

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NISHIN TAMBAY, M.D. : CIVIL ACTION
:
vs. :
:
MEETA D. PEER, M.D., ET AL. : NO. 03-4499

MEMORANDUM - ORDER

YOHN, J. JULY , 2006

Plaintiff has filed a Motion for Attorneys' Fees and Costs and Modified Prejudgment Interest and Motion to Render Judgment Joint and Several. Defendants filed a response and hearings were held on March 29, 2006 and June 8, 2006. The remaining issues are plaintiff's claims for attorneys' fees in the amount of \$92,914.35 and costs of \$5,613.11.¹

On June 17, 2005 the court entered judgment in favor of the plaintiff and against defendants Meeta D. Peer, M.D. and Meeta D. Peer, M.D., P.C. in the amount of \$32,489.70 jointly and severally. The first of the four components of this award represented damages in the amount of \$5,119.23 relating to the November 2001 termination of plaintiff after a dispute concerning billing issues, which escalated to an argument, and then resulted in plaintiff's either being fired or quitting. After plaintiff filed suit, the parties compromised and plaintiff was reinstated, but never paid his lost wages. The second component in the amount of \$5,631.15 represented plaintiff's unpaid salary for a period of approximately two weeks in early March of 2002 before he was terminated on March 20, 2002. There was no dispute that plaintiff worked during this period of time and was not paid for it. Whether plaintiff was told he could no longer work there because of the MUA issue caused by

¹The court denied plaintiff's Motion to Render Judgment Joint and Several at the hearing on March 29, 2006 for the reasons set forth on the record. The parties also agreed that the request to Modify Prejudgment Interest was moot.

defendants or he was told by Ms. Hanna of the (then) INS that he could stay until he found a new job, he was still entitled to his back pay under the Pennsylvania Wage Payment and Collection Law (WPCL). Plaintiff also was awarded \$17,690.00 on his claim that the defendants breached his employment contract by not granting him annual ten percent increases under the contract during the time he worked for them. Finally, the parties agreed on prejudgment interest on these claims in the amount of \$4,049.32. As a result, a total of \$32,489.70 was awarded on the claims relating to unpaid wages during the November 2001 termination, unpaid wages prior to the March 2002 termination, the ten percent annual increases and prejudgment interest. All of these claims for back pay arise out of a breach of the employment contract by the defendants and plaintiff is entitled to an award of attorneys' fees under the WPCL.

In addition, the court awarded damages to the plaintiff in the amount of \$29,683.11 for the period of time between March 20, 2002 when he was terminated and June 3, 2002 when he began new employment elsewhere. In addition, because his new employment paid a lesser salary, the court awarded damages in the amount of \$134,035.79 for the period from June 3, 2002 until the end of the employment contract to compensate him for the differential. Prejudgment interest was added in the amount of \$23,306.02 for a total of \$187,024.92. These claims for front pay, as plaintiff agreed at the hearing, are not subject to Pennsylvania's WPCL and, therefore, are not subject to a claim for attorneys' fees.

An evidentiary hearing was held on June 8, 2006 to determine the reasonableness of the hourly rates and the hours expended, the allocation of the reasonable attorneys' fees between the WPCL claims, on which attorneys' fees are paid, and the front pay claims, on which attorneys' fees are not paid, and plaintiff's claim for costs of \$5,613.11.

At the evidentiary hearing defendants agreed that they were not contesting the reasonableness of the hourly rates. In addition, there was no meaningful contest of the reasonableness of the total number of hours set forth in the bills submitted by plaintiff's counsel. Jeffrey A. Carr, Esquire testified concerning the preparation of the bills and gave a very balanced and credible recitation of how they were compiled and the various adjustments that were made to make sure that the plaintiff was not overbilled. Defendants did not contest these submissions in any extensive way and the court finds that their limited attacks were not persuasive. Therefore, I find that the total amount of the bills for all of the work in the case is reasonable.

The issue as to attorneys' fees, therefore, becomes what proper allocation should be made between the WPCL claims and the front pay claims. Neither party would suggest a reasonable allocation, even after invitation by the court.

Plaintiff contends that the bills cannot be allocated in a principled manner and, therefore, I should award plaintiff the full amount. Plaintiff contends that he cannot allocate the time between the two claims because all of the same facts were involved in both claims.

Defendants respond that the plaintiff should have allocated the bills appropriately from the beginning and that since plaintiff did not do so I should not award plaintiff anything. Defendants also point out that much of the time spent in preparation for the trial and at the trial involved the MUA issue which did not impact on the WPCL claims, that only count 7 of the complaint involved the WPCL, and that counts 5 and 6 for fraud were part of the case until the very beginning of the trial when plaintiff withdrew them.

The court disagrees with the absolute approach of both sides. A reasonable allocation must be made. It would not be just to award all of the fees to plaintiff when a very substantial

portion of the time involved bore no relationship to the WPCL claims. Likewise, it would not be just to award no fees to plaintiff since plaintiff did make a recovery on his WPCL claims. Plaintiff's total recovery was \$219,514.62 but only \$32,489.70 of that amount reflected the WPCL claims. Moreover, it is clear to the court that 80-90% of the testimony and exhibits at trial related to the MUA issues which had little, if any, impact on the WPCL claims, but which were decisive as to the front pay claims. Because neither side has suggested a way to appropriately allocate the claim for attorneys' fees between the WPCL claims and the non-WPCL claims, and neither party has suggested a way to allocate the hours expended by plaintiff's counsel in pursuing each of the claims, the court finds that the only principled means to base the allocation initially is to award attorneys' fees in the proportion that the WPCL claims bear to the total recovery. This allocation also comports with the fact that roughly 80-90% of the time spent at trial dealt with the MUA issues which almost exclusively bore on the non-WPCL claims. As a result, the initial allocation is 14.8% of the total counsel fees. In order to adjust for the additional attorney time devoted to a small portion of the MUA issues relevant to the WPCL claims and for the limited time devoted to defending the counterclaim raised by the defendants, the court will increase the allocation to 20%. As a result, total attorney fees in the amount of \$18,582.87 will be awarded.

Finally, plaintiff seeks costs in the amount of \$5,613.11. The costs which plaintiff's counsel billed are listed on each monthly bill and the monthly bills were marked as exhibits at the hearing, but never introduced into evidence. No testimony was presented as to any of the costs. Plaintiff conceded that he had not submitted a bill of costs to the Clerk. As a result, I will deny the claim for costs without prejudice to the right of the plaintiff to file a bill of costs with the Clerk of Court.

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O R D E R

AND NOW, this ____ day of July, 2006, upon consideration of plaintiff's Motion for Attorneys' Fees and Costs and Modified Prejudgment Interest and Motion to Render Judgment Joint and Several (Document No. 38) and defendants' response and after hearings on March 29, 2006 and June 8, 2006, **IT IS HEREBY ORDERED** that:

1. Plaintiff's Motion for Modified Prejudgment Interest and Motion to Render Judgment Joint and Several are **DENIED** for the reasons set forth on the record at the hearing of March 29, 2006.

2. Plaintiff's Motion for Attorneys' Fees is **GRANTED IN PART** in the amount of \$18,582.87 and supplemental judgment is entered in favor of plaintiff, Nishin Tambay, M.D., and against defendants, Meeta D. Peer, M.D. and Meeta D. Peer, M.D., P.C., in the amount of \$18,582.87, jointly and severally.

3. Plaintiff's Motion for Costs is **DENIED** without prejudice to the right of the plaintiff to submit a bill of costs with Clerk of Court.

William H. Yohn Jr., Judge