STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

LAWRENCE F. JASPER, II,
Plaintiff,

Case No. 2015-147901-CB
Hon. Wendy Potts

v

BLOOMFIELD VILLAGE INVESTOR HOLDINGS, LLC, DONALD J. NEWMAN, CRG CAPITAL PARTNERS, STEVE TOWLE, PCCP, LLC, and REDICO, LLC,
Defendants.
_____/

OPINION AND ORDER RE: SANCTIONS UPON REVIEW OF DEFENDANTS' VERIFIED BILL OF COSTS AND ATTORNEY'S FEES

At a session of Court
Held in Pontiac, Michigan
On
OCT 05 2016

This matter came before the Court on a Motion for Sanctions and Other Relief that was filed by the Bloomfield Defendants, namely Bloomfield Village Investor Holdings, LLC, Redico, LLC, PCCP, LLC, and Steve Towle. On August 5, 2016, the Court entered an Opinion and Order Re: Defendants' Motion for Sanctions and Other Relief wherein the Court ordered Plaintiff to pay the Bloomfield Defendants' taxable costs and reasonable attorney fees incurred in defending against Plaintiff's frivolous claims and Plaintiff's service of the improper Summons and stricken Second Amended Complaint.

As directed by the Court, the Bloomfield Defendants timely filed their Verified Bill of Costs and Attorney's Fees on August 11, 2016. The Court provided Plaintiff with 14 days, from the date of service of the Verified Bill, to file any objections to the costs or attorney fees claimed.

While Plaintiff filed a Motion for Reconsideration of the Court's August 5, 2016 Opinion and Order, which was subsequently denied on August 31, 2016, Plaintiff failed to file any objections to the costs or attorney fees claimed by the Bloomfield Defendants in their Verified Bill.

Once a fee applicant submits its detailed billing records, the opposing party may contest the reasonableness of the requested attorney fees. "If a factual dispute exists over the reasonableness of the hours billed or hourly rate claimed by the fee applicant, the party opposing the fee request is entitled to an evidentiary hearing to challenge the applicant's evidence and to present any countervailing evidence." *Smith v Khouri*, 481 Mich 519, 532; 751 NW2d 472 (2008). In this matter, Plaintiff has not objected to the Bloomfield Defendants' Verified Bill of Costs and Attorney's Fees to warrant an evidentiary hearing.

In their Verified Bill, the Bloomfield Defendants seek $74,368.50 in attorney fees and $1,816.64 in costs. The Verified Bill identifies fees that were charged by George A. Sumnik, Jonathan C. Myers, Richard A. Zussman, Marko J. Belej, Susan R. McMaster, and Sylvia Arakelian.[1] According to the Jaffe firm's invoices, Attorney George A. Sumnik, a partner in the Southfield office of the law firm, charges a rate of $370.00-$380.00 per hour. Attorney Jonathan C. Myers, a partner in the Southfield office of the law firm, charges a rate of $330.00 per hour. Attorney Richard A. Zussman, a member of the firm's Real Estate Practice Group, charges a rate of $440.00 per hour. Marko J. Belej, a partner in the Southfield office of the law firm, charges a rate of $440.00 per hour. Susan R. McMaster, a paralegal in the Southfield office of the law firm, charges a rate of $165.00 per hour. Sylvia Arakelian, whose position at the firm has not been identified, charges a rate of $100.00 per hour.

[1] The Court referred to the Jaffe firm's website in order to garner information regarding counsel for the Bloomfield Defendants.

In determining the reasonableness of the Bloomfield Defendants' claimed attorney fees, the Court applies the factors of *Smith v Khouri*, 481 Mich 519; 751 NW2d 472 (2008). The first step in the *Khouri* analysis is to determine if the requested attorney fees are comparable to the fees customarily charged in the locality for similar legal services. *Khouri*, *supra* at 530-531. "In determining this number the court should use reliable surveys or other credible evidence of the legal market." *Khouri*, *supra*. Moreover, "the burden is on the fee applicant to produce satisfactory evidence—in addition to the attorney's own affidavits—that the requested rates are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation." *Khouri, supra* at 531.

The Court observes that the Bloomfield Defendants and the Jaffe firm have not specifically addressed, in the Verified Bill, how the requested attorney fees are in line with the prevailing fees customarily charged within this community. Additionally, the Jaffe firm has not addressed the identified individuals' level of experience and skill.

As such, the Court relies on the State of Michigan's July 2014 Economics of Law Practice: Attorney Income and Billing Rate Summary Report for guidance. The Court notes that the mean hourly billing rates of a partner in a law firm range from $282.00 to $333.00. The mean hourly billing rate in Southfield is $308.00 and the mean hourly billing rate in Oakland County is $278.00. The aforementioned hourly rates as identified in the Attorney Income and Billing Rate Summary Report shall be utilized to determine the customary rates or the reasonable hourly rates for the Jaffe firm attorneys.

In light of the Attorney Income and Billing Rate Summary Report, the Court finds that it would be reasonable to attribute an hourly rate of $300.00 to Mr. Sumnik, Mr. Zussman, Mr. Belej, and Mr. Myers. The Court shall attribute a reasonable hourly rate of $100.00 to Ms.

McMaster as the paralegal. The Court shall disregard the charges attributed to Ms. Arakelian without any verification of her credentials or association with the Jaffe firm.

In terms of the amount of billable hours claimed, the Bloomfield Defendants have provided detailed billing statements for the number of hours billed. The Court has examined the statements from the Jaffe firm and notes that the firm has expended a total of 201.5 hours[2] in their defense of the Bloomfield Defendants. By attributing the reasonable, hourly rates set forth above, the Jaffe firm's fees would be $60,390.00.

The Court next examines whether or not the number of hours expended by the Jaffe firm were reasonable. "In considering the time and labor involved (factor 1 under MRPC 1.5 [a] and factor 2 under *Wood*) the court must determine the reasonable number of hours expended by each attorney." *Khouri*, *supra* at 532. Pursuant to Rule 1.5(a)(1) of the Michigan Rules of Professional Conduct, the Court determines the reasonableness of the hourly fees expended by examining "the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly." MRPC 1.5(a).

While the Jaffe firm was required to devote an adequate amount of time and labor in addressing Plaintiff's voluminous filings, the actual substance of those filings were fairly simple and straightforward. In terms of the novelty and difficulty of the questions involved, the Court finds that the issues[3] set forth in this lawsuit are not complex or sophisticated to necessitate a higher level of experience or skill by counsel. In essence, Plaintiff alleges that Defendants breached certain contracts by disclosing confidential information in order to wrongfully conspire and divert Plaintiff's opportunity to purchase the Bloomfield Park property. As such, the Court

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[2] The Court shall discount the .5 hourly charge or $50.00 in fees attributed to Ms. Arakelian's services.

[3] Plaintiff's original Complaint sought injunctive relief based on allegations of breach of contract, tortious interference, fraud, conspiracy, and concealment. The First Amended Complaint pursues various counts of breach of contract, fraud and misrepresentation, innocent misrepresentation, misappropriation of trade secrets, tortious interference with advantageous business expectancy, concert of action, and civil conspiracy.

finds that the 201.5 hours expended were excessive in light of the uncomplicated and unexceptional issues raised in this lawsuit.

In particular, the Court examines the Bloomfield Defendants' Exhibit 1, where the Jaffe firm incurred a total of 61 hours in its review of Plaintiff's original Complaint, Plaintiff's filing of two lis pendens, Plaintiff's motion for preliminary injunction, and Plaintiff's motion to disqualify the Jaffe firm as counsel for the Bloomfield Defendants. The Court is aware of the lengthy documents that Plaintiff has filed in this matter, however, the Court is of the opinion that a 61 hour charge, incurred to review the original Complaint and address two lis pendens and two motions, is not reasonable when the issues, again, are fairly clear-cut and routine.

The Court also notes that the Bloomfield Defendants only filed responsive pleadings in relation to the First Amended Complaint and not the original Complaint. Additionally, the Court observes that 3.7 hours are attributed to the Jaffe firm's appearance before the Court on the discharge of the lis pendens and other matters. The parties appeared before the Court for the motion hearing on July 29, 2015 at 10:21 a.m. for approximately 8 minutes. Accordingly, the Court finds that 30 hours would be reasonable to review and respond to the initial filings in this matter.

With respect to the Bloomfield Defendants' Exhibit 2, the Jaffe firm indicates that it incurred 20.6 hours during the month of August in responding to Plaintiff's Amended Complaint. The Jaffe firm represents that it commenced with the preparation of discovery, preliminary research for summary disposition motions, and the initiation of litigation holds. Further, the firm had to address Plaintiff's response to the motion for order discharging lis pendens and appear for hearing on that motion.

Following the examination of the August bill, the Court observes that the Jaffe firm spent approximately 11 hours in its preparation for litigation, including the preparation of discovery requests, when there was a strong indication that summary disposition would be appropriate to dismiss the Bloomfield Defendants from the lawsuit. The Court recognizes that parties must prepare for litigation even in the likelihood of dismissal, however, the necessary investment of time and labor can be controlled by counsel. As such, the Court finds that 10 hours would have been a reasonable investment of time for the work set forth in Exhibit 2.

Regarding the Bloomfield Defendants' Exhibit 3, 38.3 hours in fees were incurred for the research and preparation of the dispositive motions regarding lack of jurisdiction as to PCCP, LLC and Steven Towle. In this matter, Defendants PCCP, LLC and Steven Towle presented two affidavits to demonstrate that they clearly had no connection to the State of Michigan and neither had purposely availed themselves of Michigan law or sought contact with Michigan in a manner sufficient to confer this Court's jurisdiction over them. For the reason that the Bloomfield Defendants' request for dismissal due to lack of jurisdiction was rather effortless to prove, the Court finds that 15 hours would have been a reasonable number of hours incurred for that particular work.

In the Bloomfield Defendants' Exhibit 4, the Jaffe firm represents that it incurred 14.8 hours in its completion and filing of the dispositive motion concerning PCCP, LLC and Steven Towle as well as the summary disposition motion for failure to state a claim with respect to Bloomfield Village Investor Holdings, LLC and Redico, LLC. The Court finds the 14.8 hourly charge to be reasonable for the completion of the subject dispositive motions.

Concerning the Bloomfield Defendants' Exhibit 5, the Jaffe firm attributed 5.2 hours toward the preparation of discovery requests served by Plaintiff, their motion to compel

discovery, and a 3 page response to opposing counsel's motion to withdraw. The Court finds that 3 hours would have been reasonable to address discovery and respond to opposing counsel's succinct motion to withdraw.

In December 2015, the Jaffe firm charged 5.9 hours, as outlined in the Bloomfield Defendants' Exhibit 6, for their attendance at opposing counsel's motion to withdraw, the review of documents produced pursuant to a subpoena, and the review of Plaintiff's emergency injunction motion. The Court notes that the firm charged 4.6 hours to attend opposing counsel's motion to withdraw. The Court has reviewed the motion hearing on December 2, 2015 and notes that the hearing commenced at 10:28 a.m. and took approximately 10 minutes to argue. As such, the Court finds that 2 hours should be reasonably charged for that hearing for a total of 3.3 hours incurred for the month of December 2015.

With respect to the Bloomfield Defendants' Exhibit 7, the Jaffe firm expended 15.3 hours toward the preparation of a case management plan and the status conference itself, the review of Plaintiff's response to the dispositive motions, and the drafting of a reply brief. The Court finds these charges to be reasonable as services were rendered in anticipation of the status conference and the hearing on the dispositive motions.

Regarding the Bloomfield Defendants' Exhibit 8, the Jaffe firm represents that it incurred 15.5 hours for the review of supplemental papers filed by Plaintiff, attendance at a hearing on Plaintiff's third motion for preliminary injunction, and the preparation of a response to Plaintiff's motion for declaration of necessity. The Jaffe firm also indicates that it prepared for hearings and reviewed Plaintiff's motion for reconsideration and Second Amended Complaint. Again, the Court notes that the Jaffe firm charged 4.6 hours for the February 10, 2016 hearing, which commenced at 11:04 a.m. and concluded at 11:21 a.m. With regard to Plaintiff's motion for

declaration of necessity, the Bloomfield Defendants' 4 page response focused primarily on the fact that the motion was deficient under MCR 2.119(A). Thus, the Court finds that 10 hours would have been a reasonable investment of time for the services performed in February 2016.

Within the Bloomfield Defendants' Exhibit 9, the Jaffe firm asserts that they incurred 10.8 hours to prepare the motion to strike Plaintiff's Second Amended Complaint, to review Plaintiff's response, and to prepare for the motion hearing. The Court finds that the 10.8 hours charged are reasonable as they relate to the Bloomfield Defendants' response to Plaintiff's improperly filed Second Amended Complaint.

Concerning the Bloomfield Defendants' Exhibit 10, the Jaffe firm charged .20 hours for calls to the Court regarding the pending motion and status of the case. The Court finds that charge to be reasonable. The Bloomfield Defendants' Exhibit 11 also seeks reimbursement of .40 hours of services rendered for counsel's review of appeal papers received from Plaintiff. The Court will allow the .40 hourly charge as a reasonable charge.

Finally, the Bloomfield Defendants submit their Exhibit 12, which outlines the Jaffe firm's legal services rendered in relation to Plaintiff's improper service of the Summons and the Second Amended Complaint. In the Court's August 5, 2016 Opinion and Order Re: Defendants' Motion for Sanctions and Other Relief, the Court found that the Bloomfield Defendants had the right to pursue sanctions against Plaintiff for his actions related to the improper service of the Summons and Second Amended Complaint against Dale Watchowski. Specifically, Plaintiff had no legal authority under MCR 2.102(A) to draft, sign, and issue the Summons. Plaintiff also signed the Proof of Service as the individual who served the Summons and Second Amended Complaint in violation of MCR 2.103(A). For those reasons, the Court found that the Bloomfield Defendants were entitled to sanctions pursuant to MCR 2.114(E). Due to the rudimentary nature

of the sanctions motion, however, the Court concludes that 10 hours of legal services are reasonable.

Accordingly, the Court finds that 122.8 hours are a reasonable number of hours expended for the defense of the Bloomfield Defendants in this lawsuit. In recalculating the fees, the Court finds that the base number for reasonable attorney fees is $36,780.00.[4]

"Multiplying the reasonable hourly rate by the reasonable hours billed will produce a baseline figure. After these two calculations, the court should consider the other factors and determine whether they support an increase or decrease in the base number." *Khouri*, *supra* at 532–33.

The Michigan Supreme Court in *Wood* listed the following six factors to be considered in determining a reasonable attorney fee: "(1) the professional standing and experience of the attorney; (2) the skill, time and labor involved; (3) the amount in question and the results achieved; (4) the difficulty of the case; (5) the expenses incurred; and (6) the nature and length of the professional relationship with the client." *Wood v Detroit Auto. Inter-Ins. Exch.*, 413 Mich 573, 588; 321 NW2d 653 (1982).

Trial courts "have also relied on the eight factors listed in Rule 1.5(a) of the Michigan Rules of Professional Conduct, which overlap the *Wood* factors and include:

> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
> (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
> (3) the fee customarily charged in the locality for similar legal services;
> (4) the amount involved and the results obtained;
> (5) the time limitations imposed by the client or by the circumstances;
> (6) the nature and length of the professional relationship with the client;
> (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

[4] 201.5 hours – 122.8 hours = 78.7 hours to be deducted at a rate of $300.00/hour ($23,610.00) from the original fee amount of $60,390.00. 60,390.00 - $23,610.00 = $36,780.00.

(8) whether the fee is fixed or contingent." [MRPC 1.5(a).]
Khouri, *supra* at 529–30.

In consideration of the *Wood* factors, the Court notes that the Bloomfield Defendants have not made any representations as to the professional standing and experience of the attorneys from the Jaffe firm who contributed to their representation during this lawsuit. Certainly, the Court recognizes that the partners would be considered highly experienced attorneys.

In terms of the skill, time, and labor involved in this case, the Court finds that the issues raised by Plaintiff do not necessarily require a more skilled or experienced attorney to defend against the allegations in the First Amended Complaint. Associates could have easily handled discovery-related legal work as well as the research and preparation of certain motions in consideration of the uncomplicated issues at hand. Furthermore, the issues were not unique or novel, but rather typical or predictable and easy to address in the Bloomfield Defendants' responsive pleadings, motions, and other responsive filings. Nevertheless, the Jaffe firm utilized three partners and one member of the firm's real estate practice group to fully represent the Bloomfield Defendants.

For example, the firm's partner George Sumnik expended approximately 12 hours or $3,600.00 on research and over 10 hours or $3,000.00 on discovery-related work from July through November. The firm's partners George Sumnik and Jonathan Myers also expended well over 70 hours or $21,000.00 on the preparation of various motions, responses to motions, and objections during the pendency of this lawsuit. The Court finds that this expert level of representation, which demands higher fees, on every aspect of the case was unreasonable and as a result, the Court will reduce the total amount of fees by $10,000.00 for an updated, attorney fee amount of $26,780.00.

The Court notes that the Jaffe firm achieved a favorable outcome for the Bloomfield Defendants as they were dismissed from the lawsuit pursuant to summary disposition. Concerning the difficulty of the case, the Court has analyzed that topic numerous times within the Opinion and Order and has consequently reduced the total amount of fees. As for the fifth factor under the *Wood* analysis, the Court shall address the expenses incurred by the Bloomfield Defendants following the final determination of attorney fees in this Opinion and Order. With regard to the sixth factor under *Wood*, the Court is unaware of the nature and length of the professional relationship between the Jaffe firm and the Bloomfield Defendants.

In consideration of the factors outlined in Rule 1.5(a) of the Michigan Rules of Professional Conduct, the Court has already addressed factors (1), (3), (4), (6), and (7). With respect to the second factor, "the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer," there is no indication by the Bloomfield Defendants or the Jaffe firm that legal representation in this matter precluded the firm's ability to represent other clients. Regarding factor five, "the time limitations imposed by the client or by the circumstances," there has been no representation made to the Court that the Jaffe firm was restrained by time limitations in this matter. As for the final factor, the Court notes that the attorney fees are not contingent. For all of these reasons, the Court finds that attorney fees in the amount of $26,780.00 are reasonable and justified under the *Khouri/Wood* factors and pursuant to MRP 1.5(a).

With regard to expenses or taxable costs, the Court finds that the Bloomfield Defendants' request for costs shall be limited to those costs that are normally taxable in a civil action. The term "costs" has a definite meaning in the context of civil litigation: "The power to tax costs is wholly statutory. Therefore, costs are not recoverable where there is no statutory authority for

awarding them." *Portelli v I.R. Construction Products Co*, 218 Mich App 591, 605; 554 NW2d 591 (1996).

The Court observes that the Verified Bill of Costs and Attorney's Fees does not provide any statutory authority in support of the Bloomfield Defendants' request for reimbursement of taxable costs. Upon review of the costs outlined in the Bloomfield Defendants' Exhibits 1 through 12, the Court shall only award statutory costs pursuant to MCL 600.2529. For instance, "motion fees constitute taxable costs." *Van Elslander v Thomas Sebold & Associates, Inc.*, 297 Mich App 204, 225; 823 NW2d 843 (2012).

The Court has reviewed the case file and observes that the Bloomfield Defendants have filed the following motions: (1) July 15, 2015 Motion for Order Discharging Improperly Filed Lis Pendens, et al.; (2) September 30, 2015 Bloomfield Village Investor Holdings, LLC's Motion for Summary Disposition; (3) October 6, 2015 Motion to Dismiss Defendants PCCP, LLC and Steve Towle; (4) October 14, 2015 Redico, LLC's Motion for Summary Disposition; and, (5) June 8, 2016 Motion for Sanctions. As a result, the Bloomfield Defendants are entitled to $20.00 per motion filing for a total of $100.00 in statutory costs.

Accordingly and for the reasons stated herein, the Bloomfield Defendants are hereby awarded $26,780.00 as reasonable attorney fees incurred in defending against Plaintiff's claims. The Bloomfield Defendants are also awarded $100.00 in taxable costs.

The Court hereby orders Plaintiff to pay $26,880.00 to the Bloomfield Defendants within sixty (60) days of the date of this Opinion and Order.

IT IS SO ORDERED

Dated: OCT 05 2016

Hon. Wendy Potts
Circuit Court Judge