

STATE OF MICHIGAN  
WASHTENAW COUNTY TRIAL COURT

SALEM TOWNSHIP,  
Plaintiff,

v

LINDA HAMILTON,  
Defendant.

Case No. 11-269-CZ  
Hon. Archie C. Brown

\_\_\_\_\_  
Edward D. Plato (P29141)  
Attorney for Plaintiff

Steven A. Matta (P39718)  
Attorney for Defendant  
\_\_\_\_\_

**OPINION AND ORDER GRANTING PLAINTIFF'S REQUEST  
FOR SANCTIONS AND AN AWARD OF ATTORNEY FEES & COSTS**

Held in Ann Arbor, Michigan  
on May 9, 2011

The Court previously granted Plaintiff's Motion for Declaratory Relief, after oral argument, on March 24, 2011, and signed the Order granting Plaintiff's Motion for Declaratory relief on May 2, 2011. The Court entered the Order, over the objections of Defendant, as Defendant did not comply with the requirements set forth in MCR 2.602(B)(3).

This action is before the Court on the Plaintiff's Request for Sanctions and an award of Attorney Fees and Costs that had been taken under advisement by the Court, subject to the parties submitting additional pleadings in support of, or objecting to, the award of sanctions.

For the reasons placed on the record on March 24, 2011 and as set forth in this Court's May 2, 2011 Order, the Court determines that Defendant's opposition to Plaintiff's Motion for Declaratory Relief was without merit and frivolous pursuant to MCR 2.114(F) and MCR 2.625(A)(2), and MCL 600.2591.

The Court grants Plaintiff its attorney fees and costs for the services rendered by its attorney(s) to defend this action in the amount as determined by the Court and as set forth below.

The Supreme Court in *Smith v. Khouri*, 481 Mich. 519,526 (2008), set forth the factors to be considered by the trial court in determining the reasonableness of an award of attorney fees. The Court must determine the reasonable hourly rate customarily charged in the locality for similar legal services, multiplied by the reasonable number of hours expended, with the calculation subject to adjustment up or down based on the factors stated in *Wood v. DAHE*, 413 Mich. 573 (1982) and in MRPC 1.5(a).

The determination of the reasonable hourly rate customarily charged in the locality for similar legal services, entails the use of reliable surveys or other credible evidence. The Court has previously heard testimony on this issue in other cases within the past two years. The Court also relies upon the 2007 State Bar of Michigan Economics of Law Practice Summary Report, the 2010 State Bar of Michigan Economics of Law Practice Summary Report attached to Plaintiff's Brief as Exhibit 5, and the Affidavits of Edward D. Plato attached to Plaintiff's Brief as Exhibits 1 and 8.

An award of attorney fees is not limited to the attorney's individual compensation, but should include overhead costs and support staff costs of that attorney's office. *Allard v. State Farm Ins. Co.*, 271 Mich App 394 (2006); *Anglers of Ausable, Inc. v. Dep't of Environmental Quality*, 283 Mich App 115 (2009).

An hourly fee in the amount of \$275.00 (for an attorney with 32 years experience such as Plaintiff's attorney) represents a fee customarily charged in this locality for similar legal services given the expertise of the attorney; which is reflected by the market rate for the attorney's work. The market rate is the rate that lawyers of similar ability and experience in the community normally charge their paying clients for the type of work in question. *Smith v. Khoury*, *supra*, p. 480.

The Court appreciates that a reasonable hourly rate for one counsel may be more or less than what other counsel would have been paid. For these reasons the Court determines that the reasonable hourly rate for Mr. Plato's services to Plaintiff is \$275.00 per hour. The Court further finds that the hourly rate charged is clearly reasonable for the services rendered. In so doing the Court relies, in part, upon the factors stated in *Wood v. DAHE*, 413 Mich. 573 (1982) and in MRPC 1.5(a) below.

The Rules of Professional Responsibility, MRPC 1.5(a), set forth the following factors to be considered in determining the reasonableness of an attorney fee:

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 would 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.

The Court further finds that the services rendered to Plaintiff by its attorneys, due to the actions of Defendant, is clearly reasonable. The Court also finds that the time charged for rendering those services, during the period February 21, 2011 through March 30, 2011, when Plaintiff's counsel accumulated 34.90 hours, is reasonable. The Court adjusted downward Plaintiff's request of 50.50 hours by 19.6 hours ( $50.50 - 15.60 = 34.90$ ) for time entries for research on February 21<sup>st</sup>, February 25<sup>th</sup>, February 26<sup>th</sup> and March 1<sup>st</sup>, 2011, leaving a total of 4.0 hours for those research activities.

Plaintiff is awarded a total of 34.90 hours at \$275.00 per hour for a total of \$9,597.50, and incurred miscellaneous court costs and fees in the amount of \$170.00. For these reasons the Court awards Plaintiff the sum of \$9,767.50 in attorney fees and costs requested.

Defendant represented herself in propria persona throughout these proceedings (even though she had retained counsel in the 14A District Court Summary Proceedings matter between these same parties). She is now represented by counsel, who has filed a Response to Plaintiff's Submission for Attorney Fees and Costs.

Defendant's Response is largely unhelpful and largely irrelevant to the limited proceedings remaining before the Court. The Response argues in large part matters this Court previously ruled upon, and is more in the form of a Motion for Reconsideration. As this Court determines that there was no palpable error, pursuant to MCR 2.119 (F)(3), such a Motion, if intended, is denied.

Notwithstanding Defendant's argument, until Defendant stated on the record in Court on March 24, 2011 that she would be vacating the Plaintiff's building by March 31, 2011, there is no evidence to support her claim that she intended to do so, and there is certainly no evidence to support a claim that she or her attorneys advised Plaintiff of her intentions to vacate.

Defendant's Brief does not challenge with any specificity the number of hours or specific items of service performed by Plaintiff's attorneys. Defendant merely complains that the amount of fees requested by Plaintiff is outrageous. As our Court of Appeals has noted in *People v Kelly*, 231 Mich App 627 (1998); and *Derderian v Genesys Health Care Sys.*, 263 Mich App 364 (2004), a party "may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give only cursory treatment with little or no citation of supporting authority."

This Court does not find Plaintiff's request for attorney fees and costs as clearly excessive. As both parties realize, each attorney spends more or less time on each matter depending on a myriad of factors that the Court does not need to recount here.

Defendant shall pay Plaintiff this sum by noon on or before July 11, 2011 without interest. If Defendant fails to pay as ordered, then judgment interest shall accrue upon the entire unpaid balance retroactive to the date of this Order.

IT IS ORDERED that the total amount of attorney fees and costs awarded to Plaintiff, in the amount of \$9,767.50, shall be paid by Defendant to Plaintiff by noon on or before July 11, 2011 without interest. In addition to any other costs or sanctions that may be imposed by this Court if Plaintiff fails to pay as ordered, judgment interest shall accrue upon the entire unpaid balance retroactive to the date of this Order, if not paid as ordered above.

DATED: May 9, 2011



Hon. Archie C. Brown  
Trial Court Judge

**PROOF OF SERVICE**

I hereby certify that I served a copy of the foregoing document upon the attorneys of record and/or the parties in this case on the DATE NOTED below:  
PERSONALLY on \_\_\_\_\_  
FIRST-CLASS MAIL on \_\_\_\_\_  
VIA FAX on 5-9-11  
Banda Band