

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

Anton Hopfinger

Plaintiff,

vs.

Alice Rogoff et al

Defendant(s).

CASE NO: 3AN-16-07173CI

**ORDER ON PLAINTIFF'S MOTION FOR
ATTORNEY'S FEES**

On December 6, 2018 plaintiff moved for award of attorney's fees he incurred in prosecuting this litigation. The motion is based on Civil Rule 68(b)(1), which pertains to offers of judgment, and not on Rule 82. Having considered the parties' briefs, the court concludes that plaintiff is entitled to an award of \$191,334.30 in attorney's fees.

The facts are fairly simple. First, there is no dispute that on September 30, 2016, Hopfinger made a valid offer of judgment less than sixty days after the Rule 26(a)(1) deadline for exchanging initial disclosures in discovery. Second, there is also no dispute that the jury's award to Hopfinger, \$852,752.45, "beat" Hopfinger's \$600,000 offer of judgment by more than ten percent, which, under Rule 68, entitles him to a fee award of 75% of his reasonable actual fees incurred from the date the offer was made. Third, the affidavit of Mr. Hopfinger's attorney explained that his a total of \$290,167.50 in legal fees was incurred prosecuting the case for plaintiff. (Affid. of Jeffrey Robinson at 2.) The senior attorneys who did the majority of the pre-trial and trial work were billed at \$300 per hour; one associate was billed at \$250 per hour and other attorneys' hourly rates varied from \$250 to \$375. Legal assistants were billed at \$100/hr.

The original motion sought a fee award of 75% of the total fees incurred, which would have been \$217,625.60. (Plaintiff's Mot. for Atty Fees at 2.) Later, Hopfinger revised the figure downwards, to \$191,664.40, when he properly restricted the request to 75% of the fees incurred from the date of the offer of judgment.¹ Rogoff has reviewed 87 pages of billing records kept by Hopfinger's attorneys and not challenged any of this accounting.

Rogoff does find several minor instances in which the fees charged can be nitpicked, but Rogoff doesn't challenge the reasonableness of the hourly rates nor suggest that the overall amount billed for over two years of litigation and a two-week trial is unreasonable. Nonetheless, Rogoff proposes that an appropriate fee award would be only 15% of Hopfinger's total fees, or \$28,749.66. The figure itself cannot be taken too seriously, as it is literally invented out of thin

¹ The figure of \$191,664.40 for plaintiff's reduced fee demand does not appear in the original motion; it appears first in Rogoff's Second Opposition to Motion for Attorney's Fees, at page 2. Nevertheless, it appears that the fee demand set forth in Hopfinger's Reply brief is premised on the same figure..

air. And its credibility is not enhanced by the feigned precision of carrying the figure out two decimal places. Rogoff's rationale appears to be that, in spite of the amount of the jury's verdict and the language of Rule 68, Hopfinger did not prevail. In the court's view, this is entirely incorrect.

In determining which party has prevailed, the court looks at the "big picture." A party can prevail even if it loses on most of its claims and even if it doesn't receive all of the relief it asked for. "The prevailing party is the one who . . . is successful on the main issue of the action and in whose favor the decision or verdict is rendered and the judgment entered." *Schultz v. Wells Fargo Bank*, 301 P.3d 1237, 1242 (Alaska 2013). "When considering prevailing party status the trial court should ask the objective question . . . whether [the party]obtained the relief it sought." *Id.*

In this case, Hopfinger successfully established Rogoff's obligation to pay him based on a promise to buy out his interest in ADP and won an award on a scale closely commensurate with his original claim. This was the core of the entire case. The fact that the jury based the award on promissory estoppel, rather than breach of contract, is completely immaterial to his status as prevailing party. The only issue that Hopfinger lost was his attempt to pierce the corporate veil of ADP, but this affected only his lost employee severance pay claim, which had a value of \$75,000. The jury awarded him over ten times that amount in damages for promissory estoppel. By any metric, Hopfinger is the party that prevailed in this case.

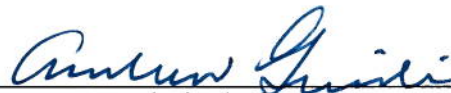
Accordingly, with respect to the final calculation of the fee award, the court makes the following findings:

- (1) The hourly rates charged by Hopfinger's attorneys are reasonable.
- (2) The fees charged by Hopfinger's attorneys are exceptionally conservative and reasonable, especially when one considers the complexity of some of the issues, the amount of litigation required, and the effort required for trial.
- (3) Hopfinger may recover \$1,050 in legal fees devoted to monitoring ADN's bankruptcy proceedings, as they were intimately related to the litigation of this case. The fees do not appear to be for legal work within the bankruptcy proceeding, otherwise they would be disallowed, but they are analogous to investigation and research in support of Hopfinger's claims in this case. As such they are reasonably related and recoverable in this action.
- (4) \$300 in duplicative billing were identified and are excluded from this award.

- (5) The \$3,020 incurred in connection with the "veil piercing" claim were necessarily and reasonably incurred and are recoverable, notwithstanding the fact that Hopfinger lost on that specific issue.
- (6) Overall, 75% of the actual reasonable attorney's fees Hopfinger incurred from the date of his offer of judgment amounts to \$191,334.30,² which is now awarded pursuant to Civil Rule 68(b)(1).

2/13/19

Effective Date




Judge's Signature

ANDREW GUIDI

Type or Print Judge's Name

I certify that on 2/13/19

a copy of this order and notice was mailed:

J. Roberson *D. Gross*
A. Lipson
H. Wang *M. Michalety*
Clerk: C McNeese


² The court's own calculation is \$191,364.40, but as Hopfinger reiterates and urges the court several times to award a figure \$30.10 lower the (slightly) lower figure is adopted by the court, in deference to the request.