

Not Reported in F.Supp.2d, 2007 WL 4302703 (S.D.Fla.)
(Cite as: 2007 WL 4302703 (S.D.Fla.))

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United States District Court,
S.D. Florida.
David HERARD, Plaintiff,
v.
ATN RESTAURANT, INC. d/b/a Harvest Café,
and Michael Yodice, Defendants.

No. 07-60269-CIV.
Dec. 4, 2007.

Chris Kleppin, of Glasser, Boreth & Kleppin,
Plantation, FL, for defendant.

Anthony Georges-Pierre, of Remer & Georges-
Pierre, Miami, FL, for plaintiff.

ORDER

WILLIAM J. ZLOCH, District Judge.

*1 THIS MATTER is before the Court upon Defendants ATN Restaurant, Inc. d/b/a Harvest Café and Michael Yodice's Verified Motion For Attorney's Fees Against Plaintiff And Remer & Georges-Pierre, P.A. (DE 57). The Court has carefully reviewed said Motion and the entire court file and is otherwise fully advised in the premises.

In its prior Order (DE 54), the Court granted Defendants ATN Restaurant, Inc. d/b/a Harvest Café and Michael Yodice's Motion For Involuntary Dismissal For Violation Of Court Order Sanctioning Plaintiff And His Counsel And Requiring Various Documents To Be Produced For The Second Time (DE 51) and ordered Defendants to provide the Court with a Memorandum with the necessary Exhibits and Affidavits to establish the attorney's fees it incurred in the preparation and execution of said Motion. In its Memorandum (DE 57), Defendants ATN Restaurant, Inc. d/b/a Harvest Café and Michael Yodice allege their counsel spent 9.3 billable hours in his efforts regarding the Motion For Involuntary Dismissal (DE 51), including the hear-

ing before this Court.

While the Court's Order (DE 54) established Defendants' right to attorney's fees incurred in the preparation and execution of their Motion For Involuntary Dismissal (DE 51) pursuant to Federal Rule of Civil Procedure 41, the Court has a duty to make sure that such an award is reasonable. *See Hensley v. Eckhart*, 461 U.S. 424, 433-34 (1983) (noting that reasonableness is the bedrock upon which the determination of the amount of attorney's fees rests). The determination of exactly what fees to assess is vested in the sound discretion of the Court. Further,

it generally is recognized that the federal courts should exercise care and restraint when awarding attorney's fees. Undue generosity might encourage some members of the bar to seek out clients and encourage litigation over disputes that otherwise might not reach the courts. Were this to become a widespread practice both the American system of civil litigation and the legal profession might fall into public disrepute.

10A Wright, Miller & Kane, *Federal Practice and Procedure*: Civil 3d § 2675.1 (1998 West Supp.2007).

To calculate a reasonable fee, the Court must utilize the "lodestar" method. *See Norman v. Housing Auth. of City of Montgomery*, 836 F.2d 1292, 1299 (11th Cir.1988). In computing the lodestar, the first step is to determine the reasonable hourly rate. A "reasonable hourly rate" has been defined as "the prevailing market rate in the relevant legal community for similar services by lawyers of reasonably comparable skills, experience and reputation." *Loranqer v. Stierheim*, 10 F.3d 776, 781 (11th Cir.1994) (quoting *Norman*, 836 F.2d at 1299). The Court is deemed an expert on the issue of hourly rates in this community and may properly consider "its own knowledge and experience concerning reasonable and proper fees and may form

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an independent judgment either with or without the aid of witnesses as to value." *Loranqer*, 10 F.3d at 781 (quoting *Norman*, 836 F.2d at 1303). Counsel for Defendants, Mr. Chris **Kleppin**, Esq. requests an hourly rate of \$250.00 per hour. The Court finds that request is reasonable.

*2 Once the lodestar is set, the Court must determine the reasonable number of hours expended preparing the Motions. This analysis focuses on the exclusion of hours "that would be unreasonable to bill to a client and therefore to one's adversary irrespective of the skill, reputation or experience of counsel." *ACLU of Georgia v. Barnes*, 168 F.3d 423, 428 (11th Cir.1999) (quoting *Norman*, 836 F.2d at 1301) (emphasis omitted). The burden of establishing that the time for which compensation is sought was reasonably expended on the litigation rests on the applicant. *See id.* at 428. The fee applicant must provide the Court with specific and detailed evidence that will allow the Court to accurately determine the amount of fees to be awarded. *Id.* At the same time, the party opposing the fee application must satisfy its obligation to provide specific and reasonably precise objections concerning hours that should be excluded. *Id.* If the party moving for fees fails to exercise the requisite billing judgment, the Court is obligated to do so by reducing the amount of hours and "pruning out those that are excessive, redundant or otherwise unnecessary." *Id.*

Upon a careful review of Defendants ATN Restaurant, Inc. d/b/a Harvest Café and Michael Yodice's Exhibits and Affidavits, the Court finds that the request for 9.3 hours is a reasonable amount of time spent working on the Motion For Involuntary Dismissal (DE 51) and the hearing regarding the same, with one exception. Defendants request 1.4 hours for the preparation and execution of the instant Motion (DE 57). The Court finds that 1.0 is a reasonable amount of time. In all other respects, the Court finds Plaintiff's request reasonable.

Therefore, the Court will reduce Defendants'

request for 9.3 billable hours to 8.9 billable hours. Defendants shall receive compensation for 8.9 billable hours spent by Mr. Chris **Kleppin**, Esq. at a lodestar of \$250.00 per hour, for a total award of \$2,225.00.

Accordingly, after due consideration, it is

ORDERED AND ADJUDGED that Defendants ATN Restaurant, Inc. d/b/a Harvest Café and Michael Yodice do have and recover from the law firm of Remer & Georges-Pierre, P.A. the sum of \$2,225.00, for all of which let execution issue.

DONE AND ORDERED.

S.D.Fla.,2007.
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