

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS & ST. JOHN

JEFFREY EPSTEIN and L.S.J., LLC,)
)
 Plaintiffs,)
)
 -vs-)
)
 NICK LAMBROS and AVLK, LLC)
 d/b/a SOUND X,)
)
 Defendants.)

CASE NO. ST-12-CV- 21

ACTION FOR
BREACH OF CONTRACT AND
FRAUD

JURY TRIAL DEMANDED
PUNITIVE DAMAGES SOUGHT

DATE STAMPED
2012 DEC 10 PM 2:24
COPY

MOTION FOR AWARD OF COSTS & ATTORNEYS' FEES & INCORPORATED
MEMORANDUM IN SUPPORT

COME NOW Plaintiffs JEFFREY EPSTEIN and L.S.J., LLC, by and through their undersigned counsel, KELLERHALS FERGUSON FLETCHER KROBLIN LLP, and hereby move this Honorable Court for an award of costs and attorneys' fees.

I. APPLICABLE LAW

Title 5, section 541, provides the applicable law governing the award of costs and attorneys' fees in the Virgin Islands. It states in relevant part as follows:

- (a) Costs which may be allowed in a civil action include:
 - (1) Fees of officers, witnesses, and jurors;
 - (2) Necessary expenses of taking depositions which were reasonably necessary in the action;
 - (3) Expenses of publication of the summons or notices, and the postage when they are served by mail;
 - (4) Compensation of a master as provided in Rule 53 of the Federal Rules of Civil Procedure;
 - (5) Necessary expense of copying any public record, book, or document used as evidence on the trial; and
 - (6) Attorney's fees as provided in subsection (b) of this section.

(b) The measure and mode of compensation of attorneys shall be left to the agreement, express or implied, of the parties; **but there shall be allowed to the prevailing party in the judgment such sums as the court in its discretion may fix by way of indemnity for his attorney's fees in maintaining the action or defenses thereto...**

5 V.I. CODE ANN. tit § 541(a)&(b) (emphasis added).

The decision of whether and to what extent fees should be awarded is within the Court's discretion. *Wenner v. Government of the Virgin Islands*, 29 V.I. 158, 164 (D.V.I. 1993). The Court is obligated, however, to follow established guidelines in evaluating requests for attorneys' fees. *Damidaux v. Hess Oil Virgin Islands Corp.*, 18 V.I. 417, 419-420 (D.V.I. 1981). Though a district court may have many good reasons to set or reduce a proposed fee award, if those reasons are not explicated, at least in some meaningful degree, and if the district court's fee-award opinion is so terse, vague, or conclusory that it provides no basis to review it, the fee-award order will not withstand scrutiny on appeal. *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 196 (3d Cir. 2000).

In determining a fair and reasonable attorneys' fee award under Virgin Islands law, the Court must consider the time and labor required, the novelty and difficulty of the questions involved, the requisite skill needed to properly conduct the case, customary charges of the bar for similar services, the amount involved in the controversy, the benefits resulting to the client from the services, and the contingency or certainty of compensation. *Wenner v. Government of Virgin Islands*, 1993 WL 661182, *3 (D.V.I. 1993) (citing *Lucerne Investment Co. v. Estate Belvedere, Inc.*, 411 F.2d 1205, 1207 (3d Cir.1969)).

To determine a fair and reasonable award of attorneys' fees, the Court considers factors including the time and labor involved, skill required, customary charges for similar services, benefits obtained from the service and the certainty of compensation. *Lempert v. Singer*, Civ. No.1990-200, 1993 WL 661181, at *2 (D.V.I. Dec. 30, 1993); *see also Morcher v. Nash*, 32 F.Supp.2d 239, 241

(D.V.I.1998). Reasonable attorneys' fees may include charges for work that was "useful and of a type ordinarily necessary to secure the final result obtained from the litigation." *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 478 U.S. 546, 561 (1986); see also *Gulfstream III Associates, Inc. v. Gulfstream Aerospace Corp.*, 995 F.2d 414, 420 (3d Cir.1993) (noting that reasonable attorneys' fees may include charges for measures necessary to enforce district court judgments as well as other charges "reasonably expended" to advance the litigation).

Banco Popular de Puerto Rico v. Paradise Motors, Inc., 2008 WL 4222085, *1 (D.V.I. 2008).

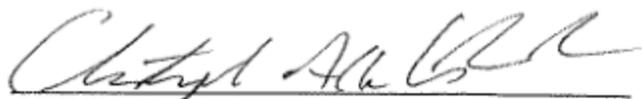
II. AN AWARD OF ATTORNEYS' FEES IS APPROPRIATE

In the instant case, Plaintiffs filed an action for breach of contract and fraud, seeking contractual and tort damages against the Defendants who represented that they were skilled audio / visual technicians who had the ability to purchase and install state of the art entertainment systems, which skill they did not have. Defendants accepted payment from Plaintiffs but failed to perform or to correct the faulty work they did perform. Despite being served with the complaint and even acknowledging service through direct contact with the Court, the Defendants failed to appear or otherwise defend this matter. Plaintiffs were required to prosecute this matter in order to obtain relief and are, therefore, entitled to an award of their costs and attorneys' fees as permitted by 5 V.I. CODE ANN. tit § 541(a)&(b). As set forth in the accompanying Affirmation, the total amount of attorneys' fees sought by Plaintiffs is \$7,702.50.

WHEREFORE, it is respectfully requested that this Honorable Court enter an award of attorneys' fees and costs in favor of Plaintiffs and against Defendants in the amount of **\$7,702.50**.

Respectfully,

DATED: December 10, 2012



CHRISTOPHER ALLEN KROBLIN, ESQ.

VI Bar # 966

KELLERHALS FERGUSON FLETCHER KROBLIN LLP

9100 Port of Sale Mall, Suite 15

St. Thomas, VI 00802-3602

Telephone: [REDACTED]

Telefax: [REDACTED]

Email: [REDACTED]

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS & ST. JOHN

DATE STAMPED
COPY
2012 DEC 10 PM 2:24

JEFFREY EPSTEIN and L.S.J., LLC,)	
)	
Plaintiffs,)	
)	CASE NO. ST-12-CV- 21
)	
-vs-)	ACTION FOR
)	BREACH OF CONTRACT AND
NICK LAMBROS and AVLK, LLC)	FRAUD
d/b/a SOUND X,)	
)	JURY TRIAL DEMANDED
Defendants.)	PUNITIVE DAMAGES SOUGHT

ORDER

BEFORE THE COURT is Plaintiff's Motion for Award of Costs & Attorneys' Fees & Incorporated Memorandum in Support. Upon consideration of the Motion, the Court will grant the relief requested therein. Accordingly, it is hereby:

ORDERED that Plaintiff's Motion is Granted; it is further

ORDERED that the Judgment for Plaintiff shall include the additional award of \$7,702.50 in costs and attorneys' fees.

Dated: _____

Judge of the Superior Court
of the Virgin Islands