

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

R. WAYNE KLEIN, the Court-
Appointed Receiver of Trigon Group,
Inc. and for the assets of Daren L. Palmer

Plaintiff,

v.

STEPHAN D. LAWSON, and individual

Defendant.

Case No. 4:10-cv-00197-EJL

ORDER

INTRODUCTION

Pending before the Court in the above-entitled matter is Plaintiff's Motion For Attorney Fees. No response brief was filed and the time for doing so has passed. Therefore, the matter is ripe for the Court's consideration. Having fully reviewed the record herein, the Court finds that the facts and legal arguments are adequately represented in the briefs and record. Accordingly, and in the interest of avoiding further delay, and because the Court conclusively finds that the decisional process would not be significantly aided by oral argument, this Motion shall be decided on the record before this Court without oral argument.

FACTUAL AND PROCEDURAL BACKGROUND

On February 26, 2009, Plaintiff, R. Wayne Klein, was appointed Receiver of Trigon Group, Inc. (“Trigon”) and for the assets of Daren L. Palmer in two related enforcement actions filed by the Securities and Exchange Commission (the “SEC”) and the Commodity Futures Trading Commission (the “CFTC”). *See* Case 4:09-cv-00075-EJL and Case 4:09-cv-00076-EJL. In those cases, Trigon and Mr. Palmer were alleged to have engaged in a large-scale Ponzi scheme beginning before 2006 and continuing through 2009. Trigon was insolvent since as early as 2002 and became increasingly more insolvent with each passing year.

The Receiver brought this action against Defendant Stephan D. Lawson to recover assets transferred from Trigon to Mr. Lawson during the Ponzi scheme. (Dkt. 1.) The Receiver claimed Mr. Lawson received a check for \$20,000 on or about September 9, 2008 from Trigon for which there was no reasonably equivalent value given to Trigon. The Complaint raised claims for breach of contract, avoidance and recovery of fraudulent transfer pursuant to the Idaho Uniform Fraudulent Conveyance Act (UFTA), Idaho Code §§ 55-913, 55-914, and 55-916, a constructive trust claim seeking remedies provided for under Idaho Code § 55-916(b) and (c), and attorney fees and costs. (Dkt. 1.) On May 28, 2013, this Court granted in part and denied in part the Receiver’s Motion for Summary Judgment ruling that the \$20,000 check received by Mr. Lawson from Trigon was an actual fraudulent transfer. (Dkt. 23.) A Judgment was entered in favor of the Receiver in the amount of \$20,000 plus pre-judgment interest in the amount of \$11,388.49 for a total

judgment award of \$31,388.49. (Dkt. 24.) In its Order on the Motion for Summary Judgment, the Court directed the Receiver to refile a motion for attorney fees as provided in the Local Civil Rules. (Dkt. 23 at 9.) The Receiver has now filed such Motion and the Court finds as follows.

DISCUSSION

1. Idaho Code § 12-120(3)

On this Motion, the Receiver requests payment of attorney fees pursuant to Idaho Code § 12-120(3) which provides:

In any civil action to recover on an open account, account stated, note, bill, negotiable instrument, guaranty, or contract relating to the purchase or sale of goods, wares, merchandise, or services and in any commercial transaction unless otherwise provided by law, the prevailing party shall be allowed a reasonable attorney fee to be set by the court, to be taxed and collected as costs.

In Idaho, any action covered by subsection (3), regardless of the dollar amount, carries with it the mandatory award of attorney fees to the prevailing party. The action must involve a dispute over an actual commercial transaction in order to be covered by the “commercial transaction” clause. The term “commercial transaction” is defined to mean all transactions except transactions for personal or household purposes. “The critical test is whether the commercial transaction comprises the gravamen of the lawsuit; the commercial transaction must be integral to the claim and constitute a basis on which the party is attempting to recover.” *Bingham v. Montane Resource Associates*, 987 P.2d 1035, 1041 (Idaho 1999). “[T]he commercial transaction must be integral to the claim and

constitute a basis on which the party is attempting to recover.” *Id.* at 1041; *see also C & G, Inc. v. Rule*, 25 P.3d 76 (Idaho 2001).

The gravamen of the lawsuit in this case was the \$20,000 check issued by Trigon and received by Mr. Lawson. That check, Mr. Lawson asserted, was a loan made from Trigon to his company, Denali Group, LLC., and not to Mr. Lawson personally. (Dkt. 20 and 23 at 6-7.) Because the check was a business loan, it was clearly a commercial transaction and attorney fees are appropriate under Idaho Code 12-120(3). *See Erickson v. Flynn*, 64 P.3d 959 (Idaho Ct.App. 2002).

Further, the Receiver was the prevailing party in this matter having succeeded on his claims at summary judgment. *See Shore v. Peterson*, 204 P.3d 1114, 1125 (Idaho 2009); *Nguyen v. Bui*, 146 Idaho 187, 191 P.3d 1107, 1112 (2008) (interpreting Idaho R. Civ. P. 54(d)(1)(B)) (The court considers three principal factors in determining which party, if any, prevailed: “(1) the final judgment or result obtained in relation to the relief sought; (2) whether there were multiple claims or issues between the parties; and (3) the extent to which each of the parties prevailed on each of the claims or issues.”). The only portion of the Motion for Summary Judgment that was denied was as to the request for attorney fees which the Court directed the Receiver to refile as directed by the Local Civil Rules. (Dkt. 23 at 9.) The Receiver otherwise prevailed on all of the substantive claims.

Based on the foregoing, the Court finds the Receiver is entitled to attorney fees in this case. The Court must next consider whether the amount of attorney fees requested is reasonable.

2. Calculating Reasonable Attorney Fees

“The most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate.” *Jordan v. Multnomah County*, 815 F.2d 1258, 1262 & n.5 (9th Cir. 1987) (explaining method to arrive at “lodestar” figure). In determining a reasonable fee award, the Court considers both the “experience, skill and reputation of the attorney requesting fees” *Trevino v. Gates*, 99 F.3d 911, 924 (9th Cir.1996), as well as “the prevailing market rates in the relevant community,” *Blum v. Stenson*, 465 U.S. 886, 895 (1984). The “fee applicant has the burden of producing satisfactory evidence, in addition to the affidavits of its counsel, that the requested rates are in line with those prevailing in the community for similar services of lawyers of reasonably comparable skill and reputation.” *Multnomah County*, 815 F.2d at 1262.

The controlling test for determining a reasonable hourly rate requires the rate to be “in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation.” *Blum v. Stenson*, 465 U.S. 886, 896 n. 11 (1984); *Welch v. Metro. Life Ins Co.*, 480 F.3d 942, 946 (9th Cir. 2007). “[N]ormally the relevant legal community for determining the prevailing market rates for attorneys’ fees is the community in which the forum is situated.” *Gates v. Deukmejian*, 987 F.2d 1392, 1405 (9th Cir.1993). The relevant community in this case is Boise, Idaho.

What constitutes a reasonable fee is a discretionary determination for the trial court, to be guided by the criteria of Idaho Rule of Civil Procedure 54(e)(3). *Sanders v. Lankford*, 1 P.3d 823 (Idaho App. 2000) (citing *Kelly v. Hodges*, 811 P.2d 48, 52 (Idaho App. 1991)). “The factors of Rule 54(e)(3) include: time and labor; difficulty; skill required; prevailing charges; fixed or contingent fee; time limitations; amount and result; undesirability of the case; relationship with the client; awards in similar cases; costs of automated research; and any other factors.” *Sun Valley Potato Growers, Inc. v. Texas Refinery Corp.*, 85 P.3d 475, 483 (Idaho 2004). The Court may not single out or give undue weight to anyone factor such as to exclude the other factors listed in Rule 54(e)(3). *See Id.* (citing *DeWils Interiors, Inc. v. Dines*, 678 P.2d 80, 82 (Idaho App. 1984)).

Having considered the Motion and supporting Affidavit of counsel submitted in this case, the Court finds the hourly fees charged at between \$150-270 are more than reasonable in this community. Furthermore, the Court has reviewed the number of hours billed and the worked performed during those hours and finds those amounts to be reasonable in this case. The total number of hours billed is 24 which is entirely reasonable given the record and filings made in this matter. The Receiver filed the Complaint in this matter, attempted several service of summons to Mr. Lawson, filed a litigation plan, and ultimately filed and succeeded on his Motion for Summary Judgment. In so ruling, the Court has considered the time and labor; difficulty; skill required; prevailing charges; fixed or contingent fee; time limitations; amount and result; undesirability of the case; relationship with the client; awards in similar cases; costs of automated research; and any

other factors that were relevant. Accordingly, the Court will award the Receiver \$3,878.50 in attorney fees.

ORDER

NOW THEREFORE IT IS HEREBY ORDERED that the Plaintiff's Motion for Attorney Fees (Dkt. 25) is **GRANTED**. Plaintiff is awarded \$3,878.50 in attorney fees.



DATED: **December 30, 2013**

A handwritten signature in black ink that reads "Edward J. Lodge". The signature is written in a cursive style and is positioned above a horizontal line.

Honorable Edward J. Lodge
U. S. District Judge