

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

NATURIFE FOODS, LLC, a foreign
limited liability company,

Plaintiff/Counter-Defendant,

vs.

SIEGEL EGG CO., INC., a foreign
corporation,

Defendant/Counter-Plaintiff.

Case No. 12-10585-CKB

HON. CHRISTOPHER P. YATES

ORDER ON PLAINTIFF'S MOTION FOR FINAL JUDGMENT

On November 11, 2014, a jury returned a sizable verdict in favor of Plaintiff Naturipe Foods, LLC (“Naturipe”) and against Defendant Siegel Egg Co., Inc. (“Siegel Egg”). In the fullness of time, Naturipe filed a motion for entry of a final judgment, demanding the verdict amount of \$327,644.98, augmented by costs in the amount of \$9,545.71, prejudgment interest, and attorney fees in excess of \$200,000. At oral argument on the motion, the Court approved each element of damages sought by Naturipe except the attorney-fee award. The Court bears an obligation to review the attorney-fee request for “reasonableness” under Smith v Khouri, 481 Mich 519 (2008). This order sets forth the Court’s determination that Naturipe is entitled to \$201,900.65 in attorney fees. Consequently, the Court invites Naturipe to submit a final judgment reflecting that award.

Pursuant to Michigan law, attorney fees generally “are not recoverable as an element of costs or damages unless expressly allowed by statute, court rule, common-law exception, or contract.” Marilyn Froling Revocable Living Trust v Bloomfield Hills Country Club, 283 Mich App 264, 297 (2009). Here, however, the parties’ contract provides Plaintiff Naturipe with the right to attorney

fees. Also, Michigan law ordinarily requires an evidentiary hearing to resolve a contested attorney-fee request, B&B Investment Group v Gitler, 229 Mich App 1, 15-17 (1998), but Defendant Siegel Egg waived its right to an evidentiary hearing, thereby enabling the Court to resolve the attorney-fee request on the parties' written submissions. Finally, our Supreme Court has prescribed a three-step analysis for considering the reasonableness of attorney fees. See Smith, 481 Mich at 522. Thus, the Court shall undertake that three-step process.

The Court first must determine a "reasonable hourly rate" that "represents the fee customarily charged in the locality for similar legal services[.]" Smith, 481 Mich at 531. Defendant Siegel Egg has chosen not to challenge the hourly rates charged by Plaintiff Naturipe's attorneys, so the Court shall use the hourly billing rates Naturipe has requested: \$325 for lead counsel Andrew Shier; and \$225 for co-counsel Nathan VanRyn.

The Court next must establish "the reasonable number of hours expended in the case." See Smith, 481 Mich at 531. At the outset, the Court must acknowledge that this case involved several complicated motions and a full-blown jury trial. As a result, the reasonable number of hours spent on this matter is understandably quite large.¹ Nevertheless, our Court of Appeals has explained that "excessive, redundant or otherwise unnecessary hours regardless of the attorneys' skill, reputation or experience' should be excluded." Van Elslander v Thomas Sebold & Associates, Inc, 297 Mich App 204, 231 (2012). In this case, Naturipe chose to double-staff hearings and the jury trial. The Court readily understands Naturipe's decision to do so, but Michigan law "only permits an award of a *reasonable* fee," which differs "from the prices charged to well-to-do clients by the most noted

¹ Plaintiff Naturipe has provided all of its billing statements to the Court as Exhibit 3 attached to its motion for final judgment. The Court has carefully reviewed those statements and concluded that Naturipe's attorneys justifiably devoted a substantial number of hours to this case.

lawyers and renowned firms in a region.”” Smith, 481 Mich at 528. Subtracting the hours billed by Attorney VanRyn whenever he was assisting Attorney Shier at hearings or trial, the Court arrives at a reduction of 22.7 hours to account for double-staffing.² Multiplying that number of hours by the hourly billing rate of Attorney VanRyn, *i.e.*, \$225, the Court concludes that Naturipe’s attorney-fee request of \$207,008.15 must be reduced by \$5,107.50 to yield a presumptive reasonable attorney-fee award of \$201,900.65.

The Court next must weigh several “factors to determine whether an up or down adjustment is appropriate.” See Smith, 481 Mich at 531. Those factors, spelled out by our Supreme Court in Smith, 481 Mich at 529-530, do not suggest any basis for an adjustment, either up or down, of the reasonable attorney fee computed by the Court. Plaintiff Naturipe’s attorneys’ experience and skill have already been factored into their hourly rates, the reasonable hours set by the Court reflect the appropriate amount of time devoted to the case, Naturipe’s ringing success is reflected in the large reasonable fee calculated by the Court, the Court’s award reflects Naturipe’s billing arrangement with its attorneys (*i.e.*, an hourly rate), and the Court does not believe that any adjustment should be made to take into account the length of the attorneys’ relationship with Naturipe or the limitations imposed by Naturipe upon its attorneys. Accordingly, the Court finds no justification to adjust its reasonable attorney-fee determination at the third step of the analysis prescribed by Smith.

Although the Court’s attorney-fee award here might seem excessive to the untrained eye, the Court has had the opportunity throughout the long history of this litigation to observe the attorneys

² The Court has made the following deductions: (1) 2.1 hours for a motion hearing held on January 25, 2013; (2) 1.1 hours for a motion hearing held on February 8, 2013; (3) 1.25 hours for a motion hearing held on October 21, 2013; (4) 1.25 hours for a motion hearing on July 11, 2014; (5) 8.0 hours for trial on November 3, 2014; and (6) 9.0 hours for trial on November 11, 2014.

on both sides of the case provide exemplary representation at every stage of the proceedings. This was a complex matter that required deft handling of factual and legal issues alike, and the attorneys for Plaintiff Naturipe unfailingly measured up to that lofty standard. Thus, the Court can confidently conclude that Naturipe is entitled to a reasonable attorney-fee award of \$201,900.65, which closely resembles the request that Naturipe made. Naturipe is invited to submit a proposed judgment that reflects the jury's verdict, the reasonable attorney-fee award set by the Court, and the other elements of Naturipe's recovery that the Court has already approved under Michigan law.

IT IS SO ORDERED.

Dated: April 3, 2015



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