

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

RALPH S. JANVEY,

Plaintiff,

v.

DEMOCRATIC SENATORIAL
CAMPAIGN COMMITTEE, INC., *et al.*,

Defendants.

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Civil Action No. 3:10-CV-0346-N

ORDER

This Order addresses the Receiver’s motion for attorneys’ fees [113]. The Court grants the motion in a modified amount.

I. ORIGINS OF THE FEE APPLICATION

This case arises out of the ongoing Securities and Exchange Commission’s (“SEC”) securities fraud action (“SEC Action”) against R. Allen Stanford, his associates, and various entities under Stanford’s control. As part of that litigation, the Court appointed a Receiver and assumed exclusive jurisdiction over the estate. *See* Second Am. Order Appointing Receiver (“Receivership Order”), July 19, 2010 [1130], *in SEC v. Stanford Int’l Bank, Ltd.*, Civil Action No. 3:09-CV-0298-N (N.D. Tex. filed Feb. 17, 2009). Pursuant to his powers, the Receiver brought this fraudulent transfer suit under the Texas Uniform Fraudulent Transfer Act (“TUFTA”) on February 19, 2010 [1] against the Democratic Senatorial Campaign Committee, Inc., the Democratic Congressional Campaign Committee, Inc. (together the “Democratic Committees”), the National Republican Congressional Committee,

the Republican National Committee, and the National Republican Senatorial Committee (together the “Republican Committees”) (collectively the “Defendants”). On June 22, 2011, the Court granted summary judgment for the Receiver [109]. The Receiver subsequently filed the instant motion for attorneys’ fees requesting \$484,860.46 in fees for the instant case, \$120,000.00 for the pending appeal to the Fifth Circuit, \$125,000.00 should the Defendants petition for certiorari in the United States Supreme Court, and \$275,000.00 should the Supreme Court grant certiorari.¹

¹While the motion for attorneys’ fees was pending, the Court granted Defendants’ motions to stay the execution of judgment while the action was on appeal, but the Order specifically contemplated that attorneys’ fees could be added to the amount of the letters of credit Defendants posted [135, 136].

Additionally, while Defendants argue that the Court has already denied attorneys’ fees to the Receiver because it held that “all relief not expressly granted is denied” in its final judgment [110], *see* Repub. Committees’ Resp. to Receiver’s Mot. Att’ys Fees 11 [124] [hereinafter Repub. Resp.]; Dem. Committees’ Opp’n to Receiver’s Mot. Att’ys Fees 1 [122], the Court did no such thing. Indeed, Federal Rule of Civil Procedure 54(d)(2) specifically instructs parties to make a claim for attorneys’ fees by motion after an entry of judgment. *See* FED. R. CIV. P. 54(d)(2)(B)(i). And, the Supreme Court has held that motions for attorneys’ fees are collateral issues, separate from a final judgment on the merits, appropriately handled after an entry of judgment. *See, e.g., Landgraf v. USI Film Prods.*, 511 U.S. 244, 277 (1994) (“Attorney[s]’ fee determinations . . . are ‘collateral to the main cause of action’ and ‘uniquely separable from the cause of action to be proved at trial.’” (quoting *White v. N.H. Dep’t of Emp. Sec.*, 455 U.S. 445, 451-52 (1982))). Even assuming, arguendo, that the Court had denied the Receiver attorneys’ fees, it would consider the instant motion a motion to supplement the award of costs, which the Fifth Circuit has held is governed by Rule 54(d), and not Rule 59(e), as Defendants argue. *See Carter v. GM Corp.*, 983 F.2d 40, 42 (5th Cir. 1993) (“A motion requesting costs is predicated on Rule 54(d), rather than Rule 59(e). Such a motion ‘does not imply a change in the judgment, but merely seeks what is due because of the judgment.’ This circuit has held that a motion to correct or supplement an award of costs is ‘uniquely separable from the cause of action to be proved at trial’ and thus is not a Rule 59(e) motion.” (internal citations omitted)).

II. THE COURT GRANTS RECEIVER'S MOTION IN A MODIFIED AMOUNT

TUFTA provides that “[i]n any proceeding under [TUFTA], the court may award costs and reasonable attorney’s fees as are equitable and just.” TEX. BUS. & COMM. CODE § 24.013. In determining reasonableness under Texas law, a court should consider eight factors: (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal service properly; (2) the likelihood that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent on results obtained or uncertainty of collection before the attorneys have rendered the legal services. *Arthur Andersen & Co. v. Perry Equip. Corp.*, 945 S.W.2d 812, 818 (Tex. 1997); *see also Metal Bldg. Components, LP v. Raley*, 2007 WL 74316, at *16 (Tex. App. – Austin 2007, no pet.) (applying *Andersen* test to TUFTA attorneys’ fees provision).

The Court finds that it is equitable and just to award attorneys’ fees. The Court tasked the Receiver with “[c]ollect[ing], marshal[ing], and tak[ing] custody, control, and possession of all the funds, accounts, mail, and other assets of, or in the possession or under the control of, the Receivership Estate, or assets traceable to assets owned or controlled by the Receivership Estate, wherever situated.” Receivership Order 4. The ultimate goal of the

Receivership is to maximize the assets of the Receivership Estate in order to distribute as much money as possible to the defrauded investors of the Stanford Ponzi scheme. Thus, by awarding attorneys' fees, the Court ensures that the Receivership Estate will retain all of the resources expended in the successful prosecution of the claim to disburse ultimately to the investors. Additionally, if the Receiver were forced to bear his own attorneys' fees in litigation pursuant to the Court's Receivership Order, it would severely compromise his ability to marshal the assets of the Estate. Courts in this district have similarly awarded attorneys' fees to receiverships under TUFTA. *See, e.g., Crawford v. Lee*, 2011 WL 2115824, at *3 (N.D. Tex. 2011) (Lindsay, J.); *Quilling v. 3D Marketing, LLC*, 2007 WL 1058217, at *4 (N.D. Tex. 2007) (Kaplan, Mag. J.), *aff'd*, 2007 WL 631281 (N.D. Tex. 2007) (Lindsay, J.).

The Court next turns to the reasonableness of the Receiver's fee request. The Receiver calculated a lodestar of \$369,783.37² by multiplying attorney and paralegal hours by their hourly rates through June 22, 2011, the date the Court granted summary judgment for the Receiver. Factors (2), (5), (6), and (8) of the *Andersen* test are inapplicable due to the nature of the case as ancillary to a receivership. The remaining factors, on balance, demonstrate that the requested lodestar is a reasonable figure.

²At the outset, the Court reduces the Receiver's requested lodestar from \$387,888.37 to \$369,783.37 because the Receiver has not shown and the Court finds no authority holding that the Receiver's own expenses are recoverable under the TUFTA attorneys' fees provision. Although the Receiver himself is an attorney, his role is that of client in this action as he has not made an appearance as counsel.

First, the time and labor required was reasonable in light of the length of the action and the multiplicity of Defendants. Additionally, the Receiver dealt with novel issues which he had not previously addressed. *See* App. Supp. Receiver Ralph S. Janvey's Mot. Att'ys Fees 2 [114] [hereinafter Receiver's App.] (Kevin Sadler's Declaration stating that Republican Committees raised issues related to statutes of repose and limitations and Democratic Committees raised defenses related to federal election law preemption). Thus factor (1) indicates that the lodestar is reasonable.

Second, the Receiver was successful in obtaining a judgment for the estate in the amount of \$1.75 million without necessitating a potentially costly trial. Thus, factor (4) indicates that the lodestar is reasonable.

Finally, factors (3) and (7), too, indicate that the lodestar is reasonable. Although Defendants argue that the Receiver's fees are higher than those customarily charged in the locality for similar legal services, *see, e.g.*, Repub. Committee's App. Supp. of Their Opp'n to Pl.'s Mot. Att'ys Fees 5 [125] (Mark Shank's Affidavit), the Court notes that the Receiver's requested rates are 20% lower than 2009 levels. *See, e.g.*, Receiver's App. 12. Indeed, the 2011 rates for Kevin Sadler and Scott Powers, two of the Receiver's attorneys, were 20-30% higher for other cases than the requested rates at issue here. *See id.* However, even if this were not the case, the Court notes that the experience, reputation, and ability of the Receiver and his attorneys merit the requested rate of pay.³ The Court also finds that the

³The Court takes note of the Republican Committees' objections to certain specific time entries. *See* Repub. Resp. 2-3. However, to the extent that any of these time entries are improper and/or unreasonable, they are counterbalanced by the Receivers' decreased billing

Receiver's proposed division of fees among the Defendants is reasonable,⁴ and the parties do not contest the issue.

Next, the Court declines the Receiver's request to enhance the lodestar by 25%. Absent superior representation and exceptional success, courts are wary of upward fee adjustments. *See, e.g., Abrams v. Baylor Coll. of Medicine*, 805 F.2d 528, 537 (5th Cir. 1986). Although it is commendable that the Receiver obtained a \$1.75 million judgment for the Estate, and the Court finds his representation of Stanford investors and creditors to be very good, the Court finds the lodestar sufficient to compensate the Receiver. Finally, while the Court grants the Receiver's reasonable appellate fee requests, *see Esse v. Empire Energy III, Ltd.*, 333 S.W.3d 166 (Tex. App. – Hous. 2010, pet. denied) (granting conditional appellate attorneys' fees in TUFTA case); *Walker v. Anderson*, 232 S.W.3d 899 (Tex. App. – Dallas 2007, no pet.) (same), it conditions those amounts upon Defendants' lack of success, *see, e.g., Neidert v. Collier*, 2011 WL 4526869, at *9 (Tex. App. – Eastland 2011, no pet.) (collecting cases holding that courts must condition an award of appellate attorneys' fees on an unsuccessful appeal).

rates and utilization of a junior associate to perform the bulk of the drafting and researching. *See Receiver's Mot. Att'ys Fees* 13 (“Dustin Howell, an associate in the Austin office in his third year of practice, had the responsibility of preparing the initial drafts of all briefing in the case and conducting the associated research, as well as preparing the initial drafts of the Receiver's discovery requests and responses.”); *Receiver's App.* 11-12 (showing Dustin Howell as billing more hours than any other attorney).

⁴*See Receiver's App.* 11-12.

CONCLUSION

Because it is equitable and just to award attorneys fees and the requested fees are reasonable, the Court grants the Receiver's motion, albeit in a modified amount. Accordingly, the Court orders the Democratic Committees to pay \$93,831.00, the Republican Committees to pay \$133,157.70, and the Democratic Committees and the Republican Committees to jointly pay \$142,794.67 to the Receiver in attorneys' fees. The Defendants are jointly and severally liable for the latter amount. Additionally, should Defendants be unsuccessful in their appeal to the Fifth Circuit, the Court orders Defendants to pay \$120,000.00 to the Receiver. Should Defendants unsuccessfully petition for certiorari to the Supreme Court, the Court orders Defendants to pay \$125,000.00 to the Receiver. Finally, should the Supreme Court grant certiorari and then find for the Receiver, the Court orders Defendants to pay \$275,000.00 to the Receiver. Defendants are jointly and severally liable for the conditional appellate attorneys' fee awards. The Court also orders Defendants to increase the amount of their respective securities to reflect the award of attorneys' fees in accordance with Orders [135] and [136].

Signed March 6, 2012.


David C. Godbey
United States District Judge