



UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
LOS ANGELES DIVISION

In re: Paul William Martin, Debtor	Case No.: 2:17-bk-16996-ER Adv. No.: 2:17-ap-01587-ER
Kevin Hunter,  Plaintiffs	<b>MEMORANDUM OF DECISION FINDING THAT HUNTER IS ENTITLED TO ATTORNEYS' FEES AND COSTS IN THE AMOUNT OF \$25,495.68</b>
v.	<b>TRIAL:</b>
Paul William Martin DBA Veronica Rose Productions, Inc.,  Defendant	Date: January 28 and February 4, 2019 Time: 9:00 a.m. Location: Ctrm. 1568 Roybal Federal Building 255 East Temple Street Los Angeles, CA 90012

On July 10, 2019, the Court entered a *Memorandum of Decision Finding that Martin's Indebtedness to Hunter, in the Amount of \$10,000, is Excepted from Discharge* [Adv. No. 58] (the "Memorandum of Decision").<sup>1</sup> As set forth in the Memorandum of Decision, the Court determined that Plaintiff Kevin Hunter ("Hunter") was entitled to an award of attorneys' fees and costs, pursuant to Cal. Code Civ. Proc. ("CCP") § 1021 and by reference to a promissory note executed by Hunter and the Defendant Paul William Martin DBA Veronica Rose Productions, Inc. ("Martin"). Having prevailed only on his § 523(a)(2)(A) claim for "actual fraud,"<sup>2</sup> Hunter's

<sup>1</sup> Terms not defined herein have the meaning set forth in the Memorandum of Decision.

<sup>2</sup> In his dischargeability action, Hunter alleged that Martin was liable for debt in the sum of \$141,582.88 on four legal grounds: §§ 523(a)(2)(A) (for false pretenses and for actual fraud), (a)(2)(B), (a)(4) (for committing fraud or

attorneys' fee award was limited to expenses incurred in connection with such claim (the "Actual Fraud Claim").<sup>3</sup> On its July 10, 2019 order (the "Scheduling Order"), the Court directed Hunter to submit evidence of the attorneys' fees and costs incurred, and provided Martin an opportunity to contest the reasonableness of Hunter's legal expenses. Having reviewed the submissions of Hunter and Martin,<sup>4</sup> the Court finds that Hunter is entitled to attorneys' fees and costs in the amount of \$25,495.68.

## **I. Hunter is Entitled to Attorneys' Fees in the Amount of \$24,005.98**

### *A. The Court will Review the Memorandum of Costs on the Merits, Notwithstanding its Untimely Filing*

As set forth in the Scheduling Order, the Court directed Hunter to submit evidence relevant to requested attorneys' fees and costs by no later than September 10, 2019. Hunter filed *Plaintiff's Memorandum in Support of an Award of Attorneys' Fee and Cost in the Total Amount of \$39,193.70* (the "Memorandum of Costs") [Adv. No. 64] on September 12, 2019, thereby missing the filing deadline by two days. On September 13, 2019, Hunter's counsel submitted a supplemental declaration (the "Supplemental Declaration") [Adv. No. 65] explaining that the untimely filing of the Memorandum of Costs was caused by an illness and his subsequent hospitalization. Among other reasons discussed below, Martin objects to Hunter's claimed fees and costs based on the untimeliness of the Memorandum of Costs.

Federal Rule of Bankruptcy Procedure ("FRBP") 9006 applies in computing any time period specified in a court order and enables courts to enlarge filing deadlines on a party's motion, even after the deadline has elapsed, "where the failure to act was the result of excusable neglect." FRBP 9006(b)(1). In *Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership*, 507 U.S. 380, 388 (1993), the Supreme Court discussed the legislative history and purpose of FRBP 9006(b)(1), holding in relevant part:

"[h]ence, by empowering the courts to accept late filings 'where the failure to act was the result of excusable neglect,' Rule 9006(b)(1), Congress plainly contemplated that the courts would be permitted, where appropriate, to accept late filings caused by inadvertence, mistake, or carelessness, as well as by intervening circumstances beyond the party's control."

---

defalcation in a fiduciary capacity), and (a)(6). The Court ruled in Hunter's favor with respect to the actual fraud claim only, and in Martin's favor with respect to all other claims.

<sup>3</sup> See Memorandum of Decision at 15.

<sup>4</sup> The Court reviewed the following papers in adjudicating this matter:

- 1) Plaintiff's Memorandum in Support of an Award of Attorneys' Fee and Cost in the Total Amount of \$39,193.70 [Adv. No. 64] (the "Memorandum of Costs")
  - a) Supplemental Declaration of Eric R. Gassman Re: Late Filing of Plaintiff's Memorandum in Support of an Award of Attorneys' Fee Due to Emergency Medical Condition of Counsel [Adv. No. 65]; and
- 2) Defendant's Motion to Dismiss All Fees and Costs [Adv. No. 66] (the "Motion to Disallow Fees").
- 3) Defendant's Response to Plaintiff's Memorandum Requesting Attorney's Fees and Awards in the Amount of \$39,193.70 is Egregious, Overreaching and Not Limited in Scope [Adv. No. 67] (the "Opposition").

“Excusable neglect” as contemplated under FRBP 9006 is a “somewhat elastic concept,” which concerns an equitable determination “of all relevant circumstances surrounding the party’s omission.” *Id.* at 392, 395 (internal citations omitted). In the context of an untimely application for attorney’s fees and costs, the Ninth Circuit applied *Pioneer* in finding that a lower court had abused its discretion— “[t]he *Pioneer* analysis is ‘broader and more flexible’ than the one we previously employed and ‘caution[s] against erecting a rigid barrier against late filings.’” *Taybron v. City and County of San Francisco*, 218 Fed. Appx. 690, 691 – 92 (9th Cir. 2007) (reversing a lower court’s denial of a motion to reconsider an order precluding appellant from filing an untimely application for attorney’s fees and costs) (internal citations omitted).

Based on the reading of FRBP 9006(b)(1) established in *Pioneer*, Hunter’s untimeliness is excusable. Eric R. Gassman, Hunter’s counsel, attested that on the afternoon of September 10, 2019, prior to completing and filing the Memorandum of Costs, he unexpectedly became ill and began suffering from incessant vomiting, requiring immediate medical attention. Supplemental Declaration, ¶¶ 2 – 3. Counsel remained in continuing medical care for approximately twenty-four hours. *Id.* at 3. Following his discharge from the hospital, counsel claims that he promptly returned to work and submitted the Memorandum of Costs on Thursday, September 12, 2019. *Id.* at 4 – 5. The untimely filing of the Memorandum of Costs was the result of “intervening circumstances beyond [Hunter’s] control,” i.e., a severe ailment incapacitating Hunter’s counsel for more than a day. *See Pioneer Investment Services Co.*, 507 U.S. at 388. Given that the Memorandum of Costs was filed soon after his unexpected hospitalization, there is no indication that Hunter’s counsel acted with anything other than good faith and reasonable expedience. Even if counsel was willing to work through his ailment, he remained hospitalized overnight for “tests, observations, and kept on an I.V. fluid.” Supplemental Declaration, ¶ 3.

Martin counters that Mr. Gassman’s co-counsel, Mr. Brock, should have at least timely filed his own fee application. The Court is unpersuaded by Martin’s contentions. Having been afflicted by an unexpected illness requiring hospital care, it is understandable that Mr. Gassman was unable to inform his co-counsel that the Memorandum of Costs had not been finalized. As such, the Court regards Mr. Brock’s untimeliness excusable because it arises from the unfortunate set of circumstances discussed above. Moreover, the Court notes that Martin was not materially prejudiced by the filing delay and even availed himself of the opportunity to submit a substantive objection to the Memorandum of Costs.

Based on the foregoing, the Court finds that the untimely filing of the Memorandum of Costs was caused by “excusable neglect,” and thereby deems the Supplemental Declaration as a motion to enlarge filing deadlines. *See* FRBP 9006(b)(1) (filing deadlines may be enlarged “on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.”) Therefore, the Memorandum of Costs will be considered on its merits.

*B. Hunter is Entitled to Attorneys' Fees in the Amount of \$24,005.98 Billed by Eric R. Gassman and Robert A. Brock*

The Court “must calculate awards for attorneys’ fees using the ‘lodestar’ method, and the amount of that fee must be determined on the facts of each case. The ‘lodestar’ is calculated by multiplying the number of hours the prevailing party reasonably expended on the litigation by a reasonable hourly rate.” *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 978 (9th Cir. 2008) (internal citations and quotations omitted).

Hunter’s counsel, Mr. Brock, performed the entirety of Hunter’s legal work in the state court action. Both Mr. Brock and Mr. Gassman performed litigation work for Hunter on the present adversary proceeding. With respect to billed fees attributed to work on the Actual Fraud Claim, Mr. Brock purportedly billed 92.45 hours and Mr. Gassman billed 37.9 hours.

1. The hourly rates charged are consistent with prevailing market rates.

Mr. Brock’s billing rate is a flat rate of \$250/hour and Mr. Gassman’s billing rate is a flat rate of \$385/hour for all legal services rendered.

“The ‘prevailing market rates in the relevant community’ set the reasonable hourly rate for purposes of computing the lodestar amount.... ‘Generally, when determining a reasonable hourly rate, the relevant community is the forum in which the district court sits.’ Within this geographic community, the district court should ‘tak[e] into consideration the experience, skill, and reputation of the attorney [or paralegal].’” *Gonzalez v. City of Maywood*, 729 F.3d 1196, 1205–06 (9th Cir. 2013) (internal citations omitted).

Based on the Court’s general observation of counsels’ expertise and demonstrated trial advocacy and writing skills, the hourly rates charged are adequate. Accordingly, both Mr. Brock and Mr. Gassman displayed reasonable competency in litigating Hunter’s case. Their hourly rates are further commensurate with prevailing market rates for practitioners of comparable skill in the Central District of California. Moreover, Martin’s contention that billed attorneys’ fees of \$37,704 are “egregious” goes to the argument that fees were excessively charged, but nowhere in his opposition does Martin actually object to the specific hourly rate at which such fees were billed. Moreover, to the extent that Martin intended to challenge counsels’ billing rates as “egregious,” he has not introduced any evidence whatsoever that the rates charged by Hunter’s counsel exceeded prevailing market rates in this region. Therefore, the hourly rates billed by Hunter’s counsel are reasonable.

2. The total number of hours billed by Hunter’s counsel for work on the Actual Fraud Claim was unreasonable.

The Court must next determine whether the number of hours expended on the litigation by Hunter’s counsel was reasonable. “Ultimately, a ‘reasonable’ number of hours equals ‘[t]he number of hours ... [which] could reasonably have been billed to a private client.’” *Gonzalez*, 729 F.3d at 1202 (internal citations omitted). Relatedly, under California law, “[i]f a plaintiff has prevailed on some claims but not others, fees are not awarded for time spent litigating claims

unrelated to the successful claims, and the trial court ‘should award only that amount of fees that is reasonable in relation to the results obtained.’” *Chavez v. City of Los Angeles*, 47 Cal. 4th 970, 989, 224 P.3d 41, 53 (2010).

Pursuant to the Memorandum of Decision, Hunter was limited to the recovery of attorneys’ fees incurred in relation to the Actual Fraud Claim, i.e., legal work rendered to establish Martin’s liability for “actual fraud” on account of the unauthorized sale of a Porsche (the “Collateral”). In addition, the Court stated that “Hunter [was] not entitled to attorney’s fees incurred in presenting other aspects of his case against Martin.”<sup>5</sup> The Court further directed Hunter to submit evidence “limited to fees and costs incurred with respect to the issue of actual fraud,” and to omit evidence of fees and costs incurred to establish Martin’s liability as to all other grounds.<sup>6</sup>

Hunter seeks fees billed by Mr. Brock in the state court action, in the sum of \$17,362.50,<sup>7</sup> attributed to establishing liability for conversion of the Collateral. Hunter further seeks fees in the sum of \$20,416.50 for legal services arising from this adversary proceeding and connected to the Actual Fraud Claim, of which \$5,825 were billed by Mr. Brock and \$14,591.50 were billed by Mr. Gassman. To avoid the possibility of any duplicative billing, Mr. Brock agreed to forego any fees billed after Mr. Gassman’s association as co-counsel, on or about early August of 2018. According to the Memorandum of Costs, Hunter claims that all requested fees are attributed to services rendered in connection with the Actual Fraud Claim. However, with few exceptions, the billing statements submitted by Hunter’s attorneys do not specify which claims are attributed to each fee item. *See* Memorandum of Costs, Ex. 7.

In opposition, Martin recites a dense collection of grievances concerning state civil procedure rules, ongoing motion practice, discovery efforts, and his fraught relationship with opposing counsel. To the extent that these disjointed contentions revolve around issues previously litigated or improperly brought at this stage, Martin’s arguments are deemed meritless and inapposite. Notwithstanding, it is clear that Martin objects to the sum of Hunter’s legal fees as “egregious,” “excessive,” and “unreasonable.” Based on a charitable reading of the Opposition, Martin contends that Hunter’s fees are unreasonable because the legal services provided were pointless (“exuberant[,] excessive and unnecessary legal fees”), redundant (“[a]ll of Mr. gasman’s [sic] fees are not applicable to establishing liability to the actual fraud”), or intended to oppress (“high legal fees were the result of their over aggressive legal tactics”). Martin further disputes Hunter’s proposed fee allocation because establishing liability on the Actual Fraud Claim was relatively straightforward. Opposition at 4 (“We know that the Plaintiff’s lawyers didn’t spend an equal amount of time attempting to prove claim 523 (a)(2)(A) ...). Specifically, given that Martin acknowledged selling his car over the course of litigation in state court, the elements of the Actual Fraud Claim were established pre-petition. Martin additionally asserts that the Memorandum of Costs lacks sufficient detail to support the requested fees, in contravention of the Court’s instructions. As discussed below, there is at least partial merit to these arguments.

---

<sup>5</sup> Memorandum of Decision at 15.

<sup>6</sup> Scheduling Order at 2.

<sup>7</sup> Claimed amounts were determined by multiplying counsels’ hourly rates by the number of hours purportedly expended on the Actual Fraud Claim.



When the prevailing party submits records for hours that are “excessive, redundant, or otherwise unnecessary,” a court must exclude such compensation by using one of two methods. *See Gonzalez*, 729 F.3d at 1203 (internal citations omitted). First, the court may carry out an “hour-by-hour analysis of the fee request,” and exclude hours not properly billed. *See id.* Second, when provided with a “massive fee application,” the court can also enact “across-the-board percentage cuts either in the number of hours claimed or in the final lodestar figure.” *Id.* (citing *Gates v. Deukmejian*, 987 F. 2d 1392, 1399 (9th Cir. 1992)). If the court determines that a reduction greater than 10% is needed, the court must explain the determined fee cut. *See id.*; *see, e.g., Schwarz v. Sec’y of Health and Human Servs.*, 73 F.3d 895, 899 – 900, 906 (9th Cir. 1995) (affirming 75% cut to the number of hours billed where plaintiff prevailed on only 25% of his claims); *Welch v. Metropolitan Life Ins. Co.*, 480 F.3d 942, 948, (9th Cir. 2007) (affirming 20% cut to hours where fee applicant block billed, as court relied on third-party report that block billing increased number of hours by 10-30%).

Hunter is not entitled to receive attorneys’ fees of \$37,704 billed in connection with the Actual Fraud Claim. Further, because the billing statements proffered date as far back as August 2015, an hour-by-hour fee analysis is not practical here. As explained below, Hunter’s non-compensable legal fees will be excluded according to the “across-the-board” method described in *Gonzalez*.

Here, the hours billed by Hunter’s counsel for work performed to establish Martin’s liability for “actual fraud” are excessive. While certain components of Hunter’s case involved complex issues of fact and law, he only succeeded on 25% of claims pled in the adversary proceeding—the Actual Fraud Claim, which is supported by a straightforward and uncontroversial fact pattern. Accordingly, the Court found that Martin had perpetrated “actual fraud” by conveying the Collateral with the intention of concealing assets from Hunter or otherwise to impair Hunter’s ability to collect on the debt.<sup>8</sup> The Court’s determination of liability relied on the following facts:<sup>9</sup>

- Martin sold his Porsche to a mechanic for \$10,000.
- Martin knew that the Porsche served as security for the Note.
- Martin failed to either notify Hunter of the sale or remit any of sale proceeds.
- Martin knew that the unauthorized sale was wrong.
- The unauthorized sale hindered Hunter’s ability to collect upon the Note.

In reaching its decision, the Court also relied upon general background facts presented by Hunter at trial, which described this case’s overall narrative.<sup>10</sup> The general factual narrative enhanced the Court’s understanding with respect to the financial relationship between Hunter and Martin, the significance of the Collateral, and Martin’s awareness of the debt owed to Hunter. For this reason, the assertion that the majority of Hunter’s legal fees were pointless, unnecessary, or incurred to oppress Martin is greatly overstated. Instead, the efforts expended by counsel in developing the general factual record, as well as the dispositive facts outlined above, were valuable to Hunter’s case, and thereby, in relation to the actual fraud claim. Nevertheless, based

---

<sup>8</sup> Memorandum of Decision at 10.

<sup>9</sup> *See id.*

<sup>10</sup> *See generally* at 2 – 9.

upon the Court's review of the fee statements attached as Exhibit 7 of the Memorandum of Costs, the fees billed by Hunter's counsel reasonable include services performed for unsuccessful or unrelated state claims. Moreover, because the hours spent working on these other claims were significant, the fee allocation suggested by Hunter is incongruous with the number of hours reasonably billed for the Actual Fraud Claim.

First, Hunter proposes to bifurcate all state court fees in half. Mr. Brock's state court fees principally consisted of time spent preparing the state court complaint; several rounds of discovery requests; and a motion for summary judgment/summary adjudication, along with supporting papers. Mr. Brock additionally prepared at least seven discovery motions, two of which were resolved by court ruling, in Hunter's favor.<sup>11</sup> Hunter's state court action is based on four claims for 1) breach of contract, 2) conversion, 3) fraud, and 4) for money lent.<sup>12</sup> Hunter argues that the first and fourth claims should be disregarded as they did not require much effort to litigate. The Court disagrees with Hunter's claim, and by extension, with the proposed method of allocation. The fee statements submitted by Hunter are woefully vague, and state court documents do not indicate that the first and fourth claims required little effort. Instead, the services provided in state court seemingly encompassed issues arising from all four claims. For instance, Martin filed an answer asserting various affirmative defenses against the breach of contract claim and his obligation to repay the loaned amount.<sup>13</sup> And in its tentative ruling on the summary adjudication motion, the state court's discussion of the facts largely focused on contract breach, indicating that this cause of action was not inconsequential. Furthermore, the money lent claim appears to be based on Martin's obligation to repay loaned monies and is further supported by general facts germane to the breach of contract claim. In sum, Hunter has not satisfied his burden that these claims should be disregarded. *See In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1305 (9th Cir.1994) (“[t]he party petitioning for attorneys' fees ‘bears the burden of submitting detailed time records justifying the hours claimed to have been expended.’”) In equity, Hunter's state court fees should be apportioned among all four state court claims. As a result, out of a total of 138.9 hours billed in the state court action, 34.73 should be attributed to the conversion claim. Therefore, Hunter's state court fees amount to \$8,682.50.

Second, Hunter's proposed apportionment with respect to the adversary proceeding is also flawed. Hunter requests that adversary proceeding fees be divided among three legal grounds: 1) §523(a)(2)(A) for false representation and 2) for actual fraud, and 3) for the § 523(a)(2)(B) claim. Hunter does not explain how he determined this proposed allocation, or why he ignored time expended on the §523(a)(4) and (a)(6) claims. There is no reason to disregard these two claims, for which the Court considered evidence and arguments, and thereafter reached a decision disfavoring Hunter. Based on the fee reduction method used above, Hunter's adversary proceeding fees should be divided by four, representing each of causes of actions asserted in the adversary proceeding complaint. Further, this allocation is consistent with the complexity, effort, and time dedicated on issues pertinent to the actual fraud claim. For his work on the adversary proceeding, Mr. Brock billed a total of 70 hours, 17.5 of which should be attributed to

---

<sup>11</sup> See Memorandum of Costs, Ex. 3. It is unclear whether the state court deliberated upon the other discovery motions referenced in Mr. Brock's billing statements.

<sup>12</sup> See Memorandum of Costs, Ex. 1.

<sup>13</sup> See *id.*, Ex. 2.

the actual fraud complaint. Mr. Brock's fees total \$4,375. Mr. Gassman billed a total of 113.75 hours, 28.48 of which are attributed to the actual fraud claim. Mr. Gassman's fees total \$10,948.48. Therefore, Hunter's adversary proceeding fees amount to \$15,323.48.

Based on the foregoing, the Court finds that Hunter is entitled to attorneys' fees in the amount of \$24,005.98.<sup>14</sup>

## **II. Hunter is Entitled to Costs in the Amount of \$1,489.70**

Hunter seeks legal costs in the amount of \$1,489.70. This figure is based on the allocation of costs that Hunter attributes to the actual fraud claim. The requested costs consist of expenses for legal research, electronic data management services, filing fees, and messenger services. Although the Court disapproves of Hunter's proposed allocation with respect to attorneys' fees, the Court finds that the costs herein requested are reasonable. Hunter is entitled to costs in the amount of \$1,489.70.

## **III. Conclusion**

Based upon the foregoing, Hunter is entitled to an award of attorneys' fees and costs in the amount of \$25,495.68, consisting of \$24,005.98 in attorneys' fees billed by Messrs. Brock and Gassman and \$1,489.70 in legal costs. The Court will enter judgment consistent with this memorandum of decision.

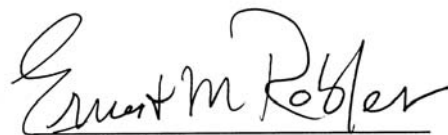
---

<sup>14</sup> The calculation is as follows: for prevailing on the actual fraud claim, Hunter is entitled to \$24,005.98, which is the sum of \$8,682.50 in state court fees and \$15,323.48 in fees incurred as part of this adversary proceeding.



###

Date: December 10, 2019

A handwritten signature in black ink, appearing to read "Ernest M. Robles". The signature is written in a cursive style with a horizontal line underneath the name.

Ernest M. Robles  
United States Bankruptcy Judge