Diana C. **Ferreira**,
Plaintiff/Appellee,
v.
Rosalia Mafnas **Borja**, et al.,
Defendants/Appellants,
Theodore R. Mitchell,
Real Party in Interest.
Appeal No. 98-003
Civil Action No. 86-0796
December 1, 1999

Argued and Submitted on August 24, 1999

Counsel for Appellant: Theodore R. Mitchell, Saipan.

Counsel for Appellee: John Biehl (Carlsmith Ball Wichman Case & Ichiki), Saipan.

BEFORE: DEMAPAN, Chief Justice, MANGLONA, Justice Pro Tem, and ATALIG, Justice Pro Tem.

DEMAPAN, Chief Justice:

¶1 **[1]** Theodore R. Mitchell ("Mitchell") appeals the Superior Court Order of February 6, 1998 granting attorney fees in the amount of $26,863.32. We have jurisdiction pursuant to Article IV, Section 3 of the Commonwealth Constitution. N.M.I. Const., art. IV, § 3.

ISSUES PRESENTED AND STANDARDS OF REVIEW

¶2 The issues before this Court are:

1. Whether the Superior Court erred in not providing Mitchell with an additional hearing to contest the reasonableness of the attorney fees; and

2. Whether the Superior Court erred in finding that the attorney fees were reasonable.[1]

¶3 **[2,3]** We review constitutional questions of law *de novo. Office of the Attorney General v. Rivera*, 3 N.M.I. 436, 441 (1993). We review the imposition of sanctions by the Superior Court under the abuse of discretion standard. *Pangelinan v. Itaman*, 4 N.M.I. 114, 117 (1994).

FACTS AND PROCEDURAL BACKGROUND

¶4 In 1988, the Superior Court granted the Defendants' motion for summary judgment and held that the transaction at issue violated Article XII, Section 1 of the Commonwealth Constitution. *Ferreira v. Borja*, 3 CR 472, 500 (Trial Ct. 1988). In 1992, the Commonwealth Supreme Court affirmed the decision on other grounds. The Court rejected the agency-trust argument but held that a resulting trust arose from Plaintiff's partnership agreement and that Plaintiff held the land in trust for persons of non-Northern Marianas descent which was in violation of Article XII of the Commonwealth Constitution. *Ferreira v. Borja*, 2 N.M.I. 514, 533 (1992).

¶5 In 1993, the United States Court of Appeals for the Ninth Circuit vacated the decision of the Commonwealth Supreme Court and remanded the case for reconsideration of the interpretation of resulting trust theory. *Ferreira v. Mafnas*, 1 F.3d. 960, 963 (9th Cir. 1993).

¶6 On remand, the Commonwealth Supreme Court agreed with the Ninth Circuit that "because the purported transaction to be accomplished had an illegal purpose, no resulting trust would have arisen in favor of third parties not of Northern Marianas descent." *Ferreira v. Borja*, 4 N.M.I. 211, 212 (1995). Further, the Court affirmed that the agency theory was not applicable to this matter. *Id.* Therefore, the Court reversed the Superior Court grant of summary judgment against Plaintiff in favor of the Defendants

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[1] The issues of whether the Superior Court erred in denying Defendants' motion for relief from judgment and whether sanctions, pursuant to Commonwealth Rules of Civil Procedure 11, were proper, were previously addressed in *Ferreira v. Borja*, 1999 MP 2, 5 N.M.I. 208.

and remanded the matter to the Superior Court with instructions to enter a final judgment and decree giving quiet title of all three lots to Plaintiff. Defendants appealed the decision, but it was affirmed by the Ninth Circuit. *Ferreira v. Borja*, 93 F.3d 671, 675 (9th Cir. 1996). On February 18, 1997, the United States Supreme Court denied Defendants' petition for writ of certiorari.

¶7 On April 25, 1997, the Defendants moved the Superior Court for relief from judgment pursuant to Rule 60(b) of the Commonwealth Rules of Civil Procedure. The Superior Court denied the motion in its June 3, 1997 order. On June 9, 1997, the Plaintiff moved for sanctions, pursuant to Commonwealth Rules of Civil Procedure 11, against Mr. Mitchell, which was granted by the court on July 21, 1997. On February 6, 1998, the court granted Plaintiff's request for $26,863.32 in attorney fees. Mitchell timely appealed.

ANALYSIS

I. Due Process

¶8 **[4]** The Commonwealth Constitution provides that "[n]o person shall be deprived of life, liberty, or property without due process of law." N.M.I. Const., art. I, § 5.

¶9 Mitchell contends that his due process fights were violated because he was not afforded an opportunity to be heard, at a separate evidentiary hearing on the amount of attorney fees. Plaintiff asserts that the only hearing Mitchell was entitled to, was the hearing on the motion for sanctions and that he was not entitled to a separate hearing on the amount of the fees.

¶10 **[5,6]** The cases clearly indicate that a party is entitled to notice and a hearing before sanctions are imposed.[2] We adopt the line of cases that conclude that an additional hearing on the amount of the

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[2] *Tom Growney Equip., Inc. v. Shelley Irrigation. Dev., Inc.,* 834 F.2d 833 (9th Cir. 1987) (*citing Boddie v. Connecticut*, 401 U.S. 371, 379, 91 S. Ct. 780, 786, 28 L. Ed. 2d 113, 119 (1971)); *In re Yagman*, 796 F.2d 1165 (9th Cir.

fees is not necessary to satisfy the due process requirement of the Constitution.[3] In *Ocelot Oil Corp.*, the court held that "[a]lthough due process requires fair notice and an opportunity to be heard before attorney's fees are imposed, it may not necessarily require both an oral hearing on whether attorney's fees should be imposed and a separate oral hearing on the amount of such fees." *Ocelot Oil Corp. v. Sparrow Indus.*, 847 F.2d 1458, 1465-66 (10th Cir. 1988) (citations omitted).[4]

¶11 Although the court did not violate Mitchell's due process fights in denying the hearing, the Court needs to examine whether the attorney fees assessed were reasonable.

II. Reasonableness of Fees

¶12 **[7,8,9]** Pursuant to Commonwealth Rules of Civil Procedure 11, once a violation of the rule has been determined, the Superior Court has the discretion to award an appropriate sanction. Com. R. Civ. P. 11(c). If the court exercises its discretion, the fees must be reasonable and a direct result of the violations. Com. R. Civ. P. 11(c)(2). The sanction must be limited to what is sufficient to deter repetition of the sanctionable conduct. If the court award attorney fees as part of the sanction, such fees must be reasonable and must be incurred as a direct result of the violation. Com. R. Civ. P. 11(c)(2).

¶13 **[10]** The burden falls on the Plaintiff to show that the time expended was reasonable. *Leroy v. City of Houston*, 906 F.2d 1068, 1079 (5th Cir. 1990). The following billing practices cause some concern to the Court:

1986); and *Hudson v. Moore Business Forms, Inc.*, 898 F.2d 684 (9th Cir. 1990).

[3] Although due process does not require an additional hearing, it may be judicially efficient for the court to have the parties address the issue of reasonableness of fees at the hearing on the motion for sanctions.

[4] *See Doyle v. United States*, 817 F.2d 1235, 1237 (5th Cir. 1987); *Pesaplastic, C.A. v. Cincinnati Milacron Co.*, 799 F.2d 1510, 1522 (11th Cir. 1986); and *Falstaff Brewing Corp. v. Miller Brewing Co.*, 702 F.2d 770, 784 (9th Cir. 1983).

1. Block Billing

¶14 Block billing is the lumping together of several tasks into a single block of time. Block billing effectively prevents persons from accurately, assessing the amount of time actually spent on a particular task.[5] Almost all of the time billed in this matter was block billed. For example, a billing entry dated April 2, 1997, stated:

> DRN Conference with J.F. Biehl regarding Mitchell motion; telephone conference with D. Babauta regarding Mitchell motion; conference with M.K. Schultz regarding staff. 1 hour

From this description, it is impossible to tell how much time was spent conferencing with J.F. Biehl, D. Babauta, and/or M.K. Schultz.

2. Inter-Office Conferencing

¶15 Inter-office conferencing is meetings conducted between attorneys within the firm. From April 1997 to June 1997, there is at least one conference per day with other attorneys within the firm. On many occasions, Mr. Moore consulted with Mr. Biehl or Ms. Schultz on how to proceed in the case.

3. Vague Entries

¶16 Vague entries make it difficult to tell the nature of the work performed. For example, an attorney would bill time for research performed, but fail to provide an explanation of the project.

4. Excessive Research

¶17 This case has been continuing for some fourteen (14) years and Mr. Biehl has been handling the case since its inception. Therefore, it would have made more sense for Mr. Biehl to handle these matters

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[5] Terms used in this section were supplied by James P. Schratz. Mr. Schratz is president of Jim Schratz & Associates, based in Glen Ellen, California and acts a legal auditor and expert witness. He has prepared audit reports to the Superior Court in the matter of *The Estate of Larry L. Hillblom*, Civil Action No. 95-0626.

instead of having Mr. Moore relearn the entire case. In addition, the Court is concerned that there were some 25 hours spent by Kevin E. Moore for researching and preparing the motion on Rule 11 sanctions, from April 28, 1997 to May 6, 1997. This seems excessive.

¶18 **[11]** The Court finds that the amount of attorney fees awarded was excessive, and that the appropriate remedy is to deny the fee motion in its entirety. Doing otherwise would encourage litigants to make unreasonable demands, since the worst that could happen is that the award would be reduced to a reasonable amount. *See Serrano v. Unruh*, 652 P.2d 985, 994 n.21 (Cal. 1982) and *Vocca v. Playboy Hotel of Chicago*, 519 F. Supp. 900, 901 (N.D. Ill. 1981).

CONCLUSION

¶19 Based on the reasoning above, the Court finds that the amount of attorney fees assessed to Mitchell were unreasonable and the entire amount shall be disallowed.