

FOR PUBLICATION



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IN THE SUPERIOR COURT FOR THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

IN RE:

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ESTATE OF RITA ROGOLIFOI,

Deceased.

CIVIL ACTION NO. 03-0079

ORDER GRANTING IN PART PETITION FOR INSTRUCTIONS RE: PAYMENT OF ATTORNEY'S FEES AND COSTS-EXPENSES

I. INTRODUCTION

THIS MATTER came before the Court on January 4, 2011 at 1:30 p.m. in Courtroom 202A on the Administrator's Petition for Instructions Re: Payment of Attorney's Fees and Costs-Expenses ("Petition").¹ The Petition was submitted by Enrique K. Seman ("Administrator") by and through his counsel, Brien Sers Nicholas, Esq. ("Counsel"). The Petition presented several issues to the Court, all of which have been resolved except for Counsel's request for the Court to approve his attorney fees pursuant to the contingency fee agreement between Counsel and the Administrator.

¹ The Petition sought Instructions from this Court relative to (1) Execution of a new Lease Agreement on behalf of said Estate with Saipan Ice, Inc., (2) Distribution of all future quarterly rental incomes to the Administrators/Administratrix of the respective estates of the Decedent's Heirs herein pursuant to a permanent order, (3) Distribution of the judgment entered on May 12th, 2009 in favor of said Estate in *The Board of Marianas Public Lands Authority vs. The Heirs of Rita Rogolifoi, et al.*, Civil Action No. 05-0197A to the Administrators/Administratrix of the respective estates of the Decedent's Heirs herein, (4) Payment of all future Business Gross Receipt Tax to the CNMI Government pursuant to a permanent order, and (5) Payments of attorney fees and costs/expenses already incurred by this Estate as of December 31st, 2010 as well as those already incurred by said Estate in *The Board of Marianas Public Lands of Marianas Public Contexpenses* already incurred by the set as of December 31st, 2010 as well as those already incurred by said Estate in *The Board of Marianas Public Lands Authority vs. The Heirs of Rita Rogolifoi, et al.*, Civil Action No. 05-0197A pursuant to a contingency fee agreement between the Administrator and Counsel.

1	Based on the papers submitted by counsel, the Court GRANTS in part Counsel's
2	requested attorney's fees.
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4	II. <u>BACKGROUND</u>
5	On November 9, 2004, the Administrator retained the services of Counsel to represent
6	him in the above entitled probate matter ("Probate Case") and in the separate, but related,
7	action: The Board of Marianas Public Lands Authority v. The Heirs of Rita Rogolifoi, et al.,
8	Civil Action No. 05-0197A (NMI Super. Ct.) ("Quiet Title Action"). The Administrator and
9	Counsel executed a retainer agreement ("the Retainer Agreement"), wherein, the Administrator
10	agreed to pay Counsel \$175.00 per hour for his legal services on the Probate Case ² and a
11	contingency fee based on any recovery obtained in the Quiet Title Action. The Retainer
12	Agreement outlined the contingency fee as follows:
13	1. Twenty Percent (20%) if recovery is obtained
14	 <u>before</u> any judgment is obtained; 2. Thirty Percent (30%) if recovery is obtained <u>after</u>
15	any Judgment is obtained; and
16	3. Forty Percent (40%) if recovery is obtained after any appeal (or any other form of appellate proceeding) is
17	filed by any party.
18	(Exs. A, B.)
19	On May 12, 2009, this Court entered a judgment ("Judgment") in favor of the
20	Administrator in the Quiet Title Action, awarding the heirs to the Estate of Rogolifoi ("Heirs")
21	fee simple ownerships and titles to Lot 616 and Lot 630, collectively containing some 33,927
22	square meters, more or less. The Board of Marianas Public Lands Authority v. The Heirs of
23	Rita Rogolifoi, et al., Civil Action No. 05-0197A (NMI Super. Ct. May 12, 2009) (Judgment at
24	2). Also, the Heirs were awarded a total sum of \$2,690,020.07, which represented "just
25	compensation" for certain government takings and rental payments collected by the
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27	$\frac{1}{2}$ On March 4, 2011, Counsel submitted his final billings on the Probate Case for \$2,795.75, which the Court

 ² On March 4, 2011, Counsel submitted his final billings on the Probate Case for \$2,795.75, which the Court approved on December 22, 2011. *In re Estate of Rogolofoi*, Civ. Case No. 03-0079 (NMI Super. Ct. December 22, 2011) (Order Approving Proposed Actions of Administrator at 2.)

Department of Public Lands (DPL), plus nine percent post-Judgment interest.³ The total Judgment award plus post-Judgment interest came out to a grand total of \$2,844,566.64 ("the Recovery"). (*Id.* at 3-4.) Pursuant to the Retainer Agreement and negotiations with the Administrator, Counsel seeks thirty percent of the Recovery for a total sum of \$853,369.99 in attorney's fees ("the Contingency Fee"). (*Id.*)

III. LEGAL STANDARD

The cornerstone of any award of attorney fees, including contingency fees, is 8 reasonableness. See Matsunaga v. Matsunaga, 2006 MP 25 ¶ 19 ("While recognizing the 9 value of contingency fees, the Legislature also found that it has the power to ensure that 10 attorney's fees are reasonable."). "In evaluating the reasonableness of attorney fees, the court 11 considers the time and labor required, the novelty and difficulty of the questions involved, and 12 the skill required to properly perform the legal service." Ishimatu v. Royal Crown Ins. Corp., 13 2010 MP 8 ¶ 68. The court "may consider its own knowledge and experience concerning 14 reasonable and proper fees and may form an independent judgment either with or without the 15 aid of witnesses as to value." Norman v. Hous. Auth. of Montgomery, 836 F.2d 1292, 1303 16 (11th Cir. 1988). 17

With respect to contingency fee agreements, the court must first rule on the validity of the contingency fee agreement. *In re Estate of Malite*, 2010 MP 20 ¶ 49. "If valid, it must be enforced. If the agreement is declared invalid, then the court must examine all relevant MRPC 1.5 factors to determine reasonable attorney fees." *Id*.

IV. DISCUSSION

On November 9, 2004, the Administrator and Counsel signed the Retainer Agreement that clearly outlines the legal services to be provided and the terms of compensation. (Exs. B, C.) There are no apparent signs or allegations of overreaching or other improper tactics

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³ Post-Judgment interest accrued from May 13, 2009 to December 31, 2009, totaling \$154,546.57. (Ex. E.)

involved in the execution of the Retainer Agreement. Counsel obtained an extremely favorable
outcome for the Administrator and the Heirs in the Quiet Title Action, and thereafter, engaged
in negotiations with the Administrator to affix an exact amount of compensation for Counsel.⁴
On December 20, 2010, the Administrator signed an "Amendment to Retainer Agreement,"
agreeing to Counsel's attorney fees in the sum of \$853,369.99, representing thirty percent of
the Recovery. (Ex. E.)

Despite the immediate appearance of a valid contingency fee agreement and the 7 Administrator's approval thereof, the Court is reluctant to approve the Contingency Fee 8 without the consent of all the Heirs. See In re Malite 2007 MP 3 ¶ 26 (holding that all "the 9 Heirs had a right to be heard in the probate matter as to the propriety of the attorney fees 10 requested in the civil case."). The Heirs are the direct beneficiaries of the Recovery, and thus, 11 are interested parties who shall have an opportunity to be heard on the matter regarding the 12 Retainer Agreement. See id ¶ 29 ("The major policy concern underpinning probate courts – 13 safeguarding the interests of those who can't care for themselves - is equally implicated 14 regardless of whether the probate court is protecting the interests of an incapacitated or a 15 deceased and heirs."). If the Heirs approve the Contingency Fee then so will the Court. 16 Otherwise, the Court will conduct a further analysis to determine whether the Retainer 17 Agreement is valid and whether the Contingency Fee is reasonable. 18

Regardless of whether the Heirs approve the Contingency Fee, the Court does approve
\$71,006.25 in attorney's fees entitled to Counsel based on Counsel's hourly rate of \$175.00 for
the 405.75 hours Counsel spent on the Quiet Title Action. (Exs. H, H-1.) In light of the time
and labor required, the novelty and difficulty of the questions involved, and the skill required
to properly perform the legal service, the Court finds that \$71,006.25 is a reasonable fee. See *Ishimatu*, 2010 MP 8 ¶ 68. Certainly Counsel is entitled, at least, to the value of the actual

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⁴ Although the Retainer Agreement's express language may have entitled Counsel to forty percent of the Recovery because DPL brought a "certified question" to the CNMI Supreme Court, which is arguably a "form of appellate proceeding," Counsel agreed to pursue only thirty percent of the Recovery. (Exs. B, H.) Additionally, Counsel declined to seek any percentage of the obtained quarterly rental incomes and real properties, which was included as part of "the Recovery" in the Retainer Agreement. (*Id.*)

1	work he performed in the Quiet Title Action. Whether Counsel is entitled to the entire
2	Contingency Fee pursuant to the Retainer Agreement may be resolved only after the Heirs have
3	had an opportunity to be heard on the matter.
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5	V. <u>CONCLUSION</u>
6	For the reasons set forth above, the Court hereby GRANTS in part the Petition,
7	awarding Counsel attorney fees in the amount of \$71,006.25. The Court hereby STAYS its
8	order on the Retainer Agreement fee balance of \$782,363.74, pending approval of the Heirs.
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11	IT IS SO ORDERED this 12th day of March, 2012.
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14	/s/ ROBERT C. NARAJA, Presiding Judge
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