

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

THOMAS JEFFERSON UNIVERSITY,	:	June Term 2001
ET. AL.,	:	
	:	
Plaintiff,	:	No. 2507
	:	
	:	
v.	:	Commerce Program
DR. RONALD WAPNER, ET. AL.,	:	
	:	
Defendant.	:	
	:	Control Number 031051/030651

ORDER

AND NOW, this 18th day of April, 2006, upon consideration of Plaintiffs' Motion for Award of Attorney's Fees and Costs (cn 031051), Defendants' Motion for an Award of Attorneys' Fees and Costs (cn 030651), all response in opposition, Memoranda, all matters of record, after oral argument and in accord with the contemporaneous Opinion to be filed of record, it hereby is **ORDERED** that

1. Plaintiffs' Motion for Attorney's Fees is **Denied**.
2. Defendants' Motion for Attorney's Fees is **Denied**.

BY THE COURT,

C. DARNELL JONES, II, J.

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OPINION

JONES, II, J.

Presently before the court are the respective parties' motions for attorneys' fees and costs. For the reasons discussed below, the respective motions are denied

Background

In this consolidated action, Plaintiffs Thomas Jefferson University and Jefferson University ("Plaintiffs") asserted causes of action against Defendant Dr. Ronald Wapner for breach of the duty of loyalty, breach of contract, tortious interference with both existing and prospective contractual relations, misappropriation of trade secrets and civil conspiracy. Plaintiffs also asserted causes of action against Defendant Dr. Amy Levine for breach of the duty of loyalty, breach of contract, tortious interference with both existing and prospective contractual relations and civil conspiracy.

Dr. Wapner asserted counterclaims against Plaintiffs for violation of Pennsylvania's Wage Payment and Collection Law, 43 P.S. 260.1 et. seq. ("WPCL"), breach of contract regarding his appointment as an adjunct professor in connection with the National Institute of Health ("NIH") grant, tortious interference with his relationship with NIH and defamation in connection with statements allegedly made to NIH. Dr.

Wapner withdrew his claims for breach of contract, tortious interference and defamation leaving only the WPCL claim. Dr. Levine also asserted a counterclaim for violation of the WPCL.

The jury returned a verdict against Plaintiffs and in favor of Defendants on Plaintiffs' claims, found that Plaintiffs owed Dr. Wapner wages under the WPCL and found that Plaintiffs did not owe any wages to Dr. Levine under the WPCL.

After the verdict the parties filed Post Trial Motions which were denied. The Parties filed their respective motions for attorney's fees and costs. On November 22, 2005, the court heard oral argument on these motions.

DISCUSSION

Pennsylvania consistently follows the American rule "that there can be no recovery of attorneys' fees from an adverse party, absent an express statutory authorization, a clear agreement by the parties or some other established condition." Merlino v. Delaware County, 728 A.2d 949, 950 (Pa. 1999). In the case at bar, the parties respectively claim that they are each entitled to an award of attorney's fees and costs based on a clear agreement (Exhibit "A to Dfts Mt. for Att. Fees and Costs), Article V Section 9 of Jefferson's Bylaws¹ and Article X of the Operating Document which governs the terms of employment for every employee of Jefferson University Physicians.²

¹ Article V Section 9 states: The College is committed to performing and maintaining the highest standards of medical service both to ensure excellence in medical education and research. In recent years, the increasing costs of litigation and judicial review have diverted College resources away from its primary mission. Therefore, while any matter pertaining to these Bylaws, or the appointment, reappointment, disciplinary action, etc. of any faculty member may be submitted for judicial review, it is understood that the prevailing party shall be entitled to reasonable costs and attorney fees associated with the dispute.

² Article X of the Operating Document that governs the terms of employment for every employee of Jefferson University Physicians provides:

Any matter pertaining to this Operating Document may be submitted for judicial review; however, it is understood that the prevailing party shall be entitled to reasonable costs and attorney fees associated with the dispute.

After reviewing the facts and law, it is clear that the parties' respective motions should be denied.

I. Plaintiffs are not entitled to an award of Attorney Fees and Costs since they are not the Prevailing Party.

Article V of the Bylaws and Article X of the Operating Document mandate that the prevailing party be entitled to reasonable costs and attorney fees associated with the dispute. The term prevailing party however is not defined by the respective documents. "When terms in a contract are not defined, we must construe the words in accordance with their natural, plain, and ordinary meaning." Cordero v. Potomac Ins. Co. of Illinois, 794 A.2d 897, 900 (Pa. Super. 2002). In common parlance, to "prevail" means "to gain ascendancy through strength or superiority: TRIUMPH." Profit Wize Mktg. v. Wiest, 812 A.2d 1270 (Pa. Super. 2002)(*quoting* Merriam Webster's Collegiate Dictionary, 7th Ed. at 924). Additionally, Black's Law Dictionary has defined the verb, prevail, as "to obtain the relief sought in an action; to win a lawsuit." Id. (*quoting* Black's Law Dictionary, 7th ed. at 1206.). Application of these definitions is still limited to those circumstances where the fact finder declares a winner and the court enters judgment in that party's favor. Id. Such a pronouncement does not accompany a compromise or settlement. Id.

In light of these definitions, Plaintiffs are not entitled to a reimbursement of its attorney fees and costs as it did not "prevail" or "win" on the four counterclaims asserted against them by Dr. Wapner. Plaintiffs were not declared a winner by the fact finder. Instead, Wapner choose to withdrawal the subject counterclaims before submission to the jury. As such, Plaintiffs are not a prevailing party entitled to an award of attorney fees.

Plaintiffs however were the prevailing party on Dr. Levine's WPCL counterclaim. Nevertheless, Plaintiffs are not entitled to an award of attorney's fees and costs. Pennsylvania enacted the WPCL to provide a vehicle for employees to enforce payment of their wages and compensation held by their employers. Oberneder v. Link Computer Corp., 674 A.2d 720, 721 (Pa. Super. 1996). The underlying purpose of the WPCL is to remove some of the obstacles employees face in litigation by providing them with a statutory remedy when an employer breaches its contractual obligations to pay wages. Id. The WPCL does not create an employee's substantive right to compensation; rather it only establishes an employee's right to enforce payment of wages and compensation to which an employee is otherwise entitled by the terms of the agreement. Banks Engineering Co., Inc. v. Polons, 667 A.2d 1020, 1024 (Pa. Super. 1997).

The WPCL permits a plaintiff to recover in addition to any judgment an award of attorney's fees and costs. *See* 43 Pa. Stat. § 260.9a(f). The WPCL however is silent as to whether a prevailing employer is entitled to such an award. In light of the underlying purpose of the WPCL described above and the WPCL's silence on this issue, the court finds that a prevailing employer is not entitled to an award of attorney fees. Accordingly, Plaintiffs' Motion for Attorney fees and cost is denied.

II. Defendants are also not Entitled to An Award of Attorneys Fees and Costs.

Unlike Plaintiffs, Defendants Drs. Wapner and Levine do satisfy the definition of prevailing party. The jury returned a verdict against Plaintiffs and in favor of Defendants on Plaintiffs' claims and also returned a verdict against Plaintiffs and in favor of Dr. Wapner on the WPCL claim. Under the terms of the Employment Agreement, Bylaws and the Operating Document Defendants are clearly a prevailing party and would

be entitled to an award of attorney fees if this were a run of the mill case. This case however is not run of the mill.

A review of the record demonstrates that neither Drs. Wapner nor Levine incurred any legal fees or costs during the course of this litigation. (Exhibit “A” to Dfts. Mt. for Att. Fees p. 47, 54-55). The attorney fees were paid by Drexel University College of Medicine, (“Drexel”), a non party to the litigation. Although Defendants claim that they are required to indemnify Drexel for the fees and cost it paid, Defendants fail to present credible evidence supporting this claim.³ The contractual agreements between the defendant doctors and Drexel contain no provision addressing the doctors’ obligation or agreement to pay any such monies over to Drexel. (Exhibit “B” to Plts. Mt. for Att. Fees.). In light of the fact that Defendants did not incur any expenses associated with this litigation, an award of attorney fees and cost in their favor would be inequitable and would constitute a windfall. Accordingly, Defendants Motion for Attorney Fees and Costs is denied.

As it pertains to the WPCL claim, Dr. Wapner was a prevailing party and is entitled to an award of attorney fees and costs. 43 Pa. Stat. § 260.9a(f). However, absent from the record is any evidence of the amount of fees and costs related or allocated to the WPCL claim. Based on the foregoing, the court finds that Defendants failed to satisfy their burden of proof. Accordingly, Defendants motion for attorney’s fees and costs is denied.

³ Defendants’ affidavits attached to the Motion for Attorney Fees and Costs create a Nanty- Glo situation since the doctors rely upon oral testimony to support their claim that they are required to reimburse Drexel. See Nanty-Glo Boro. v. American Surety Co., 309 Pa. 236, 163 A. 523 (1932).

CONCLUSION

For the foregoing reasons, the parties respective Motions for Attorneys' Fees and Costs is Denied. An order consistent with this Opinion will follow.

BY THE COURT,

C. DARNELL JONES, II, J.