

STATE OF MICHIGAN
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

LARRY A. SPEET; and S'TEL GROUP,
LLC,

Plaintiffs/Counter-Defendants,

vs.

SINTEL, INC., a Michigan corporation,

Defendant/Counter-Plaintiff.

Case No. 12-09225-CKB

HON. CHRISTOPHER P. YATES

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND VERDICT

The Michigan Sales Representatives' Commissions Act ("SRCA"), MCL 600.2961, includes incentives to induce the post-termination payment of commissions for sales of goods. For example, "in addition to actual damages, a defendant may be liable for up to an additional \$100,000 for an intentional failure to pay sales commissions when due." Frank W Lynch & Co v Flex Technologies, Inc, 463 Mich 578, 579 (2001). Beyond that, "the court shall award to the prevailing party" in a suit under the SRCA "reasonable attorney fees and court costs." See MCL 600.2961(6). Here, Plaintiffs Larry Speet and S'Tel Group, LLC, have invoked the SRCA in an effort to parlay contractually due sales commissions into a substantial verdict. The Court concludes that Speet and S'Tel Group, LLC, must be awarded \$6,865.72 in damages as well as their reasonable attorney fees and court costs.

I. Findings of Fact

Pursuant to MCR 2.517(A)(1), in an action tried without a jury, "the court shall find the facts specially, state separately its conclusions of law, and direct entry of the appropriate judgment." The Court must render "[b]rief, definite, and pertinent findings and conclusions on the contested matters"

that may take the form of a written opinion. See MCR 2.517(A)(2) & (3). Therefore, the Court shall begin with findings of fact, followed by conclusions of law, and ultimately the verdict.

For nearly a quarter of a century, Plaintiff Speet worked in various capacities for Steelcase Inc. (“Steelcase”), a major furniture manufacturer in West Michigan. In 2001, Speet opted for early retirement from Steelcase and began working as an independent sales representative for Defendant Sintel, Inc. (“Sintel”). On March 15, 2001, Speet signed a contract memorializing the terms of his relationship with Sintel. See Plaintiffs’ Exhibit 2. That agreement included a termination provision, which states:

This commission arrangement may be terminated by either party upon 90 days written notice. Sintel is responsible for paying commissions only on shipments that occur with in [sic] 90 days after termination.

Id. (Memorandum, ¶ 5). For a decade after he signed that agreement, Speet worked harmoniously with Steelcase on behalf of Sintel. In exchange, Sintel routinely paid sales commissions to Speet for requests for quotes (“RFQs”) that Sintel received from Steelcase.

In November of 2011, the owners of Sintel – including Plaintiff Speet’s brother, Gary Speet – sold the company to a new ownership group that included Nicholas Kulkarni. Although the buyers and sellers initially expected that the former owners of Sintel would retain significant roles in the company, the relationship between the buyers and sellers quickly soured, prompting the buyers to discharge the former owners in early 2012. Thereafter, for several tense months, Kulkarni tried to rein in what he regarded as the excesses and deficiencies of Plaintiff Speet. In April of 2012, Speet and Kulkarni signed a one-page agreement that Speet had prepared. See Plaintiffs’ Exhibit 4. That agreement added clarity to Speet’s responsibilities, but it made no reference whatsoever to the more comprehensive agreement Speet had signed in March of 2001. See id.

In the wake of signing the new agreement in April of 2012, Nicholas Kulkarni concluded that Plaintiff Speet brought no new Steelcase business to Sintel. Then, when Kulkarni decided that Speet had taken actions that damaged Sintel's reputation with Steelcase, Kulkarni ended the relationship between Sintel and Speet on May 31, 2012.¹ See Plaintiffs' Exhibits 5 & 32. Relying upon the 90-day termination provision in the March 2001 agreement, see Plaintiffs' Exhibit 22, Sintel paid sales commissions to Speet during the summer of 2012, and then Sintel ended all payments to Speet. As a result, Speet received a check from Sintel for \$4,940.87 on June 6, 2012, a check for \$5,597.89 on July 18, 2012, and a check for \$1,200.07 on August 8, 2012, but nothing beyond that. See Plaintiffs' Exhibit 40.

On October 3, 2012, Plaintiff Speet filed this action against Sintel,² alleging a single claim for breach of contract and demanding the full panoply of remedies under the SRCA. Sintel, in turn, responded on July 12, 2013, with counterclaims for breach of contract, breach of fiduciary duties, and tortious interference with a business relationship or expectancy. The Court denied competing motions for summary disposition on December 19, 2013, and ultimately set the case for trial to the bench. After six days of testimony presented on August 4, 5, 6, 7, 11, and 12, 2014, the Court heard comprehensive closing arguments from both sides. Now, based upon the record established at trial, the Court must resolve Plaintiff Speet's breach-of-contract claim and Sintel's counterclaims.

¹ At trial, Robert Easley – who works as a buyer for Steelcase – described Plaintiff Speet as a solid sales representative who did nothing to harm Sintel's relationship with Steelcase. The Court need not decide whether Nicholas Kulkarni correctly concluded that Speet damaged Sintel. By all accounts, the relationship between Speet and Sintel has suffered irreparable damage, so at this point the Court simply must decide whether, and to what extent, Speet is entitled to sales commissions.

² The complaint also identifies Plaintiff Speet's company, S'Tel Group, LLC, as a plaintiff. For the sake of simplicity, the Court shall refer to Speet and S'Tel Group, LLC, as one and the same throughout these findings of fact and conclusions of law, but not in the verdict itself.

II. Conclusions of Law

The broken relationship between Plaintiff Speet and Defendant Sintel has engendered claims, counterclaims, and a wide variety of accusations that have no bearing upon the outcome of this case. The Court shall initially focus upon Speet's claim for breach of contract against Sintel, then turn to Sintel's counterclaims against Speet, and finally establish the amount of damages that must be paid as compensation in this dispute.

A. Larry Speet's Claim for Breach of Contract.

Plaintiff Speet initiated this action to recover post-termination commissions purportedly due to him by Defendant Sintel. "When analyzing a claim for posttermination commissions, the first step is to look at the parties' contract." KBD & Associates, Inc v Great Lakes Foam Technologies, Inc, 295 Mich App 666, 675 (2012); see also MCL 600.2961(2). In this case, both sides admit executing the initial agreement in March 2001, see Plaintiffs' Exhibit 2, and the updated agreement in April 2012, see Plaintiffs' Exhibit 4, but the two sides disagree about the relationship between those two documents. Speet asserts that the April 2012 agreement superseded the March 2001 agreement and its termination provision, whereas Sintel insists that the April 2012 agreement merely supplemented the March 2001 contract, leaving the termination provision unaltered and applicable. Based upon a review of the evidence, the Court concludes that Sintel has the better argument on this point.

Under Michigan law, the freedom to contract "permits parties to enter into new contracts or modify their existing agreements." Quality Products and Concepts Co v Nagel Precision, Inc, 469 Mich 362, 371 (2003). When the terms of an initial contract and a subsequent agreement conflict and the new agreement contains an integration clause, the terms of the new agreement control. See

Archambo v Lawyers Title Ins Co, 466 Mich 402, 414 (2002). Even in the absence of an integration clause, “if the later contract covers the same subject matter as the earlier contract and contains terms that are inconsistent with the terms of the earlier contract, the later contract may supersede the earlier contract, unless it appears that this is not what the parties intended.” Id. at 414 n16. But when the new agreement neither conflicts with the earlier contract nor includes an integration clause, the Court need not surmise that the parties intended the latter agreement to supersede the former agreement. Instead, “the intention of the parties must be gleaned from all of the agreements.” See Omnicom of Michigan v Giannetti Investment Co, 221 Mich App 341, 346 (1997).

Here, as in Omnicom of Michigan, the parties’ “second agreement does not completely cover the subject of the first agreement.” See Omnicom of Michigan, 221 Mich App at 347. Specifically, the April 2012 agreement merely defines Plaintiff Speet’s responsibilities as an independent sales representative for Sintel and the commission rates Sintel had to pay to Speet for those services. See Plaintiffs’ Exhibit 4. The April 2012 agreement says nothing about termination of the relationship by either contracting party – a subject expressly covered in section 5 of the March 2001 agreement. See Plaintiffs’ Exhibit 2. Thus, the specific termination provision in the initial agreement in 2001 was “not rescinded by the second agreement” in 2012. See Omnicom of Michigan, 221 Mich App at 347. The context of the parties’ negotiations in 2012 fortifies this conclusion. Nicholas Kulkarni harbored deep concerns in April of 2012 that Plaintiff Speet was contributing nothing of value to the operations of Sintel. Recognizing that his brother had just been terminated by Sintel, Plaintiff Speet reached out to Kulkarni to prove his worth to Sintel, acknowledging all the while that Kulkarni did not want a long-term relationship with him. See Plaintiffs’ Exhibit 3. Any abrogation of the existing termination provision would have flown in the face of that shared understanding.

Plaintiff Speet makes much of his suggestion to Nicholas Kulkarni that he would “VOID the contract [Speet had] with the previous owner of Sintel and see if we can agree on a new one.” See Plaintiffs’ Exhibit 3. But nothing in the record even hints at Kulkarni’s assent to that suggestion. To the contrary, Kulkarni doggedly insisted throughout the negotiations that Speet had to be more accountable to Sintel than he had been to the previous owners of the company. Thus, the termination provision in the March 2001 contract between Speet and Sintel survived the April 2012 revision of the parties’ agreement. And because that termination provision – including its 90-day sunset term – remained in full force and effect throughout Speet’s relationship with Sintel, Speet cannot repair to the procuring-cause doctrine to reframe his contractual rights and responsibilities. As our Court of Appeals put it: “The procuring-cause doctrine applies when the parties have a contract governing the payment of sales commissions, but the contract is silent regarding the payment of posttermination commissions.” KBD, 295 Mich App at 673. Here, the termination provision contained in the March 2001 contract, which provides that “Sintel is responsible for paying commissions only on shipments that occur with in 90 days after termination[,]” see Plaintiffs’ Exhibit 2, forecloses application of the procuring-cause doctrine. Accordingly, the Court simply must determine whether Sintel breached its obligation to pay sales commissions to Speet under the terms of the parties’ contract.

As even Nicholas Kulkarni acknowledged, the termination provision invoked by Sintel gave Plaintiff Speet the contractual right to receive residual commissions for 90 days after termination. See Plaintiffs’ Exhibit 32 (“Sintel has reviewed your original contract that was continued, and you will be paid for 90 more days if Sintel’s legal consul agrees.”). Because the March 2001 agreement called “for paying commissions only on shipments that occur with in 90 days after termination[,]” see Plaintiffs’ Exhibit 2, and Sintel severed its contractual relationship with Speet on May 31, 2012,

see Plaintiffs' Exhibit 32, Sintel bore a contractual obligation to pay sales commissions to Speet for three months during the summer of 2012. See Plaintiffs' Exhibit 22. The Court concludes, based upon the evidence adduced at trial, that Sintel did not entirely fulfill that obligation.

Plaintiff Speet received three payments after his termination date: a check for \$4,940.87 on June 6, 2012; a check for \$5,597.89 on July 18, 2012; and a check for \$1,200.07 on August 8, 2012. See Plaintiffs' Exhibit 40. The three checks covered commissions for the months of May, June, and July of 2012. The Court concludes that the check issued on August 8, 2012, was inadequate, as even Nicholas Kulkarni acknowledged from the witness stand. In addition, the Court concludes that the failure of Sintel to issue a check to Speet in September of 2012 impermissibly deprived Speet of all compensation for commissions for August 2012, as Nicholas Kulkarni admitted on the witness stand. Therefore, the Court concludes that Sintel breached the terms of the March 2001 termination clause it invoked to end its relationship with Plaintiff Speet.

B. Sintel's Counterclaims.

The Court had misgiving about resolving Sintel's counterclaims on summary disposition, but the record developed at trial plainly demonstrates that all three counterclaims cannot be sustained. First, Sintel asserts that Plaintiff Speet breached the terms of the April 2012 agreement by failing to support Sintel's business with Steelcase as a sales representative. But Robert Easley – who served as Speet's principal point of contact at Steelcase – described Speet as “a solid sales representative” who did a “fine job” for Sintel. More broadly, Easley explained that a sales representative who tries to maintain too much contact with Steelcase can be detrimental to a business relationship. In sum, the Court finds no basis whatsoever to conclude that Speet breached his contract with Sintel.

Second, Sintel contends that Plaintiff Speet breached his fiduciary duties to the company by working for Sintel's alleged competitors. An independent sales representative's "dual representation of competitors is not necessarily a breach of the duty of loyalty and fair dealing where the agent believes that he is privileged to undertake such representation and has disclosed his representation of competitors to the principals involved." See H J Tucker & Associates, Inc v Allied Chucker & Engineering Co, 234 Mich App 550, 574 (1999). Here, the evidence not only establishes that Speet disclosed to Sintel his work for other companies, but also demonstrates that most of the companies for whom Speet furnished services did not compete directly with Sintel.³ Thus, the Court concludes that Speet did not breach any fiduciary duties he may have owed to Sintel.

Third, Sintel accuses Plaintiff Speet of "tortious interference with a business relationship or expectancy" between Sintel and Steelcase, but that claim depends upon proof that Speet engaged in "an intentional interference . . . inducing or causing a breach or termination of the relationship or expectancy[.]" Health Call of Detroit v Atrium Home & Health Care Services, Inc, 268 Mich App 83, 90 (2005). Here, the evidence establishes that Speet strengthened – rather than damaged – the business relationship between Sintel and Steelcase. Moreover, the two companies still do business together, so the Court finds no "breach or termination of the relationship or expectancy[.]" See id. Beyond that, Sintel's tortious-interference claim requires proof that Speet "acted both intentionally and either improperly or without justification." Dalley v Dykema Gossett PLLC, 287 Mich App 296, 323 (2010). Sintel has presented no such evidence. At most, Sintel has demonstrated that Speet did not always understand the wishes of Sintel's new owners in dealing with Steelcase. But the Court

³ Sintel's former president, Dennis Dornbush, testified that he knew Plaintiff Speet acted as an independent sales representative for two firms that engaged in some competition with Sintel, but those firms lacked authorization to sell to Steelcase, so Speet's work for them presented no conflict.

concludes that Speet always had good intentions in his contacts with Steelcase, and because Speet's "actions were motivated by legitimate business reasons," *i.e.*, increasing Sintel's business prospects with Steelcase, Speet's "actions would not constitute improper motive or influence." *Id.* at 324. As a result, the Court finds no basis for imposing liability upon Speet for any of the counterclaims advanced by Sintel.

C. Actual Damages.

Having found merit in Plaintiff Speet's breach-of-contract claim against Sintel, but no basis for liability on any of Sintel's counterclaims against Speet, the Court must next assess the damages that Sintel must pay to Speet. Unpaid sales commissions constitute the most obvious damages that Speet has incurred. *See Peters v Gunnell, Inc.*, 253 Mich App 211, 216-219 (2002). As the Court has already explained, Speet was undercompensated for July 2012 commissions in the Sintel check for \$1,200.07 issued on August 8, 2012, *see* Plaintiffs' Exhibit 40, and he was completely deprived of August 2012 commissions. But the parties have made the Court's work in computing the unpaid commissions much too challenging. During the trial, the parties bandied about commission rates that ranged from 2.18 percent to 3.00 percent, and they derived their monthly Steelcase sales figures from a virtually incomprehensible table introduced as "page Steelcase000038" in Plaintiffs' Exhibit 57. What results, in the Court's estimation, is a conservative formula for setting monthly commissions. That is, the gross sales figure for each 30-day period on "page Steelcase000038" found in Plaintiffs' Exhibit 57 must be multiplied by Speet's effective commission rate of 2.18 percent to yield the total amount due for Steelcase sales commissions during the relevant three-month period in the summer of 2012. Thus, Speet's sales commissions in the Sintel check issued on August 8, 2012, should have

been \$4,078.97,⁴ as opposed to the amount of \$1,200.07 that Sintel actually paid to him. Similarly, Speet's sales commissions for August 2012 should have been \$3,986.82,⁵ even though he received nothing from Sintel for that month. Accordingly, the Court concludes that Speet is entitled to unpaid sales commissions from Sintel in the aggregate amount of \$6,865.72.⁶ That figure constitutes the Court's baseline award of damages.⁷

D. Double Damages.

Pursuant to the SRCA, if Sintel "is found to have intentionally failed to pay the commission when due," Sintel must pay as damages "an amount equal to 2 times the amount of commissions due but not paid . . . or \$100,000.00, whichever is less." See MCL 600.2961(5)(b). But Sintel contends that Plaintiff Speet has no right to double damages under the SRCA for two separate reasons. First, Sintel asserts that Speet cannot rely upon the SRCA because the contract between Speet and Sintel provides the exclusive remedy available to Speet in his quest for post-termination commissions from Sintel. Second, Sintel insists that, even if Speet can rely on the SRCA as a basis for seeking double damages, the record does not support such a remedy here. The Court shall address each of those two arguments in turn.

⁴ The simple arithmetic is as follows: $\$187,108.53 \times .0218 = \$4,078.97$.

⁵ The simple arithmetic is as follows: $\$182,881.87 \times .0218 = \$3,986.82$.

⁶ The simple arithmetic is as follows: $\$4,078.97 - \$1,200.07 + \$3,986.82 = \$6,865.72$.

⁷ The Court's chosen commission rate multiplied by each 30-day sales figure from Plaintiffs' Exhibit 57 at page "Steelcase000038" does not precisely yield the amounts of the checks issued to Plaintiff Speet by Sintel on May 12, June 6, and July 18, 2012, see Plaintiffs' Exhibit 40, but those figures come close enough to convince the Court that its calculations do a reasonably reliable job of capturing the damages that Speet suffered in unpaid commissions. Indeed, neither side could do any better when pressed on this point by the Court during closing arguments.

Sintel claims that its contractual agreement with Plaintiff Speet – comprising the March 2001 contract and the subsequent April 2012 agreement – dictates the company’s obligation to make post-termination commission payments to Speet, so the SRCA has no role to play in this dispute. Under the SRCA, the “terms of the contract between the principal and sales representative shall determine when a commission becomes due.” See MCL 600.2961(2). The SRCA also prescribes a default rule that requires commissions “due at the time of termination of a contract between a sales representative and principal” to “be paid within 45 days after the date of termination[,]” see MCL 600.2961(4), and mandates that commissions “that become due after the termination date shall be paid within 45 days after the date on which the commission shall become due.” Id. In other words, the SRCA does not supplant contractual eligibility and timing rules for the payment of post-termination commissions, but the SRCA does impose a 45-day deadline for the payment of post-termination commissions that a principal owes to a sales representative under the terms of the parties’ contract. And if a principal “is found to have intentionally failed to pay the commission when due,” the SRCA dictates that the principal “is liable to the sales representative for . . . 2 times the amount of commissions due but not paid as required by [the SRCA] or \$100,000.00, whichever is less.” See MCL 600.2961(5)(b). The Court concludes that Sintel’s failure to pay Speet post-termination commissions under the parties’ contract for July and August of 2012 within the 45-day deadline imposed by the SRCA potentially entitles Speet to the remedy of double damages under the SRCA, MCL 600.2961(5)(b).

Next, the Court must turn to the double-damages provision of the SRCA to ascertain whether it applies here. The SRCA mandates a double-damages award if, but only if, “the principal is found to have intentionally failed to pay the commissions when due.” See MCL 600.2961(5)(b). Although this standard does not require Plaintiff Speet to prove bad faith on Sintel’s part, see In re Certified

Question, 468 Mich 109, 113-114 (2003), it absolves Sintel of responsibility for double damages if the underpayment of commissions was “accidental or unintended.” Peters, 253 Mich App at 221. Based upon the evidence at trial, the Court finds that Sintel’s underpayment of commissions for July 2012 and its failure to pay commissions for August 2012 was accidental or unintended, so the Court cannot impose double damages as a remedy against Sintel.

From the day that Nicholas Kulkarni terminated Plaintiff Speet’s sales-representative contract with Sintel, Kulkarni promised to pay Speet 90 days’ sales commissions. See Plaintiffs’ Exhibits 22 & 32. The e-mail confirming this promise from Kulkarni on June 1, 2012, was sent to all of the top managers at Sintel, which dutifully issued commission checks to Speet on at least three occasions after his termination – June 6, July 18, and August 8, 2012. See Plaintiffs’ Exhibit 40. Although the first two checks included the full amounts due to Speet, the third check came up short, and Sintel neglected to issue one final check to account for August 2012 sales commissions. During trial, no witness explained what happened to the checks for July and August 2012 commissions, but Kulkarni acknowledged that Sintel may have made an error. Upon review, of course, the Court has found that Sintel erred in computing Speet’s sales commissions, but the Court finds that that mistake was truly inadvertent, rather than intentional in any sense of the word. See MCL 600.2961(5)(b). In light of that finding, the Court must deny the request by Speet for double damages under the SRCA.

E. Attorney Fees.

As a general rule, “attorney fees are not recoverable as an element of costs or damages unless expressly allowed by statute, court rule, common-law exception, or contract.” See Marilyn Froling Revocable Living Trust v Bloomfield Hills Country Club, 283 Mich App 264, 297 (2009). Here,

the language of the SRCA provides the basis for Plaintiff Speet’s claim for attorney fees: “If a sales representative brings a cause of action pursuant to this section, the court shall award to the prevailing party reasonable attorney fees and court costs.” See MCL 600.2961(6). The “word ‘shall’ generally indicates a mandatory directive,” Smutter v Thornapple Township, 494 Mich 121, 136 (2013), but the SRCA narrowly defines a “prevailing party” as “a party who wins on all the allegations of the complaint” See MCL 600.2961(1)(c). Thus, Speet’s entitlement to attorney fees depends upon his ability to claim that he “prevailed fully on each and every aspect of the claim . . . asserted under the SRCA.” Peters, 253 Mich App at 223.

Even under the narrow approach of the SRCA, Plaintiff Speet constitutes a “prevailing party” in this case. He has won on the merits of his claim against Sintel for post-termination commissions, he has obtained an award of damages to compensate him for those unpaid commissions, and he has won on every counterclaim advanced by Sintel.⁸ In accordance with the analysis in Peters, 253 Mich App at 222-225, where our Court of Appeals upheld an attorney-fee award under the SRCA despite the plaintiff’s relatively modest success in obtaining damages, the Court concludes that Speet should be provided attorney fees under the SRCA, MCL 600.2961(6), as a “prevailing party.” To be sure, the Court has denied double damages to Speet under the SRCA and imposed a contractual 90-day sunset period upon his recovery of unpaid commissions, but those restrictions upon Speet’s damages do not undermine Speet’s victory on liability as to each claim and counterclaim at issue in this case. Therefore, the Court shall provide Speet with an award of “reasonable attorney fees and court costs” under the SRCA, MCL 600.2961(6).

⁸ The Court recognizes that none of Defendant Sintel’s counterclaims relies upon the SRCA, but each counterclaim presents a theory in derogation of Plaintiff Speet’s claim to sales commissions under the March 2001 and April 2012 agreements and the SRCA.

Arriving at a proper attorney-fee award may be difficult. The Court fears that this litigation has become so contentious and protracted that each side's attorney fees may outstrip any award of damages that either side should have contemplated. Alas, this seems to be the nature of commercial litigation, where competing parties seem willing to spend millions for defense – or offense, for that matter – but not one cent for tribute. Nevertheless, the Court cannot shirk its obligation to pare down Plaintiff Speet's attorney-fee request to that which is "reasonable" under Michigan law, see Smith v Khouri, 481 Mich 519 (2008), so the Court shall set the matter of attorney fees for an evidentiary hearing at which Speet must establish the "reasonableness" of each element of his attorney-fee claim and Sintel must be afforded the opportunity to challenge each aspect of that claim for attorney fees. See B&B Investment Group v Gitler, 229 Mich App 1, 15-17 (1998).

III. Verdict

For all of the reasons stated in the Court's findings of fact and conclusions of law, the Court hereby renders a verdict in favor of Plaintiffs Larry Speet and S'Tel Group, LLC, with regard to their claim against Defendant Sintel for post-termination sales commissions. The Court awards damages of \$6,865.72 to the plaintiffs as well as "reasonable attorney fees and court costs" under the SRCA, MCL 600.2961(6). Also, the Court renders a verdict in favor of the plaintiffs and against Sintel on each of Sintel's three counterclaims. Thus, Sintel shall recover nothing from the plaintiffs.

IT IS SO ORDERED.

Dated: December 29, 2014



HON. CHRISTOPHER P. YATES (P41017)
Kent County Circuit Court Judge