Hourly Rate

Attorney Muller and Attorney Gagliardi attest that \$500 per hour is a reasonable rate for their services because of their experience level in this area of practice in Rhode Island. (Am. Pet., Ex. 1, Muller Aff. ¶ 18; Am. Pet., Ex. 3, Gagliardi Aff. ¶ 12.) As part of the petition, Plaintiff submitted an Affidavit from Attorney Richard Sinapi. *See* Am. Pet., Ex. 4 Sinapi Aff. Attorney

Sinapi is the principal attorney at Sinapi Law Associates, Ltd. *Id.* ¶ 1. He graduated *cum laude* from Harvard Law School in 1983. *Id.* ¶ 2. Attorney Sinapi has been providing legal representation in civil rights cases including employment law for forty-one years. *Id.* Through his personal knowledge, he is familiar with Attorney Muller’s credentials, background, and experience. *Id.* ¶ 4. Attorney Sinapi regards Attorney Muller as a highly competent practitioner in the field of employment law in the Rhode Island legal community. *Id.* ¶ 5. Attorney Sinapi is familiar with fees charged by civil rights and employment law attorneys in Rhode Island. *Id.* ¶ 6. In his opinion, \$500 per hour is a reasonable rate for Attorney Muller based on Attorney Muller’s reputation, skills, and experience. *Id.* According to Attorney Sinapi, the \$500 hourly rate is at or below the hourly fees charged by other attorneys of comparable skill and experience. *Id.*

In *Gempp v. The Preservation Society of Newport*, No. NC-2016-0406, (June 4, 2020), (Carnes, J.), a case decided over four years ago, the court awarded Attorney Muller \$375 per hour. *Gempp*, No. NC-2016-0406 at 21. Here, Attorney Muller and Attorney Gagliardi are requesting an hourly fee award of \$500. Although Defendants did not provide an affidavit from a disinterested attorney setting forth the reasonable rate of an attorney in a comparable practice and skill to Attorney Muller or Attorney Gagliardi, Defendants argue that the \$500 an hour rate is excessive. Defendants argues that a rate of \$475 an hour as found in *Child Evangelism Fellowship of Rhode Island, Inc. v. Providence, Public School District*, 2024 WL 1240526 (D.R.I. 2024), would be more reasonable.⁵ *See* Defs.’ Opp’n Mem. at 8.

⁵ The Court notes that although the United States District Court for the District of Rhode Island approved a \$475 rate for Attorney Mihet and Attorney Gannam—who according to Defendants appear nationally in constitutional litigation and who have appeared before the United States Supreme Court—the instant Amended Petition is distinguishable from *Child Evangelism Fellowship of Rhode Island*, because there the hourly rate was not in contention and was, in fact, not challenged by the defendants. *Child Evangelism Fellowship of Rhode Island*, 2024 WL 1240526, at *2 (D.R.I. 2024) (“The defendants do not challenge the claimed hourly rates and the

Using the Consumer Price Index (CPI) inflation calculator provided through the United States Bureau of Labor Statistics, the \$375 an hour adjusted for inflation from the date of the *Gempp* decision in June 2020 to the most recent month for CPI numbers June 2024⁶ is \$457.01 an hour. See Bureau of Labor Statistics, *CPI Inflation Calculator*, <https://data.bls.gov/cgi-bin/cpicalc.pl?cost1=375&year1=202006&year2=202406> (last visited Jul. 23, 2024). Since the four years from the *Gempp* decision, Attorney Muller has gained more experience and knowledge of employment law litigation. Attorney Muller throughout trial demonstrated skills that are comparable to those members of the community; however, the Court does not believe the \$500 per hour requested is reasonable. The \$475 hourly rate is a \$17.99 an hour increase from the \$457.01 inflation adjusted hourly rate awarded to Attorney Muller in *Gempp*. The \$17.99 an hour increase is a reasonable increase. The additional \$17.99 an hour gain encompasses the additional knowledge and skill Attorney Muller received over the course of the four years from the Court's decision in *Gempp*.

Therefore, the Court finds a reasonable hourly rate for legal services rendered for Attorney Muller is \$475 per hour. Attorney Gagliardi has a comparable experience and knowledge of employment law to Attorney Muller. As such, the Court also finds a reasonable hourly rate for Attorney Gagliardi's services is \$475 an hour.

Court finds that CEF has sufficiently demonstrated these rates are acceptable.”) Furthermore, Defendant has provided no details about the facts of that case to justify a comparison. Therefore, this Court does not believe that the comparison to *Child Evangelism Fellowship of Rhode Island* is relevant.

⁶ The Bureau of Labor Statistics has not yet published July CPI numbers.

Attorney Kovach's Reasonable Hourly Rate

According to Attorney Muller, \$220 per hour is a reasonable fee for Attorney Kovach based on Attorney Kovach's experience and rates charged by other attorneys at his experience level. (Am. Pet., Ex. 1, Muller Aff. ¶ 22.) It is also Attorney Sinapi's opinion that a \$220 hourly rate for work performed by an associate attorney is a reasonable hourly rate. (Am. Pet., Ex. 4, Sinapi Aff. ¶ 8.) Attorney Sinapi attests that the fees sought in this case are particularly fair and reasonable given the services that were performed. *Id.* ¶ 9.

As stated above, Attorney Kovach was an associate at Muller Law from March 2021 to January 2023. (Am. Pet., Ex. 2, Kovach Aff. ¶ 8.) Attorney Kovach is a relatively new attorney having been a 2020 graduate of Roger Williams University School of Law. *See id.* ¶ 5; *see also id.* Ex. A Kovach Resume. He currently works for Cope Ehlers, PC in Chicago, Illinois. Am. Pet., Ex. 2, Kovach Aff. ¶ 7; *id.* Kovach Aff., Ex. A Kovach Resume. Attorney Sinapi opined that a \$220 hourly rate for work performed by an associate attorney is a reasonable hourly rate. (Am. Pet., Ex. 4 Sinapi Aff. ¶ 8.) Attorney Sinapi attests that the \$220 an hour fee is particularly fair and reasonable given the services that were performed. *Id.* ¶ 9. Furthermore, Defendants do not object to the \$220 an hour rate that Attorney Kovach has requested. Therefore, the Court finds that \$220 per hour to be a reasonable hourly rate for Attorney Kovach's services rendered.

Calculation of Reasonable Attorneys' Fee

After having determined the reasonable hours expended by Attorney Muller and Attorney Gagliardi and after having determined their reasonable hourly rate, this Court hereby calculates their lodestars as stated below.

i

Calculation of Attorney Muller's Lodestar

As calculated above, the Court determined Attorney Muller reasonably expended 211.3 hours pursuing Mr. Maloney's case; also, as noted above, the Court determined that \$475 an hour is a reasonable rate for Attorney Muller. Thus, taking the 211.3 reasonable hours and multiplying by a reasonable hourly rate of \$475 an hour, the Court finds that the lodestar for Attorney Muller's services pursuing Mr. Maloney's claims is \$100,367.50. This calculated lodestar represents a \$7,282.50 reduction from Attorney Muller's request of \$107,650.

ii

Calculation of Attorney Kovach's Lodestar

The Court addresses Attorney Kovach's fee request in the Fee Reduction section *infra*. See discussion *infra* Section III.B.2.

iii

Calculation of Attorney Gagliardi's Lodestar

As calculated above, the Court determined that Attorney Gagliardi reasonably expended 15.2 hours pursuing Mr. Maloney's case. As noted above, the Court determined that \$475 an hour is a reasonable rate for Attorney Muller. Thus, taking the 15.2 reasonable hours and multiplying by a reasonable hourly rate of \$475 an hour, the Court finds that the lodestar for Attorney Gagliardi's services pursuing Mr. Maloney's claims is \$7,220. This calculated lodestar represents a \$2,880 reduction from Attorney Gagliardi's request of \$10,100.

B

1

Attorneys' Fee Enhancement

The Petition requests an additional 10% fee enhancement. (Am. Pet. at 12.) Citing *Gempp*, Plaintiff argues that pursuant to Rhode Island case law and the factors of Rule 1.5 of the Rhode Island Rules of Professional Conduct, “Plaintiff believes that a 10% enhancement is appropriate.” *Id.* Plaintiff provides no further explanation as to why a fee enhancement is appropriate for this instant petition. At the June 25 hearing, Attorney Muller did not provide any further reason as to why a 10% fee enhancement is warranted here. Without further explanation from Attorney Muller, and reviewing Attorney Muller’s work over the course of the trial, this Court finds that there is no basis for a 10% enhancement. Attorney Muller performed to the level of expertise that was expected and there were no extraordinary issues presented to justify an enhancement.

2

Attorneys' Fee Reduction

Defendants’ Opposition Memorandum requests a 20% reduction for block billing, for failure to identify which Count of the Complaint expended hours went to, and for Plaintiff’s failure to produce records that meet the required standard in fee award petitions. (Defs.’ Opp’n Mem. at 19.) Defendants also argue that Attorney Muller’s and Attorney Kovach’s time records contain various non-descript entries. *See id.* at 10-12. As noted above, a reduction for block billing may be reasonable when a time record lumps time together and sufficient explanation as to the hours expended is not provided. *See Torres-Rivera*, 524 F.3d at 340. The reasonableness of the fee reduction for block billing is within the trial justice’s discretion. *Id.*

Although the Court notes that both the Muller Time Record and the Kovach Time Record have various time entries that combine various and different legal tasks, the Court finds a distinction between Attorney Muller's Time Record and Attorney Kovach's Time Record. One example of an entry containing various legal tasks in Attorney Muller's time record is a 13.2-hour entry on April 17, 2024, entitled Email correspondence. (Am. Pet. Ex. 1, Muller Aff., Ex. C Muller Time Record at 10.) In that 13.2-hour time entry, Attorney Muller details that he emailed the court, reviewed examinations, reviewed deposition transcripts, edited notes for jury selection, conducted trial, jury selection, and examination. *Id.* Although Attorney Muller does not distinguish how long each individual task took, this time entry is sufficiently detailed for the Court to find that Attorney Muller reasonably conducted those tasks within the 13.2-hour timeframe. After careful review, the Court finds that the Muller Time Record contains sufficient detail and accounting for the Court to decide whether the time stated was reasonably expended. *See id.*

On the other hand, Attorney Kovach's records are often lacking in detail and substance. *See* Am. Pet. Ex. 2, Kovach Aff., Ex. B Kovach Time Record. Many of Attorney Kovach's time entries simply state that he is drafting a motion or preparing for hearings or depositions. *See id.* Because of the lack of specificity in his records, it is difficult for the Court to determine what time is being spent on particular tasks, thus making it difficult for the Court to determine whether this time is being reasonably spent. *See Rhode Island Medical Society*, 323 F.Supp. 2d at 288. As such, the Court deducts 5% of Attorney Kovach's requested lodestar amount of \$62,326 based upon the requested 283.3 hours times the reasonable hourly rate of \$220.

Defendants' Opposition Memorandum also notes that the time records lack differentiation between time spent between Count I and Count II of the Complaint. This argument made by Defendants mischaracterizes what it means to be a "prevailing party" under established precedent.

As has already been stated, the United States Supreme Court has recognized that a “prevailing party” is “one who has been awarded some relief by the court[.]” *Buckhannon Board and Care Home, Inc.*, 532 U.S. at 603. Although Plaintiff did not succeed on Count II of his Complaint, Plaintiff received a jury verdict in his favor and was awarded \$225,000 in relief on his claim under Count I requesting relief pursuant to the Rhode Island Civil Rights Act.

The precedent regarding “prevailing parties” does not require a party be successful on every aspect of litigation, it only requires the “success on a significant issue that achieves an appreciable measure of the relief sought.” *Pontarelli*, 781 F.Supp. at 119-20 (citing *Nadeau*, 581 F.2d at 278-79). Here, Plaintiff was successful on Count I—a significant issue—and achieved a verdict for \$225,000—an appreciable measure of relief.

Furthermore, both the facts and work done on Count I and Count II were heavily intertwined. All the time records submitted detail work that went to achieve a jury verdict in Plaintiff’s favor. As such, the Court does not make any deductions for failure to distinguish work done on the separate claims.

Therefore, for the lack of specificity in the Kovach Time Record, the Court hereby reduces Attorney Kovach’s requested lodestar by 5%. The Court does not reduce Attorney Muller’s calculated lodestar.

C

Reasonable Costs

Along with the requested attorneys’ fees, Plaintiff is requesting \$2,454.15 in court costs. In support of Plaintiff’s award for court costs, Attorney Muller attests that the \$2,454.15 represents fair and reasonable costs incurred prosecuting this case. Am. Pet., Ex. 1, Muller Aff. ¶ 32; *see* Am. Pet., Ex. 1, Muller Aff., Ex. D Litigation Costs. The submitted litigation costs table contains

various entries including entries for medical records, costs for deposition transcripts, priority mail costs, binder costs, subpoena service costs, and costs for the filing fees. *See id.* Defendants argue that payment of expert-witness fees is not normally recoverable. (Defs.' Opp'n Mem. at 19.) Defendants also argue that Plaintiff is seeking costs outside the parameters articulated in *Kottis v. Cerilli*, 612 A.2d 661, 669 (R.I. 1992). *Id.* Defendants argue that the Court should exclude the following from Plaintiff's costs: \$17.50 for medical records, the \$252.22 for postage on Plaintiff's unsuccessful Motion for Partial Summary Judgment, and the \$391.75 for service of a subpoena on Dr. Gorelick for a keeper of records deposition that did not occur. *Id.* at 20.

Upon further review of the Litigation Costs table, the service of the subpoena upon Dr. Gorelick was \$131.00. (Am. Pet., Ex. 1 Muller Aff., Ex. D Litigation Costs at 2.) There was also a \$106.00 cost for personal service on Dr. Gorelick for trial. *Id.* The \$391.75 cost Defendant articulated was for Mr. Maloney's deposition transcript with invoice number 8224, not for Dr. Gorelick's fees. *Id.* Likewise, the postage and binder for Plaintiff's Partial Motion for Summary Judgment were \$17.10. *Id.* at 1. The \$252.55 cost Defendants mention is for Rhonda Pavese's deposition transcript with invoice #INV2391051, not for the postage and binder. *Id.*

Pursuant to G.L. 1956 § 9-22-5, "[i]n civil actions at law, the party prevailing shall recover costs, except where otherwise specially provided, or as justice may require, in the discretion of the court." Section 9-22-5. In *Kottis*, our Supreme Court found that "[c]osts are normally considered the expenses of suing another party, including filing fees and fees to serve process." *Kottis*, 612 A.2d at 669. Our Supreme Court further explained that "[f]ees to pay expert witnesses would not be included in this definition of costs." *Id.* Our Supreme Court did note however that § 9-22-5 grants the trial justice discretion. *Id.*

Here, the \$131.00 and \$106.00 costs for the expert witness were not an “expert witness fee” but rather was for the service of a subpoena on Dr. Gorelick. The \$131.00 and \$106.00 costs were not a fee paid to Dr. Gorelick for his expert witness testimony and as such these are costs that Plaintiff can be reimbursed for. As stated above regarding Plaintiff’s Motion for Partial Summary Judgment, because Plaintiff’s position articulated in his Motion for Partial Summary Judgment was ultimately successful, the Court finds that Defendants are responsible for the \$17.10 for postage and binder for Plaintiff’s Motion for Partial Summary Judgment. Therefore, this Court finds that Plaintiff’s requested costs of \$2,454.15 are reasonable.

IV

Conclusion

This Court determines that Attorney Muller’s reasonable attorney’s fee is **\$100,367.50** representing a \$7,282.50 reduction from the requested amount of \$107,650.

This Court determines that Attorney Kovach’s reasonable attorney’s fee is **\$59,209.70** representing a \$3,116.30 reduction from the requested amount of \$62,326. Attorney Kovach’s calculated fee consists of a 5% reduction from the \$62,326 lodestar amount for block billing and lack of detail in his time record.

This Court determines that Attorney Gagliardi’s reasonable attorney’s fee is **\$7,220** representing a \$2,880 reduction from the requested amount of \$10,100.

This Court therefore finds and holds that **\$166,797.20** is a reasonable attorneys’ fee award plus reasonable costs of **\$2,454.15** for a total award amount of **\$169,251.35**. This calculated rate represents a \$13,278.80 reduction from the total requested amount of \$182,530.15. Counsel shall submit an appropriate order and form of judgment.



RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE: Patrick Maloney v. Select Realty Services Corp. and
Thomas Morrill

CASE NO: WC-2021-0022

COURT: Kent County Superior Court

DATE DECISION FILED: August 8, 2024

JUSTICE/MAGISTRATE: Van Couyghen, J.

ATTORNEYS:

For Plaintiff: Chip Muller, Esq.

For Defendant: Sonja L. Deyoe, Esq.