

DISSENTING OPINION BY GINOZA, J.

I respectfully dissent with regard to the reasonableness of the attorneys' fees awarded in this case. In my view, the record is inadequate to have enabled the Circuit Court of the First Circuit (circuit court) to properly exercise its discretion in determining the reasonable amount of attorneys' fees to be awarded to Appellee Oahu Publications, Inc. (Oahu Publications). In particular, the attorney billing invoices in this case contain so many redactions that it is not possible to assess the reasonableness of the time billed by the five (5) attorneys for Oahu Publications or whether there was duplicative work that should not be awarded.

There is no dispute that Oahu Publications is entitled to an award of reasonable attorneys' fees and costs under Hawaii Revised Statutes (HRS) 92F-15(d). The question on appeal as to attorneys' fees is whether the amount of \$67,849.19 awarded by the circuit court is reasonable. "Generally, in order to justify a finding of a 'reasonable' attorney's fee, there must be evidence, or a proper showing made, in support of such finding."

Sharp v. Hui Wahine, Inc., 49 Haw. 241, 250, 413 P.2d 242, 248 (1966). In Sharp, the Hawai'i Supreme Court vacated the trial court's award of attorneys' fees due to the inadequacy of the record "not only to support the fees allowed and awarded but to even enable the trial judge to exercise his discretion in determining 'reasonable' attorneys' fees[.]" Id. at 251, 413 P.2d at 249.

As the supreme court subsequently noted,

[n]either Sharp nor any other case sets a bright line standard for adequacy of documentation in the trial court's determination of attorneys' fees. Rather, . . . a trial court's award of attorneys' fees is reviewed for an abuse of discretion which occurs when the trial court clearly exceeds the bounds of reason or disregards rules or principles of law or practice to the substantial detriment of a party litigant. Thus, the question is whether the trial court's award of attorneys' fees and costs was reasonably supported by the record.

Kamaka v. Goodsill Anderson Quinn & Stifel, 117 Hawai'i 92, 122-23, 176 P.3d 91, 121-22 (2008) (emphasis added and citation omitted).

In this case, 57 of the 173 entries in the attorney billing invoices submitted to the circuit court were redacted, which amounts to about one-third of the total entries. Moreover, because some entries contain multiple redactions, there are a total of 69 redactions. The time billed for the redacted items amounts to 46.5 hours. Moreover, in most of the entries containing redactions, there is little or no other information to assess the nature or ultimately the reasonableness of the work. For example, a number of entries by the various attorneys only state: "Legal research re **REDACT**" or something along the lines of "[r]esearch **REDACT**; develop arguments regarding same."¹

Given the numerous redactions, the record was also inadequate to allow the circuit court to assess if the multiple attorneys were duplicating work that should not be awarded. In

¹ There are also a number of items billed simply for "research." Whether such an entry is sufficient must be determined on a case-by-case basis. That determination could, for instance, depend on whether other entries, if unredacted, provided sufficient indication as to generally the research conducted in the case, as well as the total number of hours billed for legal research.

Fought & Co. v. Steel Eng'g and Erection, Inc., 87 Hawai'i 37, 951 P.2d 487 (1998), the supreme court reduced requested attorneys' fees where two attorneys for the same client had duplicated work. Id. at 56, 951 P.2d at 506. Although Fought addressed reasonable attorneys' fees incurred during an appeal, and did not review a trial court's fee award, it still properly stands for the proposition that in assessing the reasonableness of requested attorneys' fees, a court should consider whether there is unreasonable duplicative work. Given the redactions by the multiple attorneys in this case, the circuit court did not have sufficient information to properly determine if there was unreasonable duplicative work.

Although the circuit court had discretion in awarding attorneys' fees, there must be an adequate record upon which to have exercised that discretion. Sharp, 49 Haw. at 250, 413 P.2d at 248; see also Ringolsby v. Johnson, 193 P.3d 1167, 1170-71 (Wyo. 2008) (holding that the first prong of the lodestar test, whether the fee charged represents the product of reasonable hours times a reasonable rate, was not met where redacted billing statements did not allow the trial court to ascertain the nature of the services performed and thus the reasonableness of the services). As the party seeking attorneys' fees, Oahu Publications had the burden of demonstrating the reasonableness of the requested fees. DFS Group L.P. v. Paiea Properties, 110 Hawai'i 217, 222, 131 P.3d 500, 505 (2006); Sharp, 49 Haw. at 247, 413 P.2d at 246.

Although redacted billing invoices may at times provide a sufficient record to determine the reasonableness of requested fees, especially if sufficient other information is provided, that is not the case here. Alternatively, sometimes parties provide unredacted billing invoices to a court for *in camera* review. Here, Oahu Publications offered a copy of the unredacted billing invoices to the circuit court at the hearing on the motion for fees and costs. However, there is no indication in the record that the circuit court received the unredacted invoices. The court issued its ruling at the hearing soon thereafter and the unredacted invoices are not part of the record.

In light of the above, I would vacate the amount of the awarded attorneys' fees and, pursuant to Sharp, 49 Haw. at 251, 413 P.2d at 249, remand the case to the circuit court for further consideration, including a review of the unredacted billing invoices to determine the reasonable amount of attorneys' fees.

Tim M. Atting