

STATE OF MICHIGAN
COURT OF APPEALS

WESSERLING CORPORATION,

UNPUBLISHED
January 24, 1997

Plaintiff-Appellee,

v

No. 175471

Macomb Circuit Court
LC No. 92-005098

EASTSIDE ENTERPRISES, INC., MURRAY
SWEETWINE, NAZARETH HADJIAN, and
JACK C. CHILINGIRIAN,

Defendants-Appellants.

Before: Holbrook, Jr., P.J., and White and S.J. Latreille,* JJ.

PER CURIAM.

Defendants appeal as of right from an order granting summary disposition to plaintiff and awarding actual attorney fees to plaintiff according to the parties' contract. We affirm.

Plaintiff entered into an agreement to sell its printing business to defendant Eastside Enterprises, Inc. The other defendants are all current or former Eastside officers who executed a personal guaranty of payment on a promissory note in connection with the sale. Because Eastside encountered some difficulty in meeting its obligations to plaintiff, the parties entered into two subsequent "workout" agreements adjusting the amount and timing of the installment payments. Eastside failed to make all payments under the agreements. Plaintiff notified defendants twice that Eastside was in default and finally filed this lawsuit. Plaintiff then moved for summary disposition pursuant to MCR 2.116(C)(9) or (C)(10). Although defendants argued that the workout agreements were ambiguous and that Eastside had withheld its installment payments in order to pay property taxes that were properly plaintiff's responsibility, the trial court granted summary disposition pursuant to MCR 2.116(C)(10), finding that Eastside could not factually support its defense at trial because defendants admitted withholding payments due under the parties' contract to obtain reimbursement for a prorated share of taxes but had

* Circuit judge, sitting on the Court of Appeals by assignment.

presented no evidence that plaintiff owed any prorated taxes. In a separate hearing, the trial court granted actual attorney fees to plaintiff, according to the terms of the parties' contract.

Defendants first argue that the trial court erred in granting summary disposition to plaintiff because there was a legitimate controversy about the parties' responsibilities for payment of certain property taxes and, therefore, defendant was entitled to withhold its performance under the contract. We disagree. The contract stated, "All personal property taxes assessed upon the business fixtures, furniture and equipment shall be the responsibility of EASTSIDE subsequent to the date of the closing, and said taxes shall be prorated to the date of the closing." In an exhibit attached to the contract and separately signed by defendant Murray Sweetwine, who was then Eastside's president, the parties apportioned the tax bill for the year of the sale. Even if defendants did not understand this contractual provision, they are "at most arguing the existence of a unilateral mistake, and this Court does not consider a unilateral mistake sufficient to modify a previously negotiated agreement." *Hilley v Hilley*, 140 Mich App 581, 585-586; 364 NW2d 750 (1985).

Where written documents are unambiguous and unequivocal, their construction is for the court to decide as a matter of law. *Osman v Summer Green Lawn Care, Inc*, 209 Mich App 703, 706; 532 NW2d 186 (1995). We find that the trial court did not err in determining as a matter of law that defendants had breached their contract with plaintiff, and as a result plaintiff was entitled to exercise any rights available to it as set forth in the parties' agreement.

Defendants next argue that the trial court abused its discretion in granting plaintiff's request for actual attorney fees. Alternatively, they contend that the court abused its discretion in awarding actual, rather than reasonable, attorney fees. We disagree with both arguments.

The promissory note, executed by the parties, contained the following statement:

And in case suit or action is instituted to collect this note or any portion thereof, EASTSIDE ENTERPRISES INC. promises to pay such additional sum as the Court may adjudge reasonable as attorney's fees in said suit or action.

As a general rule, attorney fees are not recoverable in Michigan "either as an element of costs or as an item of damages, unless expressly authorized by statute, court rule, or a recognized exception." *Brooks v Rose*, 191 Mich App 565, 574-575; 478 NW2d 731 (1991). Among the recognized exceptions to the general rule are contractual provisions for payment of reasonable attorney fees, which are judicially enforceable. *Central Transport, Inc v Fruehauf Corp*, 139 Mich App 536, 548; 362 NW2d 823 (1984). Attorney fees awarded under an agreement between the parties become an item of damages arising from breach of that agreement. *Id.* at 548-549. Because the promissory note executed by defendants clearly provided for attorney fees if an action was instituted to collect on the promissory note, plaintiff was entitled to its attorney fees. Accordingly, the trial court did not abuse its discretion in awarding them.

Defendants contend, however, that even if the trial court did not abuse its discretion in awarding attorney fees under the term of the promissory note, this Court should find that awarding actual attorney

fees was an abuse of discretion. Although there is no precise formula for determining the reasonableness of attorney fees, among the factors to be considered are: “(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.” *Michigan Tax Management Services Co v City of City of Warren*, 437 Mich 506, 509-510; 473 NW2d 263 (1991), citing *Wood v DAIIE*, 413 Mich 573; 321 NW2d 653 (1982). The actual amount of attorney fees requested may be considered, but it is not controlling in itself and an award of reasonable attorney fees is not confined to that amount. *In re Martin (After Remand)*, 205 Mich App 96, 109; 517 NW2d 749 (1994), rev’d on other grounds 450 Mich 204; 538 NW2d 399 (1995).

In this case, the trial court held an evidentiary hearing and considered several of the pertinent criteria for determining the reasonableness of the attorney fees. The court examined plaintiff’s attorney’s billing sheets, and specifically found that plaintiff’s attorney’s standing in the bar was “unquestioned,” and that the hourly rate was “uncontested.” The trial court was not required to detail its findings as to each specific factor considered. *Michigan National Bank v Metro Institutional Food Service, Inc*, 198 Mich App 236, 241; 497 NW2d 225 (1993). We conclude that the trial court did not abuse its discretion in awarding plaintiff its actual attorney fees.

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Helene N. White
/s/ Stanley J. Latreille