

STATE OF MICHIGAN
COURT OF APPEALS

PAYNE BRODER & FOSSEE, P.C.,

Plaintiff-Counterdefendant-
Appellee,

v

STEPHEN SHEFMAN,

Defendant-Counterplaintiff-
Appellant.

UNPUBLISHED

July 22, 2014

No. 312659

Oakland Circuit Court

LC No. 2012-124985-CK

Before: MURPHY, C.J., and DONOFRIO and FORT HOOD, JJ.

MURPHY, C.J. (*concurring*).

I write this short concurrence simply to make clear that my position in this case is not at odds or in conflict with my partial dissent in *Fraser Trebilcock Davis & Dunlap, PC v Boyce Trust 2350*, 304 Mich App 174, 224-231; ___ NW2d ___ (2014). In *Fraser Trebilcock*, I expressed my view that a law firm was not entitled to an “attorney fee” under MCR 2.403(O)(6)(b) as a case-evaluation sanction when the firm appears pro se in the litigation, given the absence of a true attorney-client relationship as necessary to accurately characterize a fee as an “attorney” fee.

As aptly noted in the majority opinion, the so-called “attorney fees” at issue here are in the nature of damages, considering that the basis for the award was contractual. See *Fleet Business Credit, LLC v Krapohl Ford Lincoln Mercury Co*, 274 Mich App 584, 589; 735 NW2d 644 (2007). The contract language provided that, “in the event litigation is necessary to collect the fees owed for services we render to you, the cost of that litigation, including attorney fees and out-of-pocket expenses, will be recoverable.” “The fundamental goal of contract interpretation is to determine and enforce the parties' intent by reading the agreement as a whole and applying the plain language used by the parties to reach their agreement.” *Dobbelaere v Auto-Owners Ins Co*, 275 Mich App 527, 529; 740 NW2d 503 (2007). Plaintiff does not place its reliance on the attorney-fee language in the contract in order to recover the amount at issue; rather, plaintiff, which sought to recover for the time lost by its attorneys in handling the collection action, cites and relies on “the cost of . . . litigation” language. This provision is sufficiently broad to capture what have been deemed “attorney fees” attributable to the time lost by plaintiff’s own attorneys in working on the collection litigation. Accordingly, my partial dissent in *Fraser Trebilcock* has no bearing on my position in this case. I respectfully concur.

/s/ William B. Murphy