IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

HIROSHI ISHIMATSU, BERNARDO A. HIPONIA, and SERAFIN ESPERANCILLA,
Plaintiffs-Appellees/Cross-Appellants,

v.

ROYAL CROWN INSURANCE CORP.,
Defendant-Appellant/Cross-Appellee.

SUPREME COURT NO. 2011-SCC-0016-CIV
SUPERIOR COURT NO. 02-0065C

ORDER AWARDING ATTORNEY FEES

Cite as: 2013 MP 2

Decided February 19, 2012

G. Anthony Long, Saipan, MP, for Defendant-Appellant/Cross-Appellee Royal Crown Insurance Corp.
Joseph E. Horey, Saipan, MP, for Plaintiffs-Appellees/Cross-Appellants Bernardo A. Hiponia and Serafin Esperancilla

BEFORE: ALEXANDRO C. CASTRO, Chief Justice; JOHN A. MANGLONA, Associate Justice; ROBERT C. NARAJA, Justice Pro Tem.

PER CURIAM:

¶ 1 On January 15, 2013, Plaintiffs-Appellees/Cross-Appellants Bernardo A. Hiponia and Serafin Esperancilla ("Plaintiffs") filed a timely request for attorney fees, seeking $8,903.25. Defendant-Appellant/Cross-Appellee Royal Crown Insurance Corporation ("Royal Crown") filed a timely opposition on January 30, 2013. Plaintiffs then filed a reply on February 5, 2013, reducing their attorney fee request to $8,463.25. To decide Plaintiffs' current request, we must resolve three issues: (1) whether 4 CMC § 5112 ("Section 5112")[1] authorizes the Supreme Court to determine fee requests; (2) whether Plaintiffs are entitled to attorney fees incurred litigating their entitlement to attorney fees (also known as "fees on fees"); and, assuming the first two issues are answered in the affirmative, (3) whether Plaintiffs' request is reasonable. For the following reasons, we will award Plaintiffs $8,463.25 in attorney fees.

¶ 2 Before addressing the issues, a brief procedural background is useful. Plaintiffs seek fees pursuant to Section 5112, the attorney fee provision of the Commonwealth Consumer Protection Act ("CPA"), 4 CMC §§ 5101-5123. Section 5112(a) states that courts "shall award . . . reasonable attorney's fees if the plaintiff prevails" in a CPA claim. Here, Plaintiffs prevailed in their CPA lawsuit against Royal Crown before the trial court, which this Court affirmed in *Ishimatsu II*, 2010 MP 8 ¶¶ 21-28. We then remanded the case to the trial court for determination of appellate attorney fees, the award of which we affirmed in *Ishimatsu III*, 2012 MP 17 ¶¶ 20-21 (Slip Opinion, Dec. 27, 2012).

I. Discussion

A. Proper Court to Decide Section 5112 Attorney Fee Motions

¶ 3 We have previously suggested in dicta that the Superior Court might be the proper court to decide fee motions pursuant to Section 5112. *Ishimatsu v. Royal Crown Ins. Corp.*, No. 06-0043-GA (NMI Sup. Ct. Dec. 27, 2010) (Order Denying Attorneys Fees at 3-4). After reviewing the statutory language, however, we reject our previous statement and hold that the Supreme Court may determine Section 5112 fee requests related to work completed before the Supreme Court.

¶ 4 If the meaning is clear and unambiguous, we give a statute its plain meaning. *Calvo v. N. Mariana Islands Scholarship Advisory Bd.*, 2009 MP 2 ¶ 21. When the statute is not clear and unambiguous, however, we ascertain the legislature's intent by viewing the statute as a whole. *Id.* ¶ 22.

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[1] 4 CMC § 5112(a) provides:

> Any person aggrieved as a result of a violation of this article may bring an action in the Commonwealth Superior Court for such legal or equitable relief as the court may order. In addition to actual damages, the court shall award liquidated damages in an amount equal to the actual damages in cases of willful violations, and shall award costs and reasonable attorney's fees if the plaintiff prevails.

We likewise avoid reading statutes in a manner that runs contrary to common sense or would produce absurd results. *Aurelio v. Camacho*, 2012 MP 21 ¶ 15 (Slip Opinion, Dec. 31, 2012).

¶ 5 Here, neither plain language nor common sense supports that the Superior Court is the exclusive source for deciding appellate fee motions pursuant to Section 5112. Section 5112 focuses on actions before the Superior Court. For instance, Section 5112 creates a private right of action enforceable in the Superior Court. 4 CMC § 5112(a) ("Any person aggrieved as a result of a violation of this article may bring an action in the Commonwealth Superior Court for such legal or equitable relief as the court may order.") That subsection goes on to mandate that the Superior Court award reasonable attorney fees if the plaintiff prevails on a Section 5112 claim. *Id.* It does not discuss appeals or attorney fees earned defending or appealing the Superior Court's ruling on Section 5112 claims.

¶ 6 Furthermore, construing Section 5112 to require us to remand appellate attorney fee questions to the Superior Court runs against common sense. Because we heard the appeal, we are more familiar with the work completed on appeal than the Superior Court and are, therefore, more capable of determining the reasonableness of Plaintiffs' request. *Cf. Willey v. Willey*, 951 P.2d 226, 232 (Utah 1997) (holding fee motion best decided by court with "personal knowledge and first-hand experience with the litigation, the skill, the experience, and the effectiveness of the attorneys involved"). Moreover, by resolving appellate attorney fee issues at the appellate level, our interpretation will help bring a speedier resolution to this and other appeals. The present dispute, for example, has been active for over a decade. Any further delay in its resolution would be inequitable to all involved. *See United States v. Gonzalez*, 981 F.2d 1037, 1040 (9th Cir. 1992) (Kozinski, J., dissenting) (noting "courts also benefit" when cases are properly "put to rest").

B. Section 5112 and Fees on Fees

¶ 7 Whether prevailing parties can recover appellate attorney fees (or fees on fees) based on Section 5112(a) is an issue of first impression in this court. In states with consumer protection acts similar to the CPA, courts routinely hold that prevailing parties can recover fees for work performed during an appeal to uphold a favorable result for their clients. *Vader v. Fleetwood Enters.*, 201 P.3d 139, 151 (Mont. 2009) ("[T]he court may award the prevailing party reasonable attorney fees incurred in prosecuting or defending the action.") (internal quotation omitted).[2] Plaintiffs' request, however, attenuates the link between the CPA and the attorney fees sought since the main issue on appeal was review of the trial

[2] *See also Smolen v. Dahlmann Apartments, Ltd.*, 463 N.W.2d 261, 264 (Mich. Ct. App. 1990) ("the [Michigan Consumer Protection Act's] award of reasonable attorney fees applies to appellate proceedings"); *Volkswagen of America, Inc. v. Licht*, 544 S.W.2d 442, 446 (Tex. Civ. App. 1976) (holding fee award recovery "must necessarily include the work expended on appeal, since that work is just as essential to the recovery as is the work in the trial Court"), *superseded by statute on other grounds as stated in Plas-Tex, Inc. v. U.S. Steel Corp.*, 772 S.W.2d 442, 446 (Tex. 1989).

court's attorney fee award. Thus, Plaintiffs' current request is almost entirely for fees on fees, which the foregoing authorities do not discuss.

¶ 8 Even though the foregoing authorities do not address the recoverability of fees on fees pursuant to Section 5112, the purpose of the CPA as well as the recoverability of fees on fees under many federal statutes leads us to conclude that Plaintiffs are entitled to fees for their work on *Ishimatsu III*. The CPA, in 4 CMC § 5123, instructs Commonwealth courts to "construe any ambiguity in any provision of [the CPA] . . . in favor of the consumer." By holding that prevailing parties can recover fees on fees, we construe Section 5112 in favor of the consumer because attorneys will have more incentive to represent clients with meritorious claims even if those clients might not otherwise have the means to afford an attorney.

¶ 9 Courts interpreting federal fee-shifting statutes, such as the Equal Access to Justice Act, 28 U.S.C. § 2412, rely on similar reasoning to award fees on fees to prevailing parties. *Comm'r v. Jean*, 496 U.S. 154, 162-64 (1990) (collecting cases and holding that federal Equal Access to Justice Act, 28 U.S.C. § 2412, allows recovery of fees on fees). In allowing recovery of fees on fees, these courts reason that "denying attorneys' fees for time spent in obtaining them would 'dilute the value of a fees award by forcing attorneys into extensive, uncompensated litigation in order to gain any fees.'" *Gagne v. Maher*, 594 F.2d 336, 344 (2d Cir. 1979). The Third Circuit cogently explained the detrimental effect denying fees on fees would have on the availability of attorneys to assist economically disadvantaged clients as follows:

> If an attorney is required to expend time litigating his fee claim, yet may not be compensated for that time, the attorney's effective rate for all the hours expended on the case will be correspondingly decreased. Recognizing this fact, attorneys may become wary about taking Title VII cases, civil rights cases, or other cases for which attorneys' fees are statutorily authorized. Such a result would not comport with the purpose behind most statutory fee authorizations, Viz, the encouragement of attorneys to represent indigent clients and to act as private attorneys general in vindicating congressional policies.

Prandini v. National Tea Co., 585 F.2d 47, 53 (3d Cir. 1978).

C. Reasonableness of Plaintiffs' Request

¶ 10 Section 5112(a) calls for the award of "reasonable" attorney fees. Before reviewing the claimed fees, it is important to note what Plaintiffs did *not* claim. Plaintiffs discounted the following items from its attorney fee request: (1) reduction of hours spent drafting principal/response brief by one-fifth to remove time spent drafting unsuccessful cross-appeal; (2) reduction of all time spent on reply in support of unsuccessful cross-appeal; and (3) reduction of oral argument billing by one-half to remove portion devoted to unsuccessful cross-appeal. These actions are all good faith efforts to claim only reasonable fees.

¶ 11 After reviewing Plaintiffs' time billings, we conclude that the Plaintiffs' billings are reasonable.[3] They devoted their largest time commitment to drafting the response brief, for which they claim only approximately eighteen hours. This is a reasonable time to charge for the drafting an appellate brief. Additionally, our conclusion that Plaintiffs' request is reasonable is based on their failure to engage in double billing for meetings between multiple attorneys. For example, on January 11, 2012, there is a time slip from David G. Banes for a meeting with Joseph E. Horey and no accompanying time slip from Horey.

¶ 12 Royal Crown claims Plaintiffs' request is unreasonable because Plaintiffs engaged in impermissible block billing and attempted to recover fees for paralegal work even though Section 5112(a) only allows recovery of "attorney's fees." 4 CMC § 5112(a). "Block billing is the lumping together of several tasks into a single block of time." *Ferreira v. Borja*, 1999 MP 23 ¶ 14, *overruled on other grounds by In re Estate of Malite*, 2010 MP 20 ¶ 45 n.32.

¶ 13 We do not find any impermissible block billing in Plaintiffs' request. Almost every request contains a single discrete task charged by a specific attorney. As for Royal Crown's argument that paralegal time is not recoverable, the United States Supreme Court has held it "self-evident" that statutes allowing the recovery of attorney fees also allow for the recovery of paralegal fees. *Missouri v. Jenkins*, 491 U.S. 274, 285 (1989) ("We thus take as our starting point the self-evident proposition that the 'reasonable attorney's fee' provided for by statute should compensate the work of paralegals, as well as that of attorneys."). We see no reason to depart from this understanding and hold that paralegal fees are recoverable pursuant to Section 5112.

¶ 14 As we stated in *Ishimatsu III*, to determine a fee award we must look at "more than only time billings." 2012 MP 17 ¶ 21 (Slip Opinion, Dec. 27, 2012) (quoting *Estate of Malite*, 2012 MP 20 ¶ 44). We must also look to ABA Model Rule of Professional Conduct 1.5 ("MRPC Rule 1.5") factors. *Id.* ¶¶ 19-21. One MRPC Rule 1.5 factor is the time and labor required for the case as well as the novelty and difficulty of the issues presented. MODEL RULES PROF'L CONDUCT R. 1.5(a)(1). While the issues in this appeal were not particularly complex, we find the relatively small number of hours charged by Plaintiffs reasonable. For instance, Plaintiffs claim only eighteen hours for their drafting of the response brief, a task that often involves a substantially longer time commitment.

¶ 15 Another relevant MRPC Rule 1.5 factor is whether the fee charged is similar to the fee customarily charged for similar services in the jurisdiction. MODEL RULES PROF'L CONDUCT R. 1.5(a)(3). To support this factor, counsel included declarations and orders showing they have been awarded fees at the same rate ($245/hour) claimed here in other matters before both the Superior Court and the United

[3] Our analysis does not include the billings Plaintiffs voluntarily disclaimed in their reply in support of their fee request.

States District Court for the Northern Mariana Islands. That other tribunals have previously awarded counsel these rates suggests the rates are similar to the fee customarily charged for similar services.

¶ 16 A third and final relevant MRPC Rule 1.5 factor is "the amount involved and the results obtained." MODEL RULES PROF'L CONDUCT R. 1.5(a)(4). Here, the total amount of money claimed is not particularly high and only involves fees for defending the appeal rather than for both the appeal and counsel's unsuccessful cross-appeal. Thus, this factor supports awarding counsel the amount requested in their reply brief.

II. Conclusion

¶ 17 For the foregoing reasons, we award Plaintiffs $8,463.25 in attorney fees for their work defending the appeal.

SO ORDERED this 19th day of February, 2013.

/s/
ALEXANDRO C. CASTRO
Chief Justice

/s/
JOHN A. MANGLONA
Associate Justice

/s/
ROBERT C. NARAJA
Justice Pro Tem