

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

DEREK NORMAN,
Plaintiff,

v

DYLAN SYER and SIRE
CONSULTANTS, LLC,
Defendants.

Case No. 2014-142340-CB
Hon. Wendy Potts

Consolidated with
Case No. 2014-142461-CH

OPINION AND ORDER RE: PLAINTIFF'S REVISED INTEREST
AND TAXABLE BILL OF COSTS AND
AMENDED JUDGMENT

At a session of Court
Held in Pontiac, Michigan

On
JUL 20 2016

This matter is before the Court on Plaintiff's request for statutory interest and costs as awarded in the parties' September 25, 2015 Judgment. By way of background, Plaintiff initiated this lawsuit against Defendants on allegations that Defendant Dylan Syer was diverting business assets and misappropriating proprietary and confidential information regarding the parties' unrecorded partnership, Sire Consultants. The Court ultimately entered a Judgment in this matter on September 25, 2015, wherein Plaintiff was awarded a net amount of \$9,200.00 in addition to statutory interest and costs. Subsequent to the entry of the Judgment, Plaintiff Derek Norman filed a Motion for Entry of Order Defining Statutory Interest and Costs in Judgment Dated September 25, 2015 in Case No. 2014-142340-CB on September 30, 2015.

The Court then addressed Plaintiff's request for statutory interest and costs in the November 10, 2015 Opinion and Order Re: Derek Norman's Motion for Entry of Order Defining Statutory Interest and Costs in Judgment Dated September 25, 2015 in Case No. 2014-142340-CB. In

accordance with that Opinion and Order, the Court directed Plaintiff to file a revised bill of costs in addition to a supplemental brief citing the statutory authority for the remaining taxable costs claimed. The Court provided Defendants with an opportunity to file a response within seven days of service of the revised bill of costs and supplemental brief. The Court would then review the parties' submissions and determine if the remaining costs are taxable and enter an amended judgment.

Plaintiff filed his Revised Interest and Taxable Bill of Costs on November 16, 2015 and Defendants filed their Objection on November 20, 2015. The Court acknowledges that due to a clerical oversight and/or clerical error, Plaintiff's request for statutory interest and costs has not yet been determined. The Court shall make a determination as to statutory interest and costs herein.

In their Objection, Defendants argue that the Court did not award Plaintiff costs and interest in her ruling from the bench. However, "[a] court speaks through its written orders." *Johnson v Johnson*, 276 Mich App 1, 12; 739 NW2d 877 (2007), citing to *In re Gazella*, 264 Mich App 668, 677; 692 NW2d 708 (2005), superseded by statute in part on other grounds in MCL 712A.19b(5). The Court's September 25, 2015 Judgment provides that statutory interest and costs are awarded.

Next, Defendants object to the requested \$2,000.00 in expert witness fees for Norman L. Sandles for the reasons that Plaintiff has failed to present a bill or invoice for those fees, Plaintiff has not presented a cashed check verifying payment to Mr. Sandles, and finally, the testimony of Mr. Sandles was faulty as he was unable to provide a valuation as of August 1, 2014. In the November 10, 2015 Opinion and Order, however, the Court stated that "Syer fails to explain how the \$2,000 fee is unreasonable for an expert who was required to review financial records and offer opinions on the value of the LLC. Syer's objection to the expert fee is denied." Defendants' renewed objection to Mr. Sandles' expert witness fees appears to be in the nature of a motion for

reconsideration on this particular issue, which is untimely. Thus, Defendants are entitled to recover \$2,000.00 in expert witness fees pursuant to MCL 600.2164.

Third, Defendants object to the witness travel expenses for Joshua Biletsky in consideration of MCL 600.2552(1) wherein travel expenses are recoverable “from the boundary line of this state that the witness passed in coming into this state, if his or her residence is out of this state.” Defendants maintain that Plaintiff should only be entitled to \$46.02 with regard to witness travel expenses for Joshua Biletsky. On June 10, 2016, Plaintiff filed a second Revised Interest and Bill of Costs, which reduced the witness travel expenses request to \$37.80 for Joshua Biletsky. The Court shall approve the witness travel expenses of \$37.80 for Joshua Biletsky as authorized by MCL 600.2552.

With regard to Plaintiff’s taxable bill of costs as it relates to claimed witness fees, Defendants assert that MCR 2.625(G)(3) requires an affidavit in support of the bill of costs that provides the distance traveled, the days actually attended, and the days the witnesses actually testified. Defendants argue that Plaintiff has not produced an affidavit regarding claimed witness fees as required by the applicable court rule.

The Court has reviewed Plaintiff’s Revised Interest and Taxable Bill of Costs document and observes that Plaintiff’s counsel, Gary R. Trzaskos, submitted an Affidavit that contains information relevant to the witnesses’ travel dates and trial dates when those witnesses were in attendance and actually testified. However, the Affidavit is not notarized.

“For a document to constitute a ‘valid affidavit,’ it must be: ‘(1) a written or printed declaration or statement of facts, (2) made voluntarily, and (3) confirmed by the oath or affirmation of the party making it, taken before a person having authority to administer such oath or affirmation.’” *Detroit Leasing Co. v City of Detroit*, 269 Mich App 233, 236; 713 NW2d 269 (2005). While the Court finds that the Affidavit complies with MCR 2.625(G)(3) in terms of

substance, the Court orders Plaintiff to file a notarized Affidavit within 10 days of the date of this Opinion and Order as a condition of payment of the witness expenses.

Finally, Defendants object to Plaintiff's request for independent legal process service costs. Defendants maintain that Plaintiff is entitled to a total bill of either \$12.35 or \$29.32 in mileage and attempted service charges. The Court has reviewed the Revised Interest and Taxable Bill of Costs document and observes that Plaintiff is requesting \$18.10 in independent legal process service costs, which appears reasonable and is authorized under MCL 600.2559.

Without objection by Defendants, the Court finds that Plaintiff is entitled to the remaining costs for the filing of the Summons and Complaint, motion filing fees, and trial costs, all of which are authorized by statute¹. For the reasons stated herein, the Court finds that Plaintiff is entitled to total costs in the amount of \$2,561.90. As stated previously, Plaintiff shall file a notarized Affidavit pursuant to MCR 2.625(G)(3) within 10 days as a condition of the award of witness fees.

With respect to statutory interest, the Court's November 10, 2015 Opinion and Order provided that the amended judgment will reflect \$258.92² in statutory interest as requested by Plaintiff in his September 30, 2015 Motion for Entry of Order. Yet, the Court recognizes that an amended judgment was not promptly entered and so at this time, the Court will grant Plaintiff's request for statutory interest in the amount of \$407.73, as the amount of statutory interest that has accrued through June 9, 2016.

AMENDED JUDGMENT

The Court hereby orders and enters JUDGMENT as follows:

Plaintiff Derek Norman is awarded his initial investment of \$17,000.00 as well as an additional \$15,000.00 as a return on his investment for a total of \$32,000.00.

¹ See MCL 600.2529 and MCL 600.2441.

² Defendants have not objected to Plaintiff's initial statutory interest request of \$258.92, nor the first revised request of \$278.46 in statutory interest.

That a credit of \$8,800.00 and a credit of \$14,000.00, for property retained by Plaintiff Derek Norman, shall be deducted from the \$32,000.00 awarded to Plaintiff Derek Norman.

That Defendant Dylan Syer shall pay \$9,200.00, which is the remaining balance of the \$32,000.00 owed to Plaintiff Derek Norman, after the credits noted above.

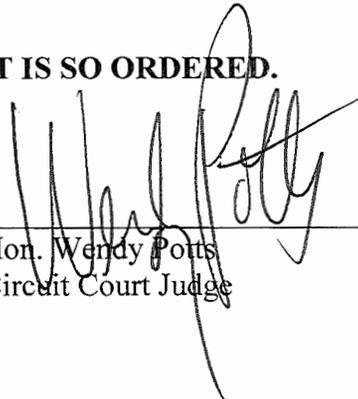
That Defendant Dylan Syer is awarded Sire Consultants, LLC, free and clear of any claim of right by Plaintiff Derek Norman.

That Defendant Dylan Syer's request for attorney fees for the recovery of his personal property is denied.³

That statutory interest is awarded. Plaintiff Derek Norman is entitled to statutory interest in the amount of \$407.73 through June 9, 2016.

That costs are awarded in the amount of \$2,561.90 to Plaintiff Derek Norman. Payment of witness fees shall be subject to the filing a notarized Affidavit within 10 days of the date of this Judgment.

This resolves the last pending claim and closes the case.

IT IS SO ORDERED.


Hon. Wendy Potts
Circuit Court Judge

Dated: JUL 20 2016

³ The Court denied Defendants' Motion for Reconsideration as to attorney fees on October 28, 2015.