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Docket: 1384CV02347-BLS1

Date: January 31, 2020

Parties: Tam v. Federal Management Co., Inc., et al.

Judge: /s/Brian A. Davis Associate Justice of the Superior Court

Decision and Order Regarding Defendants' Renewed Motion for Sanctions Pursuant to the Inherent Powers of the Court and Mass. R. Civ. P. 56(g) (Docket Entry No. 122):

Plaintiff Siew-Mey Tam ("Ms. Tam") filed this putative class action against defendant Federal Management Co. and others (collectively, "Federal") in June 2013 alleging nonpayment of overtime wages.[1] Plaintiff Mary Jane Raymond ("Ms. Raymond" or, collectively with Ms. Tam, "Plaintiffs") joined the case as an additional named plaintiff approximately one year later. Plaintiffs previously held the position of "Property Manager" at subsidized and low income housing projects managed by Federal in Massachusetts. Federal classified Plaintiffs and its other Property Managers as salaried, exempt employees for overtime purposes, meaning that they received a fixed salary regardless of the number of hours they worked in any given work week. Plaintiffs have alleged, however, that their classification by Federal as salaried, exempt employees was improper, and that Federal violated G.L. c. 151, § 1A (the Commonwealth's "Overtime Statute"), by failing to pay them time-and-a-half for all hours worked in excess of forty hours per week. Whether Plaintiffs were properly classified turns, in large part, on their job duties as Property Managers. See, e.g., *Goodrow v. Lane Bryant, Inc.*, [432 Mass. 165](#), 171-172 (2000) (retail store employee who "had no authority or influence over any decision to hire, fire, promote or demote any other employee" and who "did not exercise any discretionary powers in the execution of her job because all decisions she made concerning the business of the store were subject to the approval of upper level managers" did not qualify as someone "employed in a bona fide executive, administrative, or professional capacity" for purposes of G.L. c. 151, § 1A). Federal consistently has denied that Plaintiffs were misclassified or that they failed to receive all of the compensation they were due.

Procedural Background

The procedural history of this case is long and complex, but the following events have particular relevance to the matters currently before the Court.

Plaintiffs succeeded in having this action certified as a class action in late 2015 on behalf of "all current and former Property Managers" employed by Federal. See Memorandum and Order, dated December 16, 2015 (Docket Entry No. 47) (Brieger, J.).

[1] The other defendants are officers and agents of Federal whom Plaintiffs allege are individually liable for Federal's purportedly unlawful failure to pay overtime wages pursuant to G.L. c. 151, § 1B.

That victory was brought about, in part, through Plaintiffs' submission of the six-page "Affidavit of Siew-Mey Tam in Support of Motion for Class Certification," dated September 5, 2014 (the "First Affidavit"). In her First Affidavit, Ms. Tam swore under oath that, as a Property Manager for Federal, she and her fellow Property Managers did not, among other things: "interview, select, or train employees;" "supervise [or] ... direct the work of any employees;" "schedule the work of any employees;" "discipline employees;" have any "responsib[ility] for preparing and/or planning the

budget" of the property she managed; or otherwise "exercise ... discretion and independent judgment with respect to matters of significance." First Affidavit, ¶¶19-63. Ms. Tam further swore in her First Affidavit that all of the statements contained in the affidavit were true, and that they were made based upon her "own personal knowledge and belief." id., ¶1.

Plaintiffs' procedural victory in winning certification of their class action against Federal was short-lived. Less than a year later, the Court allowed Federal's motion to decertify Plaintiffs' class based upon what the Court found were Ms. Tam's numerous "materially false and misleading" statements in her First Affidavit. See Memorandum and Order on Defendants' Motion to Decertification of Class Action, dated November 30, 2016 (the "Decertification Order," Docket Entry No. 82) (Leibensperger, J.). More specifically, the Court reexamined Ms. Tam's First Affidavit in light of her subsequent deposition testimony in this proceeding and concluded (as Ms. Tam acknowledged at her deposition) that many of the statements in her First Affidavit concerning her job duties as a Federal Property Manager were untrue. As recounted by the Court,

[i]n her [First] Affidavit, Tam stated that she did not interview, select, train or supervise any employees. In her deposition, however, she testified that she did interview potential employees, and supervise and evaluate the performance of employees. When confronted with her [First] Affidavit, she admitted that her statements in the [First] Affidavit were not true. In her [First] Affidavit, Tam [also] stated that she was not responsible for preparing and/or planning the budget for her property. In her deposition, however, she testified that she did prepare budgets. She admitted in her deposition that her [First] Affidavit was "wrong" and "incorrect." These are two significant examples of numerous other inconsistencies in her [First] Affidavit as compared to her deposition.

Decertification Order at 4-5. The Court concluded that Ms. Tam was not an adequate class representative because she was "so impaired by her admitted falsehoods and

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recklessness with respect to her sworn statements that the credibility of the claims of the putative class would be adversely affected." Id. at 7.

Approximately six months later, Federal filed separate motions for summary judgment on all of Ms. Tam's and Ms. Raymond's claims in this proceeding. See Defendants' Motion for Summary Judgment Against Plaintiff Siew-Mey Tam (the "Tam Motion," Docket Entry No. 90) and Defendants' Motion for Summary Judgment Against Plaintiff Mary Jane Raymond (the "Raymond Motion," Docket Entry No. 97). The Court heard the Raymond Motion first in June 2017, and allowed the Raymond Motion in a written decision issued in July 2017. See Memorandum of Decision and Order on Defendants' Motion for Summary Judgment Against Plaintiff Mary Jane Raymond, dated July 21, 2017 (Docket Entry No. 99) (Kaplan, J.). In ruling against Ms. Raymond, the Court found that her claims for overtime pay were time-barred, and that her retaliation claim against Federal failed as a matter of law based on the undisputed facts. Id. at 3, 5-6.

The Tam Motion was extensively briefed by the parties. In its motion papers, Federal relied primarily upon Ms. Tam's sworn deposition testimony, which unequivocally established that Ms. Tam's duties as a Property Manager at Federal were dramatically different from, and more expansive than, what she described in her First Affidavit. See Defendants' Memorandum in Support of Their Motion for Summary Judgment Against Plaintiff Siew-Mey Tam ("Federal Memo. in Support") at 3-5.

Ms. Tam responded to Federal's motion for summary judgment by effectively doubling-down on her First Affidavit in a second sworn affidavit, signed on May 8, 2017, and submitted to the Court in conjunction with her opposition. See Affidavit of Siew-Mey Tam in Support of Motion for

Summary Judgment as to Liability and in Opposition to Defendants' Motion for Summary Judgment (the "Second Affidavit"). Ms. Tam's Second Affidavit repeated and reasserted many of the same factual misstatements that she previously had admitted at her deposition were "wrong" and "incorrect." For example, Ms. Tam again asserted in her Second Affidavit that she "was not responsible for preparing and/or planning the budget" for Mason Place (Le., the property that she managed for Federal), even though she acknowledged at her deposition on May 26, 2016, that her job duties as Property Manager at Mason Place included "preparing budgets," and she also had listed "Preparation of Budgets" as one of her job responsibilities as Property Manager in a resume that she circulated to prospective employers after she left Federal. See Transcript of Hearing before the Honorable Brian A. Davis on December 19, 2018 ("December 2018 Hearing Trans."), at 62 & Hearing Exhibit 8.

Ms. Tam attempted to reconcile the numerous, material inconsistencies between her First and Second Affidavits on the one hand, and her sworn deposition testimony on the

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other, by simultaneously offering up a thirty-two (32) page errata sheet to her deposition transcript (the "Errata Sheet"), in which she attempted to dramatically revise her deposition testimony. See December 2018 Hearing Trans., Hearing Exhibit 2. For example, in her Errata Sheet, Ms. Tam purported to change to her answers to the following deposition exchange: "Q. So you were preparing budgets, correct? A. I was preparing budgets. Q. For Mason Place? A. "Yes," to "I am not responsible to prepare the budgets. I am not good with numbers. Clarifying answer." Errata Sheet at 12. That is just one instance of Ms. Tam's 180 degree testimonial turns. Her Errata Sheet contains a substantial number of additional complete, or nearly complete, reversals of her deposition testimony, including a seeming reversal of her deposition testimony that she interviewed candidates for job positions as a Property Manager (from "Yes" at her deposition, to "I was in the room but did not ask any questions or answer any questions" in her Errata Sheet (id. at 4-5)), and a full reversal of her deposition testimony that she was responsible for supervising maintenance personnel at Mason Place (from "Yes" at her deposition, to "No. I was not their supervisor" in her Errata Sheet (id. at 26-27)). In explaining the many dramatic testimonial revisions listed in her Errata Sheet, Ms. Tam. frequently asserted that she was simply "[c]orrecting answer" or "[c]larifying answer" (see, e.g., id. at 4-19, 22-26) or, on multiple occasions, that she was "confused," "terrified," and/or "scared" by the Federal attorney who took her deposition, with the result that she "just agreed with him" (see, e.g., id. at 10, 16-17, 19-23, 26-28).

This Court (per Kaplan, J.) heard oral argument on Federal's motion for summary judgment on Ms. Tam's claims on May 4, 2018, and allowed Federal's motion, in its entirety, in a decision issued shortly thereafter.[2] See Memorandum of Decision and Order on (1) Defendants' Motion for Summary Judgment Against Plaintiff Siew-Mey Tam, and (2) Plaintiffs' Motion for Partial Summary Judgment, dated May 22, 2018 (the "Tam Summary Judgment Order," Docket Entry No. 111). In rendering its decision, the Court refused to take account of Ms. Tam's dramatically altered deposition testimony as reflected in her Errata Sheet. It said,

[a]s this court explained at the May 4, 2018 hearing, the court will not consider Tam's May 8, 2017 affidavit, to the extent it contradicts plain statements affirmatively made by Tam in her deposition transcript, or the errata sheet in ruling on the motions for summary judgment. See O'Brien v. Analog Devices, Inc., [34 Mass. App. Ct. 905](#), 906 (1993) (recognizing that "a party cannot create a disputed issue of

[2] In allowing Federal's motion, the Court simultaneously denied Ms. Tam's cross-motion for summary judgment on the issue of liability. Memorandum of Decision and Order on (1) Defendants' Motion for Summary Judgment Against Plaintiff Siew-Mey Tam, and (2) Plaintiffs' Motion for Partial Summary Judgment, dated May 22, 2018 at 11-12.

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fact by the expedient of contradicting by affidavit statements previously made under oath at a deposition"). See also *Smaland Beach Ass'n, Inc. v. Genova*, [461 Mass. 214](#), 22730 (2012) (Smaland) ("While substantive changes to errata sheets are permitted under Rule 30(e), we caution deponents and attorneys to invoke this privilege sparingly. The errata sheet is intended as a tool to correct mistakes in deposition testimony or subsequent transcription. It is not to be used as a mechanism to inject additional facts into the testimony of a single deponent.."). In *Smaland*, the Supreme Judicial Court (SJC) adopted a more expansive use of the errata sheet under Mass. R. Civ. P. 30(e) than some Federal Courts permit under the analogous Federal rule; however, it also cautioned that an errata sheet ought not be used in a manner similar to a "sham" affidavit filed in opposition to a motion for summary judgment: "conflict between postdeposition affidavit and deposition testimony may not be used to create disputed issue of fact to defeat summary judgment." *Id.* at 229 n.24, citing *Lyons v. Nutt*, [436 Mass. 244](#), 249 (2002). Moreover, in *Smaland*, the SJC also required "that any submitted changes comply with the procedural requirements of Rule 30(e)." *Id.* at 230. Rule 30(e) has explicit time limits for the submission of errata sheets: "If the deposition transcript is not signed by the witness within 30 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver..." Tam's errata sheet was served almost a year late. In determining whether disputed issues of fact exist in the summary judgment record of this case, the court will not consider the errata sheet or Tam's affidavit to the extent either contradict unequivocal assertions in Tam's deposition transcript.

Tam Summary Judgment Order at 3-4.

Relying upon Ms. Tam's original, unaltered deposition testimony, the Court found the "summary judgment record ... viewed in the light most favorable" to Ms. Tam, demonstrated that, as a Property Manager for Federal, Ms. Tam was "an exempt administrative employee and therefore not entitled to overtime pay." *Id.* at 9. More specifically, the Court found that Federal had correctly classified Ms. Tam as an

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administrative employee because her areas of responsibility as Property Manager included, without limitation,

financial (e.g., creating and adhering to property budgets; maintaining positive cash flow; preparing monthly budget reports; maintaining accurate resident and property records; approving purchase orders for goods and services; and overseeing security deposits); resident relations (e.g., handling resident complaints and concerns; monitoring service requests; and physical inspections of units); marketing (preparing marketing plan; greeting prospective residents; answering routine calls; reviewing and approving all applications for residency; and complying with federal regulations); supervisory (e.g., supervising and evaluating all site staff; completing annual reviews; participating in the interviews of new hires; auditing leasing activities; and conducting staff meetings); and general and administrative duties (e.g., conducting unit inspections; overseeing capital improvement projects; and general office duties).

Id. at 5-6.

Having prevailed on all of Ms. Tam's and Ms. Raymond's claims on the merits, Federal proceeded to file a Motion for Sanctions against Ms. Tam and her legal counsel in this action, Attorney Frederick T. Golder, pursuant to Mass. R. Civ. P. 11 and G.L. c. 231, § 6F (the "First Motion for Sanctions," Docket Entry No. 120). Federal argued in its motion for sanctions that Ms. Tam's overtime claims, as demonstrated by the numerous, dramatic shifts in her sworn testimony, were "wholly insubstantial, frivolous and not advanced in good faith," thereby entitling Federal to an award of "its reasonable counsel fees and other costs and expenses incurred in defending against such claims." G.L. c. 231, § 6F. Federal further argued that Attorney Golder had violated Rule 11 by bringing the overtime claims on Ms. Tam's behalf. Ms. Tam and Attorney Golder, not surprisingly, denied any wrongdoing.

This Court (per Davis, J.) held an extended evidentiary hearing on Federal's First Motion for Sanctions on December 19, 2018. A full transcript of that hearing is included in the parties' current motion papers. See Defendants' Memorandum in Support of Their Renewed Motion for Sanctions Pursuant to the Inherent Powers of the Court and Mass. R. Civ. P. 56(g), Exhibit A (the "December 2018 Hearing Trans."). Ms. Tam testified at length at the hearing, while Attorney Golder testified only briefly. At the conclusion of the hearing, the Court denied Federal's First Motion for Sanctions, not because it believed that Ms. Tam had been consistently forthright in her sworn

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testimony, but because the Court was unable to determine from Ms. Tam's apparent lack of truthfulness whether her claims against Federal were "wholly insubstantial, frivolous and not advanced in good faith" for purposes of G.L. c. 231, § 6F. As the Court explained at the hearing,

I really have two motions before me. I have the motion for sanctions pursuant to 231, 6F and I have a motion for sanctions pursuant to Rule 11. Rule 11 applies only to counsel. The information that I have in front of me, including Mr. Golder's testimony, is that he was provided with information he understood to be truthful from Ms. Tam, that he acted on that information, and on that basis I deny the motion [for] Rule 11 sanctions against Mr. Golder.

The c. 231, 6F, I'm also denying that motion because I don't think that that motion fits the circumstances of this case. I do believe that Ms. Tam submitted testimony that was at least recklessly inaccurate. She has testified here under oath that she submitted documents to the Court that she swore to as being truthful under the pains and penalties of perjury that she didn't even review. In addition, it's apparent from her testimony here today and the materials that I've reviewed that she did take a very laissez-faire and again reckless approach to whether the information supplied in the course of this proceeding to this Court was truthful or accurate. However I don't believe that c. 231, 6F is designed to address that kind of behavior. I say that from the facts that has been -- that have been presented to me in this matter, I cannot -- I certainly have not been persuaded that a claim that property managers were improperly classified by Federal was wholly insubstantial, frivolous, and not advanced in good faith. I can't make that determination on the information I have, in part because Ms. Tam's testimony, her sworn testimony, is all over the map. So I can't tell which of her testimony is accurate and which of it is not....

[Federal has] raised I think very legitimate concerns about whether Ms. Tam was truthful with this Court. Those may be -- potentially could be addressed by some other sanction. I don't know what it would be, and I'm not in the business of

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advising the parties as to what actions they can take, but it seems to me that [Ms. Tam's] conduct is sanctionable. So I will entertain in this case, if the law supports it, some other form of motion that would sanction Ms. Tam for being reckless at a minimum with respect to sworn testimony that she provided to this Court. That may be something that the Court can entertain under its inherent powers to manage its courtroom. It may be a motion that can be brought -- brought pursuant to the Rules of Civil Procedure based upon some violation of those rules....

So the parties have to make their own determination on whether they wish to pursue such a motion and I would have to be persuaded that one is permitted by law. [But] [t]his is not a c. 231, 6F case. This is, again, based on the testimony I heard, is not a Rule 11 case. I do think that Ms. Tam made misleading and potentially fraudulent statements to this Court. Again, she certainly demonstrated a disregard for the truth which again may be sanctionable. So I will -- I'll retain jurisdiction of this case for purposes of any additional filings that the parties may wish to make in that regard.

December 2018 Hearing Trans. at 85-87.

Federal filed its present Renewed Motion for Sanctions Pursuant to the Inherent Powers of the Court and Mass. R. Civ. P. 56(g) (the "Renewed Motion") on July 2, 2019. In its Renewed Motion, Federal argues that the Court should exercise its inherent powers and its authority under Rule 56(g) to sanction Ms. Tam for submitting and for filing her untruthful Second Affidavit in opposition to Federal's motion for summary judgment in May 2017. See *Rockdale Mgmt. Co. v. Shawmut Bank, N.A.*, [418 Mass. 596](#), 598 (1994) ("Rockdale") ("When a fraud on the court is shown through clear and convincing evidence to have been committed in an ongoing case, the trial judge has the inherent power to take action in response to the fraudulent conduct."). See also Mass. R. Civ. P. 56(g) ("Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt."). Federal also argues that the Court should exercise its inherent powers to sanction Attorney Golder for abusing Mass. R. Civ. P. 30(e) by preparing and submitting Ms. Tam's questionable Errata Sheet. See

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Smaland Beach Association, Inc. v. Genova, [461 Mass. 214](#), 230 (2012) ("Smaland") (IT there is any indication that an attorney has exploited the rule by arranging or facilitating the submission of errata sheets for the purpose of strategic gain in a case and not to correct testimony, his conduct may be grounds for sanctions."). Once again, Ms. Tam and Attorney Golder oppose Federal's request for sanctions.

The Court conducted a hearing on Federal's Renewed Motion on September 19, 2019. Counsel for Federal appeared and argued, as did Attorney Golder on his own behalf and on behalf of Ms. Tam. Upon consideration of the briefs, affidavits, deposition transcripts, and other written materials submitted, as well as the oral arguments of counsel, Federal's Renewed Motion will be ALLOWED as to Ms. Tam and DENIED as to Attorney Golder for the reasons discussed below.

Findings and Rulings

I. Federal's Renewed Motion to Sanction Ms. Tam.

The Court has no doubt that Ms. Tam submitted materially false and misleading affidavits to the Court in her Second Affidavit, which she submitted after this Court (per Leibensperger, J.) found that numerous

factual statements in her First Affidavit were "materially false and misleading." Ms. Tam's Second Affidavit repeated many of the "false and misleading" statements contained in her First Affidavit and, once again, directly contradicted her sworn deposition testimony in numerous respects. It also, once again, contradicted Ms. Tam's own written description of her job duties.

Ms. Tam exponentially compounded the problem created by her untruthful affidavits by boldly submitting a false Errata Sheet that contains, in this Court's experience, an unprecedented number of substantive changes to her deposition testimony. The changes frequently reflect a complete about-face by Ms. Tam on material issues, including whether Ms. Tam supervised employees and prepared budgets as the Property Manager of Mason Place.

The Court listened carefully to Ms. Tam's testimony at the December 19, 2018, evidentiary hearing. It came away persuaded that her statements concerning her job duties in her Second Affidavit (as well as her First Affidavit) are inaccurate, and that Ms. Tam submitted her Second Affidavit to the Court with the knowledge that they are inaccurate or, at the very least, with reckless disregard of whether the affidavits are accurate.

The Court further finds, based upon all the evidence and its assessment of Ms. Tam's hearing testimony, that her May 26, 2016, deposition testimony was, in fact, reasonably truthful, and was not the result of any misunderstanding or confusion on Ms. Tam's part, or any intimidation or improper tactics on the part of Federal's legal counsel. Based on

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its first hand observations of Ms. Tam, this Court concludes that Ms. Tam is a fairly intelligent and capable person who is not easily confused or intimidated. The Court infers, reasonably it believes, that the numerous material inconsistencies between the sworn statements in Ms. Tam's Second Affidavit (which, in most instances, were similar or identical to the statements in her First Affidavit) and her sworn deposition testimony result from Ms. Tam's strong desire to delay the entry of summary judgment against her on her claims against Federal, and from no other cause.

Rule 56(g) of the Massachusetts Rules of Civil Procedure allows the Court to award attorney's fees where affidavits have been submitted in bad faith or solely for purposes of delay.[3] See Mass. R. Civ. P. 56(g) (addressing affidavits made in bad faith). See also *Community Natl. Bank v. Loumos*, [6 Mass. App. Ct. 830](#), 831-832 (1978) (affirming order entered pursuant to Mass. R. Civ. P. 56(g)). Presumably, one of the primary purposes of Rule 56(g) is to ensure the integrity of the Court and specifically, the summary judgment process. Cf. *Munshani v. Signal Lake Venture Fund II, LP*, [60 Mass. App. Ct. 714](#), 721 (2004) (explaining that "the judge's utilization of the ... sanction was not only appropriate on the facts of this case, but was a realistic measure undertaken to protect the integrity of the ... litigation and the Superior Court, as well as to send an appropriate message to those who would so abuse the courts of the Commonwealth").

In this case, an award of attorney's fees under Rule 56(g) is appropriate because of the serious and repeated nature of Ms. Tam's violations, which the Court regards as highly indicative of "bad faith." [4] In determining the proper amount of fees to award, Court

[3] While it is established that "fraud on the court" must be proven by "clear and convincing" evidence, see *Rockdale*, 418 Mass. at 598, no reported Massachusetts state court decision has yet enunciated the standard of proof that must be met to justify an award of attorney's fees under Rule 56(g). So as to avoid any possible misunderstanding should this matter be appealed, this Court has applied the "clear and convincing" standard in making all of the factual findings set out in

this Decision and Order.

[4] Where, as here, a rule of civil procedure directly addresses the problem presented, there is no need for the Court to also exercise its "inherent power" to sanction Ms. Tam for committing what amounts to an attempted fraud on the Court. See *id.* (noting that "trial judge has the inherent power to take action in response to the fraudulent conduct" and "judge has broad discretion to fashion a judicial response warranted by the fraudulent conduct"). Cf. *Wong v. Luu*, [472 Mass. 208](#), 209 (2015) (concluding that "judge may exercise the court's inherent power to sanction an attorney with an assessment of attorney's fees only if the attorney has engaged in misconduct that threatens the fair administration of justice and the sanction is necessary to preserve the judge's authority to administer justice"). If, however, the Court is incorrect in its assumption that Ms. Tam's misconduct is sanctionable under Rule 56(g), then the Court would exercise its inherent power to award Defendants the same relief on the same factual grounds. See *Rental Prop. Mgt. Servs. v. Hatcher*, [479 Mass. 542](#), 556 (2018) ("Even where sanctions are not authorized by any statute or court rule, and even where no court order or rule of procedure has been violated, a judge may exercise the court's inherent power to impose sanctions for misconduct where the misconduct threatens the fair administration of justice and where the sanction is necessary to preserve the judge's authority to administer justice."). See also *Commonwealth v. Gonsalves*, [437 Mass. 1022](#), 1022 (recognizing that "[i]t is settled that a judge has considerable discretion to reconsider prior orders....").

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looks to the usual factors. See *Linthicum v. Archambault*, [379 Mass. 381](#), 388-389 (1979) ("While the amount of a reasonable attorney's fee is largely discretionary, the judge ... should consider 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."). See also *Berman v. Linnane*, [434 Mass. 301](#), 303 (2001) ("No one factor is determinative, and a factor-by-factor analysis, although helpful, is not required.").

Federal seeks an award of \$104,202.50 for the "attorney's fees that [it] incurred in relation to obtaining summary judgment against [Ms.] Tam," and in "defending against her cross-motion for summary judgment after she served her [Second] Affidavit and Errata Sheet...." Federal Memo. in Support at 14. The amount requested represents 274.10 hours of attorney and paralegal time at billing rates ranging from \$135 to \$525 per hour. No costs are sought.

The Court has examined and considered all of the factors set out in *Linthicum*, *supra*. It finds that the rates charged by Federal's legal counsel in this matter are consistent with those charged by other attorneys in the Boston metropolitan area for similar services. The Court further finds, however, that the number of hours expended exceeds what is reasonably called for in the circumstances of this case. Accordingly, the Court orders Ms. Tam to pay the sum of seventy-five-thousand dollars (\$75,000.00), which represents a reduction of approximately twenty-eight percent (28%) in the total fees requested. This fee award is eminently fair and reasonable given the nature of the proceeding, the issues presented, the amount involved, and the result obtained.

II. Federal's Renewed Motion to Sanction Attorney Golder.

The Court declines to sanction Ms. Tam's counsel, Attorney Golder, under either Rule 56(g) or its inherent power because he has represented to the Court that Ms. Tam, his client, insisted that all of the information contained in her First and Second Affidavits is accurate. Attorney Golder also has represented that all of the changes reflected in Ms. Tam's Errata

Sheet were directed by her. The Court is not able to see into whatever communications may have taken place between Ms. Tam and Attorney Golder regarding her affidavits or her Errata Sheet, but it accepts Attorney Golder's representations, as an officer of the Court, that any inaccuracies in those materials are solely the responsibility of Ms. Tam. Accordingly, the Court declines to impose sanctions on Attorney Golder.

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Order

For the foregoing reasons, Defendants' Renewed Motion for Sanctions Pursuant to the Inherent Powers of the Court and Mass. R. Civ. P. 56(g) (Docket Entry No. 122) is ALLOWED IN PART. IT IS HEREBY ORDERED that plaintiff Siew-Mey Tam shall pay defendant Federal Management Co. the sum of seventy-five-thousand dollars (\$75,000.00), pursuant to Mass. R. Civ. P. 56(g), within twenty-one (21) days of the date of this Order.

/s/Brian A. Davis Associate Justice of the Superior Court

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