

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

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COURT SERVICES
2020 NOV -9 10 3:21
JOHN T. FREY
CLERK, CIRCUIT COURT
FAIRFAX, VA

John C. Depp, II,)
)
 Plaintiff,)
)
 v.)
)
 Amber Laura Heard,)
)
 Defendant.)
)

Civil Action No.: CL-2019-0002911

PLAINTIFF’S OPPOSITION TO REASONABLENESS OF DEFENDANT’S ATTORNEYS’ FEES AND COSTS

Plaintiff John C. Depp, II (“Plaintiff” or “Mr. Depp”), by and through his undersigned counsel, hereby opposes Defendant Amber Laura Heard’s (“Defendant” or “Ms. Heard”) request for attorneys’ fees and costs. Defendant’s request for \$5,900.00 in attorneys’ fees and costs in connection with a motion that was partly denied, is excessive and unreasonable.

ARGUMENT

I. Ms. Heard’s request for attorneys’ fees and costs is unreasonable and should be reduced in light of the circumstances of the motion and the case.

A. The Court denied half of Defendant’s motion.

Ms. Heard’s September 24, 2020 Motion for Sanctions Against Adam Waldman, Counsel for Plaintiff (“Motion for Sanctions”) sought to revoke Mr. Waldman’s *pro hac vice* admission and prohibit Mr. Waldman from further contacting the press or the public through social media in this case. In the October 23, 2020 hearing on the Motion for Sanctions, the Court made it clear that it *only* granted Ms. Heard’s motion on the revocation of Mr. Waldman’s *pro hac vice* admission, and *not* the requested gag order. *See Exhibit A*, October 23, 2020 Hearing Transcript at 30:8-13 (“... [Mr. Waldman’s] *pro hac vice* status is revoked. I’m not convinced, Mr.

Rottenborn, that I have the authority on mere allocation, with some statements that you make, that I have the authority, or that it would be appropriate to issue a gag order against one side and only one particular individual, so I decline to do that.”). It is unreasonable to award attorneys’ fees for time spent on parts of the motion that were denied. Because the proper measure under the Virginia rules is the “*reasonable* expenses incurred in obtaining the order,” and because Mr. Depp successfully defended against half of Ms. Heard’s motion, her fee request should be reduced.

As such, Ms. Heard’s fee award should be reduced because half of her motion was denied, with the Court specifically noting that it was not convinced that it “appropriate,” and the successful defense of which came at an expense to Mr. Depp. Notably, although Ms. Heard obviously carries the burden of providing evidence of reasonable and appropriate fees incurred, the time records submitted in support of Ms. Heard’s fee request do not differentiate between attorney time spent on the gag order and attorney time spent on the portion of her motion on which she prevailed. Consequently, Mr. Depp is unable to propose the removal of specific time entries. Because Ms. Heard was only successful on fifty percent of her motion, a fifty percent reduction in her fee request is appropriate.

Conclusion

For all of these reasons, Defendant’s fee award should be reduced from the \$5,900.00 sought by Ms. Heard, to at most \$2,950.

Respectfully submitted,



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*Counsel for Plaintiff and
Counterclaim Defendant John C. Depp, II*

Dated: November 9, 2020

63901096 v3-WorkSiteUS-034692/0008

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of November 2020, I caused copies of the foregoing to be served via email (per written agreement between the Parties) on the following:

Elaine Charlson Bredehoft (VSB No. 23766)
Carla D. Brown (VSB No. 44803)
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Counsel for Defendant Amber Laura Heard



Benjamin G. Chew

Exhibit A

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-----x
JOHN C. DEPP, II, :
Plaintiff, :
v. : Case No.:
AMBER LAURA HEARD, : CL2019-0002911
Defendant. :
-----x

HEARING
BEFORE THE HONORABLE BRUCE D. WHITE
Conducted Virtually
Friday, October 23, 2020
10:30 a.m.

Job No.: 326192
Pages: 1 - 33
Reported by: Judith E. Bellinger, RPR, CRR

1 agents, that we've detailed.

2 THE COURT: All right. What I find is
3 that Mr. Waldman has violated the Court's order as
4 far as confidentiality. I find that as a result
5 of that he has failed to meet the level of
6 professionalism expected of Virginia attorneys,
7 and his pro hac vice status is revoked.

8 I'm not convinced, Mr. Rottenborn, that
9 I have the authority on mere allocation, with some
10 statements that you make, that I have the
11 authority, or that it would be appropriate to
12 issue a gag order against one side and only one
13 particular individual, so I decline to do that.

14 I have an order in front of me, and it
15 seems that an order can be either resubmitted,
16 taking out the part about the gag order, or I can
17 line through that and initial it.

18 Do you all have thoughts on that?

19 MR. ROTTENBORN: We would be fine if
20 you just line through that and initial it, Your
21 Honor.

22 MR. CHEW: Your Honor, we would like to

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CERTIFICATE OF SHORTHAND REPORTER

I, JUDITH E. BELLINGER, RPR, CRR, the court reporter before whom the foregoing hearing was taken, do hereby certify that the foregoing transcript is a true and correct record of the testimony given; that said testimony was taken by me and thereafter reduced to typewriting under my direction; and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 23rd day of October, 2020.

My Commission Expires: November 3, 2020



NOTARY PUBLIC IN AND FOR
THE STATE OF MARYLAND