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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

SHAMUSIDEEN A. ALIU, Plaintiff and Appellant, v. ELAVON INC., Defendant and Respondent.	B269451 (Los Angeles County Super. Ct. No. BC491056)

APPEAL from an order of the Superior Court of Los Angeles County, Yvette M. Palazuelos, Judge. Affirmed.

Law Offices of George E. Omoko and George E. Omoko for Plaintiff and Appellant.

Bryan Cave, Jonathan G. Fetterly and Alexandra C. Whitworth for Defendant and Respondent.

Plaintiff and appellant Shamusideen A. Aliu appeals from an order awarding attorney fees to defendant and respondent Elavon Inc. We affirm the order.

BACKGROUND

Aliu and Elavon entered into a credit card processing agreement containing an attorney fees provision.[1] After the trial court found for Elavon on Aliu's contract-based lawsuit, Elavon moved for attorney fees in the amount of $91,828.75. Attorney Thomas P. Mulally submitted his declaration and timesheets in support of the motion. Mulally had practiced commercial litigation for 31 years. He billed 116.70 hours at a rate of $325 per hour on the case. His time included court appearances on Elavon's petition to compel arbitration, demurrer and an ex parte application; propounding and responding to discovery; and preparing for and conducting the three-day bench trial. Mulally's associate, Roberta M. Soto, had practiced general civil litigation for 26 years, and she billed 165.85 hours at the same rate. Her time included researching and drafting Elavon's motion for summary judgment and preparing discovery motions, an ex parte application, a closing statement and the proposed statement of decision. Mulally attached to his declaration "a true and correct copy of the firm's timesheets in this action."

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[1] The provision provided: "Merchant will be liable for and will indemnify and reimburse Member and Servicer for all reasonable attorneys' fees and other costs and expenses paid or incurred by Member or Servicer: (i) in the enforcement of the Agreement; (ii) in collecting any amounts due from Merchant to Member or Servicer; (iii) resulting from any breach by Merchant of the Agreement; or (iv) in defending against any claim or cause of action brought by you against Servicer or Member arising out of the Agreement."

Aliu opposed the motion on the grounds that the fees were not reasonable, Elavon had not shown the fees met the " 'indemnify and reimburse' " and " 'paid or incurred' " provisions of the attorney fees clause, and the billing statements lacked foundation and were hearsay. Aliu also vaguely referred to "[p]adding and [u]nnecessary [d]uplication of work. Misrepresentation by hiding charges for research also claimed by associate, and unnecessary review of associate's work."

The trial court overruled Aliu's objections and found that Mulally established "his personal knowledge and the foundation of the submitted timesheets," which the court further found fell under the business records exception to the hearsay rule. Aliu, having offered "no substantive challenge" to the requested attorney fees beyond the evidentiary objections, the court granted the motion in the amount requested.

On appeal, Aliu offers two reasons why the attorney fees order must be reversed. First, the fee award was based on inadmissible hearsay; and, second, the trial court abused its discretion by awarding a lodestar of $91,828.75.

DISCUSSION

The essence of Aliu's first argument is that Mulally's declaration was insufficient to support the attorney fees award. We disagree.

We review issues regarding attorney fees for an abuse of discretion, and a trial court's decision will only be disturbed when there is no substantial evidence to support its findings or when there has been a miscarriage of justice. (*Ellis v. Toshiba America Information Systems, Inc.* (2013) 218 Cal.App.4th 853, 882.) Although a fee request should ordinarily be documented in detail, an attorney's declaration verifying the time spent on the matter

in lieu of time records and billing statements may be sufficient evidence to support an attorney fees award. (*Syers Properties III, Inc. v. Rankin* (2014) 226 Cal.App.4th 691, 698 ["[i]t is well established that 'California courts do not require detailed time records, and trial courts have discretion to award fees based on declarations of counsel describing the work they have done and the court's own view of the number of hours reasonably spent' "]; *Raining Data Corp. v. Barrenechea* (2009) 175 Cal.App.4th 1363, 1375; *Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 512 [attorney declarations attesting to hours worked and hourly rates sufficient to support fee award]; *Weber v. Langholz* (1995) 39 Cal.App.4th 1578, 1586-1587.)

Here, Elavon submitted both its lead attorney's declaration and billing statements to support its request for attorney fees. However, the declaration alone was sufficient to support the fee award. Mulally, who was trial counsel below, declared the number of hours he worked on the case and his rate. He summarized the work he performed on the case, which included court appearances for motion hearings, engaging in discovery, and preparing for and conducting the trial. He also discussed his associate's time and rate and what she did on the case, which included preparing motions, the written closing statement, and proposed statement of decision.[2] The work described can be verified by looking at the record. (*City of Colton v. Singletary* (2012) 206 Cal.App.4th 751, 785.) This declaration was more than adequate to establish the reasonableness of the time spent

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[2] We reject Aliu's hearsay objection to Mulally's description of the work his associate performed. The declaration did not contain any out-of-court statement by Soto. Further, Mulally, as a partner in the law firm representing Elavon, as Soto's employer and as lead counsel, had personal knowledge of Soto's hours, rate and what she did on the case.

on the case and the reasonableness of the attorney's hourly rate. The court therefore acted well within its considerable discretion in relying on this declaration.[3]

We therefore also reject Aliu's second argument that "Elavon failed to present evidence to enable the [trial court to] make lodestar adjustments." The lodestar is the number of hours reasonably expended multiplied by the reasonable hourly rate. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132.) The lodestar may be adjusted based on factors including (1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the extent to which the nature of the litigation precluded other employment by the attorneys, and (4) the contingent nature of the fee award. (*Ibid.*) The amount to be awarded in attorney fees is left to the trial court's sound discretion. (*Vella v. Hudgins* (1984) 151 Cal.App.3d 515, 522.)

We discern no abuse of discretion. The trial court awarded the full amount Elavon requested, $91,828.75. In awarding that amount, the court did not discuss the lodestar factors, but it had no obligation to do so. (*Ketchum v. Moses*, *supra*, 24 Cal.4th at p. 1140.) In any event, the record reflects that the court had sufficient information before it to award the lodestar. As we have said, Mulally had 31 years of experience in commercial litigation, and Soto had 26 years of general civil litigation experience. He also summarized the work they performed on this case, which included preparing a demurrer and motion for summary judgment and participating in a three-day trial. Based on this,

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[3] Because Mulally's declaration was sufficient to support the fee award, we need not address whether the trial court properly admitted the billing statements under the business records exception (Evid. Code, § 1271) to the hearsay rule.

the court could reasonably conclude that their $325 billing rate and the time spent on the case were reasonable in light of their experience and the complexity of the case.

Moreover, the trial court, which oversaw pretrial and trial proceedings, could reasonably rely on its direct observation of the attorneys' services, as well as its own legal expertise and experience, to provide additional support for its findings that the nature and extent of the services performed were reasonable and necessary. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095-1096.) The " 'experienced trial judge is the best judge of the value of professional services rendered in his [or her] court, and while his [or her] judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong.' " (*Serrano v. Priest* (1977) 20 Cal.3d 25, 49.) We are not so convinced.

Finally, to the extent Aliu argues on appeal that some billing entries were unreasonable, he did not raise that issue below. He generally alluded to "[p]adding and [u]nnecessary [d]uplication," "hiding charges," and "unnecessary review of associate's work." Aliu did not otherwise specify what he was challenging in the billing statements. The issue is therefore forfeited. (See generally *In re Marriage of Nassimi* (2016) 3 Cal.App.5th 667, 695.)

DISPOSITION

The order is affirmed. Elavon may recover its costs on appeal.

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DHANIDINA, J.*

We concur:

EDMON, P. J.

LAVIN, J.

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.