

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

DEREK NORMAN, et al,

Plaintiffs,

v

DYLAN SYER, et al,

Defendants.

Case No. 2014-142340-CB

Hon. Wendy Potts

Consolidated with

Case No. 2014-142461-CH

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OPINION AND ORDER RE: DYLAN SYER AND SIRE CONSULTANTS, LLC'S MOTION  
FOR RECONSIDERATION AND CLARIFICATION OF THE COURT'S ORDER  
AND  
MOTION TO REQUEST RELIEF FROM ORDER

At a session of Court  
Held in Pontiac, Michigan

On

~~OCT 28 2015~~

In August 12, 2014, Plaintiff Derek Norman filed this action, Case No. 2014-142340-CB, claiming he had a partnership with Defendants Dylan Syer and Sire Consultants, LLC, and alleging various claims including violations of the Limited Liability Company Act, conversion, tortious interference with business relationships, and unjust enrichment. Norman asked the Court to order an accounting and dissolve Sire Consultants. One week later, Syer and Sire Consultants filed an action for claim and delivery, Case No. 2014-142461-CH, asserting that Norman would not allow Syer into Norman's residence to collect his property. Syer claimed that he lived with Norman and they conducted their business from Norman's house. The second case was transferred to this Court and the actions were consolidated.

The parties submitted their case for a bench trial on August 13 and 14, 2015, where the Court awarded a judgment for Norman of \$32,000, to be offset by \$22,800 in funds and business

property that Norman retained. The Court also awarded Syer his attorney fees incurred in his efforts to gain access to Norman's house and collect his personal property. The Court ordered Syer to present a bill of costs within 7 days. Syer promptly filed "Presentation of Attorney Billing," however, the Court concluded that Syer was claiming fees that were outside the scope of the Court's award. On August 31, the Court ordered Syer to resubmit his request including only the attorney fees incurred because of his inability to obtain his personal items from Norman's residence. The Court also ordered the parties to confer and submit an order consistent with the Court's other trial rulings. Syer filed a revised Presentation of Attorney Billing, which the Court also rejected because it "greatly exceeds the scope of the Court's Order." The Court then concluded that Syer waived his right to claim attorney fees.

The matter is now before the Court on Syer's motion for reconsideration or clarification of the Court's ruling. The Court has discretion to grant or deny reconsideration. MCR 2.119(F)(3); *Charbeneau v Wayne County General Hosp*, 158 Mich App 730, 733; 405 NW2d 151 (1987). Reconsideration is warranted if a party identifies a palpable error by which the Court and the parties have been misled and shows that a different disposition must result from correction of that error. MCR 2.119(F)(3).

Syer first appears to take issue with the Court's determination at trial that he was not a tenant in Norman's residence and the "lockout" statute, MCL 600.2918, does not apply. Syer asserts that he does not have to pay rent to qualify as a tenant. However, the Court's decision was not based solely on whether Syer was obligated to pay rent. After hearing the testimony and considering the evidence, the Court found that Syer was merely a guest, not a tenant. This distinction is significant because "a guest is not entitled to notice of termination and can be the subject of self-help eviction, including a lockout, by the proprietor, while a tenant has protection

against such measures.” *Ann Arbor Tenants Union v Ann Arbor YMCA*, 229 Mich App 431, 438; 581 N.W.2d 794 (1998). In order to prove that he was Norman’s tenant, Syer would have to show (1) Norman gave Syer permission or consent to occupy the premises, (2) Norman subordinated his rights to Norman by creation of an estate in Syer’s behalf with a reversion to Norman, (3) Norman transferred possession and control of the premises to Syer, and (4) the parties entered into an express or implied agreement. *Ann Arbor Tenants Union, supra* at 441-42. The Court concluded that Syer did not prove by a preponderance of the evidence that he was a tenant of Norman, and Syer fails to demonstrate any palpable error in that conclusion.

Syer also asserts that the Court erred in concluding that he waived his right to claim attorney fees by repeatedly failing to file an accurate statement of the attorney fees he incurred solely for the purpose of recovering his personal possessions. Syer asserts that his attorney carefully reviewed her billings and only included fees incurred as a direct result of Syer’s attempts to recover his personal property. Syer was locked out of Norman’s house in July 2014, and had to retain counsel to try to force Norman to return his belongings. Although Norman allowed Syer to pick up some of his belongings on August 7, 2014, Syer claims that some items were still missing. After Syer filed this action, Norman’s attorney offered to make Syer’s belongings available for pickup in October 2014. However, Syer claims that Norman still retained several items. Syer amended his complaint in November 2014 to list the items that were still missing which he claimed were valued at \$2,880. According to Syer, these items remained missing until the August 2015 trial.

The Court agrees with Syer that it took far too long to recover his personal possessions. However, the more than \$15,000 in attorney fees that Syer is claiming is patently unreasonable. By his own admission, Syer recovered most of his personal property by October 14, 2014, and

the remaining items that he claimed were still in Norman's possession were valued at \$2,880. From August 1, 2014 through October 14, 2014, Syer incurred approximately 16 hours of attorney fees, at a rate of \$200 per hour, for only \$3,200 in total fees. The remaining \$12,300 in attorney fees he is claiming were incurred from October 15, 2014 through the August 2015 trial. Thus, despite the fact that Syer has no legal right to claim attorney fees for the alleged lockout, he is now attempting to recoup more than \$12,000 in fees incurred to recover less than \$3,000 in personal property. Syer's claimed fees are outrageous, regardless whether he is entitled to claim them or not.

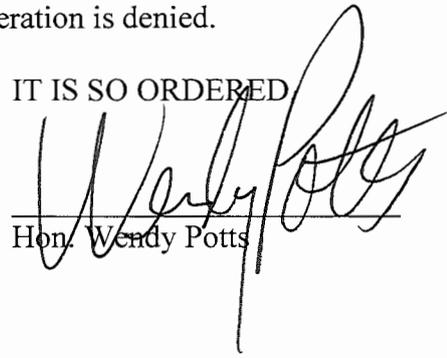
Because Syer was not a tenant, his only possible claims regarding Norman's retention of his personal property would be claim and delivery, which was the original theory of Syer's complaint, or a claim for common-law conversion, which it appears he alleged as a counterclaim. However, Syer cites no authority that would entitle him to recover his attorney fees under either a claim and delivery or common-law conversion theory. Because Syer is not entitled to claim attorney fees for the recovery of his personal property, he cannot demonstrate any error in the Court's decision to deny his request for fees.

For all of these reasons, Syer's motion for reconsideration is denied.

Dated:

OCT 28 2015

IT IS SO ORDERED

  
Hon. Wendy Potts