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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO
BEFORE THE HONORABLE ERNEST H. GOLDSMITH, JUDGE PRESIDING
DEPARTMENT NUMBER 613

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TANIA X. GARCIA,)
Plaintiff,) Case No. 454840
vs.) Attorney's Fees Motion
ELECTRICAL INDUSTRY SERVICE)
BUREAU, INC., et al.,)
Defendants.)

Reporter's Partial Transcript of Proceedings
July 11, 2008

APPEARANCES OF COUNSEL:

For Plaintiff:

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SCOTT M. DE NARDO, ESQ. (Not present)

Reported by: Melanie Dawn Gheno, CSR No. 7489, RMR, CRR

1 July 11, 2008 2:45 P.M.

2 P R O C E E D I N G S

3 THE COURT: This is the matter of Tania Garcia vs.
4 Electrical Industry Service Bureau, Incorporated in action
5 No. 454840, and it is a motion for attorney's fees and costs.

. . .

22 THE COURT: Let's take a few things off the table. At least
23 on Mr. Vaznaugh's hourly rates, which are contested by
24 Defendant. I have no argument with them. Why shouldn't he get
25 that rate, talking about Mr. Vaznaugh.

26 MR. FLYNN: I understand. Ketchum against Moses says, which
27 is cited in the briefs, says that you have to base it on a
28 non-contingent litigation of the same type. And the only

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1 evidence of non-contingent litigation of the same type is the
2 fee that we charge which is 225, and 195.

3 THE COURT: Mr. Vaznaugh displayed, I thought, exceptional
4 skill.

5 MR. FLYNN: I don't dispute that the verdict turned out
6 well.

7 THE COURT: Well, I don't mean just the verdict turned out
8 well. He displayed exceptional skill, and I put him on a par
9 with some of the, call it the big names in this field, and I
10 think he asked for 425.

11 Is that right?

12 MS. REISCH: Yes, your Honor.

13 THE COURT: I mean, you know, you've got -- I don't know
14 what people like Mr. Axlerod, Mr. Rudy, Mr. Gwilliam,
15 Mr. { }Sorgen. I don't know what they're getting, but it's
16 probably more than that. And I'd put him in that category.

17 MR. FLYNN: well, your Honor, the fact that you don't know
18 means that there's no evidence before you on that.

19 THE COURT: I saw him.

20 MR. FLYNN: No, I understand that. But there's no evidence
21 of what a non-contingent lawyer would charge for the litigation.

22 THE COURT: Can I make some assumptions what an extremely
23 skilled lawyer would get?

24 MR. FLYNN: You can make some assumptions, but and that is
25 one of the factors, but one of the factors is that the Court has
26 to look at what attorneys in the community receive for
27 non-contingent litigation of the same type. And it may be that
28 you consider him well qualified, and he'd be the top end of it.

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1 THE COURT: I do.

2 MR. FLYNN: But there is no evidence before you except what
3 the Neyhart firm charged.

4 THE COURT: well, if you can hire him for 425 an hour, you
5 ought to take it and run.

6 MS. REISCH: Your Honor, could I just address one point.

7 THE COURT: So I sort of want to take that off the table. I
8 don't have a problem with it, and I just wonder if you have any
9 compelling argument, Mr. Flynn.

10 MR. FLYNN: well, I would just cite Ketchum against Moses
11 that you're supposed to base it on the private attorneys what
12 they receive for non-contingent litigation of the same type, and

13 the only evidence in this case is what the Neyhart firm charged.

14 THE COURT: well, he cited evidence about, call it, the
15 value of the services.

16 MR. FLYNN: what in evidence particular?

17 THE COURT: well, I guess you'd say opinions from other
18 lawyers.

19 MR. FLYNN: well, yes, the opinions that he is well
20 qualified. That is before you, there's no question, but there
21 is no -- for example, if you read Mr. Sorgen's declaration, it
22 doesn't say what he charges for non-contingent litigation.
23 There is no declaration by anyone saying this is what I get
24 except my declaration from November.

25 THE COURT: well, how many plaintiffs' lawyers who work on
26 contingency ever bill by the hour?

27 MR. FLYNN: Probably not too many.

28 THE COURT: I don't think so.

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1 MR. FLYNN: But that doesn't mean that's not the standard.

2 THE COURT: well, that doesn't mean that I have to use your
3 figures, does it?

4 MR. FLYNN: well, if that's the only evidence in front of
5 you, yes, you do.

6 THE COURT: well, okay.

7 Do you have any answer to that?

8 MS. REISCH: well, your Honor, we believe defense counsel --

9 THE COURT: I'm not arguing about his, what I think his work
10 is. I'm talking about a response to Mr. Flynn's argument that
11 there's no evidence of what the non-contingent hourly rate would
12 be.

13 MS. REISCH: Well, we respectfully disagree, of course. We
14 submitted not only the declarations of Mr. Vaznaugh and
15 Ms. Villega as well as their sworn deposition testimony
16 concerning their fees and fees they've been awarded in past
17 cases as well as fees that they have sought in other fee motions
18 and obtained, but also with respect to which themselves as
19 affidavits are very substantial evidence that the Court can take
20 into consideration in determining the reasonable rate. But in
21 addition, Mr. Sorgen's declaration, Mr. Pearl's declaration, the
22 declaration of Mary Dryvich (phonetic), as well as the
23 declaration of Anna Loya (phonetic).

24 All of these declarations support the fee rate that's being
25 requested for Mr. Vaznaugh and as well as we just want to
26 clarify that of course the standard in Ketchum or in any other
27 major leading cases in California is not what a non-contingent
28 lawyer would necessarily charge but rather what a fee paying

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1 client would pay, a well-to-do fee paying, an affluent fee
2 playing client who is intent on vindicating their full rights,
3 and I believe the Court is exactly right when you say that a
4 client would be lucky to obtain the services of Mr. Vaznaugh at
5 425 an hour.

6 So we believe there's more than ample evidence before the
7 Court to find the rate that's being requested within, well
8 within the range of reason. And of course there's plenty of
9 case law saying that defense counsel charge rates, especially in
10 a situation like this where they have a repeat client and it's a
11 whole different set of circumstances, are not a controlling
12 factor in determining and, in fact, are frankly irrelevant to

13 determining what a civil rights plaintiff's attorney in the
14 Bay Area of the comparable skill and experience as Mr. Vaznaugh
15 should be awarded as a reasonable rate. So I'd be happy to cite
16 some of those cases, but they're in our briefs.

17 MR. FLYNN: Your Honor, I wanted to add one further.

18 THE COURT: Please.

19 MR. FLYNN: There's been a lot of evidence put in about what
20 other courts have awarded and, again, what other courts have
21 awarded is based on the evidence they had before them.

22 You have to make your decision based on the evidence before
23 you. You can't rely on, oh, well, some other court awarded some
24 number to somebody.

25 THE COURT: I'd give him 600, I mean.

26 MS. REISCH: That would be fine, your Honor.

27 THE COURT: Okay. I understand your position, Mr. Flynn.

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