

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 23-cv-22379-Scola/Lett

Naval Logistics, Inc. *d/b/a*
Middle Point Marina,

Plaintiff,

v.

M/V Family Time, *in rem*
Andrew Vilenchik, *in personam*
Commercial Holdings Group, Inc.,

Defendants.

**REPORT AND RECOMMENDATION ON
PLAINTIFF'S MOTION FOR ATTORNEY'S FEES**

THIS CAUSE is before the Court pursuant to a referral from District Judge Robert N. Scola of Plaintiff Naval Logistics Inc.'s Verified Motion for Attorney's Fees and Costs against the Defendants M/V Family Time, Andrew Vilenchik, and Commercial Holdings Group, Inc. ("Motion for Attorney's Fees" or "Motion", ECF No. 129) pursuant to Judge Scola's Final Judgment [ECF No. 106]. [ECF No. 131]. This matter arises out of a maritime contract dispute filed by the Plaintiff. Plaintiff requests an award of attorney's fees in the amount of \$125,952.50 and costs in the amount of \$2,494.61. [ECF No. 129].

For the reasons mentioned below, the Court recommends that the District Court grant in part Plaintiff's Motion for Attorney's Fees.

I. Background

Plaintiff filed its Complaint on June 27, 2023, alleging one count of breach of maritime contract, one count of foreclosure of a maritime lien for necessities, and one count of claim for pure salvage award. [ECF No. 1]. On August 8, 2024, Judge Scola granted the Plaintiff's Motion for Summary Judgment and denied the Defendant's Motion for Summary Judgment as it related to Counts I and II. [ECF No. 88]. In that same order, Judge Scola reserved the right to rule on attorney's fees pending the resolution of the litigation. *Id.* On August 27, 2024, Judge Scola dismissed Count III of the Complaint with prejudice. [ECF No. 91]. On September 13, 2024, the Parties jointly moved for a judgment on the case, stating that there were no pending legal issues before the Court. [ECF No. 102]. Accordingly, Judge Scola entered a Final Judgment in the case on September 16, 2024, ruling that the Plaintiff is entitled to \$7,548.85 in pre-arrest storage, \$28,934.45 in *custodia legis* expenses, \$3,945.00 in arrest related costs, and attorney's fees related to Counts I and II of the Complaint. [ECF No. 106]. Defendants filed a Notice of Appeal on September 27, 2024. [ECF No. 111].

Following entry of the Final Judgment, Plaintiff filed a Motion for Attorney's Fees on November 15, 2024. [ECF No. 129]. The basis for the attorney's fees is found within the original Shipyard Agreement, which states, "[i]n the event that Middle Point Marina engages an attorney to collect any unpaid invoices and/or to take any other action on behalf of Middle Point Marina for a breach of this Agreement, Middle Point Marina shall be entitled to recover its reasonable attorney's fees from the Owner, regardless of whether any suit is brought against Owner or Vessel." Shipyard

Agreement ¶ 15 [ECF No. 1-1]. The Defendants, with leave of Court, filed their Response on December 6, 2024, noting objections only to the number of hours billed by Plaintiff in their Motion. [ECF No. 144]. Plaintiff filed its Reply on December 13, 2024, arguing that the Response did not comply with the Local Rules on attorney's fees disputes. [ECF No. 149].

II. Analysis

A. Failure to Adhere to the Local Rules

In its Reply, Plaintiff argues that the Defendants did not comply with Local Rule 7.3(b) due to a lack of specificity in the objections and improper notice in written form, while noting that the parties did telephonically communicate about the disputes prior to the filing of the Motion. *See* Reply at 3. The Local Rules require that “[t]he respondent shall describe in writing and with reasonable particularity each time entry or nontaxable expense to which it objects, both as to issues of entitlement and as to amount, and shall provide supporting legal authority.” Local Rule 7.3(b). Defendants do not dispute Plaintiff's entitlement to attorney's fees, nor do the Defendants dispute the costs and expenses itemized in the Motion. Defendants object only to the number of hours billed by Plaintiff, which is done through a marked hour log denoting the billed hours. Therefore, although the parties did not explicitly follow the Local Rules, Defendants did provide a written basis of their objection and the parties both represented that there was a telephonic conferral about the disputes. The Court recognizes that the primary purpose of the Local Rule in this instance is to encourage communication and preempt unnecessary filings. As that was done in this case and the Court would need to conduct an independent review of the billing

hour requirements regardless of proper objection, the Court elects not to penalize the parties and rule on the merits of the Motion. *See Carnival Corp. v. McCall*, No. 18-24588CIV, 2021 WL 2338647, at *4 (S.D. Fla. Apr. 26, 2021), *report and recommendation adopted*, No. 18-CV-24588, 2021 WL 2333102 (S.D. Fla. June 8, 2021) (“[T]he Court has discretion in applying the Local Rules.”) (citing *Maale v. Kirchgessner*, No. 08-80131-CIV, 2011 WL 1549058, at *5 (S.D. Fla. Apr. 22, 2011)).

B. Reasonableness of Fees

After determining entitlement to attorney’s fees, the Court is then tasked with determining the reasonableness of the requested amount of fees. Courts typically begin this analysis with the “lodestar” method, which is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate. *See Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983); *Thornton v. Wolpoff & Abramson, L.L.P.*, 312 F. App’x 161, 163-64 (11th Cir. 2008). Once that number is determined, it carries a presumption of reasonableness. *See Blum v. Stenson*, 465 U.S. 886, 897 (1984). The lodestar amount may be adjusted by courts upward or downward based on other considerations. *Hensley*, 461 U.S. at 433-37.

To determine appropriate fees, courts are guided by the decision in *Johnson v. Ga. Hwy. Exp., Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974¹), which lays out twelve factors for consideration: 1) the time and labor required, 2) the novelty and difficulty of the questions, 3) the skill requisite to perform the legal service properly, 4) the

¹ Fifth Circuit cases decided on or before September 30, 1981, are binding precedent in the Eleventh Circuit unless they have been overruled by the Eleventh Circuit judges sitting en banc. *Bonner v. City of Prichard*, 661 F.2d 1206 (1981).

preclusion of other employment by the attorney due to the acceptance of the case, 5) the customary fee, 6) whether the fee is fixed or contingent, 7) time limitations imposed by the client or the circumstances, 8) the amount involved and the results obtained, 9) the experience, reputation, and ability of the attorneys; 10) the “undesirability” of the case; 11) the nature and length of the professional relationship with the client; and 12) awards in similar cases. *See also Mallory v. Harkness*, 923 F. Supp. 1546, 1555 (S.D. Fla. 1996) (applying the *Johnson* factors in determining appropriate attorney’s fees). This set of factors has since been used in subsequent Supreme Court cases, although it is not an all-encompassing list of factors to determine reasonableness of fees. *See Blanchard v. Bergeron*, 489 U.S. 87, 91-93 (1989). The moving party for attorney’s fees bears the responsibility of documenting the reasonableness of the hours worked on a case and the hourly rate. *A.C.L.U. of Ga. v. Barnes*, 168 F.3d 423, 427 (11th Cir. 1999).

a. Reasonable Hourly Rate

A reasonable hourly rate is measured by “prevailing market rates in the relevant community.” *Blum*, 465 U.S. at 895. The Court is considered to be the expert in determining the issue of hourly rates in its community and may apply its own knowledge and experience to form an independent judgment about the appropriate fee rate. *See Ikpe v. Kreative Therapy Rehab Ctr., Inc.*, No. 19-23217-CIV, 2019 WL 1369502, at *2 (S.D. Fla. Mar. 20, 2019) (citing *Norman v. Hous. Auth. Of Montgomery*, 836 F.2d 1292, 1303 (11th Cir. 1988)). Determining market rates requires the court to consider the *Johnson* factors in making its determination. *See*

5AIF Maple 2 LLC v. 5725 Lagorce Partners LLC, No. 21-20298-CIV, 2021 WL 7502576, at *2 (S.D. Fla. July 29, 2021) (citing to *Dillard v. City of Elba*, 863 F. Supp. 1550, 1553 (M.D. Ala. 1993)). Regardless of a party's lack of opposition to a proposed hourly rate or time expended on a case, the Court must ensure that the fee it awards is reasonable. *See Valley v. Ocean Sky Limo*, 82 F. Supp. 3d 1321, 1325 (S.D. Fla. 2015).

The Defendants in the present case do not dispute the hourly rates presented by Plaintiff. Nonetheless, the Court must evaluate the reasonableness of the rates on its own. *See id.* Plaintiff requests consistent hourly rates across the various tiers of attorneys who worked on this case. *Id.* Plaintiff first requests hourly rates of \$450 per hour for Jeffrey E. Foreman, Esq., who has been practicing law for 38 years and functioned as a supervisory attorney on the present case. *See* Motion at 4-5. For attorneys Noah D. Silverman, Esq., and Cecile von Batemberg, Esq., Plaintiff requests a fee rate of \$425 per hour as partners involved in the litigation, noting their 24 years and 8 years of practice respectively. *See id.* p. 4-7. For the two associate attorneys, Jacob M. Foreman, Esq., and Zachary L. Foreman, Esq., Plaintiff requests an hourly rate of \$300 per hour. *See id.* p. 4-8. In applying the *Johnson* factors and based on the experience, work product, comparable rates in the local legal community, and results produced for Plaintiff in the case, the Court agrees that the hourly rates requested are reasonable.

b. Reasonable Hours Expended

The Court must next evaluate the reasonableness of total hours expended by Plaintiff's attorney on the case. The Plaintiff bears the burden of providing the Court with sufficiently detailed records so that the Court can assess the time claimed for each activity. *See Hermosilla v. Coca-Cola Co.*, No. 10-21418-CIV, 2011 WL 9364952, at *14 (S.D. Fla. July 15, 2011) (citing *Barnes*, 168 F.3d at 427, 432-33). The Plaintiff, as the party requesting fees, must use sound judgment and exclude hours that would be unreasonable to bill a client. *See Norman*, 836 F.2d at 1301. The Court must also exclude excessive or redundant hours included in the final billing. *Id.* at 1303. If the hours billed are determined to be unreasonably high, the Court has two options: conduct an hour-by-hour analysis or reduce the requested hours by an across the board cut. *See Bivins v. Wrap It Up, Inc.*, 548 F.3d 1348, 1351-52 (11th Cir. 2008). Judges are given discretion and must exercise judgment, as there is no specific formula or rule in making fee determinations. *See Hensley*, 461 U.S. at 436. The goal is not to become perfect accountants and to proceed to the ledger of hours with a microscope trained to each minute entry, but to achieve a fair measure of the hours worked and the litigation conducted. *See Fox v. Vice*, 563 U.S. 826, 838 (2011) (Courts “need not, and indeed should not, become green-eyeshade accountants. The essential goal in shifting fees (to either party) is to do rough justice, not to achieve auditing perfection.”).

Defendants dispute a total of 80.1 hours² of the time that Plaintiff's attorneys billed on the present case, stating that the billing related to several filings “reflect[s]

² While Defendant's Response states 73.8 hours of disputed work, the log of disputed hours attached in ECF No. 144-1 totals 80.1 hours of billed work.

an excessive amount of time billed for legal research and with drafting particular [filings].” *See* Defs.’ Resp. at 4 & Defs.’ Resp. Ex. A. The Court agrees that a small number of the entries appear vague or slightly excessive. *See, e.g.*, Pl.’s Attorney Invoices at 9-11 [ECF No. 129-1] (denoting over 10 hours of work on the Motion for Interlocutory Sale). The Court believes that a modest flat rate cut of approximately 20 hours of work from associate fee rates and 10 hours of work from partner fee rates is sufficient to satisfy the Court’s *Hensley* obligation to adequately reflect the appropriate amount of time that should have been billed in this case.

The Defendants also state that of the 80.1 hours, several entries are duplicative in having attorneys reviewing work or having two attorneys doing the job required only by one, such as attending mediation. Defs.’ Resp. at 4-5. The Court disagrees. As stated in the Plaintiff’s Reply, it is commonplace for associates to have their work reviewed by senior attorneys, and multiple attorneys working on a particular matter does not strike the Court as excessive in billing, particularly when only accounting for fewer than six total hours of billing between two attorneys. Accordingly, the Court declines to reduce the billed hours amount on this basis.

Given the minor adjustments made to the hour requirements and the determined fee rates, the Court recommends that the Plaintiff’s Motion be granted in part, and an attorneys’ fees award be issued in the amount of \$115,702.50, along with the costs and expenses of \$2,494.61, for a total of \$118,197.11.

III. Conclusion

For the reasons stated above, the Court **RECOMMENDS** that the District Court **GRANT IN PART** Plaintiff's Motion for Attorney's Fees Against Defendants and award the amount of \$118,197.11.

Within fourteen days after being served with a copy of this Report and Recommendation, any party may serve and file written objections to any of the above findings and recommendations. 28 U.S.C. § 636(b)(1); S.D. Fla. Mag. R. 4(b). The parties are hereby notified that a failure to timely object waives the right to challenge on appeal the District Court's order based on unobjected-to factual and legal conclusions contained in this Report and Recommendation. 11th Cir. R. 3-1.

DONE and ORDERED in Chambers in Miami, Florida on this 15th day of May, 2025.

A handwritten signature in blue ink, reading "Enjoliqué A. Lett", is written over a horizontal line.

ENJOLIQUE A. LETT
UNITED STATES MAGISTRATE JUDGE

cc: All Counsel of Record