



IN THE COURT OF CHANCERY FOR THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

ELITE CLEANING COMPANY, INC.,)
d/b/a ELITE BUILDING SERVICES,)
)
Plaintiff,)
)
v.) Civil Action No. 690-N
)
WALTER CAPEL and ARTESIAN)
WATER COMPANY, INC.,)
)
Defendants.)

MEMORANDUM OPINION

Submitted: July 27, 2006
Decided: November 20, 2006

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Wilmington, Delaware, *Attorneys for Plaintiff*

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PARSONS, Vice Chancellor.

Pending before the Court is Defendant, Counterclaim Plaintiff, Walter Capel's ("Capel") petition for attorneys' fees. The parties dispute the amount of reasonable attorneys' fees that Capel can recover from Plaintiff, Counterclaim Defendant, Elite Cleaning Company, Inc. ("Elite"). In the underlying case from which the attorneys' fees stem, Elite alleged that Capel, a former janitor for Elite, breached his noncompetition agreement by taking a job with Artesian Water Company, Inc. ("Artesian") and that Artesian tortiously interfered with Elite's rights under that agreement. Capel counterclaimed that Elite had violated the Fair Labor Standards Act ("FLSA")¹ by not compensating him for overtime and travel between jobsites. On June 2, 2006, the Court granted in part and denied in part Capel and Artesian's motion for summary judgment (the "SJ Opinion"), awarding Capel a total of \$464 on his FLSA overtime claim.²

The FLSA provides that Capel shall recover reasonable attorneys' fees and costs for the prosecution of his claim. Capel is seeking \$25,352.50 in attorneys' fees for the unpaid overtime claim.³ Having carefully reviewed the submissions of the parties, I grant reasonable attorneys' fees in the amount of \$10,003.50.

¹ 29 U.S.C. §§ 201-219 (2006).

² *Elite Cleaning Co. v. Capel*, 2006 Del. Ch. LEXIS 105 (June 2, 2006).

³ Capel's petition does not request costs. See Def. Walter Capel's Pet. for Att'ys' Fees, filed June 22, 2006.

I. BACKGROUND

A. Parties and Facts

Many of the facts in this case are set forth in the Court's SJ Opinion. Only those facts pertinent to the claims currently before the Court are recited below.

Elite is a privately held corporation located in New Castle, Delaware and has approximately 150 employees. Elite provides basic janitorial services, including floor care services, carpet cleaning, ceiling tile cleaning, and ultrasonic cleaning services to residences and commercial enterprises. Artesian hired Capital Cleaning Services, a New York corporation ("Capital"), to perform janitorial services, and Capital hired Elite as a subcontractor.

In December 2000, Capel began working as a janitor for Elite. When he started, the company required Capel to sign several pre-employment forms including a covenant not to compete with Elite for a period of two years and an agreement not to solicit or accept a job with any of Elite's clients.⁴ Elite paid Capel between \$8 and \$10 per hour, and he did not receive any benefits such as health insurance or retirement savings.⁵

Capel worked for Elite at Artesian and saw a posting for a job position there that he thought was substantially superior to his job with Elite. He applied for the job, and Artesian hired him in March 2004. Shortly before he began working for Artesian, Capel notified Elite of his intention to change jobs, and Capel's supervisor informed him that

⁴ Defs.' App. to Opening Br. in Supp. of Mot. for Summ. J. ("DOB App.") A22.

⁵ DOB App. A57-58.

his contract with Elite barred his employment by Artesian. Capel still accepted the position at Artesian, and Elite filed this action against Artesian and Capel.

B. Procedural History

Elite filed its complaint on September 10, 2004. The complaint sought a temporary restraining order, preliminary injunction and permanent injunction enjoining Capel from working for Artesian for a period of two years. Elite also sought damages and attorneys' fees.

Capel filed an answer and counterclaim on October 12, 2004. The counterclaim alleged that Elite violated the FLSA by willfully failing to pay Capel (i) overtime for all work he performed in excess of 40 hours per week at a rate of not less than one and one half times his regular rate of pay, (ii) wages for work he performed during meal breaks, and (iii) wages for his travel time between worksites and time spent obtaining various supplies for Elite. As damages, Capel sought to recover the amounts owed for unpaid overtime compensation, unpaid travel time compensation, liquidated damages equal to the amount of back pay due to him and his attorneys' fees.

Capel and Artesian moved for summary judgment on all counts of Elite's complaint and on Capel's counterclaim. The Court granted Capel's motion in all respects except the FLSA counterclaim for travel time compensation. In granting Capel summary judgment on his FLSA claim for unpaid overtime, the Court awarded him \$232 in actual damages, \$232 in liquidated damages and reasonable attorneys' fees. After the Court's SJ Opinion, Capel and Elite settled Capel's counterclaim for unpaid travel time.

On June 22, 2006, Capel filed the pending petition for attorneys' fees stemming from his FLSA claim for overtime pay. The petition seeks \$25,352.50 in attorneys' fees. Elite opposed the petition. For the reasons stated in this opinion, the Court grants Capel's petition for attorneys' fees in the amount of \$10,003.50.

II. ANALYSIS

A. Standard

Pursuant to 29 U.S.C. § 216(b), the prevailing party on a successful FLSA claim is entitled to an award of reasonable attorneys' fees and costs.⁶ "The process for determining the appropriate attorneys' fees is well settled. First, the court determines the appropriate lodestar by multiplying the number of hours reasonably spent on the case by a reasonable hourly rate of compensation for each attorney."⁷ In determining the number of hours, the court must look to the time expended on each task described and determine whether those hours are reasonable, excluding hours that are excessive, redundant or

⁶ Section 216(b) provides: "Any employer who violates the provisions of section 6 or section 7 of this Act shall be liable to the employee or employees affected in the amount of . . . their unpaid overtime compensation . . . and in an additional equal amount as liquidated damages. . . . The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action." A number of courts have addressed the reasonableness of attorneys' fees under the FLSA. *See Mantz v. Steven Singer Jewelers*, 100 Fed. Appx. 78 (3d Cir. 2004); *Loughner v. Univ. of Pittsburgh*, 260 F.3d 173 (3d Cir. 2001); *Lyon v. Whisman*, 1994 U.S. Dist. LEXIS 20542 (D. Del. Dec. 8, 1994); *Griffin v. Leaseway Deliveries, Inc.*, 1992 U.S. Dist. LEXIS 20203 (E.D. Pa. Dec. 31, 1992); *Bell v. United Princeton Props., Inc.*, 884 F.2d 713 (3d Cir. 1989).

⁷ *Lyon*, 1994 U.S. Dist. LEXIS 20542, at *3.

otherwise unnecessary.⁸ The court may reduce excessive hours “where the case is clearly not complex, requires limited discovery, or involves only limited proceedings and briefing.”⁹ “In fixing the hourly rate, [t]he court should assess the experience and skill of the prevailing party’s attorneys and compare their rates to the rates prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation.”¹⁰ The court then multiplies the calculated reasonable time spent by the calculated reasonable hourly rate to reach the lodestar. The court may adjust the lodestar figure, at its discretion, by a multiplier “to reflect the contingent nature of the litigation, difficulty of the issues involved, and the quality of the attorneys’ work.”¹¹ While the fee applicant bears the burden of proving the time and rate elements of a reasonable fee, the fee opponent must raise specific concerns to challenge the reasonableness of the requested rates or the time expended.¹² The Court may not *sua sponte* decrease a fee award based on factors not raised at all by the fee opponent.¹³

⁸ *Mantz*, 100 Fed. Appx. at 81.

⁹ *Jefferson v. City of Camden*, 2006 U.S. Dist. LEXIS 46654, at *20 (D.N.J. June 30, 2006).

¹⁰ *Id.* (internal quotations and citations omitted).

¹¹ *Lyon*, 1994 U.S. Dist. LEXIS 20542, at *3 (internal quotations and citations omitted).

¹² *Id.* at *4.

¹³ *Bell*, 884 F.2d at 720.

1. Hourly rate

Capel asserts that \$225 per hour is a reasonable hourly rate for the type of work done by his attorneys and argues that this hourly fee is commensurate with prevailing market rates within the community. To support these contentions, Capel's attorneys filed affidavits from Laurence Cronin and Mathew Boyer, both of whom are Delaware employment, business and commercial litigators. Both state their belief that \$225 is a reasonable hourly rate for someone of Margaret DiBianca's qualifications in employment law cases. Elite has not argued that the requested hourly rate is unreasonable. Because Elite has not challenged the reasonableness of DiBianca's hourly rate, and because Capel has filed persuasive affidavits supporting the rate requested, the Court finds that \$225 per hour is a reasonable hourly attorneys' fee to litigate the FLSA overtime claim.

2. Number of hours

Capel claims that 105 hours were spent pursuing his FLSA claim for overtime pay. He argues that Elite's delay in producing the requested documents required his attorneys to draft and file motions to compel discovery, thus increasing the number of hours spent on that claim. Moreover, he argues that the redacted and illegible quality of the documents produced required his attorneys to spend significantly more time reviewing them. Capel also contends that the illegibility of those records forced him to seek the deposition of Cheryl Ecton, Elite's owner, to clarify the nature of Elite's records and record keeping practices. To show the reasonableness of the time spent deciphering the

Elite documents, Capel relies upon the Court's comment in the SJ Opinion about the confusing and illegible manner in which Elite kept its records.¹⁴

Elite argues that Capel caused the delay of three months in producing its documents by broadly asking for "all" employee and client information. According to Elite, any incompleteness in its document production stemmed from the fact that it did not produce records for the times Capel did not work. Elite redacted the documents to preserve the privacy of its employees and clients, other than Capel. Elite also alleges that they produced the requested documents in an appropriate way, but Capel's counsel had them in "complete disarray," thereby necessitating additional time to review them.¹⁵ Elite further asserts that it offered to help Capel's attorneys organize the records, for free, and that Capel's rejection of that offer inflated the number of hours needed to review the documents.¹⁶ Thus, Elite argues, the number of hours for which Capel seeks reimbursement is excessive.

a. Documents produced by Elite

Capel's attorneys billed 30.1 hours for payroll record document review. Although the Court found the time sheets produced by Elite confusing, this amount of attorney time for document review is unreasonable. Capel's claim for overtime compensation is straightforward and objective. Elite's time records may have been numerous and poorly kept, but there were not more than a handful of different document types. Review of

¹⁴ *Elite Cleaning Co. v. Capel*, 2006 Del. Ch. LEXIS 105, at *39 n.63.

¹⁵ Pl.'s Resp. to Def.'s Pet. For Att'ys' Fees ¶ 4.

¹⁶ *Id.* ¶¶ 4, 7.

such documents is well within the expertise of a litigation paralegal, and should not require extensive attorney involvement. To the extent questions arose regarding how to interpret the various types of documents, Capel could have obtained the answers through communications with Elite's counsel or an earlier Rule 30(b)(6) deposition of a witness familiar with Elite's timekeeping system.

Furthermore, the Court is mindful that Capel asserted his FLSA claims not only to collect unpaid wages, but also in defense to Elite's efforts to enforce a noncompetition agreement. In the earlier proceedings, Capel argued that because Elite failed to compensate him for overtime, break periods during which he worked and travel between jobsites, it "breached" the employment-at-will relationship with him; hence, the noncompetition agreement was unenforceable. That may explain why Capel's counsel spent the time claimed for the document review in this case. Capel, however, did not prevail on that aspect of his summary judgment motion. Thus, I conclude that the number of hours devoted to document review should be reduced.

For these reasons, the Court finds that Capel's counsel reasonably should have spent 8 hours on document review for the FLSA overtime claim.

b. Letter to the Court with clarification

Capel's attorneys list a total of 8.8 hours under an entry for the drafting, editing, and revising of a letter to the Court with clarifications of calculations. I am disallowing all of this time. The Court may reduce the amount of requested fees for matters that are

within the judge's personal knowledge.¹⁷ Capel filed this supplementary letter because, at argument on the summary judgment motion, the Court stated that it needed clarification of the calculations submitted in support of Capel's counterclaim for unpaid wages. The requested information should have been included in Capel's original summary judgment briefing. Based on Capel's complaints about the problems with Elite's production, I allowed Capel to supplement his briefing to provide the missing information. Because Capel could, and should, have provided that information in the first place, however, I do not consider it reasonable to charge Elite for this time. Thus, I am eliminating the 8.6 hours sought for the letter clarifying Capel's calculations.

In sum, the Court reduces the reasonable number of hours by 30.9 from 105 to 74.1. Thus, the total lodestar amount is 74.1 hours * \$225/hour = \$16,672.50.

3. Lodestar adjustment

Elite argues that the fees requested should be reduced. First, it contends that on January 28, 2005, it mailed a \$409.92 check to Capel to compensate him for his unpaid overtime. Capel cashed the check, so Elite argues that the Court should not award any fees for work done after that date. Elite accuses Capel's attorneys of continuing to litigate the overtime claim solely to collect more fees. Second, Elite argues that the fee award should be proportional to the relatively minute damages award on the overtime claim (\$464 – including both actual and liquidated damages).

¹⁷ *Bell v. United Princeton Props., Inc.*, 884 F.2d 713, 719 (3d Cir. 1989).

Capel replies that work done after January 28, 2005 should be included in the fee award because Elite did not specify the relevant dates for which it reimbursed him, and this required his attorneys to continue reviewing the records. Capel further argues that, contrary to Elite's intimations, its check did not constitute a valid offer of judgment because it did not mention attorneys' fees or costs. As to proportionality, Capel acknowledges the "relatively small" amount of damages he received on the FLSA claim compared to the attorneys' fees requested, but argues that the fees should be awarded nonetheless, because he won 100% of the damages sought on his claim. For that argument, Capel relies upon *Mazut v. Colonial Park Properties, Inc.*¹⁸ In *Mazut* the plaintiff only partially succeeded on his FLSA claim, but the Court of Appeals for the Ninth Circuit still affirmed the District Court's grant of \$13,032 in attorneys' fees for damages that totaled only \$830.57.

I find unpersuasive Elite's argument that the Court should exclude from its fee award any work conducted after January 28, 2005. Elite's mailing of the \$409.92 check does not absolve it from liability for attorneys' fees under the FLSA. Congress made an award of reasonable attorneys fees mandatory upon a successful claim, leaving only the amount for the court's determination. This illustrates Congress' commitment to ensuring that those aggrieved by unfair labor practices have a method and forum in which to enforce their rights. The amount of recovery for FLSA claims is often too small to justify the sometimes considerable expense of hiring a lawyer. The availability of attorneys'

¹⁸ 2004 U.S. App. LEXIS 4242 (9th Cir. Mar. 4, 2004).

fees incentivizes lawyers to take these cases. Here, the Court found that Elite violated the FLSA. Thus, Elite's check for the apparent amount of underpayment does not absolve it from an award of attorneys' fees.

The Court agrees with Capel that, in essence, Elite is arguing that the check dated January 28, 2005 should act as an offer of judgment or settlement, and, therefore, make any legal fees incurred thereafter unreasonable. The Court of Chancery has no offer of judgment rule. Moreover, even in those courts that do have an offer of judgment rule, it is doubtful that Elite's check would satisfy it. To reduce the amount of attorneys' fees, the offer of judgment must include "costs then accrued," which includes attorneys' fees accrued at that time.¹⁹ Elite's check failed to satisfy that requirement.

I recognize, however, that almost all of the time for which Capel seeks attorneys' fees was for work done after January 28, 2005. The check demonstrates that at a very early stage in the litigation of this claim, Elite recognized that they had made some mistakes and that the magnitude of those mistakes was relatively minor. Capel's attorneys ignored this intelligence (or considered it unimportant) and spent almost 100 hours reviewing records and litigating this claim. In the end, however, Capel failed to prove an entitlement to much more in unpaid wages than Elite originally offered. In my opinion, Capel's attorneys could, and should, have cooperated more with Elite to simplify or resolve the overtime claim. As other courts have noted, FLSA claims for overtime

¹⁹ Super. Ct. Civ. R. 68; Fed. R. Civ. P. 68; *See Waters v. Heublein, Inc.*, 485 F. Supp. 110, 114 (N.D. Cal. 1979); *Scheriff v. Beck*, 452 F. Supp. 1254, 1260 (D. Colo. 1978).

compensation are relatively uncomplicated causes of action.²⁰ For Capel to spend over \$25,000 in attorneys' fees to show that Elite made relatively few mistakes commensurate with Elite's early assessment of the problem is questionable, at best.

The Court also rejects Capel's assertion that his claim was 100% successful. When Capel originally asserted his counterclaim, he stated that "at various times" Elite had required him to work more than 40 hours a week and had not given him overtime compensation.²¹ Given that Capel had worked for Elite for more than three years, the lack of specificity in this claim and the absence of any indication, even generally, of the number of hours involved significantly undermines Capel's assertion that his ultimate proof of \$232 in unpaid overtime constitutes 100% success. Moreover, as discussed above, Capel also sought through his FLSA claim to avoid the noncompetition clause of his employment agreement with Elite. Indeed, this may explain the seemingly disproportionate time and effort exerted by Capel's counsel on a relatively minor claim. The fact that Capel did not prevail on his attempt to use the FLSA violation as a defense to Elite's breach of contract claim further undercuts his alleged 100% success rate. Thus, the Court concludes that Capel's degree of success was much less.

"Where the plaintiff's success is not entire, the [Court] has discretion to adjust the award by . . . reducing the award to account for the limited success."²² Taking into

²⁰ *Loughner v. Univ. of Pittsburgh*, 260 F.3d 173, 179 n.5 (3d Cir. 2001).

²¹ Def.'s Answer and Countercl. at 7.

²² *Jefferson v. City of Camden*, 2006 U.S. Dist. LEXIS 46654, at *9 (D.N.J. June 30, 2006) (internal quotations and citations omitted).

account Capel's partial success and the questionable need for some of the billed hours included in the lodestar amount, I conclude that the lodestar should be reduced by 40%. Thus, Capel is awarded a final amount of \$10,003.50 in attorneys' fees.²³

III. CONCLUSION

For the reasons stated, Capel's petition for attorneys' fees is GRANTED in that petitioner is awarded \$10,003.50 in attorneys' fees for the services provided by his attorney to help him recover on his FLSA overtime claim.

IT IS SO ORDERED.

²³ $\$16,717.50 * .60 = \$10,003.50.$