

STATE OF MAINE
ANDROSCOGGIN, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-06-219

MAINE HUMAN RIGHTS
COMMISSION AND
ROBERT DUGGAN, JR.,

RECEIVED & FILED

DEC 17 2009

ANDROSCOGGIN
SUPERIOR COURT

Plaintiffs

v.

ORDER REGARDING
ATTORNEYS FEES

SADDLEBACK, INC.,
INTEGRITY ELECTRICAL
INSTALLATION & SERVICE,
INC. AND SARGENT & SONS
BUILDERS, INC.,

Defendants

BEFORE THE COURT

This matter is before the court for consideration of a request for plaintiff's attorney's fees and litigation expenses following a successful jury trial on June 16, 17 and 18, 2008 and a successful judicial determination of non-jury issues. In the court's order of October 2008, the court made findings of fact on which it relies in the analysis of the claim for attorney's fees and expenses.

The evidence at trial was essentially the same for both the Maine Human Rights Act (MHRA) claims and the tort claims.¹ Although the tort claims required proof of intimidation, the MHRA claims required proof of compelling or coercing another to violate the MHRA, 5 M.R.S.A. § 4553(10)(D) and proof of interference, coercion or intimidation, 5 M.R.S.A. § 4633. Thus, the evidence for proof of the tortious interference claims and the claims under the MHRA was much the same for all claims.

¹ The court relies on its factual statement in the October 31, 2008 Order.

Contrary to defendant's argument, the claims in this case are so interrelated² that "attempts to allocate hours between claims may be unwarranted where an action involves related legal theories applied to a common core of facts." *Phetosomphone v. Allison Reed Group, Inc.*, 984 F. 2d 4, 7 (1st Cir. 1983). There is in this case a single core of facts applicable to either theory: Duggan's employer, Integrity, discriminated against Duggan at the behest of Saddleback and Sargent in violation of MHRA and the Whistleblower's Protection Act (WPA) due to Duggan's complaint to the Maine State Electrician's Examining Board (Board) that Saddleback employees and others were performing unsafe electrical work without a license in violation of the Maine State Electrical Code (Code), that Integrity violated the WPA and the MHRA by threatening him with termination, terminating his employment and subsequently seeking to transfer him to a different job site, all because of his report to the Board, and that Saddleback and Sargent compelled or coerced Integrity to engage in unlawful MHRA employment discrimination and also tortiously interfered with Duggan's business relationship with Integrity by pressuring Integrity to fire him. Duggan was successful on all of these claims that involved a common set of facts.

Pursuant to 5 M.R.S.A. § 4614 and M.R.Civ.P. 54(b), Attorney Rebecca Webber filed a detailed request for \$79,777.07 in attorney's fees and expenses, after subtracting \$11,204.00 for tort-related work and a reduction of \$4,180 for the no-charged work.

² And, the conduct of the defendants is also so interrelated and produced "an indivisible injury", that the court concludes that the defendants are jointly and severally liable for the fees and expenses as outlined in this decision. *Koster v. Perales*, 903 F. 2d 131, 140 (2nd Cir. 1990).

Defendant Saddleback opposes Webber's application for attorney's fees on several grounds, including that most of her time was spent on the tort claims for which no attorney's fees are authorized while "the Maine Human Rights Commission litigated most of the case." Def's Opp, p.1. Saddleback also claims that Webber's fees include excessive, redundant or unnecessary hours accruing fees, and includes generic descriptions of time not capable of being properly assessed.

The court is indeed charged with examining an attorney's fee request to determine whether counsel exercised sound billing judgment. *Wilcox v. Stratton Lumber, Inc.*, 921 F. Supp. 837, 848 (D. Me. 1996). Webber and counsel of the Commission exercised extraordinary care to ensure that all matters critical to the case were covered by one of them and that they did not duplicate each other's actions. Webber has demonstrated the reasonableness of her rates and hours submitted in her application for fees. The court has scrutinized her billing records and her explanation of how she and counsel for the Commission divided up the work to be accomplished and finds that she acted responsibly and the resulting fees are reasonable.

Saddleback points to what it describes as unnecessary conferences with Attorney Gause of the Commission, but the court rejects the argument that this could only result in duplication of effort by attorneys. These conferences led to a division of work so as to avoid duplication and wasted resources. Webber and Gause divided responsibility for taking depositions, saving defendant depositions costs for which the Commission paid. Webber and Gause also split up witnesses during discovery and at trial. Gause was the only attorney to interview the State Electrical Inspector and to obtain an affidavit for Integrity

Foreman Rick Morin. Morin's affidavit was used to both defeat Saddleback's Motion for Summary Judgment and at trial. None of this shows up in Webber's fee petition precisely because it was delegated to the Commission during a conference between Gause and Webber. They also divided up the work responding to Saddleback's motion for summary judgment. Attorney Webber prepared the detailed factual section and the supporting statement of facts, work that was later used again for the trial brief and in the brief to the law court. Although both Gause and Webber signed the trial brief, they divided up responsibility for certain portions of the brief, just as they divided up responsibility for opening and closing statements, all to avoid duplication. Attorneys Gause and Webber should be commended for the lengths to which they went to avoid duplication and to ensure that their clients' cases went to the court in an expeditious manner.

Saddleback also argues that it was only one defendant and it should not shoulder all of the fees that Duggan incurred in litigating against the other defendants. However, this ignores the fact that only Saddleback vigorously defended itself against Duggan's claims. Integrity and Sargent defaulted early in the litigation. Moreover, joint and several fee liability is a proper exercise of the court's discretion. See *Webb v. Dyer County Bd. of Ed.*, 471 U.S. 234, 244 n. 20, 105 S. Ct. 1923, 1929 n. 20, 85 L. Ed. 2d 233 (1985). See also *Anrst v. Estes*, 8 A. 2d 201, 203 (Me. 1939). According to *Wyman v Secretary of State*, 625 A. 2d 307, 312 (Me. 1993), "the awards are to be guided by substantive liability rules, and should reflect the defendant's degree of responsibility for the injury suffered by the plaintiff." *Id.* at 312-13 (citations and quotations omitted). Here, not only was Saddleback engaging in the illegal and dangerous electrical work to save money,

but Saddleback was also pressuring Sargent and Integrity to have Duggan fired. Saddleback was the entity most responsible for Duggan's termination; accordingly, it is appropriate that the responsibility for the fees not be divided up and instead be awarded jointly and severally.

Saddleback further argues that Webber's services were unnecessary and redundant because the Commission was pursuing Duggan's MHRA claims. The Commission could not adequately represent Duggan in her individual claims. The Commission represents the interests of the State of Maine. Its actions were taken for the State of Maine and for the use of Duggan. Duggan has a right to counsel to represent him individually. 5 M.R.S.A. § 4613(1).

Saddleback criticizes Webber's attempt to recover for fees spent pursuing the tortious interference claim. Saddleback dismisses what it calls Webber's arbitrary determination that \$11,204 were expended on tort claims and discounting her fees by this number. Yet, Saddleback does not identify any fees that should be excluded, but simply argues that the fees should be reduced by \$15,995 for each of the two tort claim counts. The court considers the claims so interrelated that it would not be fruitful to attempt further segregation of Duggan's claims. As stated before, the elements of the MHRA claim and the tort claim are virtually identical, and Duggan was successful on all claims so there is no need to separate out the successful from the unsuccessful claims or to separate out the defendants because the witnesses were the same regardless of the claim or the defendant.

Finally, Saddleback argues against what it describes as "block billing" practice of Webber so as to evade meaningful judicial review. The court is very able to read and understand the billing entries. Each entry is about a particular

event, whether it was a discovery conference with the court, drafting a subpoena and deposition notice, and so forth. No further specificity is required.

Finally, Saddleback argues that if the court is not willing to significantly reduce Webber's fees, the court should grant it a evidentiary hearing with discovery to determine if Webber is entitled to the fees and costs she seeks and to resolve the factual issues in dispute. Yet, Saddleback has not identified what factual issues are in dispute and how an evidentiary hearing would advance the court's inquiry. And, the court is mindful that it should avoid a second major litigation over the fee petition. See *Koster v. Perales*, 903 F. 2d 131, 140 (2d Cir. 1990); *Webb v. Dyer County Bd. of Ed.*, 471 U.S. 234, 244 n. 20, 105 S. Ct. 1923, 1929 n. 20, 85 L. Ed. 2d 233 (1985).

The court considered most, if not all of the factors relevant to how many hours were reasonably spent on this case. The court considered the factors identified in *Colony Cadillac & Oldsmobile, Inc. v. Yerdon*, 558 A. 2d 364, 368 (Me. 1989); *Mancini v. Scott*, 2000 ME 19, ¶ 10, 744 A. 2d 1057, 1061 (citing *Poussard v. Commercial Credit Plan, Inc. of Lewiston*, 479 A. 2d 881, 883 (Me. 1984)). The court finds that the time spent by the lawyers and paralegal is reasonable considering the time and labor spent on the case from summary judgment, through trial and than an appeal filed by Saddleback. This case involved novel issues, including the extent of coverage and the interpretation of 5 M.R.S.A. § 4553(10)(D) and 5 M.R.S.A. § 4633. Employment law expertise was vital to this case and required, from time to time, preclusion of other employment. The hourly fee of Attorney Webber and her associate are comparable, if not lower than, the customary rates charged by other Maine attorneys with similar experience in employment litigation in Maine. Attorney Webber took a substantial risk in taking this case

on a contingent fee basis. The circumstances under which Attorney Webber came into this case required her to get up to speed quickly and to promptly prepare an amended complaint. This priority work inevitably delayed other legal work at that time. Success in this case for Duggan was complete. Attorney Webber's experience, reputation and ability were apparent in her handling of this case. Because the lost back pay wages in this case were small, and the MHRA damages were limited due to the size of Integrity, and the fact that Saddleback was not a direct employer, this case was not desirable when compared to cases with larger potential MHRA damages. Attorney Webber did not know Duggan before this case, thus this case required additional time for trial preparation with Mr. Duggan. After considering all of the factors, the court concludes that Duggan's attorney's fees are reasonable. Accordingly, Duggan is awarded the attorney's fees and expenses requested.

The entry is:

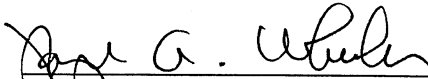
1. Saddleback is Ordered to pay forthwith the Bill of Costs approved in July 2008;
2. Saddleback is Ordered to pay the Bill of Costs submitted subsequent to the appeal in the amount of \$476.50 within 30 days of this Order;
3. Saddleback is Ordered to pay pre-judgment interest pursuant to 14 M.R.S.A. § 1602-B(3) on the amount of the judgment against it, which includes the award by the jury of \$42,000, plus \$7,500 of MHRA penalties, plus \$1,907.36 of lost pay, plus this award of attorney's fees. The total amount on which interest is due is: \$131,184.43. The interest rate to be applied is: 7.36%. The amount due in pre-judgment interest is therefore: \$9,655.17.
4. Saddleback is Ordered to pay Duggan post-judgment interest pursuant to 14 M.R.S.A. § 1602-C on the amount of the judgment against it, which includes the award by the jury of \$42,000, plus \$7,500 of MHRA penalties, plus \$1,907.36 of lost back pay, plus this award of attorney's fees. The total amount on which interest is due is: \$131,184.43. The interest rate to be applied is: 9.42%. The total amount due in post-judgment interest is therefore: \$12,357.57.

5. Saddleback is Ordered to pay the following attorney's fees and litigation expenses to Duggan's counsel within 30 days of this order:

Attorney's fees for Attorney Webber	\$	76,300.00
Attorney's fees for Attorney Buck	\$	714.00
Paralegal fees of Anne Leblanc	\$	2,264.00
Expenses	\$	499.07

TOTAL:	\$	79,777.07
--------	----	-----------

Date: December 16, 2009


Joyce A. Wheeler, Justice