

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

THE SERVICE PROFESSOR, INC.,

Plaintiff,

Case No. 19-07021-CBB

vs.

HON. CHRISTOPHER P. YATES

GREGG TROVINGER,

Defendant.

OPINION AND ORDER TRANSFERRING CASE
TO THE MUSKEGON COUNTY CIRCUIT COURT

Without question, this case must be transferred to the Muskegon County Circuit Court. Our Court of Appeals said so in an order entered on January 17, 2020. Beyond that, the Court must order Plaintiff The Service Professor, Inc., to pay “the statutory filing fee applicable to the court to which the action is transferred[.]” See MCR 2.223(B)(1). And, of course, no business litigation is complete without a demand from somebody for an order instructing somebody else to pay attorney fees, so the Court must address Defendant Gregg Trovinger’s request under MCR 2.223(B)(1) for “reasonable compensation for [his] expense, including reasonable attorney fees, in attending in the wrong court.” See id. As a threshold matter, the plaintiff correctly notes that MCR 2.223(B)(1) merely states that the Court “may include [such] reasonable compensation” as part of the mandatory change of venue under MCR 2.223, and the use of the word “may” – as opposed to “shall” – empowers the Court to exercise its discretion in determining whether to provide “reasonable compensation” to Trovinger. See Aroma Wines & Equipment, Inc v Columbian Distribution Services, Inc, 303 Mich App 441, 449 (2013), aff’d, 497 Mich 337 (2015).

Although the Court understands the plaintiff's prickliness about the order to transfer the case to the Muskegon County Circuit Court despite Defendant Trovinger's brazen attempts to solicit the plaintiff's employees in Kent County, the financial burden imposed upon Trovinger as a direct result of the filing of the case in the wrong circuit court cannot be gainsaid. To claw his way to Muskegon, Trovinger had to file a motion for change of venue and an application for leave to appeal the Court's ruling on venue. Thus, the expenses Trovinger incurred in presenting those submissions should be tacked onto "the statutory filing fee applicable to the court to which the action is transferred." See MCR 2.223(B)(1). But the Court determines, in its discretion, that no other costs or fees should be shifted from Trovinger to the plaintiff under MCR 2.223(B)(1) because no other costs or fees were necessarily incurred by Trovinger "in attending in the wrong court." See id. Therefore, the amount that the plaintiff must pay to Trovinger as "reasonable compensation for the defendant's expense, including reasonable attorney fees, in attending in the wrong court" should include only the expenses that were directly related to the dispute over venue.

Because the "reasonable compensation" due to Defendant Trovinger consists almost entirely of "reasonable attorney fees" authorized by MCR 2.223(B)(1), the Court shall turn to the ruling of our Supreme Court in Pirgu v United Services Automobile Association, 499 Mich 269 (2016), which prescribed a three-step process for "determining the reasonableness of attorney fees[.]" Id. at 281. The Court "must begin its analysis by determining the reasonable hourly rate customarily charged in the locality for similar services." Id. Trovinger had two attorneys working on the venue dispute, Ross Reuterdaahl who billed at \$350 per hour and Julianna Hyatt-Wierzbicki who billed at \$325 per hour. The plaintiff has conceded that those hourly rates are reasonable for those two attorneys, and the Court agrees with that concession, so the Court shall use those hourly rates in its analysis.

Next, the Court must multiply the approved hourly rates “by the reasonable number of hours expended in the case to arrive at a baseline figure.” See Pirgu, 499 Mich at 281. That requires the Court to review the attorneys’ “detailed billing records,” Smith v Khouri, 481 Mich 519, 532 (2008), which the Court has obtained from Defendant Trovinger’s attorneys and attached to this opinion as Appendix A. As the markings on the billing records reveal, the Court found 20.5 hours attributable to Attorney Reuterdahl and 3.2 hours attributable to Attorney Hyatt-Wierzbicki compensable under the Pirgu analysis. Specifically, the Court counted as compensable all of Attorney Reuterdahl’s work on the motion for change of venue, the application for leave to appeal the Court’s venue ruling, and the subsequent dispute about recoverable fees and costs under MCR 2.223(B)(1). In similar fashion, the Court counted as compensable all of Attorney Hyatt-Wierzbicki’s work on the venue issue with one exception – the entry for 0.3 hours billed for reviewing the plaintiff’s response to the motion for change of venue – that the Court found redundant with Attorney Reuterdahl’s billing of 0.3 for that very same work.¹ See Smith, 481 Mich at 532 n17 (“in determining hours reasonably expended, the Court should exclude ‘excessive, redundant or otherwise unnecessary’ hours”). Thus, the “baseline figure” is \$8,215, *i.e.*, 20.5 hours times \$350 for Attorney Reuterdahl plus 3.2 hours times \$325 for Attorney Hyatt-Wierzbicki.

Finally, the Court must consider adjusting the baseline figure under eight factors identified in Pirgu, 499 Mich at 282. The first factor makes no difference because “the experience, reputation, and ability of the lawyer or lawyers performing the services” is adequately taken into account in the

¹ The Court also excluded time billed for a “[c]onference with [c]lient,” an *ex parte* motion to stay the proceedings, and travel to attend a status conference that the Court invited counsel to join by conference call. The Court regards the conference with Defendant Trovinger as too unrelated to the venue issue to be compensable, and the time spent on the *ex parte* motion and the drive to Grand Rapids as excessive and “otherwise unnecessary[.]” See Smith, 481 Mich at 532 n17.

hourly rates they charged. See id. The second factor focusing on “the difficulty of the case” does not warrant any adjustment, notwithstanding the plaintiff’s contention that venue is a simple concept that should not have required much billing to write and argue a motion and then file an application for leave to appeal. See id. The third factor – “the amount in question and the results obtained” – is largely inapplicable because the parties were fighting about venue, not liability or damages. See id. The fourth factor dealing with “the expenses incurred” likewise has no bearing on the fee award because MCR 2.223(B)(1) prescribes the recoverable expenses and Defendant Trovinger has not had to incur any other expenses of any significance at this early stage of the case. See id. Similarly, the fifth factor concerning “the nature and length of the professional relationship” between Trovinger and his attorneys does not apply because Trovinger did not receive a preferred-client rate or another reduction in the otherwise-applicable fees because of a longstanding relationship with his attorneys. See id. The Court has no evidence concerning the sixth factor, which focuses on the effect of taking this case upon Trovinger’s attorneys’ other work opportunities. See id. Likewise, the seventh factor discussing “time limitations” has no bearing upon the fees Trovinger had to pay. Finally, the eighth factor – “whether the fee is fixed or contingent” – cannot alter the “baseline figure” because nothing in the record suggests that Trovinger has such a fee arrangement with his attorneys. Consequently, the Court shall direct the plaintiff to pay Trovinger the “baseline figure” of \$8,215 in attorney fees pursuant to MCR 2.223(B)(1).

Additionally, because MCR 2.223(B)(1) allows for an award of the “expense . . . in attending in the wrong court[,]” the Court shall add to the reasonable attorney fees of \$8,215 the cost of filing the motion for change of venue, which was \$20.60. See Appendix A. In contrast, the Court shall disallow the request for an additional \$20.60 for filing the *ex parte* motion to stay proceedings and

the minimal parking fee of \$5.00 per visit to the Kent County Courthouse for motion hearings and a status conference. The *ex parte* motion was neither necessary nor closely tied to the venue issue, and matters such as mileage and parking fees have never been treated at taxable costs. Finally, the transcript fee of \$140 cannot be recovered in the trial court even though the transcript played a role in the application for leave to appeal. See Van Elslander v Thomas Sebold & Associates, Inc, 297 Mich App 204, 223-224 (2012). Thus, the Court shall add to the “baseline figure” for attorney fees the single motion-filing fee of \$20.60 to arrive at a total award of \$8,235.60, *i.e.*, \$8,215 in attorney fees plus \$20.60 in costs. That is the price the plaintiff must pay in order to start litigating its claims against Defendant Trovinger in Muskegon County.² See MCR 2.223(B)(2).

IT IS SO ORDERED.

Dated: February 3, 2020



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

² In making such a substantial award, the Court fears that Defendant Trovinger may rue the day that he aggressively pursued a large award of expenses for the relatively small task of changing venue. The contract between the plaintiff and Trovinger contains a fee-shifting provision that may well allow the plaintiff to take a similarly aggressive approach to recovering its attorney fees for the entire litigation from Trovinger. See Complaint, Exhibit 1 (Non-Competition, Non-Solicitation and Confidentiality Agreement, § 8 – Costs of Enforcement). But another judge eventually will have to decide whether Trovinger must reap what he has sown.

Appendix A: Billing Sheets

Bill of Costs Regarding Change of Venue
Gregg Trovinger v The Service Professor

Date	Description	Initials	Time	Hourly Rate	Total Charge
9/30/2019	Conference with Client; Review Summons and Complaint; Telephone conference with Court regarding Proof of Service and to obtain a hearing date for Motion to Change Venue; Prepare Motion to Change Venue; Appearance; Notice of Hearing; Email to Client and Attorney Reuterdaahl regarding status.	JMHW	1.7	\$ 325.00	\$ 552.50
9/30/2019	Conference with Client.	RBR	0.5	\$ 350.00	\$ 175.00
10/1/2019	Filing Fee re Motion to Change Venue	LF	0	\$ -	\$ 20.60
10/1/2019	Research in support of Motion to Change Venue; Begin Drafting Brief in Support of Motion to Change Venue; Conference with Client; Prepare Affidavit.	JMHW	0.6	\$ 325.00	\$ 195.00
10/1/2019	Research; Work regarding Brief in Support of Motion to Change Venue.	RBR	2.8	\$ 350.00	\$ 980.00
10/1/2019	Revise Motion to Change Venue; Prepare Proof of Service; Scan, e-file, and service of Motion, Brief, Notice of Hearing, and Proof of Service on Court and Attorney McConnell.	JMHW	0.6	\$ 325.00	\$ 195.00
10/21/2019	Receive and review Plaintiff's Response to Motion to Change Venue.	RBR	0.3	\$ 350.00	\$ 105.00
10/24/2019	Review Plaintiff's Response to Motion to Change Venue and Email same to Client. Conference with Client.	JMHW	0.3	\$ 325.00	\$ 97.50
10/25/2019	Prepare for and attend Motion to Change Venue.	RBR	3	\$ 350.00	\$ 1,050.00
10/25/2019	Parking Fee for attendance at Motion to Change Venue	RBR	0	\$ -	\$ 5.00
11/1/2019	Transcript Fee	RBR	0	\$ -	\$ 140.00
11/3/2019	Work regarding Application for Leave to Appeal regarding venue.	RBR	1.5	\$ 350.00	\$ 525.00
11/4/2019	Work regarding Appeal regarding venue.	RBR	4.3	\$ 350.00	\$ 1,505.00
11/5/2019	Finalize Appeal regarding venue.	RBR	4.7	\$ 350.00	\$ 1,645.00
11/11/2019	Work regarding Motion to Stay and Draft Proposed Order	RBR	1.1	\$ 350.00	\$ 385.00
11/12/2019	Review and revise Motion to Stay; Prepare Proof of Service; Scan, e-file, and service of same. Email to Clerk regarding Proposed Order. Service on Attorney McConnell.	JMHW	0.4	\$ 325.00	\$ 130.00
11/12/2019	Filing Fee re Motion to Stay	JMHW	0	\$ -	\$ 20.60

RBR: 16.6 hours

JMHW: 2.9 hours

120021001R

1/8/2020	Prepare for and attend Status Conference with Judge Yates	RBR	2	\$ 350.00	\$ 700.00
1/8/2020	Parking Fee to attend Status Conference	RBR	0	\$ -	\$ 5.00
1/21/2019	Receive and review Order of Court of Appeals regarding venue proper in Muskegon; email same to client. Conference with Attorney Reuterdahl. Email to Court regarding hearing to determine costs. Receive and Review Order regarding hearing to determine costs of transfer and docket same. Email to Attorney McConnell.	JMHW	0.3	\$ 325.00	\$ 97.50
1/30/2020	Receive and Review Plaintiff's Response Regarding Costs.	RBR	0.4	\$ 350.00	\$ 140.00
1/31/2020	Prepare for and attend hearing on costs related to attending in improper venue.	RBR	3.5	\$ 350.00	\$ 1,225.00
TOTAL				*	\$ 9,893.70

RBR: 3.9 hours

JMHW: 0.3 hours