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SUPREME COURT
OF THE
REPUBLIC OF PALAU

IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

ROLL'EM PRODUCTIONS, INC., JEFF BARABE and MICHAEL FOX, in their representative capacity, Appellants, v. DIAZ BROADCASTING COMPANTY d.b.a. MEDAL BELAU TV and ALFONSO DIAZ his representative capacity. Appellees.	CIVIL APPEAL NO. 13-013 (Civil Action No. 08-209) **OPINION**

Decided: September 9, 2014

Counsel for Appellants: Kassi Berg
Counsel for Appellees: Siegfried B. Nakamura

BEFORE: KATHLEEN M. SALII, Associate Justice; LOURDES F. MATERNE, Associate Justice; R. ASHBY PATE, Associate Justice.

Appeal from the Trial Division, the Honorable ARTHUR NGIRAKLSONG, Chief Justice, presiding.

PER CURIAM:

Appellants Roll 'Em Productions, Inc., Jeff Barabe and Michael Fox (collectively Roll 'Em Productions) appeal the September 9, 2013 Trial Division decision denying

attorneys' fees. For the following reasons, we reverse the Trial Division and award Roll 'Em Productions $37,550 in attorneys' fees.[1]

BACKGROUND

This matter appears before us for the second time. The procedural history is long and we decline to repeat it here.[2] In summary, we previously found that Roll 'Em Productions owned the exclusive copyright to the video aired by Appellees Diaz Broadcast Company and Alfonso Diaz (collectively Diaz), reversed the Trial Division's judgment, and remanded the case for a determination of damages.

On remand, Roll 'Em Productions argued, among other things, that, under 39 PNC §841(e), it was also entitled to $57,350.00 in attorneys' fees as the prevailing party. In making its attorneys' fees determination, the Trial Division first considered the plain meaning of the fee-shifting statute, which reads:

> Anyone who violates any of the exclusive rights of the copyright . . . shall be liable . . . to pay the copyright owner . . . reasonable costs associated with enforcement, including attorneys' fees.

Id. Despite this seemingly clear and unambiguous language, the Trial Division then rather inexplicably consulted an online dictionary and determined that the phrase "shall be liable" actually meant "shall be *likely* liable." In doing so, the Trial Division determined that it maintained discretion in whether to award any attorneys' fees at all, and

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[1] Although Roll 'Em Productions requests oral argument, we determine pursuant to ROP R. App. P. 34(a) that oral argument is unnecessary to resolve this matter.

[2] A full recounting of the case's background is contained in *Roll 'Em Productions, Inc., v. Diaz Broadcasting Co.*, 19 ROP 148 (2012).

subsequently awarded Roll 'Em Productions no attorneys' fees, concluding instead that Roll 'Em Productions was only entitled to $1,000.00 in statutory damages and $851.68 in court costs. Roll 'Em Productions appealed.

STANDARD OF REVIEW

We review de novo all legal conclusions of the Trial Division, including those based on statutory interpretation. *Isechal v. ROP*, 15 ROP 78, 79 (2008).

DISCUSSION

I. Statutory Interpretation

On appeal, the parties disagree about the proper standard of review.[3] However, the crux of this appeal is the Trial Division's interpretation of 39 PNC § 841(e), specifically the meaning of the phrase "an infringer . . . shall be liable . . . to pay the copyright . . . owner reasonable costs associated with enforcement, including attorneys' fees." Because the issue on appeal is whether the Trial Division erred in interpreting the relevant statutory language—a clear question of law—de novo review is the proper standard. *Bandarii v. Ngerusebek Lineage*, 11 ROP 83, 85 (2004) ("[I]ssues of statutory interpretation are reviewed de novo[.]").

Reading the statute, we agree with the Trial Division that the statute is clear on its face—but our agreement ends there. The plain meaning of the statute, which uses the

[3] When a statute mandates the award of attorneys' fees to the prevailing party and no award is given, the standard of review remains de novo. However, where the award of fees is discretionary, any award is reviewed under the abuse of discretion standard. *See Hyde v. Midland Credit Management, Inc.*, 567 F.3d 1137, 1140 (9th Cir. 2009).

mandatory "shall" instead of the permissive or discretionary "may," clearly requires the Trial Division to award reasonable attorneys' fees. Therefore, the Trial Division erred when it in continued its analysis, consulted a dictionary, and determined that, despite the plain mandatory language of the statute ("shall be liable to pay"), the award of attorneys' fees was, in fact, discretionary ("shall *likely* be liable to pay"). Unlike the U.S. Copyright Act, which has a discretionary fee-shifting statute (17 U.S.C. § 505: "the court may also award a reasonable attorney's fee to the prevailing party"), the OEK has statutorily mandated an award of reasonable costs including attorneys' fees. The language of the statute is unambiguous: "Anyone who violates any of the exclusive rights of the copyright . . . shall be liable . . . to pay the copyright owner . . . reasonable costs associated with enforcement, including attorneys' fees." 39 PNC §841(e). U.S. courts have consistently interpreted the statutory language of "shall be liable to" as mandating an award of fees. *Lamonica v. Safe Hurricane Shutters, Inc.* 711 F.3d 1299, 1307 (11th Cir. 2013) (finding that an act which states a person "shall be liable to," is unequivocal and no court is vested with discretion to deny attorney's fees); *American Family Mut. Ins. Co. v. Hollander*, 705 F.3d 339, 352 (8th Cir. 2013) (stating that where a party prevails in his suit, the statutory language of "shall be liable to" mandates an award of attorney's fees).

Our own case law suggests the same result. In *Western Caroline Trading Co. v. Philip*, 13 ROP 28 (2005), we concluded that an attorneys' fees clause of a contractual agreement did not divest the trial court's discretion in awarding said fees. But, in reaching

our conclusion, we contrasted the facts of the case with the facts of *Singleton v. Frost*, 742 P.2d 1224 (Wash. 1987), where a statute required the award of attorneys' fees. We emphasized that the *Singleton* court concluded that a trial court *must* award attorneys' fees where a promissory note *and controlling statute* contain mandatory language providing that the prevailing party "shall be entitled to reasonable attorneys' fees" *Western Caroline Trading Co.* at 29.

Reduced to its essentials, the Trial Division's analysis simply focused on the wrong word. That is, the operative word for purposes of determining the existence *vel non* of the Trial Division's discretion to award attorneys' fees was not "liable" but "shall." We can find no common law either in Palau or the U.S. in which a trial court has resorted to a definitional inquiry of the word "liable" in order to determine the existence of discretion to award attorneys fees. We reject the Trial Division's novel inquiry here. Accordingly, we hold that the Copyright Act mandates an award of "reasonable costs associated with enforcement, including attorneys' fees." 39 PNC § 841(e).

II. Determination of Reasonable Attorneys' Fees

In support of its request for attorneys' fees below, Roll 'Em Productions submitted detailed invoices that included the date of each entry, a description of work, the hours worked, and the hourly rate. Additionally, the late, esteemed Carlos Salii testified to the reasonableness of Roll 'Em Production's attorneys' fees after reviewing the filings in the

case. Despite this, the Trial Division found Roll 'Em Productions' evidentiary support insufficient and woefully inadequate.

We do not agree. After a careful review of the invoices, we conclude that they are as detailed—if not more detailed—than the numerous attorneys' fees invoices the Trial Division routinely reviews and approves for appointed matters. Out of concern for judicial efficiency and economy, and because all necessary evidence is before us, we see no reason to remand this matter when we can easily determine the reasonable fee on the basis of the documentary evidence before us. *Estate of Rechucher v. Seid*, 14 ROP 85 (2007) (reversing the trial court and determining the proper award rather than remanding for a new determination). We reach this conclusion, in part, because the Trial Division found the witness testimony of Mr. Salii to be without evidentiary weight. Consequently, we are on equal footing with the Trial Division to review a purely documentary record.

The Lodestar method is a widely accepted model adopted by the U.S. Supreme Court for computing attorney's fees in which a court multiplies the number of hours reasonably spent by trial counsel by a reasonable hourly rate. *Hensley v. Eckerhart*, 461 U.S. 424, 433, (1983); *see Fisher v. SJB–P.D.*, Inc., 214 F.3d 1115, 1119 (9th Cir.2000). In performing this calculation, we recognize that this case has lasted over five years, has been appealed twice, addresses novel issues of law in Palau, and requires skilled legal services in the area of copyright law. Roll 'Em Productions has been successful in proving (1) that it owned the copyright in this matter, and (2) that it is entitled to

reasonable attorneys' fees. Prior to this appeal, counsel for Roll 'Em Productions billed 450 hours over the course of five years of litigation. This represents an average of only two weeks of legal work per year on a complex case. Viewed as a whole, two weeks per year is a reasonable number of hours to spend on this matter. Moreover, the hourly rate charged by legal counsel of $125.00 is commensurate to similarly situated counsel in the local market. Counsel's work product, including her appellate brief in this appeal, is commendable and of a higher quality than most of the briefs we routinely see.

However, we also recognize that counsel has limited legal experience in Palau and has failed to prove significant damages. Like the Trial Division, we have concerns with the overall costs of Roll 'Em Productions' counsel's fees. Her total hours—particularly her appeal preparation, preparation of elective motions such as her motion for recusal, and her research of moral rights—are excessive. Thus, after careful review of counsel's invoices, we determine that a reasonable fee in this matter amounts to $37,550.00.[4]

CONCLUSION

For the reasons stated above, the Trial Division is **REVERSED**.

Pursuant to ROP R. App. P. 32, we modify the Judgment in this matter to include an award of reasonable attorneys' fees to Roll 'Em Productions in the amount of $37,550.00.

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[4] This calculation credits counsel with 140.9 hours before the Trial Division (rather than the requested 182.95 hours); 87.5 hours for the first appeal (rather than the requested 130 hours); and 72 hours on remand (rather than the requested 126.35 hours).

SO ORDERED, this 9th day of September, 2014.

KATHLEEN M. SALII
Associate Justice

LOURDES F. MATERNE
Associate Justice

R. ASHBY PATE
Associate Justice