STATE OF MICHIGAN

COURT OF APPEALS

IN RE ACQUISITION OF LAND PARCEL 818

CITY OF DETROIT,

Plaintiff,

v

SPEROS G. ATSALAKIS, GEORGIA ATSALAKIS, and ATSALIS BROTHERS PAINT & MAINTENANCE COMPANY,

Defendants/Appellants/
Cross-Appellees,

and

ACKERMAN & ACKERMAN, P.C.,

Defendant/Appellee/
Cross-Appellant.

UNPUBLISHED
April 3, 1998

No. 196262
Wayne Circuit Court
LC No. 91-103693-CC

Before: Michael J. Kelly, P.J., and Cavanagh and N.J. Lambros*, JJ.

PER CURIAM.

Defendants, Speros G. Atsalakis, Georgia Atsalakis, and Atsalis Brothers Paint & Maintenance Company (hereinafter referred to as "defendants"), appeal as of right from a June 20, 1996, order determining the amount of attorney fees owed to Ackerman & Ackerman, P.C. (hereinafter referred to as "the law firm"), the counsel of record for defendants in this condemnation action brought by the City

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

of Detroit. The law firm filed a cross-appeal. We affirm in part, reverse in part, and remand for a recalculation and award of prejudgment interest from June 28, 1991.

The law firm represented defendants in a condemnation action brought by the City of Detroit. An April 30, 1987, fee agreement provided that the law firm's fee would be one third of the difference between the city's first offer and the final award to defendants. That agreement was supplemented by a May 15, 1987, letter from Alan Ackerman to Tony Atsalakis, providing that should the law firm succeed in obtaining payment for "inventory," the fee to defendants would be no greater than five percent. The underlying condemnation action was resolved by a June 28, 1991, consent judgment, awarding $2,600,000 to defendants and allowing them to take movable business property, including items contained in the appraisal report, inventory, and other items. Defendants auctioned off certain items, and retained some items that were listed in the appraisal report. A dispute arose between defendants and the law firm concerning the amount of attorney fees owed. The trial court ordered that the law firm was entitled to a five percent fee for the items sold at the auction and the items retained, because such property was "inventory" and was therefore governed by the supplement to the fee agreement. This Court reversed and remanded, holding that a factual development was necessary to determine the parties' intent with regard to the meaning of inventory. On remand, an evidentiary hearing was held, following which the trial court determined that the parties intended inventory to mean paint when they entered the supplemental fee agreement. Therefore, the value of the items auctioned, except for the paint, and the value of the items retained but not auctioned, were subject to the original agreement providing for a one third attorney fee. Thus, a net increase in attorney fees of $80,307.34 was awarded, along with interest from April 15, 1993, the date on which funds were released from an escrow account following the original determination of attorney fees before the first appeal.

Defendants' first argument on appeal is that the trial court clearly erred when it found that the parties came to a meeting of the minds and understood inventory to mean paint at the time of the May 15, 1987, supplement to the fee agreement. We disagree. We review a trial court's factual findings for clear error. MCR 2.613(C). "A finding is clearly erroneous when, although there is evidence to support the finding, this Court is left with a definite and firm conviction that a mistake has been made." *Berry v State Farm*, 219 Mich App 340, 345; 556 NW2d 207 (1996). Moreover, we defer to the trial court's special opportunity to judge the credibility of witnesses. MCR 2.613(C). Here, the trial court's finding that the parties understood inventory to mean paint was not clearly erroneous. Alan Ackerman's testimony indicated that the sale of paint to the city was the primary concern and area of discussion of the parties around the time of the formation of the supplemental fee agreement. The terms paint and inventory were used interchangeably in these discussions. Paint was the only item of concern at that time. Although Tony Atsalakis testified that inventory meant anything not on the appraisal list, that testimony was impeached by Atsalakis' prior deposition testimony that inventory referred to paint stock, and that the law firm was entitled to one third of the auction proceeds. The trial court may have reasonably determined that Ackerman's testimony concerning the parties' understanding of inventory was more credible than Atsalakis'. MCR 2.613(C). Therefore, the evidence presented at the evidentiary hearing, including testimony concerning the express words of the parties, indicated that a meeting of the minds had been reached, and that inventory was understood to mean paint. *Heritage v*

Wilson, 170 Mich App 812, 818; 428 NW2d 784 (1988). The trial court's finding was not clearly erroneous.

Defendants' second argument on appeal is that the trial court erred by awarding prejudgment interest from the date that funds were released from escrow following the initial attorney fee determination rather than from June 20, 1996, the date that the judgment was entered awarding a net increase in attorney fees. The law firm's argument on cross-appeal is that the trial court should have awarded prejudgment interest from June 28, 1991, the date that the consent judgment was entered in the underlying condemnation action. We agree with the law firm's argument. We review de novo the award of prejudgment interest under MCL 600.6013; MSA 27A.6013. *Beach v State Farm*, 216 Mich App 612, 623-624; 550 NW2d 580 (1996). That statute entitles the prevailing party to prejudgment interest from the date the complaint was filed. *Id*., p 624. The purpose of the statute is to compensate the prevailing party for the delay in the payment of money damages. *Foremost v Waters (On Rem)*, 125 Mich App 799, 803; 337 NW2d 29 (1983). However, where, as here, the prevailing party's claim arises after the complaint is filed, awarding interest from the date that the complaint was filed would exceed the purpose of the statute in compensating for the delay in payment and would overcompensate the prevailing party. *Beach*, *supra*, 216 Mich App 624. Therefore, prejudgment interest for claims arising after the complaint is filed should be awarded from the "date of delay" in payment. *Id*. The attorney fee dispute involved in the instant case arose in the course of the condemnation action. Awarding interest from the date that the condemnation complaint was filed by the city would overcompensate the law firm. Therefore, interest should have been awarded from the date of delay in defendants' payment of the attorney fee. The statutory purpose of compensating the law firm for that delay would best be served by awarding interest from June 28, 1991, the date that the consent judgment was entered. *Foremost*, *supra*, 125 Mich App 802-804. Since the law firm was entitled under the fee agreement to one third of the value of the items defendants retained by virtue of the consent judgment, the date that the consent judgment was entered is the date of delay in payment of the attorney fee for purposes of calculating the prejudgment interest owed.

Defendants' argument that the purpose behind the prejudgment interest statute would not be served in this case is without merit. The law firm was denied the use of funds to which it was entitled under the fee agreement after the consent judgment had been entered. The firm is entitled to compensation for such loss. *Foremost*, *supra*, 125 Mich App 802-803. In addition, defendants' argument that an award of attorney fees is equitable in nature, and that the prejudgment interest statute therefore does not apply, is not properly supported by authority. "This Court will not search for authority to support a party's position." *Winiemko v Valenti*, 203 Mich App 411, 419; 513 NW2d 181 (1994). We therefore conclude that the trial court erred by awarding interest from the date that funds were released from escrow. On remand, the trial court should recalculate and award prejudgment interest from June 28, 1991, the date on which the consent judgment was entered.

Finally, we note that the law firm's argument that the rate of the interest awarded should be that allowed for actions on written instruments as provided in MCL 600.6013(5); MSA 27A.6013(5), as opposed to the rate permitted under other subsections of § 6013, is not preserved for appellate review.

The law firm failed to raise that issue in the statement of issues presented. *Meagher v McNeely & Lincoln*, 212 Mich App 154, 156; 536 NW2d 851 (1995). Moreover, the issue was not raised before and considered by the trial court. *Adam v Sylvan Glynn*, 197 Mich App 95, 98; 494 NW2d 791 (1992).

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion.

/s/ Michael J. Kelly
/s/ Mark C. Cavanagh
/s/ Nicholas J. Lambros*