United States District Court

EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

DANIELLE GEOFFRION and DARREN KASMIR	§	
	§	
v.	§	Case No. 4:14-cv-350
	§	Judge Mazzant
NATIONSTAR MORTGAGE LLC	§	
	§	

MEMORANDUM OPINION AND ORDER

Pending before the Court is Plaintiffs' Amended Motion for Attorney's Fees, and Non-Taxable Expenses (Dkt. #82). After considering the relevant pleadings, the Court finds that it should be granted in part and denied in part.

BACKGROUND

Plaintiffs allege to have sent Defendant Qualified Written Requests ("QWR"s) for information regarding their account and an accounting of all payments made on their mortgage account (Dkt. #64 at p. 2). Plaintiffs further allege Defendant violated the Real Estate Settlement and Procedures Act 12 U.S.C. ¶ 2605(a) ("RESPA") because Defendant failed to provide information required by federal law (Dkt. #64 at p. 2). Plaintiffs also sued in equity to receive an accounting from Defendant (Dkt. #64 at p. 2).

The case proceeded to trial, and trial began on September 9, 2015 (Dkt. #72). On September 10, 2015, the jury rendered a verdict finding that Plaintiffs submitted QWRs to Defendant on December 16, 2013, and on January 3, 2014 (Dkt. #76 at p. 1). The jury found that Defendant failed to respond or provided an inadequate response to the QWR that Plaintiffs sent on January 3, 2014 (Dkt. #76 at p. 2). The jury also found that Plaintiffs were entitled to recover damages caused by Defendant's failure to respond to Plaintiffs' QWR (Dkt. #76 at p. 3).

On September 14, 2015, the Court entered Judgment on Jury Verdict in which the Court ordered that "all pre-judgment and/or post judgment interest allowed by law shall be paid by Defendant" (Dkt. #78 at p. 2). On September 28, 2015 Plaintiffs filed a motion for attorneys' fees and non-taxable expenses (Dkt. #82). On October 12, 2015, Defendant filed its response (Dkt. #88).

ANALYSIS

RESPA provides that

> "[w]hoever fails to comply with any provision of this section **shall be liable** to the borrower… **in the case of any successful action** under this section, **the costs of the action, together with any attorneys fees incurred** in connection with such action as the court may determine to be reasonable under the circumstances.

12 U.S.C.A. § 2605(f)(3) (emphasis added). Plaintiffs request $199,320 for attorneys' fees and $17,259.71 in expenses (Dkt. #82 at p. 1). The expenses include $2,143.97 in taxable expenses and $15,115.74 in non-taxable expenses (Dkt. #82 at p. 1). Defendant argues that Plaintiffs may only recover fees for a reasonable number of hours (Dkt. #88 at p. 5). Defendant maintains that since Plaintiffs only succeeded on a small fraction of their claims, and failed to demonstrate billing judgment, they cannot recover the requested fees (Dkt. #88 at pp. 6-10). Defendant also argues that "Plaintiffs' attorneys' rate of $550 is not sufficiently supported by evidence and is not reasonable for either the type of work or the market." (Dkt. #88 at pp. 11-14).

The computation of a reasonable attorneys' fee award is a two-step process. *Rutherford v. Harris County, Texas,* 197 F.3d 173, 192 (5th Cir. 1999) (citation omitted). First, the court must utilize the lodestar analysis to calculate a "reasonable" amount of attorneys' fees. *Id*. The lodestar is equal to the number of hours reasonably expended multiplied by the prevailing hourly rate in the community for similar work. *Id*. Second, in assessing the lodestar amount, the court must consider the twelve *Johnson* factors before final fees can be calculated. *Id*.

The *Johnson* factors are:

> (1) time and labor required; (2) novelty and difficulty of issues; (3) skill required; (4) loss of other employment in taking the case; (5) customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by client or circumstances; (8) amount involved and results obtained; (9) counsel's experience, reputation, and ability; (10) case undesirability; (11) nature and length of relationship with the client; and (12) awards in similar cases.

Id. at 192 n.23 (citing *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974)).

After considering the twelve *Johnson* factors, the court may adjust the lodestar upward or downward. *Shipes v. Trinity Indus.*, 987 F.2d 311, 320 (5th Cir. 1993). "If the plaintiff obtained limited success, the hours reasonably spent on the case times the reasonable hourly rate may be excessive." *Verginia McC v. Corrigan-Camden Indep. Sch. Dist.*, 909 F. Supp. 1023, 1032 (E.D. Tex. 1995). "'[T]he most critical factor' in determining the reasonableness of an attorney's fee award 'is the degree of success obtained.'" *Giles v. Gen. Elec. Co.*, 245 F.3d 474, 491 n.31 (5th Cir. 2001) (quoting *Farrar v. Hobby*, 506 U.S. 103, 113 (1992)); *see also Migis v. Pearle Vision, Inc.*, 135 F.3d 1041, 1047 (5th Cir. 1998). "The district court may attempt to identify specific hours that should be eliminated, or it may simply reduce the award to account for the limited success." *Verginia McC*, 909 F. Supp. at 1032 (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983)).

The fee applicant bears the burden of proof on this issue. *See Riley v. City of Jackson, Miss.*, 99 F.3d 757, 760 (5th Cir. 1996); *Louisiana Power & Light Co. v. KellStrom*, 50 F.3d 319, 324 (5th Cir. 1995). "Many of these factors usually are subsumed within the initial calculation of hours reasonably expended at a reasonable hourly rate and should not be double-counted." *Jason D.W. v. Houston Indep. Sch. Dist.*, 158 F.3d 205, 209 (5th Cir. 1998) (internal citations omitted).

The United States Supreme Court has barred any use of the sixth factor as a basis for enhancement of attorneys' fees. *See Walker v. United States Dep't of Hous. & Urban Dev.*, 99 F.3d 761, 772 (5th Cir. 1996) (citing *City of Burlington v. Dague*, 505 U.S. 557, 567 (1992)). In addition, three of the *Johnson* factors – complexity of the issues, results obtained, and preclusion of other employment – are fully reflected and subsumed in the lodestar amount. *Heidtman v. Cty. of El Paso*, 171 F.3d 1038, 1043 (5th Cir. 1999). "[T]he court should give special heed to the time and labor involved, the customary fee, the amount involved and the result obtained, and the experience, reputation and ability of counsel." *Migis*, 135 F.3d at 1047 (citation omitted).

The lodestar is presumptively reasonable and should be modified only in exceptional cases. *Watkins v. Fordice*, 7 F.3d 453, 457 (5th Cir. 1993). The fee-seeker must submit adequate documentation of the hours reasonably expended and of the attorney's qualifications and skill, while the party seeking reduction of the lodestar must show that a reduction is warranted. *Hensley*, 461 U.S. at 433; *Louisiana Power & Light Co.*, 50 F.3d at 329.

A. LODESTAR

1. Hours Expended

Plaintiffs seek $199,320 in attorneys' fees for 362.4 hours expended (Dkt. #82 at pp. 1-3). The hours expended are divided as follows:

W. Craft Hughes ("Mr. Hughes")…….. 143.7 hours

Jarett L. Ellzey ("Mr. Ellzey")……. 218.7 hours[1]

Plaintiffs assert that "[t]his was a leanly-staffed case in which every minute of work reflected on the timesheets of Plaintiffs' counsel was necessary and well-spent." (Dkt. #82 at p. 8).[2]

[1] Plaintiffs' counsel states that they waived and deleted 13.7 hours of fees billed by Brian B. Kirkpatrick, an associate who is no longer employed by Plaintiffs' counsel's firm. However, Plaintiffs' counsel does not state that they waived Mr. Kilpatrick's fees because it was excessive, duplicative, or otherwise unnecessary (Dkt. #82 at p. 6, Dkt. #88 at p. 8).

Defendant argues that "[b]ecause Plaintiffs dropped their breach of contract claim, they cannot recover attorneys' fees incurred to further it" and the calculation of hours reasonably spent on the RESPA claim must be significantly reduced (Dkt. #88 at p. 7). Defendant also argues that Plaintiffs' counsel failed to demonstrate billing judgment (Dkt. #88 at pp. 8-10). For the reasons stated below, Plaintiffs' counsel expended an unreasonable number of hours on this case.

Defendant maintains that Plaintiffs' counsel's hours should be reduced because they billed for tasks more suited to support staff or junior attorneys, and charged partner rates for those tasks (Dkt. #88 at p. 10). "Clerical work . . . should be compensated at a different rate from legal work." *Walker*, 99 F.3d at 770. *See Cruz v. Hauck*, 762 F.2d 1230, 1235 (5th Cir. 1985) ("A finding that some of the hours claimed were for clerical work may justify compensating those hours at a lower rate...."); *Johnson*, 488 F.2d at 717 ("It is appropriate to distinguish between legal work, in the strict sense, and investigation, clerical work, compilation of facts and statistics and other work which can often be accomplished by non-lawyers...."). The Court agrees that the filing of legal documents, the calendaring of events, and communications regarding scheduling issues, are all clerical in nature. *See Lewallen v. City of Beaumont*, No. CIV.A. 1:05-CV-733TH, 2009 WL 2175637, at *6 (E.D. Tex. July 20, 2009), *aff'd*, 394 F. App'x 38 (5th Cir. 2010) (finding that basic communications and case organization are "largely clerical or housekeeping matters and not legal work") (citation omitted). Defendant asserts that 3.5 hours were billed for clerical rather than legal tasks (Dkt. #88-2). The Court agrees with all

[2] Defendant also argues that because Plaintiffs have not produced their retainer agreement with their counsel, and because Plaintiff Geoffrion is Plaintiffs' counsel's sister, there is insufficient evidence that Plaintiffs "incurred" or are obligated to pay any fees (Dkt. #88 at p. 4). Defendant maintains that plaintiffs' motion for fees contains no evidence establishing the extent to which Plaintiffs are contractually obligated to pay, "save a self-serving statement of Plaintiffs' counsel" (Dkt. #88 at p. 4). Plaintiffs' counsel even stated in his affidavit that Plaintiffs "retained me and my law firm . . . to represent them in this suit . . . on an hourly basis of $550/hour" (Dkt. #82-1 at p. 3). The Court finds that the bill included with Plaintiffs' counsel's affidavit, the affidavit, and the motion are sufficient evidence that Plaintiffs retained Plaintiffs' counsel at the rate that Plaintiffs' counsel claims (Dkt. #82, 82-1, 82-2).

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