

**IN THE SUPREME COURT OF THE VIRGIN ISLANDS**

<b>JUDI'S OF ST. CROIX CAR RENTAL;</b>	)	<b>S. Ct. Civ. No. 2007-050</b>
<b>LINDA DENNER and DENNIS DENNER,</b>	)	Re: Super. Ct. Civ. No. 531-2002
	)	
Appellants/Defendants,	)	
	)	
v.	)	
	)	
<b>JAHMECA WESTON</b>	)	
	)	
Appellee/Plaintiff.	)	
	)	

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On Appeal from the Superior Court of the Virgin Islands  
Considered: April 14, 2008  
Filed: May 19, 2008

**ORDER OF THE COURT**

**PER CURIAM.**

**THIS MATTER** came before the Court on appeal from a Superior Court order setting aside dismissal and entering judgment in favor of Appellee. In an Opinion entered on February 22, 2008, we reversed the Superior Court order and remanded the case to the trial court. Subsequently, counsel for Appellants submitted a “Bill of Costs” together with an Affidavit, requesting that we award him attorney’s fees in this matter.

Pursuant to our rules, “if a judgment is reversed, reasonable costs shall be taxed against the Appellee unless otherwise ordered.” V.I.S.CT.R. 30(a). Supreme Court Rule 30(b) sets out the threshold procedural requirements for requesting reasonable costs. Specifically, counsel must, within fourteen days after entry of judgment, file an “itemized and verified bill of costs” with the Supreme Court Clerk. VISCR 30(b). In this case, counsel timely filed his “Bill of Costs” on March 6, 2008, the last day of the fourteen-day period. The rule then provides that Appellee has ten days to object to the request for fees.

Accordingly, Appellee's objection should have been filed on or before March 25, 2005.<sup>1</sup>

No objection was filed with this Court by that date.<sup>2</sup>

Supreme Court Rule 30(a) expressly contemplates attorney's fees as being included within the meaning of reasonable costs. *See* VISCR 30(a) ("reasonable costs ... may include attorney's fees"). It is within our sound discretion to determine whether the costs requested are reasonable. *See id.* Counsel requests nineteen thousand and fifty dollars (\$19,050.00) for sixty-three and one half (63.5) hours of work at a rate of three hundred dollars (\$300.00) per hour. Thus, Counsel's "Bill of Costs" requests only attorney's fees and no other costs.

In considering the reasonableness of the attorney's fees requested, this Court finds guidance in the factors discussed by the Appellate Division of the District Court of the Virgin Islands in *Evans v. R&G Mortgage Corp.*, Civ. No. 388/2002, 2007 WL 187475 (D.V.I. App. Jan. 10, 2007). Specifically, we examine:

the time and labor required, the novelty and difficulty of the issues involved, the level of skill needed to properly conduct the case, 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.

*Id.* at \*1 (citing *Lindy Bros. Builders, Inc. of Phila., et al. v. American Radiator & Standard Sanitary Corp., et al.*, 487 F.2d 161 (3d Cir. 1973); *Lucerne Inv. Co. v. Estate Belvedere, Inc.*, 411 F.2d 1205, 1207 (3d Cir. 1969)).

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<sup>1</sup> Pursuant to Supreme Court Rule 16(b), when a time limit is less than eleven days, weekends and legal holidays shall not be computed.

<sup>2</sup> On May 8, 2008, Appellee filed with this Court its "Plaintiff's Opposition to Defendants' Bill of Costs." Appellee claims therein that Appellants' Bill of Costs was not served upon her until April 18, 2008 via facsimile. Even if this is true, however, Appellee's objection was still untimely because then it should have been filed with this Court by May 2, 2008, pursuant to VISCR 30(b) and 16(b). Furthermore, we note that our decision herein is unaffected by the arguments raised by Appellee in her opposition motion.

We first consider that the amount in controversy in the original appeal was five thousand one hundred twenty dollars and seventeen cents (\$5,120.17). Here, counsel requests that we award him almost four times that amount. Hence, although the amount in controversy is but one of the factors we consider, we undertake our reasonableness inquiry in this case with the notion that a request that is four times the amount in controversy is unlikely to be reasonable. *See, e.g.*, 810 F.2d 1250, 1264 (2d Cir. 1987) (stating that, in New York, it is “rarely proper to award fees in an amount that exceeds the amount involved in the litigation”); *Scott Fetzer Co. v. Weeks, et al.*, 859 P.2d 1210, 1216 (Wash. 1993) (“[A] lodestar figure which grossly exceeds the amount involved should suggest a downward adjustment ... While the amount in dispute does not create an absolute limit on fees, that figure's relationship to the fees requested or awarded is a vital consideration when assessing their reasonableness.”); *Allied Finance Co. v. Garza, et al.*, 626 S.W.2d 120, 127 (Tex. App. 1981) (“Attorney's fees ... must ... bear some reasonable relationship to the amount in controversy or the amount recovered.”).

In this case, we review counsel’s “Bill of Costs” to determine the reasonableness of the sixty-three and one half hours expended by counsel. It appears that a bulk of counsel’s time was spent on legal research. In fact, there are seven entries for legal research. However, because most of counsel’s daily hourly totals involve multiple tasks, it is difficult for us to determine the amount of time spent on each particular task. For instance, counsel designated twenty hours for “[f]urther research, first draft Opening Brief” and eight and one half hours for “[f]urther research; final draft Brief of Appellant, Table of Contents, Table of Authorities; multiple revisions.” Additionally, two entries claim three hours and eight hours, respectively, solely for legal research. We find that

counsel could have located and analyzed the cases and statutes cited in his brief with five to six hours of research. Therefore, given the lack of specificity in counsel's "Bill of Costs," we must approximate that about twenty of the hours seemingly billed for legal research are unreasonable. Consequently, we exercise our discretion to decrease the award requested by that amount. *See generally Hensley, et al. v. Eckerhart, et al.*, 461 U.S. 424, 433 (1983) ("The party seeking an award of fees should submit evidence supporting the hours worked and rates claimed. Where the documentation of hours is inadequate, the ... court may reduce the award accordingly.").

In reviewing the other factors listed in *Evans*, we note that although our Opinion held, in Appellants' favor, that the trial court lacked jurisdiction to award Appellee the \$5,120.17, Appellee may still be entitled to bring a separate action to recover that amount from Appellants. *See Judi's of St. Croix Car Rental, et al. v. Weston*, Civ. No. 2007-50, 2008 WL 901485, at \*5 (V.I. Feb. 22, 2008) ("[B]arring compliance with the *Kokkoken* factors, Weston's remedy for Appellants' alleged breach was to initiate a new action based on the settlement agreement."). Therefore, the benefit Appellants received by counsel's labor on appeal may be short-lived. Moreover, in analyzing the hourly rate charged in this case, we note that \$300.00 per hour is at the high end of rates normally charged by Virgin Islands attorneys. *See Lucerne*, 411 F.2d at 1208 n. 2 (taking judicial notice that the hourly rate improperly charged in that case was the rate charged "by leading law firms in difficult Virgin Islands litigation").

In evaluating the difficulty of the issues presented and the level of skill required of Appellants' counsel, we find that the greater part of the appeal required the straightforward application of clearly-defined principles set out in the case law of the

United States Supreme Court, the Third Circuit Court of Appeals, and the Appellate Division of the District Court. The remainder of this appeal required the basic employment of the rules of civil procedure as well as the time devoted to oral argument. Additionally, the record in this case was not extensive. Thus, we do not find that this appeal required any novel or complex issues requiring the use of a high degree of skill by counsel. Counsel's agreement not to bill Appellants for his labor unless they prevailed may very well demonstrate that he recognized the lack of novel and complex issues.

In view of the foregoing, this Court finds that the total hours expended by counsel are somewhat disproportionate with the skill required to litigate this appeal. Additionally, in light of the limited benefit Appellants have gained on appeal as well as the higher than normal hourly rate charged by counsel, we find \$19,050.00 to be an unreasonable request for compensation in this case and will award one-third of the sum requested as a reasonable award. The premises having been considered, it is hereby

**ORDERED** that counsel for Appellants is awarded **SIX THOUSAND THREE HUNDRED AND FIFTY DOLLARS (\$6,350.00)** in attorney's fees, to be taxed as costs by the Clerk of this Court. It is further

**ORDERED** that copies of this order be directed to the parties.

**SO ORDERED** this 19th day of May, 2008.

**ATTEST:**

**GLENDALAKE, ESQ.**  
**Acting Clerk of the Court**