



By order of the Court, Associate Judge Wesley M. Bogdan

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FOR PUBLICATION



E-FILED
CNMI SUPERIOR COURT
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Case Number: 18-0395-CV
Wesley Bogdan

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

JOETEN MOTOR COMPANY, INC.,)	CIVIL ACTION NO. 18-0395
)	
Plaintiff,)	
)	
v.)	FINAL JUDGMENT AND
)	ORDER AWARDING COSTS
ALICIA DLG. LEON GUERRERO,)	AND ATTORNEY’S FEES
)	
Defendant.)	
)	

I. INTRODUCTION

THIS CIVIL ACTION came before the Court upon Plaintiff’s Motion for Attorney’s Fees and Costs on June 18, 2019 at 9:00 a.m. in Courtroom 212A of the Marianas Business Plaza. Plaintiff Triple J Saipan, Inc. (“Plaintiff”) appeared through its attorney, Michael A. White. Defendant Alicia DLG Leon Guerrero (“Defendant”) failed to appear.

II. STATEMENT OF FACTS

1. This case stems from a defaulted retail installment contract for a motor vehicle that Plaintiff and Defendant entered into on November 16, 2016.
2. On May 3, 2019, Plaintiff was granted a Partial Default Judgment under Commonwealth Rules of Civil Procedure Rule 50 due to Defendant’s failure to appear or otherwise answer.
3. The Partial Default Judgment was comprised of the principal amount of \$2,100.00. However, the Court declined Plaintiff’s request for court costs due to Plaintiff’s failure to produce any evidence in support of that claim.

1 4. On May 8, 2019, Plaintiff thereafter filed a Request to Tax Costs with evidence in support of its
2 claim for \$261.50 in court costs.

3 5. On May 8, 2019, Plaintiff also filed a Motion for Attorney's Fees and a declaration in support of
4 its motion that requested for \$400.00 in attorney fees under Commonwealth Rules of Civil
5 Procedure Rule 54(d)(2).

6 6. A hearing on Plaintiff's motions was initially scheduled for June 11, 2019.

7 7. At that hearing, Plaintiff did not file proof that it had served its motions for attorney fees and
8 costs on the Defendant.

9 8. The motion hearing was thereafter continued until June 18, 2019.

10 9. On June 13, 2019, Plaintiff filed two (2) Declarations of Mailing, dated June 11, 2019,
11 explaining that on May 28, 2019, true and correct copies of Plaintiff's motions for attorney fees and
12 costs were mailed to the Defendant at her last known address.

13 10. No return receipts showing that the mailings were delivered or that Defendant actually received
14 the mailings were filed with the Court, but Plaintiff did explain at the hearing that the mailings have
15 not been returned to his office.

16 **III. FINAL JUDGMENT AWARDING COSTS AND ATTORNEY'S FEES**

17 **A. PLAINTIFF'S REQUEST TO TAX COSTS.**

18 Plaintiff requests costs in the amount of \$261.50. The largest portion of this total is a
19 \$225.00 filing fee charged for all civil actions in accordance with the Northern Mariana Islands
20 Judiciary Fee Schedule, Administrative Order 2017-ADM-0003-MS. For the reasons stated
21 below, Plaintiff is hereby awarded \$86.50 in court costs.

22 **1. Plaintiff's Erroneous Justification for Filing this Case as a Civil Action.**

23 First, this Court is concerned with Plaintiff Counsel's totally erroneous justification at the
24 June 18, 2019 hearing about why he had to file this case as a civil action and incur a \$225.00 filing

1 fee instead of a less costly fee in small claims. At the hearing, Plaintiff asserted that he had to file
2 this case as a civil action because this Judge had recently issued a written opinion that it would not
3 award costs (or fees) in small claims cases where a plaintiff was represented by an attorney.

4 To be absolutely clear, Counsel's justification is a totally false representation. This Court
5 has awarded (and continues to award) attorney's fees and costs in small claims cases wherein the
6 plaintiff is represented by counsel and the defendant is *pro se*, upon proper presentation of what is
7 required under law. Plaintiff's Counsel must be clearly aware of his misrepresentation because
8 there are literally hundreds of new and pending small claims cases in which he is the plaintiff's
9 attorney against a *pro se* defendant, and in which attorney's fees and costs have been awarded—and
10 are continuing to be awarded—by this Court on almost a daily basis.

11 As such, Plaintiff's justification for filing this case as a civil action, which resulted in
12 increased costs, is not at all well taken. Counsel's rationalization is, in this Court's opinion, an
13 inappropriate response of disagreement to this Court's interpretation of the law and practice of
14 awarding reasonable attorney's fees and costs as required by the CNMI Supreme Court – instead of
15 relying on the 1992 Superior Court document containing a sliding scale that automatically awarded
16 costs and fees based on the amount of damages involved in a case and nothing more.

17 **2. Award of Costs.**

18 Furthermore, and with particular respect to costs and filing fees, small claims cases are
19 intentionally meant to be less expensive and streamline the process and the amount of time and
20 resources required for the Court to adjudicate small debt collection cases. The filing fee for a small
21 claims case such as the present one would have been \$50.00, and the maximum filing fee for any
22 small claims case is \$75.00, which reflects the Superior Court's recognition of the law to reduce
23 costs for those parties with lower incomes that are brought into Court because they are unable to
24 pay a debt owed.

1 Nonetheless, Plaintiff filed this case as a civil action and reports that he had to do so because
2 he couldn't otherwise receive attorney's fees for his work – which, again, is a false representation.
3 Counsel's reconstruction of the truth cannot be ignored and will not be rewarded. Counsel's course
4 of action and explanation conflict with the underlying purposes and goals of the Small Claims
5 Court and the CNMI Fair Debt Collection Practices Act (4 CMC §§ 51301-51302) and the Federal
6 Fair Debt Collection Practices Act (15 U.S.C. § 1692), which are intended to eliminate (among
7 other issues) abusive debt collection practices by debt collectors, to insure that those debt collectors
8 who refrain from using abusive debt collection practices are not competitively disadvantaged, and
9 to promote consistent State action to protect consumers against debt collection. *Ying Chang v.*
10 *CitiMortgage, Inc.*, No. 3:12-cv-01884-HU, 2013 U.S. Dist. LEXIS 158377, at *12 (D. Or. Aug.
11 27, 2013) (citing 15 U.S.C.S § 1692(e)).

12 Moreover, Counsel's conduct only further burdens the Superior Court—which is operating
13 from a temporary location under austerity measures—and its overstretched resources, causing
14 unnecessary impairment on the Superior Court and its administrative staff. Therefore, in order to
15 promote judicial efficiency and in deference to the Court Rules, the Court hereby exercises its
16 discretion granted by Commonwealth Rules of Civil Procedure Rule 54(d)(1) to award Plaintiff
17 \$86.50 in costs (comprised of \$50.00 for the filing fee, \$20.00 for the service of process and \$16.50
18 for online file and service expenses) under the present circumstances.

19 **B. PLAINTIFF'S MOTION FOR ATTORNEY'S FEES.**

20 **1. Legal Standard.**

21 In the Commonwealth of the Northern Mariana Islands, determining an attorney's fees
22 award is a two-step process. *In re Malite*, 2016 MP 20 ¶ 17 (citing *In re Malite*, 2010 MP 20 ¶ 45).
23 The Court must first consider whether the amount of the attorney fees requested is "reasonable" by
24 comparing it with the fee customarily charged in the locality for similar legal services and weighing

1 the relevant American Bar Association Model Rules of Professional Conduct (“MRPC”) Rule 1.5
2 factors.¹ If the requested fees are deemed reasonable, they may be awarded. *Id.* However, if the
3 requested fees are deemed unreasonable, the Court must then determine the appropriate remedy
4 (i.e., a fee award of either a higher or lower amount). *Id.* The party seeking attorney's fees has the
5 "burden" of showing that the fees incurred were allowable, reasonably necessary to the conduct of
6 the litigation and reasonable in amount. *Ishimatsu v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 68
7 (citing *Ferreira v. Borja*, 1999 MP 23 ¶ 12).

8 **2. Plaintiff’s Failure to Serve Defendant Within Fourteen Days After the Entry 9 of Judgment as Required by Com. R. Civ. P. 54(d)(2).**

10 Rule 54(d)(2)(B) of the Commonwealth Rules of Civil Procedure provides that, unless
11 otherwise provided by statute or order of the Court, claims for attorney’s fees and nontaxable costs
12 must be filed and served no later than fourteen (14) days after entry of judgment. The Court first
13 notes Plaintiff’s failure to comply with the service requirement of Commonwealth Rules of Civil
14 Procedure Rule 54(d)(2)(B). A Partial Default Judgment for this case was entered on May 3, 2019.
15 Plaintiff mailed Defendant notice of its motion for attorney’s fees twenty-five (25) days later on
16 May 28, 2019. Service was therefore observably outside of the fourteen (14) day period as
17 required.

18 **3. Imperfect Proof of Service.**

19 Moreover, Commonwealth Rules of Civil Procedure Rule 5(a) provides that “no service
20 need be made on parties in default for failure to appear except that pleadings asserting new or

21 ¹ The MRPC factors for determining the reasonableness of fees include: (1) the time and labor required, the novelty and
22 difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood, if
23 apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
24 (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results
obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the
professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing
the services; and (8) whether the fee is fixed or contingent. Depending on the circumstances in a given case, some
factors may be weighed more heavily than others. American Bar Association Model Rules of Professional Conduct
 (“MRPC”) Rule 1.5.

1 additional claims for relief against them shall be served upon them in the manner provided for
2 service of summons in Rule 4" (emphasis added). Under Commonwealth Rules of Civil Procedure

3 Rule 4, service may be effected:

4 (1) in any manner prescribed or authorized by any law of the Commonwealth; or

5 (2) by delivering a copy of the summons and of the complaint to the individual
6 personally or by leaving copies thereof at the individual's dwelling house or usual
7 place of abode with some person of suitable age and discretion then residing therein or
by delivering a copy of the summons and of the complaint to an agent authorized by
appointment or by law to receive service of process.

8 Com. R. Civ. P. 4(e). Rule 4 does not mention mailing as effective service, and although Rule 5
9 does, it is limited to when a party is represented by an attorney, which is not the case here. *See*
10 Com. R. Civ. P. Rule 5(b).

11 Although there is no CNMI Supreme Court guidance on whether a request for attorney's
12 fees is a "new or additional claim for relief" under Rule 5 after only being mentioned once in a
13 complaint, the Eleventh Circuit has held that a request for attorney's fees that is not provided for by
14 statute is a "new claim" under the analogous Federal Rules of Civil Procedure Rule 5 and therefore
15 requires personal service on the Defendant. *Varnes v. Glass Bottle Blowers Ass'n*, 674 F.2d 1365,
16 1368-69 (11th Cir. 1982).² Accordingly, personal service of Plaintiff's motion for attorney's fees
17 should have been made on the Defendant in order to satisfy the Commonwealth Rules of Civil
18 Procedure.

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21 ² "Fifth Circuit cases hold that a request for attorney's fees is not a motion to amend a judgment under Rule 59(e) when
22 a statute authorizes a court to grant attorney's fees as costs, *Knighton v. Watkins*, 616 F.2d 795 (5th Cir. 1980); accord,
23 *White v. New Hampshire Department of Employment Security*, 455 U.S. 445, 102 S. Ct. 1162, 71 L. Ed. 2d 325 (1982),
24 but is a motion to alter or amend a judgment on an equitable award based on bad faith, *Stacy v. Williams*, 446 F.2d 1366
(5th Cir. 1971), the theory being that a motion to allow attorney's fees under an equitable doctrine is not the correcting
of a mere clerical mistake but the granting of new substantive relief, *Stacy*, while a motion for attorney's fees when a
statute authorizes them merely seeks what is due because of the judgment. *Knighton*. Applying this analysis to Rule 5,
the request for attorney's fees in our case states "a new or additional claim for relief." *Id.*

1 In the instant case, Plaintiff did not file any proof of personal service of its motion for
2 attorney's fees on the Defendant. Plaintiff also did not file a return receipt with its proof of mailing.
3 When the Court inquired on why Plaintiff did not request for a return receipt, Plaintiff's Counsel
4 responded that service by mail is complete upon mailing according to the CNMI law, without any
5 further reference or specificity.

6 Plaintiff's failure to request for a return receipt is also not well taken by this Court.
7 Although it is not explicitly required by the Commonwealth Rules of Civil Procedure, Plaintiff's
8 Counsel understands this Court's long-standing requisite that any legal document served by mail
9 must be supported by a signed return receipt. This requirement accounts for the never-ending
10 service issues related to the infrastructural difficulties and cultural complexities which exists in the
11 CNMI that make the actual receipt of U.S. Mail here less than certain or timely.

12 The vast majority of citizens and residents here are not at all familiar with court forms and
13 filings and what it means to be served legal papers. Moreover, English is a second language to so
14 many of the people who live here, and this Court has therefore repeatedly ordered that, if personal
15 service cannot be accomplished, then at the least, a signed return receipt be presented to the Court.
16 Accordingly, Plaintiff's effort to collect attorney's fees from Defendant without first serving her in
17 person (or simply requesting for a signed return receipt) only adversely impacts this Court's
18 assessment of Plaintiff's requested fees.

19 **4. Plaintiff's Contingent Fee Agreement with Counsel.**

20 Likewise, Rule 54(d)(2)(B) of the Commonwealth Rules of Civil Procedure provides that,
21 when so directed by a Court (as this Court directed in its May 3, 2019 Order), a motion requesting
22 attorney fees shall also disclose the terms of any agreement with respect to fees to be paid for the
23 services for which claim is made. Despite this Court's order directing Counsel to disclose its fee
24 agreement with Plaintiff, Counsel's motion for—and declaration in support of—his request for

1 attorney's fees fails to provide any such information aside from a non-responsive pro forma answer
2 reporting "I have this case on a contingency fee basis." (Pl.'s Decl. at ¶ 10). Counsel's reluctance
3 to comply with lawful orders of the Court could not be more evident than this response from
4 Counsel and does not support an award of attorney fees.

5 **5. The Reasonableness of Plaintiff's Attorney's Fees.**

6 Accordingly, this Court finds Plaintiff's request for \$400.00 in attorney's fees using his
7 \$250.00 hourly standard rate of representation is unreasonable based on counsel's failure to uphold
8 the duty of candor owed to this Court and on the relevant MRPC Rule 1.5 factors.³ Given
9 Plaintiff's Counsel's legal experience and abilities, there are obviously complex civil matters and
10 critically contentious types of civil cases in which he would certainly be justified and entitled to his
11 \$250.00 hourly rate or more. However, Counsel fails to adequately explain to the Court's
12 satisfaction why a \$250.00 hourly rate should apply to this very simple and direct collection case
13 against a *pro se* Defendant. Based on the aforementioned issues, Plaintiff's Motion for Attorney's
14 Fees and the MRPC Rule 1.5 factors, this Court finds that the requested \$400.00 amount (for 1.6
15 hours of legal work at the rate of \$250.00 per hour) is an unreasonable attorney fee award and that a
16 reduction is therefore appropriate.

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19 _____
20 ³ First, the underlying collection action was not particularly complicated, novel or difficult so as to require an
21 exceptional amount of time or labor and a judgment was obtained through default. Second, acceptance of this case did
22 not preclude other employment opportunities by the lawyer involved in this matter who continues to represent this same
23 client in other matters before this Court. Third, neither the fee customarily charged in the locality nor the amount
24 involved or the results obtained support an award of extraordinary fees and the Plaintiff's Motion for Attorney Fees did
not set out any information proving otherwise. Fourth, no time limitations were imposed upon Counsel by his client or
by the circumstances of this case. Finally, Plaintiff's Counsel has taken this collection case on a contingent fee basis
and the "amount of fees due from [his] client will be well in excess of the amount of fees that [his] client is requesting."
The nature and length of the professional relationship Counsel has with his client, and the experience, reputation, and
the ability of the lawyer the services are not at issue under the particular circumstances of this relatively simple
collection case. *See* MRPC Rule 1.5.

1 **6. Award of Attorney's Fees.**

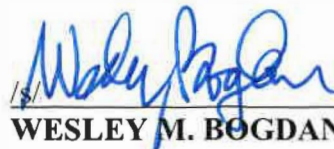
2 The CNMI Superior Court has previously set "\$75 per hour for time reasonably expended in
3 or out of court" as appropriate compensation to attorneys appointed to represent persons with a
4 constitutional or statutory right to counsel in CNMI court proceedings. *See* NMI R. INDIG. REP.
5 Rule 80, NMI Judiciary Council Resolution 2012-01. The type and amount of legal services
6 entailed in representing an individual with a constitutional or statutory right to counsel is generally
7 equal in nature, and perhaps even greater in importance, to the legal services performed in this
8 small claims-like collection case by a debt collections lawyer.

9 The Court therefore finds that it is reasonable to compensate the attorney in this particular
10 collection case, with a default and against a *pro se* Defendant, at the rate of \$75.00 per hour.
11 Pursuant to the provisions of Commonwealth Rules of Civil Procedure Rule 54(d)(2) and CNMI
12 Superior Court Action No. 2018-0001, Plaintiff is hereby awarded \$120.00 in attorney fees (\$75.00
13 per hour multiplied by counsel's 1.6 hours time spent working this case).

14 **IV. CONCLUSION**

15 For the foregoing reasons, it is hereby **ORDERED** that Plaintiff shall have a **FINAL**
16 **JUDGMENT** over and against Defendant for the total sum of \$2,306.50—comprised of the
17 principal amount of \$2,100.00; \$86.50 in court costs; and \$120.00 in attorney fees—together with
18 post-judgment interest thereon at the rate of nine (9) percent per annum from the date of this Order.

19 **IT IS SO ORDERED** this 13th day of August, 2019.

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22 **WESLEY M. BOGDAN**, Associate Judge



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

JOETEN MOTOR COMPANY, INC.,)
)
 Plaintiff,)
)
 v.)
)
 ALICIA DLG. LEON GUERRERO,)
)
 Defendant.)

CIVIL ACTION NO. 18-0395

ERRATA ORDER

The Court is hereby correcting the Final Judgment and Order Awarding Costs and Attorney's Fees issued for this civil action on August 13, 2019.

IT IS HEREBY ORDERED that the Final Judgment and Order Awarding Costs and Attorney's Fees dated August 13, 2019 is amended to read "Plaintiff Joeten Motor Company, Inc." on page 1 line 15 in lieu of "Plaintiff Triple J Saipan, Inc." The published opinion shall reflect this change.

IT IS SO ORDERED this 14th day of August, 2019.

WESLEY M. BOGDAN, Associate Judge