

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: (SUMMARY ORDER). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT [HTTP://WWW.CA2.USCOURTS.GOV/](http://www.ca2.uscourts.gov/)). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

1 At a stated term of the United States Court of Appeals for the Second Circuit, held at the
2 Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York,
3 on the 14th day of August, two thousand nine.
4

5 PRESENT:

6 GUIDO CALABRESI,
7 BARRINGTON D. PARKER,
8 REENA RAGGI,
9 *Circuit Judges.*

10 _____
11
12 Thomas Damiano and Rita Damiano,

13 *Plaintiffs,*

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16 Tobin & Dempf, LLP and Kevin A. Luibrand,

17 *Appellants,*

18 v.

07-3871-cv

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21
22 The City of Amsterdam, *et al.*,

23 *Defendants-Appellees.*
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1 FOR PLAINTIFFS: Thomas Damiano, *pro se*, Amsterdam, New York.

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3 FOR APPELLANTS: Kevin A. Luibrand, Tobin & Dempf, LLP, Latham,
4 New York.

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6 FOR DEFENDANTS-APPELLEES: John H. Pennock, Pennock, Breedlove & Noll, LLP,
7 Clifton Park, New York.

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9 UPON DUE CONSIDERATION, it is hereby ORDERED, ADJUDGED, AND
10 DECREED that the district court judgment is AFFIRMED.

11
12 Appellants Tobin & Dempf, LLP, and Kevin A. Luibrand appeal from a judgment of the
13 United States District Court for the Northern District of New York (Hurd, *J.*). Appellants are
14 counsel for Plaintiffs Thomas and Rita Damiano in the underlying § 1983 action, and they
15 challenge that aspect of the judgment awarding attorney’s fees in the amount of 1/3 of the
16 available settlement. Appellants contend that a written retainer agreement between counsel and
17 the Damianos provides instead for payment pursuant to hourly rates, which, according to
18 Appellants, would result in a greater fee award. The Damianos maintain that the district court’s
19 fee award was appropriate. We assume the parties’ familiarity with the facts, procedural history
20 of the case, and issues presented on appeal.

21 Under 42 U.S.C. § 1988, a district court may determine attorney’s fees in a civil rights
22 action where the plaintiff is a “prevailing party.” Concluding that the Damianos had prevailed
23 with respect to their false arrest claim, the district court cited § 1988 for its discretionary power
24 to assess attorney’s fees. The voluntary settlement negotiated by the parties, however, lacks the
25 judicial imprimatur necessary to render the Damianos “prevailing parties” as that term is
26 understood under § 1988. *See Buckhannon Bd. and Care Home, Inc. v. West Virginia Dep’t of*
27 *Health and Human Res.*, 532 U.S. 598, 605 (2001) (noting attorney’s fees may be awarded where

1 there has been a “judicially sanctioned change in the legal relationship of the parties,” such as a
2 judgment on the merits or a court-ordered consent decree). The district court nonetheless had
3 authority to determine a reasonable fee, because a federal court may, in its discretion, exercise
4 ancillary jurisdiction to hear fee disputes between litigants and their attorneys when the dispute
5 relates to the main action. *See Chesley v. Union Carbide Corp.*, 927 F.2d 60, 64 (2d Cir. 1991);
6 *see also Alderman v. Pan Am World Airways*, 169 F.3d 99, 102-03 (2d Cir. 1999) (“Courts have
7 broad authority to refuse to enforce contingent fee arrangements that award fees that exceed a
8 reasonable amount.”).

9 “The standard of review of an award of attorney’s fees is highly deferential to the district
10 court.” *Mautner v. Hirsch*, 32 F.3d 37, 39 (2d Cir. 1994). In this case, the district court did not
11 abuse its discretion in concluding that an award of attorney’s fees resulting in the provision of
12 only \$24,000 of a \$100,000 settlement to the plaintiffs would have been unreasonable.

13 For the foregoing reasons, the judgment of the district court is AFFIRMED.

14
15 FOR THE COURT:
16 Catherine O’Hagan Wolfe, Clerk

17
18 By: _____