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STATE OF MICHIGAN

SIXTEENTH JUDICIAL CIRCUIT COURT

BOSQUETT & COMPANY,

Plaintiff,

vs.

Case No. 2016-218-CB

STERLING BENEFITS, LLC,

Defendant.

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OPINION AND ORDER

Plaintiff has filed a motion for case evaluation sanctions pursuant to MCR 2.403(O). Defendant has filed a response and requests that the amount of sanctions sought be reduced.

I. Procedural History

In this matter, both sides rejected the case evaluation award of \$175,000.00. On September 6, 2018, the Court entered its Opinion and Order awarding Plaintiff \$228,672.06 in connection with its claims. On September 24, 2018, Plaintiff filed its instant motion for case evaluation sanctions. Defendant has since filed a response and requests that the amount of sanctions sought be reduced.

FILED
2018 OCT 11 AM 9:03
MACOMB COUNTY CLERK

II. Analysis

As a preliminary matter, Defendant concedes that Plaintiff is entitled to case evaluation sanctions. However, Defendant disputes whether the amount of fees Plaintiff has requested is reasonable. Pursuant to MCR 2.403(O)(1) and 2.403(O)(6)(b), Plaintiff is entitled to those costs taxable in any civil action, and "a reasonable attorney fee based on a reasonable hourly or daily rate as determined by the trial judge for services

necessitated by the rejection of case evaluation....” Plaintiff submits that the actual attorney fees necessitated by the rejection of the case evaluation award totals \$119,867.50, which represents 192.25 hours of work by Mr. Frank, and 95.3 hours by Mr. Bullard. Plaintiff requests that Mr. Frank’s hours be compensated at a rate of \$450.00 per hour, and that Mr. Bullard’s hours be compensated at a rate of \$350.00 per hour.

The Court in *Smith v Khouri*, 481 Mich 519, 529; 751 NW2d 472 (2008), relying on *Wood v Detroit Automobile Inter-Ins Exch*, 413 Mich 573; 321 NW2d 653 (1982), set forth six factors the Court should consider when 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.

The *Khouri* Court further stated that trial courts have also relied on the eight factors listed in Rule 1.5(a) of the Michigan Rules of Professional Conduct:

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
8. Whether the fee is fixed or contingent.

Smith, 481 Mich at 530.

In awarding attorney fees, the Court must first determine a reasonable hourly rate. *Id.* at 530. This requires the Court to ascertain a reasonable attorney fee, which is a fee similar to that customarily charged in the locality for similar legal services and which may differ from the actual fee charged or the highest rate the attorney might otherwise command. [emphasis in original text] *Id.* at 528, 530. The party seeking the fees may offer testimony or empirical data in surveys and other reliable reports, such as those provided by the State Bar of Michigan. *Id.* at 530-532. Next, the Court must determine the reasonable number of hours expended by the attorney, which requires the submission of detailed billing records. *Id.* at 532. Finally, the Court is required to multiply the reasonable hourly rate by the reasonable number of hours, which will produce a baseline figure. *Id.* at 533. However, the Court's calculated baseline figure may be increased or decreased in consideration of the above-referenced factors. *Id.*

In support of its request, Plaintiff has provided, and relied upon, the 2017 Economics of Law Practice Attorney Income and Billing Rate Summary Report ("Summary Report"), as well as affidavits of counsel attesting to the accuracy of their billing records. Pursuant to the Summary Report, the mean and median rates charged in the Mt. Clemens area are \$266.00 and \$250.00 per hour, respectively, the mean and

median rates for business litigation are \$304.00 and \$295.00 per hour, respectively, and the mean and median rates in Macomb County are \$265.00 and \$250.00 per hour, respectively. (See Summary Report at 5, 8.) Further, the 75th and 95th percentiles in the Mount Clemens area are \$300.00 and \$495.00 per hour, respectively. The 75th and 95th percentile rates for business litigation are \$350.00 and \$495.00 per hour, respectively. Finally, the 75th and 95th percentile rates in Macomb County are \$300.00 and \$425.00 per hour, respectively. Accordingly, Mr. Frank requests that his hours be compensated at a rate (\$450.00) that is above the 95th percentile in Macomb County, and is approximately in the 95th percentile in the Mount Clemens area and for all attorneys in Michigan involved in business litigation. (Id.) Mr. Frank supports that requested rate with the fact that he has been practicing since 1985 (33 years). The rate of \$450.00 per hour for an attorney practicing between 31 and 35 years falls closer to the 95th percentile (\$515.00) than the 75th percentile (\$325.00). (Id. at 4.) Mr. Frank also highlights his accomplishments and high rating. (See Plaintiff's motion, at p. 4.)

Based on the above, the Court is persuaded that the hourly rate for Mr. Frank should be reduced to \$250.00 per hour. While the Court recognizes Mr. Frank's impressive credentials, the Court also notes that this matter primarily involved contract interpretation, which is not a complicated legal issue. Moreover, Plaintiff recovered only \$228,672.06, which is less than one third of the \$797,575.99 that it requested in its complaint. Although this matter was litigious, that fact is reflected by the high total number of hours Plaintiff's counsel expended working on this matter. Given the relatively simple nature of this case, the low judgment obtained in relation to the amount

sought, as well as the average fees charged in this area for similar work, the Court is convinced that Mr. Frank's requested rate should be reduced to \$250.00 per hour.

As to Mr. Bullard, he has been practicing since 1975 (43 years) and is also AV rated. His requested rate of \$350.00 falls slightly above the 75th percentile rate for an attorney practicing over 35 years. However, Mr. Bullard works at a small firm (3 attorneys). A rate of \$350.00 falls exactly halfway between the 75th and 95th percentile rates for an attorney working in a firm of three attorneys. Plaintiff has stated that Mr. Bullard's role in this case was to provide assistance. (See Plaintiff's Motion, at p. 3.) Indeed, Mr. Bullard appears to have been engaged primarily in document review and drafting emails. Given Mr. Bullard's limited role in this case, less extensive credentials than Mr. Frank, and the simple nature of the work performed, the Court is convinced that Mr. Bullard's rate should be reduced to \$100.00 per hour. Accordingly, if the hours expended are deemed reasonable, the attorney fees awarded would be reduced from \$119,867.50 to \$57,592.50.

Turning to the hours expended, the fee applicant has the burden of supporting their claimed hours with evidentiary support, including detailed billing records, which the opposing party may contest. *Smith*, 481 Mich at 532. In this matter, Plaintiff's counsel has submitted itemized bills in support of their requests for fees. (See Plaintiff's Exhibit G.) However, Defendant has filed numerous objections to the amount of hours reflected in the records, which the Court will now address in turn.

First, Defendant argues that Plaintiff should not be able to recover fees for time spent by Mr. Frank reviewing reports produced by Defendant. Specifically, Defendant argues that reviewing reports was Mr. Bullard's main responsibility and that they both

charged for the same work. Where fees are duplicative, a court may refuse to award a request to recover such fees. *Augustine v Allstate Ins Co*, 292 Mich App 408, 438; 807 NW2d 77 (2011). Upon reviewing the records Plaintiff has submitted, the Court is satisfied that it appears that a number of the entries highlighted by Defendant in its response are duplicative. As a result, the Court is convinced that the number of hours billed for those services should be reduced by half (24 hours). Therefore, the requested award will be further reduced by \$6,000.00 (\$250.00/hr X 24).

Defendant also argues that a portion of the 1/3/18 entry for "prepare for mediation, outline witness testimony deal with assignment of judgment" should be excluded because the assignment of judgment was part of a different case. The amount of hours listed for that entry is 5 hours. The assignment of judgment appears to be part of Oakland County case no. 2009-103556-CK. Accordingly, the amount of fees requested for that entry must be reduced. Consequently, the Court is convinced that Plaintiff's sanctions award should be reduced by \$500.00.

Next, Defendant asserts that the 1/10/18 entry for "prepare for and attend hearing on the motion to set aside default judgment, prepare for and attend trial, prepare for the next day of trial" should be reduced from 12 hours as the motion to set aside default was a motion in connection with the Oakland County Case. Indeed, no such motion was heard in this case. Accordingly, it appears that a portion of the requested hours should be eliminated. The Court is persuaded that the entry in question for 12 hours should be reduced by 50%, thereby reducing the sanctions award by \$1,500.00 (6 hours X \$250.00/hr).

Defendant also challenges the 1/29/18 and 1/30/18 2 hour entries for "post trial brief". Specifically, Defendant argues that there was already a previous entry of 3 hours for drafting Plaintiff's post trial brief on 1/27/18. Upon reviewing the billing records, as well as the brief in question, the Court is satisfied that the 3 hour entry on 1/27/18 sufficiently reflects a reasonable amount of time to spend on the motion in question, and that the additional 2 hour entries are excessive. As a result, the 1/29/18 and 1/30/18 billing entries will be eliminated, thereby reducing the sanctions award by \$1,000.00 (4 hours X \$250.00/hr).

In addition, Defendant avers that the 9/12/18 entry of two hours for finalizing Plaintiff's motion for sanctions is unreasonable as Plaintiff's counsel had already spent 3 hours reviewing this Court's prior Opinion and Order and drafting the motion for sanctions. Upon reviewing the billing records, as well as the motion in question, the Court is satisfied that the 3 hour entry sufficiently reflects a reasonable amount of time to spend on the motion in question, and that the additional 2 hour entry is excessive. As a result, the 9/12/18 billing entry will be eliminated, thereby reducing the sanctions award by \$500.00 (2 hours X \$250.00/hr).

Finally, Defendant challenges Mr. Bullard's entries of .4 and .8 hours for email exchanges. After reviewing the entries in question, the Court is satisfied that Mr. Bullard's fees for emails are excessive. Consequently, the 23.7 hours that appear to have been allocated to drafting emails will be reduced by half (\$1,185.00).

Lastly, Plaintiff requests \$4,046.20 in taxable costs. Defendant does not appear to challenge this request. As a result, Plaintiff's request for the taxable costs will be granted.

Conclusion

For the reasons discussed above, Plaintiff's motion for case evaluation sanctions is GRANTED, IN PART, and DENIED, IN PART. Specifically, Plaintiff is hereby awarded \$4,046.20 in costs and \$46,907.50 in attorney fees. In compliance with MCR 2.602(A)(3), the Court states this matter REMAINS CLOSED.

IT IS SO ORDERED.



RICHARD L. CARETTI
Circuit Court Judge

Dated: October 15, 2018

cc: Jonathan B. Frank, Attorney for Plaintiff
Vincent Hoyumpa, Attorney for Defendant
Avis Choulagh, Co-Counsel for Defendant