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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

PANFILO VASQUEZ-LOPEZ AND)
MARIA C. DOMINGUEZ, husband)
and wife,)
Plaintiffs,)

Case No. 0210-10108

vs.)

BENEFICIAL OREGON, INC., dba)
BENEFICIAL MORTGAGE CORP., a)
foreign company,)
Defendant)

ORDER & OPINION REGARDING
PLAINTIFFS' PETITION FOR
ATTORNEYS FEES AND
DEFENDANT'S OBJECTIONS TO
PLAINTIFFS' STATEMENT OF
COSTS AND DISBURSEMENTS

ORDER

Defendant Beneficial's objections to Plaintiffs' Statement of Attorney Fees and Cost Bill came before the Court for argument on May 14, 2004. Beneficial appeared by and through its attorney David Aman. Plaintiffs appeared by and through their attorneys, Phil Goldsmith and Mark E. Griffin. The court, having considered the written submissions by the parties and the argument of counsel, and now being fully advised

IT IS HEREBY ORDERED:

1. Plaintiffs may recover their attorney fees associated with their claim under the federal Truth in Lending Act in the amount of \$182,107.50.
2. Beneficial's objection to plaintiffs' request for recovery of the non-taxable expenses they incurred to pursue their claims against Beneficial is sustained.
3. Plaintiffs may recover their costs and disbursements under ORCP 68A in the amount of \$4,709.50

OPINION

Defendant Beneficial's objections to Plaintiffs' Statement of Attorney Fees and Cost Bill are based on the following arguments.

1. Plaintiffs' request for attorney fees is not reasonable.
2. Plaintiffs' recovery for attorney fees is limited to the time expended to pursue their claim brought pursuant to the federal Truth In Lending Act, 15 USC § 1640.
3. Plaintiffs' Cost Bill includes items that are not properly taxable under ORCP 68.

I. Plaintiffs' Attorney Fees

Plaintiffs are entitled to recover their reasonable attorney fees under 15 USC § 1640, the federal Truth in Lending Act (TILA). The amount of attorney fees claimed is \$293,559.32. Included in that amount, plaintiffs also seek to recover their non-taxable costs in the amount of \$19,249.32.

Defendant argues that the amount plaintiffs claim for attorney fees is overstated for a number of reasons. First, defendant notes that the attorney fees claimed is a product of a multiplier, which is expressly prohibited under federal fee-shifting statutes such as the TILA.^{1, 2} Second, defendant argues that plaintiffs attorney fee request should be reduced to an amount reflective of the time actually devoted to the prosecution of plaintiffs' TILA claim. Third, defendant contends that the expenses plaintiffs claim for postage, photocopies, long distance telephone charges, mileage, computer research, copies, faxes, translators, depositions, deliveries, recording fees, parking, meals and expert witnesses cannot be recovered as part of their attorney fee award. Defendant suggests that the proper amount for plaintiffs' attorney fees would be \$88,120, along with \$1352 in properly taxed costs as set forth in Plaintiffs' Cost Bill.³

¹ *City of Burlingame v. Dague*, 505 US 557, 112 Sct 2638, 2643-44 (1992). *But see*, *Page v. Muzyn*, 124 Or App 137 (1993)(attorney fees awarded to prevailing party in civil rights case based on factors that reasonably compensated counsel for the work performed, with an enhancement for the contingency risk of a loss).

² *See also*, *Leather v. Peoria Toyota-Volvo*, 824 F Supp 155, 159 (CD Ill 1993) (award of fees that greatly exceeds TILA damages requires strong support).

³ Please refer to discussion under the heading "Plaintiffs' Cost Bill."

TILA is a federal law; therefore, the Court must look to federal law to determine the amount of attorney fees it may properly award. *See, e.g., Long v. Stroms*, 52 Or App 685, 688 (1981) (amount of attorney fees awarded to successful TILA plaintiff determined under federal law). Ninth Circuit law is controlling on this issue. In *Ferland v. Conrad Credit Corp.*, 244 F3d 1145, 1149 n. 4 (9th Cir 2001) that court held that courts must use the lodestar method for federal fee-shifting statutes. Under the lodestar method, the attorney fee award is calculated by determining the number of hours reasonably expended litigating the claim and multiplying those hours by a reasonable hourly rate. *See Caudle v. Bristow Optical Co., Inc.*, 224 F 3d 1024, 1028-29 (9th Cir 2000). The court must review the attorney's detailed time records to determine if the hours sought are adequately documented and whether any of those hours were unnecessary, duplicative or excessive. *Chambers v. City of Los Angeles*, 796 F 2d 1205, 1210 (9th Cir 1986), *reh'g denied, amended on other grounds*, 808 F 2d 1373 (9th Cir 1987). The court should consider the prevailing hourly rate in the community for similar work performed by attorneys of comparable skill, experience and reputation. *Id.*

There is a strong presumption that attorney fees calculated under the lodestar method are reasonable; however, in rare cases the court may make adjustments. *See, e.g., D'Emanuele v. Montgomery Ward Co.*, 904 F 2d 13279, 1383 (9th Cir 1990). The factors the court should consider in those cases are: (1) time and labor required; (2) novelty and difficulty of the questions involved; (3) skill requisite to perform the legal service properly; (4) preclusion of other employment by the attorney due to acceptance of the case; (5) customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) amount involved and the results obtained; (9) experience, reputation and abilities of the attorneys; (10) undesirability of the case; (11) nature and length of the professional relationship with the client; and (12) awards in similar cases. *Ferland v. Conrad Credit Corp.*, 244 F 3d at n. 4.

A. Hours Attributable to Plaintiffs' TILA Claim

As noted above, Beneficial's primary objection to plaintiffs' attorney fees claim is based on the perception that the fees are overly inclusive in that they also include time expended to prosecute plaintiffs' fraud and punitive damages claims. Plaintiffs responded by noting: (a) the evidence required to prove their TILA overlapped with the evidence required to prove their fraud claim because both claims were based on the intentional misrepresentations Beneficial made to them, both claims involved the same discovery, and both claims required plaintiffs to defeat the same affirmative defenses; (b) the time records submitted to the court excluded time and costs that only benefitted their fraud claim;⁴ (c) plaintiffs have already discounted their time by 10% to

⁴ Plaintiffs represented that they could identify more than 100 hours worked exclusively on matters that did not benefit the TILA claim - time for the motion to amend to add punitive damages, responding to defendant's motion to strike plaintiffs' claim for emotional distress damages and discovery related to the punitive damages claim. *See Plaintiffs' Attorney Fees*

account for potential cross over work performed for the benefit of the non-TILA claims; and (d) the percentage of attorney fees claimed is 77.45% of the hours worked on the case.

The court has reviewed the time entries attached to the affidavits of Mr. Goldsmith and Mr. Griffin and is satisfied that plaintiffs have fairly stated the number of attorney fees expended to prosecute their TILA claim. That number is 645 hours.

B. Hourly Rates

Beneficial does not dispute the reasonableness of the hourly rates submitted by plaintiffs' attorneys. They are \$250 per hour for Mr. Goldsmith, Mr. Griffin and Ms. Leonard; \$140 per hour for Mr. Helmy and \$135 per hour for Ms. Del Carlo.

C. Additional Factors

Mr. Goldsmith's affidavit and the affidavit submitted by Mr. Johnson establish that few lawyers in this state are willing to represent clients in unfair or predatory mortgage lending cases because they are financially risky and involve complex issues.

Mr. Goldsmith's affidavit also establishes that his firm's exclusive work on this case in January required the firm to decrease the number of potential new client intake interviews by 1/3.

These additional factors support an enhanced hourly rate of \$322 per hour for Mr. Goldsmith and Mr. Griffin, and \$207 per hour for Ms. Del Carlo.

D. Lodestar Calculation

Mr. Goldsmith	341.1 hours	\$322/hr	\$ 109,834.20
Mr. Griffin	90.7 hours	\$322/hr	\$ 29,205.40
Ms. Leonard ⁵	8 hours	\$250/hr	\$ 2,000.00
Mr. Helmy	7.2 hours	\$140/hr	\$ 1,008.00
Ms. Del Carlo	191.7 hours	\$207/hr	\$ 39,681.90
Paralegal	6.3 hours	\$60/hr	\$ <u>378.00</u>
		TOTAL	\$ 182,107.50

Reply, p. 3 n. 2.

⁵Added 2.5 hours based on billing records attached as exhibit B to affidavit of Phil Goldsmith dated April 26, 2004.

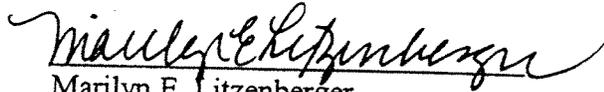
II. Plaintiffs' Cost Bill

Plaintiffs' cost bill dated April 25, 2004 includes separately stated amounts for a filing fee, service of process fee, jury trial fee and translator fees. These fees total \$4,709.50. The question the Court must resolve with respect to defendant's challenges to Plaintiffs' Cost Bill is whether plaintiffs may recover interpreter fees.

Plaintiffs' counsel represents to the court by affidavit that it was necessary for plaintiffs to have their own interpreter present throughout the court proceedings as well as during counsel's meetings with plaintiffs outside the courtroom. Additionally, interpreter services were needed for plaintiffs' depositions, for the mediation that took place prior to trial, for plaintiffs' counsel to discuss case strategy and document requests with them and to translate the complaint from English into Spanish. The total expenditure submitted for these interpreter services is \$3,357.50.

ORCP 68 provides for recovery of costs and disbursements by the prevailing party at trial. ORCP 68A(2) specifically addresses interpreter or translator fees and grants the court sole discretion to award these fees as costs and disbursements. Plaintiffs argue that interpreter services were necessary so that they could receive the same legal services as English speaking clients. Furthermore, they argue, it is particularly appropriate in this case to award interpreter costs where plaintiffs suffered harm because they could not read or speak English. Plaintiffs do not cite any legal authority to support their position. The Court will exercise its discretion and award plaintiffs' the cost of their interpreters' fees in the amount of \$3,357.50. Plaintiffs are entitled to recover costs in the amount of \$4,709.50.

DATED: 12/17/04


Marilyn E. Litzenberger
Circuit Court Judge

cc: Phil Goldsmith (for Plaintiffs)
David Aman (for Defendant)