



FOR PUBLICATION



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Joseph Norita Camacho

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

1	SEGUNDO LAPECEROS, JR.,	)	CIVIL ACTION NO. 19-0090
2)	
3	Plaintiff,	)	ORDER FINDING THAT A PREVAILING
4		)	PLAINTIFF CAN BE AWARDED
5	v.	)	ATTORNEY’S FEES IN A CASE
6		)	INVOLVING A VIOLATION OF THE
7	EDITA CAPILITAN CRUZ, dba W.E.C.	)	ALIEN AND IMMIGRANT CONSUMER
8	MANPOWER SERVICES, a/k/a W.E.C.	)	PROTECTION ACT PURSUANT TO
9	General Enterprise, W.E.C. Enterprise,	)	4 CMC § 5189(c), EVEN THOUGH
10	W.E. Cruz Catering, Mega Marianas, and	)	PLAINTIFF WAS REPRESENTED BY
11	Mega Marianas Transport,	)	MICRONESIAN LEGAL SERVICES
12	Defendant.	)	CORPORATION, A NON-PROFIT
		)	ORGANIZATION

I. INTRODUCTION

THIS MATTER came before the Court on October 1, 2019 for a hearing on the Motion for Attorney’s Fees and Attorney’s Declaration in Support. Micronesia Legal Services Corporation (“MLSC”) Attorney Jane Mack appeared as counsel for the Plaintiff. Neither Defendant nor her counsel appeared for the hearing. Defendant also did not file any written opposition.

On July 31, 2019, the Court issued a written default judgment in favor of Plaintiff Segundo Lapeceros, Jr. (“Lapeceros” or “Plaintiff”) on his claims for fraud and violation of the Alien and Immigrant Consumer Protection Act. After the Court issued its default judgment, Plaintiff requested attorney’s fees for the work that MLSC performed in this action. Plaintiff bases his claim for attorney’s fees on the section of the Alien and Immigrant Consumer Protection Act that allows prevailing plaintiffs to be awarded attorney’s fees, 4 CMC § 5189(c).

By order of the Court, Associate Judge Joseph N. Camacho

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1 **II. BACKGROUND**

2 Around January 2016, Defendant Edita Capilitan Cruz¹ (“Defendant” or “Cruz”) advertised her
3 business as a manpower agency that would process paperwork for foreign workers who sought
4 employment as CW1 workers.² Cruz offered Lapeceros a CW1 employment as a commercial cleaner for
5 her business.

6 After Lapeceros began his employment, Cruz offered to hire Lapeceros’s wife as a kitchen helper.
7 Cruz offered to prepare the necessary forms to hire Lapeceros’s wife as a CW1 worker and to submit the
8 petition for her employment to the United States Citizenship and Immigration Services(“USCIS”).
9 Lapeceros paid Cruz nine hundred fifty dollars (\$950.00) to process Lapeceros’s wife’s papers for the
10 kitchen helper position. Lapeceros relied on Cruz’s representations about her business, the fact that Cruz
11 had submitted the CW1 petition for him, the indicia of legitimate business operations of a nice office,
12 advertisement on the door, the manner in which Cruz spoke, and the apparent proficiency that Cruz said
13 she had for her business.

14 However, unbeknownst to Lapeceros, Cruz did not have any intention of submitting the necessary
15 petition for employment to the USCIS to hire Lapeceros’ wife as a CW1 worker. In fact, no CW1
16 documents were ever submitted to USCIS for Lapeceros’ wife.

17 Therefore, in March 2019, Plaintiff brought a civil action case against Defendant Cruz for fraud
18 and for violating the Alien and Immigrant Consumer Protection Act, 4 CMC § 5184(b)(2).³

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20 ¹ Edita Capilitan Cruz, dba W.E.C. Manpower Services, a/k/a W.E.C. General Enterprise, W.E.C. Enterprise, W.E. Cruz
21 Catering, Mega Marianas, and Mega Marianas Transport. Edita Capilitan Cruz was the principle owner of the various
22 companies.

23 ² “The CNMI-Only Transitional Worker (CW-1) visa classification allows employers in the Commonwealth of the
24 Northern Mariana Islands (CNMI) to apply for permission to employ foreign (nonimmigrant) workers who are otherwise
ineligible to work under other nonimmigrant worker categories.” *CW-1: CNMI-Only Transitional Worker*, U.S.
Citizenship and Immigration Services, <https://www.uscis.gov/working-united-states/temporary-workers/cw-1-cnmi-only-transitional-worker> (last visited Dec. 1, 2019).

³ Plaintiff Lapeceros filed complaint contained the following causes of actions: Breach of Contract, Conversion, Fraud,
Unfair and Deceptive Acts and Practices under the Consumer Protection Act, and violations of the Alien and Immigrant
Consumer Protection Act. The Court found in favor of Plaintiff Lapeceros’ cause of actions for Fraud and violations of
the Alien and Immigrant Consumer Protection Act.

1 On July 31, 2019, the Court issued a default judgment against Defendant finding by clear and
2 convincing evidence that the conduct of Defendant Cruz violated the Alien and Immigrant Consumer
3 Protection Act. Throughout the proceedings, Plaintiff Lapeceros was represented by an attorney employed
4 by MLSC, a non-profit corporation that provides free legal assistance in civil matters to low income
5 persons in the Commonwealth of the Northern Mariana Islands (“CNMI”).⁴ After the Court issued its
6 default judgment, Plaintiff requested attorney’s fees for the work MLSC performed in this civil action.
7 Plaintiff’s claim for attorney’s fees is based on the section of the Alien and Immigrant Consumer
8 Protection Act that allows a prevailing plaintiff to be awarded attorney’s fees, 4 CMC § 5189(c).

9 However, because MLSC is a non-profit organization, the Court ordered Plaintiff’s Attorney to
10 file a brief whether plaintiffs represented by non-profit organizations can be awarded attorney’s fees for
11 violation of 4 CMC § 5189(c) of the Alien and Immigrant Consumer Protection Act.

12 Based on the filings and arguments, the Court finds, for the reasons stated below, that Plaintiff is
13 entitled to attorney’s fees as a prevailing plaintiff in a case involving a violation of the Alien and
14 Immigrant Consumer Protection Act even though he was represented by MLSC, a non-profit
15 organization.⁵

16 III. DISCUSSION

17 Under the so-called “American rule,” parties “pay their own attorneys’ fees, regardless of the
18 outcome of the proceedings.” *Camacho v. Bridgeport Financial Inc.*, 523 F.3d 973, 978 (9th Cir. 2008).
19 However, despite this general rule, some legislatures throughout the United States have carved out
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⁴ MLSC also operates in the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

23 ⁵ Though Plaintiff brought multiple causes of action against Defendant, the Court only found in favor of Plaintiff Lapeceros’ cause of actions for Fraud and violations of the Alien and Immigrant Consumer Protection Act. Of the two
24 cause of actions that Plaintiff Lapeceros was successful only the claim for a violation of the Alien and Immigrant Consumer Protection Act contains a provision for awarding of attorney’s fees for a prevailing plaintiff.

1 specific situations where the “prevailing parties may recover their attorney’s fees from the opposing
2 side....” *Stanton v. Boeing Co.*, 327 F.3d 938, 965 (9th Cir. 2003).

3 In the Commonwealth of the Northern Mariana Islands, the Commonwealth Legislature carved
4 out such an exception to the American rule with regard to various aspects of consumer protection.
5 Specifically, pertinent to this case, 4 CMC § 5189(c) authorizes awarding attorney’s fees: “A prevailing
6 plaintiff may be awarded punitive damages, attorney’s fees, and costs of bringing an action under this
7 Article.”

8 Generally, “nonprofit legal services organizations are entitled to an award of attorney’s fees in
9 appropriate cases.” *Kulkarni v. Nyquist*, 446 F. Supp. 1274, 1280 (N.D.N.Y. 1977); *see also Reyes v.*
10 *Ebetuer*, 2 NMI 418, 434 (1992) (finding that “the trial court appropriately awarded attorney’s fees” to
11 the plaintiff, who was also represented by MLSC under the NMI Consumer Protection Act, 4 CMC §
12 5112(a)). This promotes the public policy of allowing injured individuals to pursue their legal rights, even
13 if the plaintiff requests such a low monetary value of damages that for-profit attorneys would be reluctant
14 to take on the case. *See Stevens v. Dobs, Inc.*, 373 F. Supp. 618, 620-21 (E.D.N.C. 1974) (“This Court is
15 of the opinion that public policy demands that counsel fees be awarded in housing discrimination cases
16 so that prejudiced individuals will not be hesitant in enforcing their rights.”).

17 To determine whether non-profit organizations are eligible to receive attorney’s fees under a
18 particular statute, it is necessarily to examine the language and legislative history of that statute. *See Blum*
19 *v. Stenson*, 465 U.S. 886, 895 (1984) (finding that “[t]he statute and legislative history establish that
20 ‘reasonable fees’ under (42 U. S. C. § 1988 (1976 ed., Supp. V))) are to be calculated according to the
21 prevailing market rates in the relevant community, regardless of whether plaintiff is represented by private
22 or non-profit counsel”).

23 Here, as stated above, 4 CMC § 5189(c), the relevant statute that authorizes awarding attorney’s
24 fees, states that: “A prevailing plaintiff may be awarded punitive damages, attorney’s fees, and costs of
bringing an action under this Article.”

1 4 CMC § 5189(c)'s language does not explicitly state that a prevailing plaintiff represented by a
2 non-profit organization is entitled to an award of attorney's fees. The same is also true for 4 CMC §
3 5189(c)'s legislative history. PL 15-17, § 4 (5178). However, neither 4 CMC § 5189(c)'s language nor
4 legislative history explicitly excludes a prevailing plaintiff represented by a non-profit organization from
5 being awarded attorney's fee. Because 4 CMC § 5189(c)'s does not exclude non-profit organizations, the
6 phrase, "[a] prevailing plaintiff may be awarded [...] attorney's fees," does not limit recovery for
7 attorney's fees to individuals represented by for-profit attorneys.

8 Therefore, because 4 CMC § 5189(c) does not expressly prohibit prevailing plaintiffs represented
9 by non-profit attorneys from obtaining attorney's fees, the Court finds that attorney's fees can be awarded
10 to prevailing plaintiffs even if plaintiffs are represented by non-profit organization. *See Kulkarni*, 446 F.
11 Supp. at 1280. Awarding attorney's fees to prevailing plaintiffs encourages indigent plaintiffs to pursue
12 their legal rights under the Alien and Immigrant Consumer Protection Act, thereby furthering the public
13 policy goals of 4 CMC § 5189(c).⁶

14 Additionally, the Court finds guidance from the Supreme Court of the Commonwealth of the
15 Northern Mariana Islands' ("Supreme Court") decision in *Reyes v. Ebetuer*, 2 NMI 418 (1992). In *Reyes*,
16 the Supreme Court found that "the trial court appropriately awarded attorney's fees" after finding a
17 violation of the NMI Consumer Protection Act, even though the prevailing party was represented by an
18 attorney employed by MLSC. 2 NMI at 434. Though the *Reyes* Court interpreted the NMI Consumer
19 Protection Act, rather than the Alien and Immigrant Consumer Protection Act, which is the statute relevant
20 here, the language used by both statutes to authorize the awarding of attorney's fees is similar. *Compare*
21 4 CMC § 5189(c) ("[a] prevailing plaintiff may be awarded [...] attorney's fees"), *with* 4 CMC § 5112(a)
22 (stating that the Court "shall award costs and reasonable attorney's fees if the plaintiff prevails").⁷

23 ⁶ *See also* 4 CMC § 5189(c) ("In order to deter violations of this Article, courts shall not require a showing of the
24 traditional elements for equitable relief.").

⁷ There are differences between 4 CMC § 5189(c) and 4 CMC § 5112(a), such as 4 CMC § 5189(c) uses the word "may"
and 4 CMC § 5112(a)'s use of the word "shall," however both statutes refer to prevailing plaintiffs.

1 Therefore, the Court finds *Reyes* persuasive on the issue of awarding attorney’s fees to a prevailing
2 plaintiff represented by a non-profit organization.

3 To promote the public policy of allowing indigent individuals to enforcing their rights pursuant
4 to the Alien and Immigrant Consumer Protection Act, and in light of the Supreme Court’s decision in
5 *Reyes*, the Court finds that 4 CMC § 5189(c) authorizes awarding attorney’s fees to prevailing plaintiffs
6 even if the plaintiff is represented by a non-profit organization. *See Stevens*, 373 F. Supp. at 620-21.

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8 **IV. CONCLUSION**

9 For the reasons stated above, the Court finds that a prevailing plaintiff can be awarded attorney’s
10 fees in a case involving a violation of the Alien and Immigrant Consumer Protection Act pursuant to 4
11 CMC § 5189(c), even though a plaintiff was represented by Micronesia Legal Services Corporation, a
12 non-profit organization.⁸

13 **IT IS SO ORDERED** this 11th day of December, 2019.

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16 /s/
JOSEPH N. CAMACHO, Associate Judge

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18 ⁸ The Court will issue a separate order as to the amount of attorney’s fees.
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