



By Order of the Court, Judge Joseph N. Camacho

1 FOR PUBLICATION

2
3 IN THE SUPERIOR COURT
4 FOR THE
5 COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

6 NIRANJAN MALLICK,

7 Plaintiff,

8 v.

9 SAIPAN HWA RANG CORPORATION
10 dba HONEYMOON MOTEL, and CHA
11 YUNG SOON,

12 Defendants.

CIVIL CASE NO. 09-0523

ORDER GRANTING ATTORNEY'S
FEES AND COSTS AND DENYING
PREJUDGMENT INTEREST

13 I. INTRODUCTION

14 THIS MATTER came before the Court on February 26, 2013 for a hearing. Plaintiff was
15 represented by Joe Hill, and Defendants were represented by Colin M. Thompson. Upon thorough
16 review of the record and relevant law, and for the reasons stated herein the Court: (1) **DENIES**
17 prejudgment interest accruing prior to the DOL's 2007 judgment because plaintiff failed to exhaust this
18 issue; (2) **DENIES** interest from the date of the DOL decision until the judgment in this Court; and (3)
19 **GRANTS** reasonable attorney's fees and costs consistent with this decision.

20 I. BACKGROUND

21 In November of 2001 Niranjan Mallick ("Plaintiff") filed a claim with the Department of Labor
22 ("DOL") based on alleged violations of the Non-Resident Worker's Act. (Compl. Ex. A.) On February
23 23, 2007 a hearing was held before the DOL who found for the Plaintiff. The DOL Administrative
24 Order ("AO") awarded damages of \$7660.84 for unpaid wages and overtime, and \$55.00 for illegal
deductions. Neither party appealed.

1 On December 21, 2009 Plaintiff suit against Defendants Saipan HWA Rang Corporation dba
2 Honeymoon Motel (“SHRC”) and Cha Yung Soon (collectively “Defendants”) in this Court to enforce
3 the DOL’s decision.

4 On December 24, 2010 Plaintiff filed his Motion for Summary Judgment (“Motion”). On
5 November 7, 2012 this Court granted summary judgment to enforce the AO and awarded post-judgment
6 interest pursuant to statute from the date of the judgment.

7
8 **III. DISCUSSION**

9 The remaining issues for the Court are whether plaintiff is entitled to: (A) pre-judgment interest
10 for unpaid periods prior to the date of the DOL judgment; (B) interest from the date of the DOL decision
11 to the judgment in this case; (C) reasonable attorney’s fees and costs.

12 **A. PREJUDGMENT INTEST**

13 The issue is whether Plaintiff is entitled to prejudgment interest prior to the DOL decision.
14 Initially, the Court must have jurisdiction.

15 “Parties aggrieved by agency action are required to exhaust their administrative remedies . . .”
16 *Bd. of Trs. of the N. Mariana Islands Ret. Fund v. Ada*, 2012 MP 10 ¶ 10 (citing *Cody v. N. Mariana*
17 *Islands Ret. Fund*, 2011 MP 16 ¶ 9.)). Administrative exhaustion is a prerequisite to jurisdiction. *Cody*
18 *v. Ret. Fund*, 2011 MP 16 ¶ 10 (“Both exhaustion and final agency action are jurisdictional prerequisites
19 to judicial review.”) (citations omitted). Pursuant to 3 CMC § 4445(a),¹ where no appeal is taken
20 within fifteen days of issuance of a DOL decision, that decision becomes unreviewable administratively
21 and judicially.

22 _____
23 ¹ 3 CMC § 4445(a) was the operative rule at the time. In 2008 Public Law 15-108 enacted 3 CMC § 4948(a) which replaces
24 3 CMC § 4445(a) and also provides that if no appeal is taken within fifteen days DOL orders become unreviewable both
administratively and judicially.

1 Plaintiff did not appeal the denial of prejudgment interest but instead sought enforcement of the
2 DOL order in this Court in 2009. The issue of prejudgment interest was not preserved by an appeal
3 therefore the Court lacks jurisdiction to consider it. *Cody*, 2011 MP 16 ¶ 10. Plaintiff failed to exhaust
4 his administrative remedies, therefore prejudgment interest prior to the DOL’s decision is **DENIED**.

5 **B. “POST-JUDGMENT” INTEREST FROM THE DOL DECISION**

6 Plaintiff seeks “post-judgment” interest pursuant to 7 CMC § 4101 from the date of the DOL
7 decision up to the judgment in this Court. At issue is whether Section 4101 applies to final
8 administrative actions. This is an issue of first impression in the Commonwealth.

9 7 CMC § 4101 provides, “[e]very judgment for the payment of money shall bear interest at the
10 rate of nine percent a year from the date it is entered. . . .” Title VII concerns civil procedure principally
11 applicable in the Commonwealth courts. The Court’s review of the APA indicates that references to
12 administrative orders are referred to as “decisions, findings, rulings, and orders,” but not as
13 “judgments.” *See* 1 CMC §§ 9101, 9110, 9112. Only a court makes a “judgment.” Administrative
14 agencies come to decisions which may become final for the purpose of an appeal. *See, e.g.*, 3 CMC §
15 4948(a). However, these agency actions are not “judgments” within the meaning of Section 4101. A
16 comparison between 1 CMC § 9112 referring to the procedure for an appeal from agency action which
17 does not use the word “judgment,” and 1 CMC § 9113 referring to appeal from a *judgment* of the
18 Superior Court illustrates this distinction. As a result, Section 4101 does not apply to final agency
19 action. Accordingly, the plaintiff’s request for interest from the date of the AO until the date of
20 judgment in this case is **DENIED**.

21 **C. ATTORNEY’S FEES AND COSTS**

22 Plaintiff argues that he is statutorily entitled to reasonable attorney’s fees. The Commonwealth
23 applies the “American Rule,” requiring parties to bear their own litigation expenses. *Reyes v. Reyes*,
24 2004 MP 1 ¶ 79 (citations omitted)). However, the prevailing party is entitled to costs other than

1 attorney's fees. NMI R. Civ. P. 54(d)(1). Also, the prevailing party may recover reasonable attorney's
2 fees when authorized by statute. *Id.*

3 Initially, the Court must determine whether the statute advanced by the plaintiff applies to this
4 case. Pursuant to 4 CMC § 9244 in "an action to recover liability under 4 CMC 9221 or 9222," the
5 court "shall . . . in the event the plaintiff or plaintiffs prevail, allow a reasonable attorneys fee to be paid
6 by the defendant, and the cost of the action." 4 CMC § 9244(a),(b). The referenced statutes refer to the
7 minimum wage and hour laws. *See* 4 CMC 9221, 9222. Here, plaintiffs filed suit in this Court to
8 enforce final agency action which was initially brought to recover wages. As such this action is an
9 "action to recover liability" under the plain meaning of 4 CMC 9244(a). Moreover, by enacting 4 CMC
10 9244(b), which is part of the Minimum Wage and Hour Act, the legislature likely intended to make it
11 possible for attorneys to take on wage and hour cases, even though many wage and hour clients may be
12 unable to pay. This intent is served by application of the statute to an action to enforce an administrative
13 order awarding unpaid wages. Accordingly, the plaintiff is entitled to statutory attorney's fees and costs.

14 Next the Court addresses whether the amount sought is reasonable under the circumstances. An
15 award of attorney's fees is within the court's sound discretion. *In re Estate of Malite*, 2010 MP 20 ¶ 44
16 ("Since attorney fee awards are reviewed for an abuse of discretion, lower courts are granted wide
17 latitude in awarding fees."). The Court also enjoys wide latitude in awarding costs. *Ishimatu v. Royal*
18 *Crown Ins. Corp.*, 2010 MP 8 ¶ 73. Awarding attorney's fees involves a two step process. *Malite*, 2010
19 MP 20 ¶ 45. "First, the court must determine whether the requested fees are reasonable[.]" which
20 requires the court to consider relevant factors outlined in Rule 1.5 of the Model Rules of Professional
21 Conduct. *Id.* Second, In light of these factors "the court must determine the appropriate fee award." *Id.*

22 The relevant factors pursuant to Rule 1.5 are:

- 23 (1) the time and labor required, the novelty and difficulty of the questions
24 involved, and the skill requisite to perform the legal service properly;

- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.

Id. ¶ 40 n. 28. citing Model Rules of Professional Conduct Rule 1.5.

Here, Plaintiff's attorney Mr. Joe Hill seeks \$3,970.00 in attorney's fees for 19.85 hours of work at \$200.00 an hour. Mr. Hill has been a licensed attorney approximately 39, in private practice in the Commonwealth since 1982, and has experience with labor and employment cases. (Ex. 1, 1:3-2:5.) Mr. Hill's hourly rate is similar to what would customarily be charged in the Commonwealth. (*Id.* 2:7.) Mr. Hill provided the Court with an affidavit of Joseph E. Horey, which was drafted in connection with another case. Mr. Horey has been licensed to practice law in the Commonwealth for over 17 years, and represented plaintiffs in civil rights, employment and labor cases. (Ex. 2:2,3.) In Mr. Horey's opinion Joe Hill's \$200 fee is reasonable and below the standard fee charged by attorneys with comparable education, experience and skill. (Ex. 2:8.) Given these circumstances the hourly rate is reasonable.

The amount of time spent on this case included among other things, drafting a compliant, a motion for summary judgment, attending several motions hearings and reviewing facts and pleadings. (*See* Ex. 1, 2-4.) This case is not particularly novel or difficult legally or factually. However, the time taken, a little less than twenty hours of work total was reasonable given the issues in the case. Mr. Hill obtained summary judgment for his client and enforcement of an award from the DOL totaling \$7,715.84.

As the prevailing party Plaintiff is entitled to costs other than attorney's fees. 4 CMC 9244(b); NMI R. Civ. P. 54(d)(1).

