

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

SARMAD BRIKHO,

Plaintiff,

vs.

Case No. 2014-3977-CB

SHANT SHIRINIAN, SHIRINIAN INVESTMENTS,
LLC, VAN 8 COLLISION, INC., GARY
CUNNINGHAM, and GARY H. CUNNINGHAM,
P.C.

Defendants,

and

CHOICE AUTOMOTIVE GROUP, LLC, d/b/a
Chase Automotive Leasing,

Nominal Defendant.

OPINION AND ORDER

Plaintiff has filed objections to the receiver's 8th report. In addition, Defendants Shant Shirinian ("Defendant Shirinian"), Shirinian Investments, LLC and Van 8 Collision, Inc. (collectively, "Shirinian Defendants") have filed limited objections and a request to surcharge a portion of the receiver's fees to Plaintiff. Additionally, the receiver has filed a response to Plaintiff's objections and requests that the objections be denied and that the 8th report be approved.

I. Factual and Procedural History

In November 2014, Plaintiffs filed their original complaint in this matter. The original complaint contains the following claims: Count I- Violation of Michigan's Uniform Partnership Act, MCL 449.20 through 449.21; Count II-

Conversion; Count III- Equitable Accounting; Count IV- Fraudulent Concealment and Misrepresentation; Count V- Tortious Interference with Business and Contractual Relations; Count VI- Promissory Estoppel; and Count VII- Civil Conspiracy.

On November 3, 2014, the Court entered the parties stipulated Temporary Injunctive Order Winding Down Assets and Liabilities Regarding the Membership Interests in Choice Automotive Group, LLC. On December 4, 2014, the Court subsequently entered an Order granting Defendants' motion to dissolve Choice Automotive Group, LLC ("CAG") and to appoint a receiver to liquidate its assets ("Order"). In the Order, the Court appointed Anthony J. Caputo as the receiver ("Receiver"). The Receiver has been performing various duties in connection with his role in this matter.

On February 29, 2016, the Receiver filed his 8th report ("Report"). On March 4, 2016, the Shirinian Defendants filed their limited objections to the Report, as well as their request to surcharge the Receiver's fees. On March 9, 2016, Plaintiff filed his objections to the Report. On March 17, 2016, the Receiver filed his response to the objections. On March 21, 2016, the Court held a hearing in connection with the above-referenced issues and took the matters under advisement.

II. Arguments and Analysis

A. Plaintiff's Objections to the Report

In his brief, Plaintiff contends that the Receiver has billed for time spent by the Receiver improperly advocating on behalf of the Defendant. The issue

underlying this complaint is the fact that the Receiver proposed to disburse more than \$600,000.00 from CAG's receivership estate to Defendant Shirinian. While the Court recognizes that Defendant Shirinian would be the beneficiary of such a disbursement, the time spent by the Receiver in connection with the issue was spent defending his position that the proposed disbursement was appropriate, not acting as Defendant Shirinian's advocate. While the Court ultimately decided that the funds in question should be placed in escrow, the Court is not persuaded that the time spent by the Receiver on that issue was inappropriate, or that such fees should be attributed to Defendants. For these reasons, the Court is persuaded that Plaintiff's objections regarding the time spent by the Receiver in connection with his proposal to make a disbursement to Defendant Shirinian should be overruled.

Plaintiff also objects to one or more billing entries on February 23, 2016 for time spent communicating with the Shirinian Defendants' counsel and reviewing the motion for reconsideration the Shirinian Defendants filed. However, Plaintiff has not provided any evidence whatsoever that either of those activities was improper. Consequently, the Court is satisfied that Plaintiff's objections with respect to the Receiver's billing entries for February 23, 2016 are not properly support and must be rejected.

In addition, Plaintiff object to the Receiver's billing entry of 2 hours on February 25, 2016 for time that the Receiver spent preparing a letter to be sent to the Attorney Grievance Commission ("AGC") regarding Plaintiff's co-counsel.

The Receiver concedes that the entry in question relates to his complaint to the AGC regarding Plaintiffs' co-counsel.

As a preliminary matter, the Court acknowledges that lawyers have a duty, under Rule 8.3 of Michigan Rules of Professional Conduct ("MRPC"), to report significant violations of the MRPC to the AGC. See MRPC 8.3. However, the Court is convinced that complying with such duties is a responsibility each lawyer agrees to satisfy when he/she is sworn in as an officer of the court, not a duty that is independently imposed by agreeing to serve as a receiver in a particular matter. Accordingly, while the Receiver may have had a duty to make a complaint to the AGC, the Court is not persuaded that the Receiver is entitled to compensation for the time he spent complying with his ethical duty. Consequently, the Court is satisfied that Plaintiff's objection to the Receiver's request to be compensated for the two hours he spent preparing his complaint to the AGC should be sustained and that the Receiver's request to be compensated for that time must be rejected.

Finally, Plaintiff objects to the Receiver's billing entry for five hours spent preparing the Report. Specifically, Plaintiff contends that the Report contains many bills and charges that have no relevance to the receivership estate. However, Plaintiff fails to object to any particular content within the Report as being irrelevant. Moreover, when Plaintiff's counsel was asked to explain the basis for the objections he did not reference the time the Receiver spent on the Report. Consequently, the Court is satisfied that Plaintiff's objection must be rejected as improperly supported.

B. Defendants' Limited Objections and Request to Surcharge Receiver's Fees

As a preliminary matter, the Court notes that while Defendants' pleading is categorized as encompassing objections to the Report as well as a request to surcharge fees, the pleading itself only addresses its request to surcharge a portion of the Receiver's fees to Plaintiff. Consequently, the Court's review of Defendants' pleading will be limited to the issue of whether Plaintiff should be surcharged a portion of the Receiver's fees.

In its motion, Defendants request that the Court surcharge the fees for the time the Receiver spent responding the pleadings submitted on behalf of the Plaintiff that were later withdrawn. The Court may apportion a receiver's fees as equity requires. See *Geer v Finn*, 196 Mich 738; 163 NW 20 (1917). Defendants assert that \$40,549.39 of the \$57,459.00 in total fees requested by the Receiver should be surcharged to Plaintiff. While Defendants state a total amount that they intend were charged solely due to Plaintiff's improper actions, they have failed to identify which specific charges they assert should be surcharged, or the specific reason(s) that each specific charge should be surcharged. Accordingly, the Court is convinced that Defendants have failed to establish that any particular charge should be surcharged. As a result, Defendants' motion to surcharge will be denied.

IV. Conclusion

For the reasons set forth above, Plaintiff's objections to the Receiver's 8th Report are GRANTED, IN PART and DENIED, IN PART. Specifically, Plaintiff's request to strike the Receiver's charge for 2 hours on February 25, 2016 for time

spent preparing a complaint to the Attorney Grievance Commission is GRANTED. The remainder of Plaintiff's objections are DENIED.

In addition, the Shirinian Defendants' request to surcharge receivership fees is DENIED.

Finally, the Receiver's request to approve his fees as set forth in the Report is GRANTED except as to the charges referenced above. Said fees shall be paid as follows: 50% by Plaintiff and 50% by Defendant Shirinian.

In compliance with MCR 2.602(A)(3), the Court states this Opinion and Order does not resolve the last claim and does not close the case.

IT IS SO ORDERED.

Date: MAY 16 2016

Kathryn A. Viviano
Hon. Kathryn A. Viviano, Circuit Court Judge