

STATE OF MICHIGAN
COURT OF APPEALS

M.D.G. ENTERPRISES, INC.,

Plaintiff-Appellant,

v

SHAHEEN ENTERPRISES, L.L.C., DETROIT
COMMERCE BANK, and 710 WEST
CANFIELD, L.L.C.,

Defendants-Appellees,

and

DETROIT RENAISSANCE FOUNDATION,

Defendant.

UNPUBLISHED

October 14, 2010

No. 293412

Wayne Circuit Court

LC No. 08-120145-CK

Before: O'CONNELL, P.J., and BANDSTRA and MARKEY, JJ.

PER CURIAM.

Plaintiff appeals as of right, challenging the circuit court's orders granting its motion for attorney fees but awarding a lesser fee than requested. We affirm the grant of attorney fees, but vacate the amount of attorney fees, and remand. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff contracted with defendant Shaheen Enterprises, L.L.C. ("Shaheen"), to provide an improvement to real property owned by defendant 710 West Canfield, L.L.C. Defendant Detroit Commerce Bank (the "bank") held a mortgage on the property. Shaheen failed to pay plaintiff in full, leaving a debt of \$4,318. Plaintiff filed a construction lien against the property. It then filed this action, seeking damages against Shaheen and foreclosure of its lien under the Construction Lien Act (CLA), MCL 570.1101 *et seq.* The bank was the only participating defendant in the action; Shaheen and 710 West Canfield were defaulted and Detroit Renaissance Foundation was dismissed. After resolving the issue regarding the priority of plaintiff's lien and

the bank's mortgage, the trial court granted plaintiff's request for attorney fees, but held that the requested fee of \$15,992.50 was grossly excessive and limited plaintiff's fee to \$4,318.¹

Contract interpretation is an issue of law that is reviewed de novo on appeal. *DaimlerChrysler Corp v G-Tech Prof Staffing, Inc*, 260 Mich App 183, 184-185; 678 NW2d 647 (2003). The trial court's decision to award attorney fees and its determination of the reasonableness of the fees requested are reviewed for an abuse of discretion. *Windemere Commons I Ass'n v O'Brien*, 269 Mich App 681, 682; 713 NW2d 814 (2006).

"Under the 'American 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." *Reed v Reed*, 265 Mich App 131, 164; 693 NW2d 825 (2005). It is undisputed that plaintiff has a contractual right to attorney fees.² Plaintiff's contracts with Shaheen authorized the recovery of "any associated costs, including but not limited to attorney fees, or expenses attributable to nonpayment" if Shaheen did not pay plaintiff when payment was due. "[A] contractual clause providing that in the event of a dispute the prevailing party is entitled to recover attorney fees is valid." *Fleet Business Credit, LLC v Krapohl Ford Lincoln Mercury Co*, 274 Mich App 584, 589; 735 NW2d 644 (2007). However, that does not automatically entitle plaintiff to the fee requested. "[W]hen a contract specifies that a breaching party is required to pay the other side's attorney fees, only reasonable, not actual, attorney fees should be awarded[.]" *Papo v Aglo Restaurants of San Jose, Inc*, 149 Mich App 285, 299; 386 NW2d 177 (1986).

The reasonableness of an attorney fee has most often been determined by reference to the factors cited in *Wood v Detroit Auto Inter-Ins Exch*, 413 Mich 573; 321 NW2d 653 (1982). Those factors include the following:

(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. [*Id.* at 588 (internal quotation and citation omitted).]

In *Smith v Khouri*, 481 Mich 519, 522; 751 NW2d 472 (2008), the Court provided the following guidelines for determining a reasonable attorney fee:

¹ The trial court did not specify whether it was awarding attorney fees pursuant to a contractual provision, a statute, or both. Further, the judgment, which awarded plaintiff \$4,318 in damages, plus interest, and another \$4,318 in attorney fees against Shaheen, seems to indicate that the sums due are payable by all defendants. Plaintiff has indicated that its request for attorney fees is against Shaheen only. We also note that Detroit Renaissance Foundation was dismissed from the action "without costs or attorney fees to any party."

² We express no opinion whether plaintiff is entitled to attorney fees under § 118(2) of the CLA, MCL 570.1118(2), or whether Shaheen can be held liable for attorney fees under the CLA.

[T]he trial court should begin the process of calculating a reasonable attorney fee by determining factor 3 under MRPC 1.5(a), i.e., the reasonable hourly or daily rate customarily charged in the locality for similar legal services, using reliable surveys or other credible evidence. This number should be multiplied by the reasonable number of hours expended. . . . After this, the court may consider making adjustments up or down in light of the other factors listed in *Wood* and MRPC 1.5(a). In order to aid appellate review, the court should briefly indicate its view of each of the factors.

In *Smith*, the Court noted that when multiple attorneys are involved in a case, the trial court must engage in a separate analysis for each attorney and, in determining the reasonable number of hours expended, may exclude excessive, redundant, or otherwise unnecessary hours. *Id.* at 532 n 17, 534. Further, “[i]f a factual dispute exists over the reasonableness of the hours billed or the 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.” *Id.* at 532.

Because the trial court did not engage in the analysis required by *Smith* or make any findings regarding the relevant factors, we vacate the award of attorney fees and remand for reconsideration in light of *Smith*.

Affirmed in part, vacated in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Peter D. O’Connell
/s/ Richard A. Bandstra
/s/ Jane E. Markey