

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

LISA A. STERNADORI	:	CIVIL ACTION
	:	
v.	:	
	:	
SCS HEALTHCARE MARKETING, INC.	:	
and HEALTHSTAR COMMUNICATION	:	NO. 05-3679

MEMORANDUM AND ORDER

NORMA L. SHAPIRO, S.J.

AUGUST 17, 2007

This was an action for breach of employment contract brought by Lisa A. Sternadori (“Sternadori”) against her former employers, SCS Healthcare Marketing, Inc. (“SCS”) and its parent company HealthSTAR Communication (“HealthSTAR”). Sternadori is a citizen of Pennsylvania, and SCS and HealthSTAR are New Jersey corporations. Sternadori’s complaint demanded damages in an amount in excess of \$150,000. The court had diversity jurisdiction over this case under 28 U.S.C. § 1332. The parties filed cross-motions for summary judgment based on interpretation of the employment contract. Defendants’ motion for summary judgment was granted; Sternadori’s motion for summary judgment was denied. Sternadori has filed a motion under Fed.R.Civ.P. 54 and N.J.S.A. § 2A:15-59.1 (“Frivolous Claims Act”) as prevailing party for reimbursement of attorney’s fees and costs.

I. FACTS AND PROCEDURAL HISTORY

Sternadori filed a complaint against SCS and HealthSTAR asserting three claims: breach of contract (Count I); breach of the implied covenant of good faith and fair dealing (Count II); and violation of the New Jersey Wage Payment Law (Count III). Sternadori claimed relief under all three counts because SCS and HealthSTAR allegedly terminated her employment without cause in violation of her employment contract.

In their summary judgment briefs, the parties agreed that Sternadori signed an employment contract with SCS and HealthSTAR, and that Sternadori was terminated on March 2, 2005, long before December 31, 2007, the date the employment contract was to expire. There were no disputed issues of material fact, as the parties did not dispute the express terms of the employment contract, but contested the interpretation of those terms. Decisions on the cross-motions for summary judgment on Sternadori's breach of contract claim depended upon whether the employment contract allowed SCS and HealthSTAR to terminate Sternadori before December 31, 2007, absent mutual agreement, death, disability, or enumerated cause. The court found that the contract provided for termination without cause; and while it did not define "termination without cause," it did not limit termination without cause to mutual agreement, death, or disability. Defendants' motion for summary judgment on Sternadori's breach of contract claim was granted because the employment contract clearly allowed Sternadori to be terminated without cause; Sternadori's motion for summary judgment on breach of contract was denied.

The court also rejected Sternadori's claim for breach of the New Jersey implied covenant of good faith and fair dealing. First, Sternadori argued defendants breached the covenant by terminating her employment without cause, but the court rejected this argument because it found defendants were entitled under the employment contract to do so. Second, Sternadori argued that even if SCS and HealthSTAR had the right to terminate her without cause for an unenumerated reason, they breached their duty of good faith and fair dealing by requiring her to sign a separation agreement and general release as a prerequisite to receiving three months' severance pay. The court found the release requirement was improper because it was not a

contractual prerequisite to receipt of the severance pay under Paragraph 6(B)(1) of the employment contract. But the issue became moot because SCS and HealthSTAR conceded they owed Sternadori three months' severance plus prejudgment interest to compensate for the delay in payment.

Sternadori also moved for summary judgment on her claim under the New Jersey Wage Payment Law, N.J.S.A. 34:11-4.1, et seq., because SCS and HealthSTAR failed to pay her severance upon termination. SCS and HealthSTAR cross-moved for summary judgment. SCS and HealthSTAR conceded Sternadori was entitled to three months' severance pay plus prejudgment interest and requested a judgment ordering them to pay the severance. On March 6, 2007, the court filed a judgment order awarding Sternadori \$28,187.49 plus interest.

Subsequently, Sternadori filed a motion for attorneys' fees, defendants filed cross-motions for attorneys' fees, costs, and Rule 11 sanctions, and the court heard oral argument on the motions on July 26, 2007. At oral argument, defendants conceded they had not yet paid Sternadori her judgment of \$28,187.49 plus interest, and the court ordered defendants to pay the judgment immediately. On August 3, 2007, almost five months after the court filed its judgment order, defendants paid Sternadori \$28,187.49, plus 6% interest, and \$1,111.59 in costs. Before the court is Sternadori's motion for attorneys' fees under Fed.R.Civ.P. 54¹ and the New Jersey Frivolous Claims Act, and defendants' cross-motion for attorneys' fees, costs, and sanctions pursuant to Fed.R.Civ.P. 11.

II. DISCUSSION

¹Fed.R.Civ.P. 54(d)(2)(A) provides: "Claims for attorneys' fees and related nontaxable expenses shall be made by motion unless the substantive law governing the action provides for the recovery of such fees as an element of damages to be proved at trial."

Sternadori claims attorneys' fees under the New Jersey Frivolous Claims Act in the amount of \$72,709.50 (based upon the lodestar approach of multiplying the hours reasonably spent by her counsel and staff by appropriate hourly rates), plus costs in the amount of \$1,111.59, for a total of \$73,821.09.² The Frivolous Claims Act states:

- a. (1) A party who prevails in a civil action, either as plaintiff or defendant, against any other party may be awarded all reasonable litigation costs and reasonable attorney fees, if the judge finds at any time during the proceedings or upon judgment that a complaint, counterclaim, cross-claim or defense of the non-prevailing person was frivolous.
- b. In order to find that a complaint, counterclaim, cross-claim or defense of the non-prevailing party was frivolous, the judge shall find on the basis of the pleadings, discovery, or the evidence presented that...:
 - (2) The non-prevailing party knew, or should have known, that the ... defense was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law.

N.J. Sta. 2A:15-19.1(a)(1) and (b)(2).

Sternadori argues she is the "prevailing party" under the Frivolous Claims Act because she was awarded severance pay. In her complaint, Sternadori demanded damages in excess of \$150,000 for three Counts: I (Breach of Contract); II (Breach of the Duty of Good Faith and Fair Dealing); and III (Violations of the New Jersey Wage, Payment and Collection Law). Upon summary judgment, Sternadori asserted that under the New Jersey Wage, Payment and Collection Law, she was entitled to three months' severance as provided under her employment contract, in the amount of \$28,187.49 plus interest. Although defendants conceded throughout

²The Court of Appeals has found the Federal Rules of Civil Procedure do not preempt state abuse of process claims and similar torts providing relief for misconduct in federal litigation. U.S. Express Lines Ltd. v. Higgins, 281 F.3d 383, 393-94 (3d Cir. 2001). Sternadori's claim for attorneys' fees under the Frivolous Claims Act may be entertained in federal court.

these proceedings that Sternadori was entitled to \$28,187.49, it never paid her that sum with or without interest, and she was compelled to file suit and obtain a court order before receiving her severance pay. Sternadori is clearly the prevailing party as to Count III in the amount of \$28,187.49 plus interest.

Under New Jersey law, attorneys' fees are granted under the Frivolous Claims Act where one party's arguments and defenses to a prevailing party's claims are clearly frivolous. See Fagas v. Scott, 251 N.J. Super. 169, 597 A.2d 571 (1991); Somerset Trust Co. v. Sternberg, 238 N.J. Super. 279, 569 A.2d 849 (1989). A claim is deemed frivolous or groundless when no rational argument can be advanced in its support, when it is not supported by any credible evidence, when a reasonable person could not have expected its success, or when it is completely untenable. Belfer v. Merling, 322 N.J. Super. 124, 144, 730 A.2d 434, 445 (1999); Fagas, 251 N.J. Super. at 189.

Sternadori is entitled to reasonable attorneys' fees and costs because defendants have not proffered any reasonable basis for withholding Sternadori's severance pay despite her undisputed claim under Count III. Prior to litigation, defendants had offered Sternadori her severance pay without interest, provided that she sign a Separation Agreement and General Release and give up her claims under the employment contract. Sternadori refused to sign the Separation Agreement and General Release, and defendants withheld her severance pay. Defendants did not have a reasonable basis for withholding payment of the \$28,187.49 it admitted was due to Sternadori as severance, because Sternadori's employment contract did not require her to sign a general release of claims as a precondition of receiving severance pay. As a result of defendants' actions, Sternadori had to litigate the issue of her severance pay in federal

court, and it was necessary for the court to file a judgment order on March 6, 2007, and admonish defendants at oral argument on July 26, 2007, before Sternadori was finally paid her severance. Defendants knew or should have known their refusal to pay Sternadori the severance due under contract was without any reasonable basis in law or equity.

However, Sternadori was certainly not the prevailing party on her claim she was entitled to a salary for the remainder of her employment contract because she was fired without cause. She cannot recover attorneys' fees for time and cost expended on the claims as to which she did not prevail. Under Hensley v. Eckerhart, 461 U.S. 424, 436 (1983), the most crucial factor in a § 1988 fee award is the degree of success achieved. "Where the plaintiff has failed to prevail on a claim that is distinct in all respects from his successful claims, the hours spent on the unsuccessful claim should be excluded in considering the amount of a reasonable fee." Hensley, 461 U.S. at 440. Where a lawsuit consists of related claims, but the plaintiff achieved only limited success, the court awards the amount of fees reasonable in relation to the results obtained. Id. With respect to the Frivolous Claims Act, there is also a principle of proportionality between the amount involved in the litigation, the results obtained, and the counsel fees allowable by a court. Fagas, 251 N.J. Super. at 193.

Sternadori unsuccessfully claimed she was entitled to an annual salary of \$112,750.00 from March 2, 2005 through December 31, 2007 on her breach of contract claim (Count I), and under the implied covenant of good faith and fair dealing (Count II). Her complaint requested contract damages, attorneys' fees and costs, and prejudgment interest as relief. Sternadori's damages, consisting of salary from March 2, 2005 through December 31, 2007, would have totaled \$319,149.43 had she prevailed on her breach of contract claim. However, Sternadori was

only awarded \$31,546.84 (three months' severance pay plus prejudgment interest) for prevailing in part on her New Jersey Wage Payment and Collection Law claim (Count III).

An award of the entire claimed amount is not warranted under the circumstances. Sternadori's complaint focused upon her unsuccessful claim for wrongful termination under her employment contract without averring facts regarding her entitlement to severance pay; and the majority of Sternadori's summary judgment brief and oral argument focused on the alleged wrongful termination. Sternadori fails to distinguish time expended on the successful claim, slight in view of defendants' failure to dispute the matter, and time expended on the contested unsuccessful claims.³ The court reviewed Sternadori's fee petition, but the petition failed to segregate the amount of time counsel spent on each claim. At oral argument, counsel for Sternadori argued Sternadori's claims could not be segregated, and he was therefore entitled to the entire claimed amount of attorneys' fees. Sternadori's claim for the entire amount of fees on the basis that Sternadori's claims are non-segregable is rejected.

Defendants' refusal to pay Sternadori the amount it admitted was due suggests it would be appropriate to award some fee for the recovery of severance pay in proportion to the total amount claimed in the complaint, i.e., approximately 10% of the claimed attorneys' fees. The court will award \$7,271.00.

Defendants have filed a cross-motion claiming their offer of judgment in the amount of \$30,000, greater than the amount of severance pay plus interest due at the time of the offer, not only precludes their liability for attorneys' fees or costs, but entitles defendants to reimbursement

³Sternadori's costs are not itemized, so they cannot be segregated; nevertheless, defendants paid all costs in the amount of \$1,111.59 on August 3, 2007.

for their attorneys' fees and costs incurred thereafter.

Federal Rule of Civil Procedure 68 provides, in pertinent part:

At any time more than 10 days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against the defending party for the money ... specified in the offer, with costs then accrued.... An offer not accepted shall be deemed withdrawn.... If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer....

Under the plain language of Rule 68, the only applicable inquiry is whether the judgment finally obtained by Sternadori exceeded the amount of the offer of judgment. It is undisputed that three months' severance pay plus applicable prejudgment interest (calculated from March 2, 2005 to March 6, 2007) totals \$31,546.84, which is greater than defendants' \$30,000.00 offer of judgment.⁴ Because the judgment entered for Sternadori exceeds the offer of judgment, Sternadori is entitled to attorney's fees and costs proportionate to her recovery in relation to the full amount claimed, and defendants are not entitled to reimbursement of their costs, attorneys' fees, or Rule 11 sanctions.

Because SCS and HealthSTAR conceded Sternadori was entitled to three months' severance pay plus prejudgment interest under Paragraph 6(B)(1), it was error to deny Sternadori's motion for summary judgment as to severance pay when denying her motion as to breach of contract. Similarly, it was error to grant defendants' motion for summary judgment as to the severance pay when granting it on the breach of contract issue. The order accompanying this opinion will correct that error and enter judgment accordingly.

⁴Rule 68 mandates payment of a plaintiff's costs after the date of the offer of judgment if the amount recovered exceeds the offer of judgment, even if that offer comes "surprisingly close" to the final amount. Bright v. Land O'Lakes, Inc., 844 F.2d 436, 443 (7th Cir. 1988).

III. CONCLUSION

Sternadori's motion for attorneys' fees and costs will be granted in part and denied in part. Counsel for Sternadori will be awarded attorneys' fees in the amount of \$7,271.00.

Defendants' cross-motions for costs, attorneys' fees, and Rule 11 sanctions will be denied.

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ORDER

AND NOW, this 17th day of August, 2007, for the reasons set forth in the foregoing memorandum, it is **ORDERED** that:

1. This court's order of March 6, 2007, is **AMENDED** as follows:
 - a. Plaintiff's motion for summary judgment is **DENIED**, except as to severance pay admittedly due, as to which it is **GRANTED**.
 - b. Defendants' cross-motion for summary judgment is **GRANTED** except as to severance pay as to which it is **DENIED**.
2. Plaintiff's motion for attorney fees and costs (paper no. 27) is **GRANTED IN PART and DENIED IN PART**. Plaintiff's counsel is awarded fees in the amount of \$7,271.00.
3. Defendants' cross-motion for costs (paper no. 29) is **DENIED**.
4. Defendants' cross-motion for attorneys' fees and sanctions pursuant to Rule 11 (paper no. 30) is **DENIED**.
5. The Clerk of Court shall mark this action closed.

/s/ Norma L. Shapiro

S.J.