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COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 2082CV01140

██████████ AHART-UPSHAW,

Plaintiff,

vs.

BRIDGECREST CREDIT COMPANY, LLC, and
THE ALQUIST AGENCY, INC.,

Defendants.

**FINDINGS OF FACT AND RULINGS OF LAW ON
PLAINTIFF'S G.L. c. 93A CLAIM AND MOTION FOR FEES AND COSTS**

Procedural and Factual Background

Plaintiff ██████████ Ahart-Upshaw ("Plaintiff") commenced this against defendants Bridgecrest Credit Company, LLC, and The Alquist Agency, Inc. ("Defendants") in December 2020 claiming that Defendants unlawfully breached the peace while repossessing Plaintiff's motor vehicle on August 2, 2020, in violation of G.L. c. 255B, § 20B, and G.L. c. 106, § 9-609(a) and (b). Plaintiff also asserted claims against Defendants for battery, intentional infliction of emotional distress, and violation of G.L. c. 93A, §§ 2 and 9, arising from the same incident.

The case was hard-fought on both sides with extensive pre-trial motion practice. Plaintiff's claims eventually went to trial before a Norfolk County jury on September 27-29, 2023. At the close of all the evidence, the Court directed a verdict in favor of Plaintiff on her statutory claim for breach of the peace as to liability only, leaving the jury to decide the

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question of Plaintiff's resulting damages. The Court further reserved to itself the determination of Plaintiff's G.L. c. 93A claim. See, e.g., *Kattar v. Demoulas*, 433 Mass. 1, 12 (2000) (judge may decide c. 93A claim or send claim to jury for binding or non-binding determination). In so doing, however, the Court explicitly recognized that a breach of the peace in violation of G.L. c. 255B, § 20B, also is a *per se* violation of G.L. c. 93A. See G.L. c. 255B, § 6 ("A violation of this chapter shall also be a violation of chapter ninety-three A.").

On September 29, 2023, the jury returned a verdict in favor of Defendants on Plaintiff's claims for battery and intentional infliction of emotional distress, and awarded Plaintiff \$75,237.00 in damages on her statutory claim for breach of the peace. Following entry of the jury's verdict, the Court directed Plaintiff to submit a documented request for attorney's fees and costs under G.L. c. 93A, § 9, and gave Defendants the opportunity to submit an opposition to Plaintiff's request if they wished to do so. The parties' respective papers concerning Plaintiff's fee request have since been received and reviewed by the Court.

Findings and Rulings on Plaintiff's c. 93A Claim

It was undisputed at the trial of this action that Defendant's agent, Anthony Silva, repossessed Plaintiff's motor vehicle on the evening of August 2, 2020, in the face of Plaintiff's vehement vocal and physical opposition. In acting on Plaintiff's motion for a directed verdict at the close of all the evidence, the Court ruled, as it was required to do by law, that Mr. Silva's conduct constituted a breach of the peace in violation of G.L. c. 255B, § 20B, and G.L. c. 106, § 9-609(a) and (b). See, e.g., *Hollibush v. Ford Motor Credit Co.*, 179 Wis. 2d 799, 808 (Wis. Ct. App. 1993) ("When the creditor repossesses in disregard of the debtor's unequivocal oral protest, most courts find the creditor guilty of a breach of the

peace”, quoting from 2 J. White & R. Summers, Uniform Commercial Code § 27–6, at 580 (3d ed. 1988)). Mr. Silva further testified, without contradiction by the Defendants, that he understood he was legally required to terminate his repossession of Plaintiff’s motor vehicle when she appeared and voiced her opposition, but that he nonetheless proceeded with the repossession.

The Court concludes from the foregoing facts that Defendants’ established violation of G.L. c. 93A, § 2, was willful and knowing. For this reason, the Court awards Plaintiff **double damages** totaling **\$150,474.00** under G.L. c. 93A, § 9.

Findings and Rulings on Plaintiff’s Motion for Attorneys’ Fees and Costs

In her motion for attorneys’ fees and costs (the “Motion for Fees”), Plaintiff seeks a total of \$122,810.00 in fees, representing approximately 402 hours of professional time expended over a roughly three-year period at rates ranging from \$150 to \$550 per hour. Defendant also seeks reimbursement of costs and expenses totaling \$2,466.52. No hearing on Plaintiff’s Motion for Fees has been requested by either side and none is required. See Superior Court Rule 9A(c)(1) and (2).

The amount of attorney’s fees to be awarded in any particular case is “committed to the sound discretion of the judge.” *Berman v. Linnane*, 434 Mass. 301, 302-303 (2001). Notwithstanding that discretion, the Massachusetts Supreme Judicial Court has identified various objective and subjective factors that judges are encouraged to consider in making fee awards, including,

the nature of the case and the issues presented, the time and labor required, the amount of damages involved, the result obtained, the experience, reputation and ability of the attorney, the usual

price charged for similar services by other attorneys in the same area, and the amount of awards in similar cases.

Linthicum v. Archambault, 379 Mass. 381, 388-389 (1979) (“*Linthicum*”).

The current, standard method for calculating what constitutes reasonable attorney’s fees is the “lodestar” method, which requires the court to determine the fair market rate for the legal services provided and multiply that rate by the number of hours reasonably spent on the case. *Ross v. Continental Resources, Inc.*, 73 Mass. App. Ct. 497, 515 (2009). “After making its initial [lodestar] calculation, the court then may adjust the fee upward or downward based on other considerations, including the results obtained.” *T & D Video, Inc. v. City of Revere*, 66 Mass. App. Ct. 461, 477 (2006), reversed in part by, 450 Mass. 107 (2007).

Applying the lodestar method to the facts of this case, and taking into account the factors set out in *Linthicum, supra*, the Court finds the hourly rates charged by Plaintiff’s counsel are fair and reasonable given counsel’s experience level and the billing rates previously approved by the Massachusetts courts in other comparable proceedings. The Court further finds that the number of hours expended by Plaintiff’s counsel is within reason given the nature of the case, the complexity of the issues presented, the tenacity of the defense, and the necessity of a full trial.¹ The Court perceives no need, however, to make any upward or downward adjustment to its fee award in the circumstances of this case. Plaintiff’s requested costs, which have not been challenged by Defendants, are allowed in full.

¹ The Court is unpersuaded by Defendants’ argument that the amount of attorney’s fees awarded to Plaintiff should be reduced because “[t]he jury found for the defendants on two out of the three counts that the jury was asked to consider.” As previously noted, this litigation was extremely hard-fought on both sides and, as the Appeals Court observed in *City Rentals, LLC v. BBC Co., Inc.*, 79 Mass. App. Ct. 559, 568 (2011), “a disproportionate fee allowance can become the foreseeable price of the choice to wage a Pyrrhic defense against a claim of moderate size and respectable merit.”

Order

For the foregoing reasons, **IT IS HEREBY ORDERED** that judgment shall enter on Count II of plaintiff [REDACTED] Ahart-Upshaw's ("Plaintiff") Complaint against defendants Bridgecrest Credit Company, LLC, and The Alquist Agency, Inc. ("Defendants"), jointly and severally, as follows:

1. Plaintiff shall recover the sum of **\$75,237.00** from Defendants for their violations of G.L. c. 93A, § 2, which amount shall be **doubled** based upon Defendants' willful and knowing conduct pursuant to G.L. c. 93A, § 9;

2. Plaintiff also shall recover from Defendants prejudgment interest on the compensatory portion of such award, calculated from the commencement date of this action, at the statutory rate; and

3. Plaintiff also shall recover from Defendants her reasonable attorneys' fees in the amount of **\$122,810.00**, and her reasonable costs and expenses in the amount of **\$2,466.52**, pursuant to G.L. c. 93A, § 9.

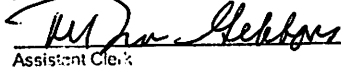
IT IS FURTHER ORDERED that Final Judgment reflecting this decision and order and the jury's trial verdict shall enter forthwith.



Brian A. Davis, Associate Justice

Date: November 3, 2023

I ATTEST THAT THIS DOCUMENT
IS A CERTIFIED PHOTOCOPY OF
AN ORIGINAL ON FILE. ✓



Assistant Clerk

11/6/2023