

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

TRACEY LUST,

Plaintiff,

v.

SEALY, INC.,

Defendant.

ORDER

02-C-50-C

Judgment was entered in favor of plaintiff on February 25, 2003. In an order dated August 21, 2003, I awarded plaintiff \$79,294 in attorney fees and \$6492.22 in costs under 42 U.S.C. § 2000e-5(k). Now, plaintiff has filed a supplemental motion for \$10,380 in attorney fees and \$119.19 in costs for the amounts incurred in responding to defendant's post verdict motions, which I denied in an opinion and order dated August 19, 2003.

Defendant objects to the requested amount on three grounds. First, defendant argues that entries for several conferences are not sufficiently explained because plaintiff does not identify the reason for the conference (e.g. "P/C [phone conference] with client"). In response, plaintiff states: "[G]iven the pleadings that were due to be filed at and around the time of these entries, and from the context of the other entries, the plaintiff has provided

sufficient information for the Court to make a fair evaluation of the nature and need for the services provided.” I agree with plaintiff in part. The entries surrounding the conferences on March 14, 2003, and March 29, 2003, show that their purpose was related to preparing for their opposition to defendant’s post verdict motions. However, the same cannot be said for the June 10, 2003 meeting between attorneys Paul Kinne and Robert Gingras, which occurred after briefing was completed. The only other entry near this conference is one for “supplemental legal research” and “letter to court from PAK.” It is not apparent from either of these entries why the conference was necessary. In the absence of further explanation from plaintiff, I agree with defendant that plaintiff is not entitled to be reimbursed for this time. The meeting lasted .3 hours. Therefore, I will deduct \$150 from plaintiff’s fees (Kinne’s fees (\$60) + Gingras’s fees (\$90)).

Next, defendant objects to entries for activities performed after I denied defendant’s post verdict motions. For example, plaintiff seeks reimbursement for time spent reviewing the opinion and order denying defendant’s post verdict motions and for various conferences held after the opinion was released. Defendant argues: “Sealy should not have to subsidize Plaintiff’s review of [the order denying defendant’s post verdict motions] or its pursuit of post-Order discussions with Sealy—that’s just overkill.”

There is no hard and fast rule that a prevailing party may not receive attorney fees for activity that occurs after she has obtained the desired result. For example, a plaintiff in

a civil rights action may recover attorney fees for efforts made in enforcing or implementing the judgment. Eirhart v. Libbey-Owens Ford Co., 996 F.2d 846 (7th Cir. 1993); Bond v. Stanton, 630 F.2d 1231 (7th Cir. 1980). However, I agree with defendant that, at this time, there is no need to enforce the order. Until defendant challenges the judgment, any further action taken by plaintiff is gratuitous. If defendant chooses to appeal the judgment and loses, then plaintiff would be entitled to receive attorney fees for preparing for the appeal, which would include reviewing the orders of this court. See Ustrak v. Fairman, 851 F.2d 983, 990 (7th Cir. 1988). But it would be premature to award fees for efforts that might assist opposition to a *potential* appeal. Accordingly, I will subtract the fees for activities occurring after I denied defendant's post verdict motions, for a total of \$970 (Kinne's fees (\$200/hr x 2 = \$400) + Gingras's fees (\$300/hr x 1.9 = \$570)).

Third, defendant argues that plaintiff should not be reimbursed for time spent on her reply for her original fee petition because I substantially reduced the award requested by plaintiff. However, I disagree with defendant that plaintiff must be completely successful on every argument she makes in order to recover attorney fees. When a plaintiff is a prevailing party as she is in this case, the question in awarding fees is not whether she received everything she wanted, but whether the fees were reasonably incurred. Id. at 990. In Ustrak, 851 F.2d at 990, the court concluded that the plaintiff was entitled to recover the fees incurred in opposing the defendant's appeal, even though the defendant was successful

in having the fees awarded by the district court reduced by one third. In this case, plaintiff showed that she was entitled to receive almost 90% of what she requested. I cannot say that the time plaintiff spent on the reply to the original fee petition was unreasonable. Therefore, I will not subtract the fees incurred by plaintiff while preparing the reply for the original fee petition.

In summary, I will reduce plaintiff's requested supplemental fee award by \$1120. Because defendant has not challenged plaintiff's requested costs, I will award those in full.

ORDER

IT IS ORDERED that plaintiff Tracey Lust's supplemental motion for attorney fees is GRANTED IN PART. Plaintiff is awarded an additional \$9260 in attorney fees and \$119.19 in costs.

Entered this 22nd day of September, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge