IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN
****

IN THE MATTER OF THE ESTATE OF JEFFREY E. EPSTEIN, **Deceased.**	**CASE NO: ST-2021-RV-00005** **Originating Case No: ST-19-PB-80**

REPLY IN SUPPORT OF MOTION FOR AWARD OF ATTORNEYS' FEES

COME NOW the Co-Executors of the Estate of Jeffrey E. Epstein (the "Epstein Estate"), **DARREN K. INDYKE** and **RICHARD D. KAHN** (the "Co-Executors"), and submit this reply brief in support of their Motion for Award of Attorneys' Fees (the "Motion for Attorneys' Fees") dated March 4, 2022.[1]

ARGUMENT

I. The Co-Executors Are Entitled To Their Attorneys' Fees.

Despite having made the GVI Motions in the Probate Division, the GVI argues in its opposition that (i) the Court orders denying the GVI Motions and GVI Appeal (together, the "Orders") are not "judgments" and a party may not receive attorneys' fees until the entirety of the proceedings are complete, and (ii) the Co-Executors are not the "prevailing party." That is incorrect. First, the GVI ignores that this is a probate matter in which the asserted need for a final judgment resolving the proceeding is neither logical nor required by applicable statute. Second, the GVI's argument that attorneys' fees are not available without a final judgment is inconsistent with longstanding Virgin Islands case law. Third, in light of the nature of the Probate Action, the relief unsuccessfully sought by the GVI in the GVI Motions and GVI Appeal, and existing case

1. Capitalized terms not defined herein have the meaning ascribed to them in the Motion for Attorneys' Fees.

law, the Co-Executors were the prevailing party on these applications and are accordingly entitled to an award of their attorneys' fees.

A. A Final "Judgment" Is Not Required to Obtain Fees in a Probate Matter.

The GVI bases its argument that an award of costs or attorney's fees is available only upon a "judgment" on the language of 5 V.I.C. § 541. (GVI Opp. at 3.) However, the GVI disregards the language of 15 V.I.C. § 165, which applies to matters arising in probate proceedings such as the GVI Motions and GVI Appeal. 15 V.I.C. § 165 (stating that it applies "[w]ith respect to matters to which [Chapter 15] relates" and implicitly distinguishing between such matters and "civil action[s] in the district court"). Probate proceedings are distinct, statutory actions that may require the resolution of many disputes, often among multiple parties, before the close of probate. In such matters—and as the Virgin Islands Code recognizes—costs are not reserved for the conclusion of the probate proceeding or a final "judgment," but are instead available "in favor of one party against another . . . in any proceedings contested adversely." 15 V.I.C. § 165.

While the GVI notes that the standard for an award of attorneys' fees is the same under 5 V.I.C. § 541 and 15 V.I.C. § 165 (GVI Opp. at 3 n.1), it cites no support—because none exists—for its argument that the purported requirement from Section 541 that there be a final "judgment" applies equally under Section 165 to probate proceedings such as this one. Because the GVI Motions and GVI Appeal were contested, adversarial proceedings, an award of attorneys' fees is available here pursuant to Section 165.

B. The GVI's Arguments Are Inconsistent with Applicable Case Law.

Even outside of the probate context, no case supports the GVI's argument that fees and costs cannot be awarded absent an appealable judgment. To the contrary, Virgin Islands case

law indicates that, in civil actions, attorneys' fees and costs may be awarded absent a final judgment.

For example, in *John v. Maldonado*, the parties settled before trial (and therefore without a final judgment, such as the GVI seeks to require here) and the plaintiff thereafter sought reimbursement for his attorney's fees and costs incurred in maintaining the suit before it settled. Civ. No. 536–1988, 1991 V.I. LEXIS 13, at *5-6 (V.I. Terr. Ct. June 11, 1991). The Court held that the plaintiff could recover his fees and costs, and characterized the defendant's argument that the plaintiff was not the "prevailing party in the judgment" because the parties settled as "almost frivolous, for it has long been settled in the Virgin Islands that 'as long as a plaintiff achieves some of the benefits sought in maintaining a lawsuit, even though that plaintiff does not ultimately succeed in securing the judgment sought, the plaintiff can be considered the prevailing party for purposes of a fee award.'" *Id*. at *7 (quoting *Ingvolstad v. Kings Wharf Island Enterprises, Inc.*, 20 V.I. 314, 317 (Dist. Ct. 1983) (citations omitted), *aff'd.*, 734 F.2d 5 (3d Cir. 1983).

Similarly, in *Melendez v. Rivera*, the parties engaged in litigation but resolved the matter before trial. Civ. No. 10/1988, 1988 WL 1628341, at *1 (V.I. Terr. Ct. Oct. 28, 1988). The Court awarded fees and costs to the respondent, reasoning that:

> While as a rule the prevailing party is considered to be the one in whose favor a decision or verdict is rendered and a judgment is entered, the term may be construed more broadly. The test is whether a party has achieved at least some of the benefits which were sought in the litigation, even if a judgment is not finally obtained.

Id. at *3 (citations omitted); *see also, e.g.*, *Great Bay Condo. Owners Ass'n v. Socolof*, No. ST-13-CV-426, 2019 V.I. LEXIS 165, at *7 (V.I. Sup. Ct. Feb. 25, 2019) ("Whether a party is a prevailing party does not turn on whether it obtained success through litigation—through a formal determination of the Court—but whether it prevailed in obtaining the relief it sought.").

The Third Circuit has likewise repeatedly held that a litigant can be considered the "prevailing party" for purposes of a fee award as long as it achieves some of the benefits it sought in the lawsuit, even though it does not secure a judgment. *See, e.g.*, *People Against Police Violence v. City of Pittsburgh*, 520 F.3d 226, 234 (3d Cir. 2008) (finding the plaintiff constituted a "prevailing party" entitled to an award of attorneys' fees where it successfully obtained a preliminary injunction, even where no final "judgment" was reached); *P.N. v. Clementon Bd. of Edu.*, 442 F.3d 848, 855-57 (3d Cir. 2006) (finding that party that obtained interim orders requiring action in its favor was "prevailing party" entitled to attorneys' fees); *NAACP v. Wilmington Med. Ct., Inc.*, 689 F.2d 1161, 1165 (3d Cir. 1982) (holding that "a prevailing party can be awarded fees before the conclusion of protracted litigation"). *See also Golden v. N.J. Inst. Of Tech.*, 934 F.3d 302 (3d Cir. 2019) (finding that party was entitled to attorneys' fees under New Jersey statute requiring a party to prevail where the lawsuit served as the catalyst for desired action).

C. The Co-Executors Are the Prevailing Party Since the Orders Dispensed with the Then-Pending Litigation.

The Virgin Islands Supreme Court recently directed courts to interpret the term "prevailing party" for the purposes of awarding attorneys' fees "liberally and broadly" "in light of the Legislature's intent to indemnify the party that is not at fault in the litigation." *DaCosta v. DaCosta*, 74 V.I. 640, 647 (V.I. 2021). Given the underlying Probate Action, the facts underlying the GVI Motions and GVI Appeal, the relief awarded in the Orders, and the law discussed above in Sections I.A and B, there can be no doubt that the Co-Executors were the prevailing party here.

The GVI seeks to frame the "prevailing party" analysis in terms of the merits of the claim it filed against the Estate after this Court denied the GVI Appeal with prejudice. But that claim is not what the GVI Motions and GVI Appeal concerned. Rather, those applications exemplified the GVI's attempted interference with the ongoing administration of the Estate and

the Estate's funding of the Epstein Victims' Compensation Program, based purely on the GVI's separate CICO Action and without the GVI submitting to the jurisdiction of the Probate Division by filing a formal claim—despite Magistrate Judge Hermon-Percell's express direction on February 4, 2020 that the GVI do so. The GVI's consistent strategy throughout these probate proceedings has been to assert that it is entitled to control the administration of the Estate with no regard for probate rules. Through the Orders, the Co-Executors prevailed in obtaining the Court's affirmance that the GVI could not assume the Co-Executors' fiduciary responsibilities and that, if the GVI wishes to be heard in the probate proceedings, it must submit to the Probate Division's jurisdiction and file a claim in the Probate Action. Particularly given the nature of the Probate Action, which requires complex administration completely outside of the final determination of individual claims, this successful realignment of the parties' legal relationship is separate from the merits of the GVI's CICO Action. *See supra* Section I.B; *see also, e.g.*, *Tex. State Teachers Ass'n v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 792 (1989) (finding that a party may be the "prevailing party" entitled to legal fees if the resolution of the dispute "changes the legal relationship" between the parties).

II. An Award of Attorneys' Fees Against The GVI Is Appropriate.

The litigation resolved by the Orders was also separate from the GVI's claim in the Probate Action, which as noted above the GVI did not even file until after the Probate Division issued its Orders and this Court upheld those Orders on the GVI Appeal. That the GVI hopes it will eventually succeed in the CICO Action—which forms the sole basis for its probate claim—is irrelevant to the award of attorneys' fees here, and the Court should not deny the Motion for Attorneys' Fees on that basis.

In addition, the Court should reject the GVI's assertion—for which it once again provides no support—that the Court should not award attorneys' fees because its failed GVI Motions and GVI Appeal allegedly relate to a law enforcement action. (GVI Opp. at 6.) The Virgin Islands Legislature chose to allow prevailing parties to recover costs and attorneys' fees because "a party should not have to bear the legal expenses of demonstrating either that it is not at fault or that it is the victim of another's fault," and it is intended as an indemnity. *DaCosta*, 74 V.I. at 646-47 (quoting *Int'l Leasing & Rental Corp. v. Gann*, Civ. No. 08-40, 2010 WL 1284464, at *1 (D.V.I. Mar. 23, 2010)) (finding that Section 541 should be interpreted broadly in light of this intent). The GVI's pending CICO Action does not in and of itself entitle the GVI to obtain relief in the Probate Action or use any litigation tactics it chooses to interfere with the orderly administration of the Estate; nor does the GVI's role as a government agency justify forcing the Estate to bear the costs of defending against the GVI's unsuccessful attempts to do so. *See Equivest St. Thomas, Inc. v. Gov't of Virgin Islands*, No. CIV.2001-155, 2004 WL 3037953, at *7 (D.V.I. Dec. 31, 2004) (rejecting the GVI's argument that it should not have to pay attorneys' fees and costs because of its "financial plight," particularly given the GVI's unwise decision to litigate the matter at issue).

To the extent that equity is relevant to the grant of attorneys' fees, it favors the Co-Executors. The GVI made the GVI Motions and GVI Appeal in a vain effort to impede the administration of the Estate, including funding of the Epstein Victims' Compensation Program, which provided compensation for 125 individual claimants seeking redress for sexual abuse. Moreover, this litigation was needlessly prolonged by the GVI's year-long delay in appealing the GVI Motion to Intervene and the GVI's refusal to follow Judge Hermon-Percell's direction to observe the requirements of probate claims procedure. The Court should not countenance such

disregard for court orders and waste of Estate and judicial resources by immunizing the GVI from the costs of its ill-advised GVI Motions and GVI Appeal.

III. The Co-Executors' Counsels' Rates Are Not Excessive.

In its opposition, the GVI ignores the case law and evidentiary support presented by the Co-Executors regarding the reasonableness of their counsels' rates. Instead, the GVI asserts flatly that attorneys in the Virgin Islands can never, under any circumstances, obtain compensation greater than $350 per hour. (GVI Opp. at 7-8.) The Court should not credit the GVI's refusal to consider the Virgin Islands Supreme Court's direction that an attorney's normal billing rate is evidence of a reasonable rate, the experience of the attorneys in question, the magnitude and complexity of the Estate and the unprecedented challenge presented by the GVI Motions and GVI Appeal, or the evidence that rates for attorneys in the Virgin Islands have risen (like the costs of everything else) in the years since courts approved unchanging rates for Virgin Islands attorneys. As the Virgin Islands Supreme Court recently held, courts cannot simply apply a preconceived belief regarding attorneys' rates in the Virgin Islands—rather, they must consider evidence including the attorneys' normal billing rates. *Mahabir v. Heirs of James Wellington George*, S. Ct. Civ. No. 2014-0025, 2021 WL 6100552, at *3 (V.I. Dec. 22, 2021) (finding that courts should not use preconceived notions of current standard rates as a basis to lower the requested standard rate and that "the value of an attorney's time generally is reflected in his normal billing rate") (quoting *Estien v. Christian*, 507 F.2d 61, 63 (3d Cir. 1975)).[2]

2. With regard to the rates of the Co-Executors' New York counsel, the GVI cites no law in support of its untenable position that the Court should not consider prevailing New York rates in determining reasonable compensation. The GVI's own use of Motley Rice LLC—a firm with more than 100 attorneys and offices in New York, New Jersey, Washington, D.C., South Carolina, Rhode Island, Connecticut, West Virginia and Pennsylvania—to represent it in the CICO and Probate Actions demonstrates the GVI's recognition that counsel outside of the Virgin Islands with special expertise in similar cases is necessary and appropriate here.

IV. The Hours Expended by the Co-Executors' Counsel in Defeating the GVI Motions and GVI Appeal Are Reasonable.

Finally, the GVI argues that the Court should exclude several of the Co-Executors' counsels' time entries because they contain "vague descriptions, duplicative tasks, unrelated matters, and clerical work." (GVI Opp. at 9.) Despite the GVI's contention, those time entries are reasonable.

A. The Time Entries Are Not Vague.

Courts in the Virgin Islands have recognized that allegedly "vague" billing entries are reasonable where, as here, they are "sufficiently clear to allow [the court] to know the tasks to which [the attorney] devoted his time." *Watts v. Blake-Coleman*, No. CV 2011-61, 2014 WL 902231, at *2 (D.V.I. Mar. 7, 2014) (quoting *Tenafly Eruv Ass'n, Inc. v. Borough of Tenafly*, 195 F.App'x 93 (3d Cir. 2006)) (finding that entries such as "Attn to brief" and "Attn to reply" provided the requisite level of specificity). The Third Circuit has similarly held that time entries that provide the "general nature of the activity and the subject activity where possible," as well as "the date the activity took place and the amount of time worked on the activity," are reasonable. *Rode v. Dellarciprete*, 892 F.2d 1177, 1191 (3d Cir. 1990); *see also Washington v. Phila. Cnty. Court of Common Pleas*, 89 F.3d 1031, 1038 (3d Cir. 1996) (same).

Likewise, courts in the Virgin Islands have granted attorneys' fees for time entries consisting of so-called "block billing" where the court was "able to determine that the time spent on the various tasks was reasonable." *Chem. Bank v. Lampe Fam. Living Tr. (Irrevocable Living Tr. Agreement)*, No. CV 2018-23, 2019 WL 4259459, at *3 (D.V.I. Sept. 9, 2019). It is "not necessary to know the exact number of minutes spent nor the precise activity to which each hour was devoted nor the specific attainments of each attorney." *Rode*, 892 F.2d at 1190 (quoting *Lindy*

Bros. Builders, Inc. of Phila. v. American Radiator & Standard Sanatory Corp., 487 F.2d 161, 167 (3d Cir.1973)).

Here, the GVI claims that several billing entries are "vague" because they contain "block billing," that certain words contained in the entries are "unclear," or that the amount of time spent on each individual task set forth in the entry is not separately broken out. (GVI Opp. Ex. 2.) That is baseless nit-picking: each of the entries conveys the nature of the activity and overall time worked, and is sufficient for the Court to determine that the amount of time spent was reasonable. Similarly, while the GVI asserts that some entries are "vague" because the GVI claims that it cannot discern to which hearing or motion the entry refers, not only do the entries themselves make that information abundantly clear—for example, the GVI absurdly claims that it cannot tell what hearing the Co-Executors' counsel attended on February 4, 2020, when Judge Hermon-Percell conducted an all-day evidentiary hearing which the GVI's attorneys also attended (GVI Opp. Ex. 2 (Christopher Kroblin's 10th expressly-listed time entry))—but the attorneys' affidavits attached to the Motion for Attorneys' Fees also state that the relevant time entries relate to the GVI Motions and GVI Appeal.

B. <u>The Time Entries Are Not Duplicative.</u>

The GVI also argues that the Estate's entries are "duplicative" because more than one attorney participated in drafting or revising briefs in successful opposition to the GVI Motions and GVI Appeal.

The GVI's argument misses the mark. Courts in the Third Circuit have recognized that "overlapping" billing entries are reasonable when each attorney plays a "differing role" in accomplishing certain tasks or each attorney's presence is "essential" to the completion of the task. *See, e.g.*, *Hatchett v. Cty. of Philadelphia*, No. CIV.A. 09-1708, 2010 WL 4054285, at *4 (E.D.

Pa. Oct. 15, 2010) (finding that overlapping time entries were reasonable where multiple attorneys billed for attending a conference and a meeting); *Inventor Holdings, LLC v. Bed Bath & Beyond Inc.*, No. CV 14-448-GMS, 2016 WL 10957312, at *1 n.1 (D. Del. July 14, 2016), *aff'd*, 876 F.3d 1372 (Fed. Cir. 2017) (finding that, where multiple attorneys billed to complete a particular project, the hours expended were reasonable).

As detailed in the Motion for Attorneys' Fees and discussed above, defeating the GVI Motions and GVI Appeal was of significant importance to the Co-Executors and the Probate Division's oversight over the ongoing administration of the Estate, and those applications had far-reaching implications for the Estate and the Epstein Victims' Compensation Program. (Mot. for Attorneys' Fees at 8-9, 17-18.) Moreover, the GVI's attempt to intervene in the Probate Action and seize control of the Estate's assets rested on unsupported applications of law and baseless accusations concerning the Co-Executors and the Probate Division's ability to effectively administer the Estate. It is both unsurprising and reasonable that completing the tasks necessary to defeat those applications required the input of different attorneys—each of whom has differing expertise and knowledge of different aspects of the Estate. As each of these attorneys played a different role and was essential to completion of the tasks necessary to defeat the GVI's ill-conceived applications, there is no unreasonable duplication in the time entries.

Moreover, the rules and orders governing *pro hac vice* admission to practice law before Virgin Islands courts require that the regularly admitted attorney who moved for a *pro hac vice* admission review the work of *pro hac vice* counsel and accompany such counsel to hearings to insure compliance with local rules. *See, e.g.*, V.I. S. Ct. R. 201(a)(4) ("The regularly admitted attorney of record shall be accountable to the Supreme Court for the timely prosecution of such causes and compliance with all applicable rules . . ."). Not only is it not duplicative to have both

pro hac vice and regularly admitted Virgin Islands counsel work together on briefs and appear together at hearings, it is actually required.

C. The Time Entries Do Not Contain Unrelated Entries.

The GVI also incorrectly asserts that the Estate "lumped" together unrelated time entries, pointing mainly to references to the Epstein Victims' Compensation Program and incidental tasks related to administration of the Estate that arose in direct relation to the GVI Motions and GVI Appeal. As discussed above and in the Motion for Attorneys' Fees, the GVI's primary purpose in filing the GVI Motions and GVI Appeal was to wrongfully interfere with the ongoing administration of the Estate, including funding of the Epstein Victims' Compensation Program. The GVI therefore should not be surprised that its applications required some work to defend. As all of the time entries relate to the GVI Motions and GVI Appeal, they are reasonable and should be allowed. *See, e.g.*, *Tangible Value, LLC v. Town Sports Int'l Holdings, Inc.*, No. 10-1453-MAS-TJB, 2014 BL 325994, at *11 (D.N.J. Nov. 17, 2014) (finding that the "bundling" of numerous tasks under a single entry was reasonable where the tasks were not grouped together "indiscriminately," but were instead related); *Washington Federal Savings Bank v. McGuier (In re McGuier)*, 346 B.R. 151, 168 (Bankr. W.D. Pa. 2006) (finding that "lumped" time entries were reasonable based on the "specificity of the entries and the Court's actual knowledge of services provided").

D. The Time Entries Are Not for Clerical Work.

While the GVI complains about time spent by Virgin Islands legal assistant Shauna Betz, the weight of authority holds that time spent by paralegals and legal assistants is properly recoverable. *See, e.g.*, *MRL Development, LLC v. Whitecap Investment Corp.*, Civ. No. 2013-48, 2017 U.S. Dist. LEXIS 46211, at *11 (D.V.I. March 23, 2017) (collecting cases). The GVI cites

no authority for its bizarre theory that a movant must identify an individual (here, the same individual) as a "paralegal" rather than a "legal assistant" in order for their services to be compensable. *See id*. (using the terms paralegal and legal assistant interchangeably). Likewise, while the GVI complains that Ms. Betz's work in cases where courts found her time recoverable "included drafting pleadings," her work here likewise include proofreading and reviewing briefs. (*See, e.g.*, GVI Opp. Ex. 2 (Ms. Betz's time entries).)

The GVI's other complaints about purported "clerical work" likewise fail. As each of the time entries relates to preparation and drafting of the Co-Executors' oppositions to the GVI Motions and GVI Appeal, these entries are reasonable.

CONCLUSION

For the reasons set forth herein and in the Motion for Attorneys' Fees, the Co-Executors respectfully request that the Court issue an award reimbursing them for their attorneys' fees incurred in successfully opposing the GVI Motions and GVI Appeal in the amount of $112,216.90.

Respectfully,

Dated: April 7, 2022

/s/ Christopher Allen Kroblin

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of April 2022, I caused a true and exact copy of the foregoing **Reply in Support of Motion for Award of Attorneys' Fees** to be served via VIJEFS upon:

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