Filed 3/28/17 Ruiz v. U.S. Security CA2/1

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

| | |
|---|---|
| ELIZABETH RUIZ,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>U.S. SECURITY ASSOCIATES, INC.,<br><br>Defendant and Appellant. | B275201<br><br>(Los Angeles County Super. Ct. No. BC542144 ) |

APPEAL from the judgment of the Superior Court of Los Angeles County, Malcolm H. Mackey, Judge. Affirmed.

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Ford & Harrison, Michelle B. Abidoye, and Astineh Arakelian for Defendant and Appellant.

Ivie, McNeill & Wyatt, Rodney S. Diggs; The Cochran Firm, and James A. Bryant for Plaintiff and Respondent.

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Defendant and appellant U.S. Security Associates, Inc. (USSA) appeals an attorney fee award in the amount of $481,100 in favor of plaintiff and respondent, Elizabeth Ruiz, a former employee of USSA, after settling her claims of discrimination under the California Fair Employment and Housing Act (FEHA) and wrongful termination. USSA contends that the trial court abused its discretion in its award of attorney fees in setting arbitrary and unreasonable rates for counsel and failing to deduct fees based on certain litigation work after USSA proffered its settlement offer. Finding no abuse of discretion by the trial court on either point, we affirm.

## FACTUAL AND PROCEDURAL SUMMARY

On August 13, 2015, Ruiz filed a first amended complaint against USSA and other individuals alleging that she was sexually harassed and discriminated against in violation of FEHA and wrongfully terminated. Ruiz valued her claim at $5,000,000.

On December 22, 2015, USSA submitted its Civil Code of Procedure section 998 offer (section 998 offer) to Ruiz. USSA left the offer open for 30 days. After receiving the settlement offer, Ruiz's attorneys continued to work on the case preparing it for trial.

On January 25, 2016, Ruiz accepted USSA's section 998 offer, which the parties later agreed to reduce to a confidential settlement agreement. The parties agreed under the settlement that Ruiz was the prevailing party and entitled to reasonable attorney fees.

On March 11, 2016, Ruiz filed a motion for attorney fees. In her moving papers, Ruiz represented to the trial court that she obtained a settlement "for more than twice [d]efendant's initial [section] 998 offer" based on USSA's initial $100,000 valuation of the case. Ruiz's attorneys requested an award of $645,782 plus a

1.5 multiplier for a total award of $968,673 based on the claimed 1,007.9 billed hours.[1]

Ruiz claimed the following as her attorney fees:

| **Attorney** | **Rate** | **Hours** | **Total Amount** |
|---|---|---|---|
| James Bryant (Equity Partner, The Cochran Firm) | $650/hour | 442.3 | $287,495 |
| Rodney S. Diggs (Senior Associate, Ivie, McNeill & Wyatt) | $650/hour | 479.7 | $311,805 |
| Elvin-Mathias Tabah (Associate, Ivie, McNeill & Wyatt) | $450/hour | 59.8 | $26,910 |
| Rickey Ivie (Partner, Ivie, McNeill & Wyatt) | $750/hour | 7 | $5,250 |
| W. Keith Wyatt (Partner, Ivie, McNeill & Wyatt) | $750/hour | 19.10 | $14,325 |
| | Total | 1006.2 | $645,782 |
| | Multiplier | 1.5 | $968,673 |

[1] Although respondent calculated the total worked hours as 1,006.2, the amount of hours claimed by respondent equals 1,007.9. Similarly, although respondent calculated the total fees for the hours worked as $645,782, the amount in fees claimed by respondent equals $645,785. After applying respondent's requested 1.5 multiplier, the total would be $986,677.50.

In support of Ruiz's motion, she submitted the declarations of all five of her attorneys, attesting to their hourly rates and experience, and their detailed billing entries. Ruiz's motion argued that the attorneys' hourly rates and the number of hours expended were reasonable, that the hourly rates were on par with fees awarded in other FEHA cases and that the attorneys were entitled to a 1.5 multiplier given the public importance of the anti-discrimination statute and the contingent nature of the action.

USSA opposed the motion on the basis that the fees requested were unreasonable due to the straightforward nature of the case and the attorneys' failure to obtain a settlement close to the original $5,000,000 valuation of the case. In support of USSA's opposition to the motion for attorney fees, it submitted a declaration from James P. Schratz, an attorney and auditor specializing in legal fees audits. Schratz opined that the fees should be reduced significantly because the rates and the hours were unreasonable and not commensurate with the rates of other attorneys practicing labor and employment litigation in Los Angeles, in firms with 50 attorneys or fewer, with the same years of practice as Ruiz's attorneys.

Schratz concluded that the reasonable rate for Diggs was $365 per hour; the reasonable rate for Bryant was $380 per hour; the reasonable rate for Tabah was $275 per hour and the reasonable rate for Ivie and Wyatt was $475 per hour.

USSA argued that the trial court should reduce the claimed hourly rates to those recommended by Schratz, deduct 60 hours for excessive and duplicative communications, deduct 42 hours billed for inefficient work on drafting oppositions to the multiple summary judgment motions filed by USSA and deduct $69,991.50 for time entries related to excessive litigation work after respondent

received the section 998 offer. USSA also requested that the trial court apply a negative or no multiplier.

On April 6, 2016, the trial court heard the motion. In its ruling, issued 5 days later, the trial court found that the sole justification respondent provided for the reasonableness of her attorneys' hourly rates was the attorneys' own declarations, which stated the year they were admitted to practice law, their customary rates and their various accomplishments. Ruiz's attorneys failed to provide comparable rates to other attorneys of like skill in the area. Accordingly, the trial court reduced the attorneys' hourly rates as follows: Diggs's rate was reduced from $650 per hour to $500 per hour; Bryant's rate was reduced from $650 per hour to $500 per hour; Tabah's rate was reduced from $450 per hour to $300 per hour and Ivie's and Wyatt's rates were reduced from $750 per hour to $600 per hour.

The trial court reduced the hours billed for communications between respondent's counsel by 20 hours to avoid duplicative billing. The court also reduced the billable hours for both Diggs and Bryant attending Ruiz's deposition from 14 hours to 7 hours to subtract for multiple appearances by counsel.

The court declined to reduce the amount of respondent's counsel's hours for the time period between receiving USSA's settlement offer and accepting the offer. The court found that, upon receiving the offer, respondent's counsel strategized, reviewed the offer and continued litigating the action in case the offer was not accepted by their client. The court also declined to reduce the hours spent by Ruiz's counsel for opposing USSA's summary judgment motions. Finally, the court declined to apply the 1.5 multiplier as requested by respondent. Accordingly, the motion for attorney fees was granted in the reduced sum of $481,100.

On May 5, the trial court dismissed the case, and USSA filed a timely notice of appeal.

## DISCUSSION

On appeal, USSA argues that the trial court abused its discretion when it (1) found that the reasonable rates for Ruiz's attorney fees were $500 per hour for Diggs and Bryant and $600 per hour for Ivie and Wyatt and (2) awarded attorney fees for the 133 hours expended for trial preparation in the month between receiving the settlement offer and accepting it. We disagree.

The "experienced trial judge is the best judge of the value of professional services rendered in his court, and while his judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong." (*Serrano v. Priest* (1977) 20 Cal.3d 25, 49, quoting *Harrison v. Bloomfield Building Industries, Inc.* (6th Cir. 1970) 435 F.2d 1192, 1196.) Generally, an award of reasonable attorney fees is based on the product of the number of hours reasonably expended by counsel and the prevailing market rate of comparable legal services (this calculation is commonly referred to as the lodestar method). (*Serrano v. Priest, supra,* 20 Cal.3d at p. 48.) Determining " '[t]he value of legal services performed in a case is a matter in which the trial court has its own expertise. [Citation.] The trial court may make its own determination of the value of the services contrary to, or without the necessity for, expert testimony. [Citations.]' " (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1096, quoting *Melnyk v. Robledo* (1976) 64 Cal.App.3d 618, 623-624.)

In reviewing an award of attorney fees, the amount awarded by the trial court will not be set aside absent an affirmative showing of abuse of discretion that the award is "manifestly excessive in the circumstances." (*Children's Hospital & Medical*

*Center v. Bonta* (2002) 97 Cal.App.4th 740, 782.) An award of attorney fees will be reversed only if that amount "is so large or small that it shocks the conscience and suggests that passion and prejudice influenced the determination." (*Akins v. Enterprise Rent-A-Car Co.* (2000) 79 Cal.App.4th 1127, 1134.)

**A. Reasonable Hourly Rates**

Here, USSA argues that the trial court abused its discretion because it did not require respondent's attorneys to provide comparable rates to other attorneys in the community and it disregarded the declaration of Schratz, who provided the average prevailing rates of attorneys in Los Angeles practicing labor and employment law in firms with less than 50 attorneys. Both contentions fail.

An attorney seeking fees is required to provide adequate information establishing his or her hourly rate of compensation. He or she may not simply state a requested hourly rate. (*Blum v. Stenson* (1984) 465 U.S. 886.) Courts have routinely found that the use of counsel's current rates is reasonable and appropriate. (*Graham v. DaimlerChrysler Corp*. (2004) 34 Cal.4th 553, 583-584.) Moreover, the court may rely on the credible declarations of requesting counsel. (*United Steelworkers v. Retir. Income Plan, ASARCO* (9th Cir. 2008) 512 F.3d 555.) Here, Ruiz's attorneys provided detailed declarations containing: (1) description of the work performed; (2) the number of hours spent; (3) identification of the attorneys who performed the work; (4) the standard hourly rates for the attorneys; and (5) a description of the education and experience of the attorneys. Contrary to USSA's argument, there is no requirement that the attorneys seeking fees provide declarations or testimony from other attorneys in the geographic area stating a comparable hourly rate.

Moreover, contrary to USSA's assertion, the trial court considered USSA's expert's evidence and cited Schratz's declaration in its minute order on the attorney fees motion. In fact, the court relied upon Schratz's opinions in reducing the rates of the attorneys and reducing the hours spent on attorneys' communications and multiple appearances at respondent's deposition.

USSA further argues that the hourly rates should have been reduced because Ruiz's attorneys submitted previous declarations in other matters with lower hourly rates. As Ruiz's attorneys note, however, those matters were non-contingency cases for the County of Los Angeles, a 30-year client of the Ivie, McNeill & Wyatt firm, with pre-negotiated discounted rates—dissimilar litigation with dissimilar risks and benefits. As the Tenth, Eleventh and Ninth Circuits have noted, lower rates paid by public entities for its defense counsel should not determine the lodestar hourly rate. (*Case v. Unified School Dist. No. 233, Johnson County* (10th Cir. 1998) 157 F.3d 1243; *Brooks v. Georgia State Bd. of Elections* (11th Cir. 1993) 997 F.2d 857; *Trevino v. Gates* (9th Cir. 1996) 99 F.3d 911.) In sum, the court did not abuse its discretion when it evaluated the evidence before it and set a reasonable rate relying upon Ruiz's attorneys' declarations and USSA's expert's declaration.

### B. Work Performed After Receiving the Settlement Offer

USSA also contends that the court improperly allowed for approximately $70,000 in fees (or 133 hours of work) in the month between receiving USSA's settlement offer and accepting the offer. We disagree. USSA tendered the section 998 offer approximately six weeks before trial was set to begin. Ruiz accepted the offer a mere two weeks before the start of trial. While considering the offer,

Ruiz's counsel had an obligation to prepare for trial in case Ruiz decided to reject the settlement offer. Ruiz's attorney spent 133 hours preparing for trial—including 13 hours preparing an expert witness who was to testify regarding Ruiz's alleged damages for emotional distress and 17 hours preparing motions in limine.

USSA claims that the hours preparing the expert were "pad[ded]" and that Ruiz's counsel should have provided its list of proposed motions in limine to USSA before drafting the motions to give USSA a chance to stipulate to some of them. Although parties are required to meet and confer prior to filing a motion in limine (Super. Ct. L.A. County, Local Rules, rule 3.57(a), Motions in Limine), there is no requirement that the parties meet and confer prior to drafting motions in limine. The trial court, therefore, did not abuse its discretion by awarding fees for trial preparation in the weeks leading up to trial, notwithstanding the fact that a settlement offer was tendered by USSA for Ruiz's consideration.

## DISPOSITION

The trial court's attorney fees judgment is affirmed. The parties shall bear their own costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

JOHNSON, J.

LUI, J.