

STATE OF MICHIGAN
COURT OF APPEALS

RVP DEVELOPMENT CORP,

Plaintiff-Appellant,

v

FURNESS GOLF CONSTRUCTION INC,
formerly known as, CASTLE ROCK
COMMUNICATIONS INC

Defendant-Appellee.

UNPUBLISHED

August 3, 2004

No. 241125

Manistee Circuit Court

LC No. 00-009791-CK

FURNESS GOLF CONSTRUCTION INC,
formerly known as, CASTLE ROCK
COMMUNICATIONS INC,

Plaintiff-Appellee,

v

RVP DEVELOPMENT CORP,

Defendant-Appellant.

No. 241126

Manistee Circuit Court

LC No. 00-009766-CH

Before: Zahra, P.J., Saad and Schuette, JJ.

PER CURIAM.

In Docket Nos. 241125 and 241126, RVP Development Corp (RVP) appeals as of right from the trial court's order of final judgment of no cause for action RVP's claims for negligence and breach of contract based upon the jury's verdict that an "act of God" occurred, and the jury's verdict in favor of Furness Golf Construction Inc's (Furness), for retainage owed under the Construction Lien Act (CLA) MCL 570.1101 *et seq*, plus contractual interest (\$546,123.98). RVP also appeals the trial court's award of case evaluations sanctions pursuant to MCR 2.403(O)(6)(b). We affirm the judgment on the basis of the jury verdict, but reverse the award of case evaluation sanctions and remand for further proceedings.

I. Basic Overview

On September 26, 1998, a severe rainstorm passed over RVP's golf course and caused substantial erosion damage. RVP claims that Furness, the general contractor of the golf course, is responsible for the damage because it failed to maintain the golf course's drainage systems. Furness' position at trial was and on appeal is that the rainstorm was so severe that it was an "act of God," that as a matter of law relieves Furness of liability, and further, that the negligent design and engineering of the golf course's drainage systems caused RVP's loss, not Furness' alleged maintenance failures.

II. Act of God

A. Standard of Review

RVP argues that trial court improperly denied its motion for a directed verdict. This Court reviews de novo a trial court's ruling on a motion for a directed verdict. *Graves v Warner Bros*, 253 Mich App 486, 491; 656 NW2d 195 (2002). In reviewing a trial court's decision on a motion for a directed verdict, this Court examines the evidence and all reasonable inferences that may be drawn from it in the light most favorable to the nonmoving party. Only if the evidence so viewed fails to establish a claim as a matter of law should the motion be granted. *Clark v Kmart Corp*, 465 Mich 416, 418-419; 634 NW2d 347 (2001), on remand 249 Mich App 141; 640 NW2d 892 (2002) (citations omitted).

B. Analysis

RVP argues that trial court improperly submitted for jury consideration the affirmative defense of "act of God."¹ We disagree.

Michigan law recognizes the affirmative defense of "act of God." See *Golden & Boter Transfer Co v Brown & Sehler Co*, 209 Mich 503, 510; 177 NW 202, 204 (1920). Our Supreme Court has described an "act of God" as: "[T]hose events and accidents which proceed from natural causes and cannot be anticipated and provided against, such as unprecedented storms, or freshets, lightning, earthquakes, etc." *Id.* This Court later added the following comments about the "act of God" defense: "the definition of an 'act of God' requires an unusual, extraordinary, and unexpected manifestation of the forces of nature, and require(s) the entire exclusion of human agency from the cause of the injury or loss." *Potter v Battle Creek Gas Co*, 29 Mich App

¹ RVP does not distinguish its claims for negligence and breach of contract as each relates to the affirmative defense of "act of God." We envision circumstances in which an "act of God" would not excuse contractual obligations, since the risk of an "act of God" occurring may be negotiated and allocated in the contract. Since RVP has not asserted or preserved the question whether the risk of an "act of God" occurring was allocated in their contract, we address only whether there is sufficient evidence to support the "act of God" affirmative defense as to any of RVP's claims.

71, 75; 185 NW2d 37 (1970), citing *Golden & Boter Transfer Co, supra*; *Kaminski v The Hertz Corp*, 94 Mich App 356; 288 NW2d 426 (1979).²

In a similar case involving torrential rains that caused erosion damage, our Supreme Court, in *Smith v Board of County Road Commissioners of Chippewa County*, 381 Mich 363, 367; 161 NW2d 561 (1968), addressed whether the affirmative “act of God” defense was properly submitted to the jury. In *Smith*, the defendant replaced a culvert and raised the level of the road several inches to prevent water from breaching a road (west road). After the repairs, there was extraordinarily heavy rainfall. Water accumulated in the basin located between the west road and an eastern road. Because of the improvements to the west road, water did not flow over the west road. Rather, the water continued to accumulate in the basin until breaching the east road. The water rushed toward Lake Superior, and in doing so, poured over the plaintiff’s property causing damage. *Id.* at 365-366.

The defendant claimed that the plaintiff’s injury resulted from an “act of God,” the torrential downpour, and the jury was instructed on the defense. *Smith, supra* at 366. On appeal, the plaintiff claimed that the “act of God” instruction should not have been given. *Id.* The plaintiff relied on case law underscoring the proposition that, “when an act of defendant concurs with an act God as a cause of the injury, defendant is liable; that an act of God is a defense only if it is the sole proximate cause of the injury.” *Id.* at 367. The plaintiff also insisted that “under the proofs there can be no question but that defendant’s action . . . was . . . a concurring cause of the injury, without which it would not have happened despite the unusual rainfall” *Id.* Here, RVP also claims that the “act of God” instruction should not have been given because Furness’ failure to maintain the drainage systems is a concurring cause of the loss.

Smith held the defense of “act of God” was properly before the jury because there was evidence presented that “but for the [‘act of God,'] the accident and injury would not have occurred.” *Smith, supra* at 368. Applying this test to the instant case, we conclude the issue was properly presented to the jury. Here, there is evidence that, but for the September 26, 1998 rainfall, erosion would not have occurred. Moreover, Furness presented evidence from which the jury could find an entire exclusion of human agency, or, that Furness’ alleged acts did not concur with the September 26, 1998 rainfall. *Potter, supra*. The factual gravaman of RVP’s claim is that its loss was occasioned by blockages of risers and a twenty-four inch drainage pipe. Regarding the blocked risers, there was evidence that their being blocked or being too long to take in water was not a cause of RVP’s loss. The risers had perforations, and there was evidence that as much rainwater entered the drainage system through these perforations than if the risers had been shortened and the silt mesh removed. Thus, a jury could reasonably conclude that Furness’ alleged failure to finish the risers was not a cause of the loss. Further, Furness presented evidence that the plywood had been removed before the rainstorm.³ A rational jury could

² Furness contends that this Court did not intend the affirmative defense of “act of God” require the “entire exclusion of human agency from the cause of the injury or loss.” Furness, however, acceded at trial that the defense has this requirement.

³ Specifically, Peter Bohn testified that the plywood was removed before the rainstorm.

conclude that Furness' alleged negligence was not a cause of the loss. Therefore, the trial court properly denied RVP's motion for directed verdict.⁴

Because the jury rendered a verdict of no cause for action on RVP's breach of contract claim, RVP claim for additur need not be addressed.

III. Instructional Issues.

1. *Contributory Negligence of Non-Parties and Comparative Negligence of RVP*

In light of our conclusion that the trial court did not err in instructing the jury in regard to the affirmative defense of "act of God" to RVP's negligence claim, this issue need not be addressed. *Beadle v Allis*, 165 Mich App 516, 525; 418 NW2d 906 (1987).

2. *Special Verdict Form*

The jury concluded that an "act of God" occurred. RVP argues that because the jury reached this conclusion, and was then ordered to answer the remainder of the questions assuming that it had found no "act of God," the jury's verdict was speculative.

RVP failed to preserve this issue for review because it did not object on the record to the instruction. MCR 2.516(C). An appellate court will review unpreserved instructional errors only when necessary to prevent manifest injustice. *Bouverette v Westinghouse Electric Corp*, 245 Mich App 391, 403; 628 NW2d 86 (2001). Manifest injustice results when the defect in instruction is of such magnitude as to constitute plain error requiring a new trial, or when it pertains to a basic and controlling issue in the case. *Phinney v Perlmutter*, 222 Mich App 512, 537; 564 NW2d 532 (citations omitted).

If the theories of the parties and the applicable law are adequately and fairly presented to the jury, there is no error requiring reversal. *Murdock v Higgins*, 454 Mich 46, 60; 559 NW2d 639 (1997); *In re Flury Estate*, 249 Mich App 222, 226; 641 NW2d 863 (2002). Here, RVP does not dispute that the applicable law was adequately presented to the jury. Moreover, RVP has not shown how the nature or form of the questions contained in the jury instructions caused the jury

⁴ RVP also maintains that the jury could not have found an "act of God" occurred because Furness presented evidence that the golf course's drainage systems were not adequately designed or engineered to handle the storm. However, Furness presented two theories to negate liability. One theory was that the September 26, 1998 rainfall was an "act of God." This theory required the jury to find an entire exclusion of human agency from the cause of the loss. We agree that under this theory evidence presented to show that a non-party's negligence caused the loss is irrelevant. However, Furness' second theory is that it was not negligent because it properly installed the drainage systems that Exxel Engineering and Rick Smith Design Co negligently engineered and designed. Under this theory, evidence of inadequate design and engineering is proper as it tends to show that Furness alleged maintenance failure did not cause the loss. Therefore, this argument is without merit.

to speculate. Indeed, in all cases, juries must apply the law as it is given to them. See SJI2d 2.03. Therefore, RVP has not shown manifest injustice, and reversal is not required.

IV. Contractual Interest

A. Standard of Review

This Court reviews de novo a trial court's ruling on a motion for a directed verdict. *Graves, supra*. In reviewing a trial court's decision on a motion for a directed verdict, this Court examines the evidence and all reasonable inferences that may be drawn from it in the light most favorable to the nonmoving party. Only if the evidence so viewed fails to establish a claim as a matter of law should the motion be granted. *Clark, supra* (citations omitted). Also, the determination whether contractual language is ambiguous presents a question of law subject to de novo review. *Klapp v United Insurance Group Agency, Inc*, 468 Mich 459, 467 (2003)

B. Analysis

RVP argues that the trial court improperly instructed the jury to consider whether Furness was entitled to contractual interest on its retainage. We disagree.

The relevant provisions of the contract provide:

ARTICLE A-3 PAYMENT

a.) Subject to applicable legislation and the provisions of the Contract documents and in accordance with legislation and statutory regulations respecting holdback percentages and, where such legislation or regulations do not exist or apply, subject to a holdback of ten percent (10%), the Owner shall

1.) make monthly payments to the Contractor for completed work. The amounts of such payments shall be as certified by the Designer, and payments shall be made on or before the 20th day of the month following the invoice date via electronic transfer as per GC 14.2, and

2.) upon substantial performance of the work as certified by the Designer pay to the Contractor the unpaid balance of holdback monies then due, and

3.) upon Total Performance of the Work as certified by the Designer pay to the Contractor the unpaid balance of the completed work.

b.) If the Owner fails to make payments to the Contractor as they become due and owing under the terms of this Contract or in an award by arbitration or court, interest of (18%) per annum on such unpaid amounts shall also become due and payable until payment. Such interest shall be calculated and added to any unpaid amounts monthly.

Next, provision 14.7 provides

The Designer shall, no later than ten (10) days after the receipt of an application from the Contractor for payment upon Total Performance of the Work, make an inspection and assessment of the Work to verify the validity of the application. The Designer shall, no later than seven (7) days after his inspection, notify the contractor of his approval or the reasons for his disapproval of their application. When the Designer finds that Total Performance of the Work has been reached he will issue a certificate of Total Performance of the Work and certify for payment the remaining monies due under the Contract less holdback monies that are required to be retained. The date of Total Performance shall be stated in the certificate. Subject to the provision of GC 18 – WORKER’S COMPENSATION INSURANCE, paragraph 18.1 the Owner shall, no later than ten (10) days after the issuance of this certificate, make payment to the Contractor in accordance with the provision of Article A-4⁵] – Payment.

Last, provision 14.8, states:

The release of the remaining holdback monies shall then become due and payable providing that the Owner may retain out of such holdback monies any sums required to satisfy any liens against the Work or other monetary claims against the Contractor and enforceable against the Owner and that the Contractor has submitted to the Owner a sworn statement that all accounts for labor subcontracts, construction machinery and equipment and other indebtedness which may have been incurred by the Contractor in the Total Performance of the Work and for which the Owner might in any way be hold [sic] responsible have been paid in full except holdback monies properly retained.

The crux of RVP’s argument is premised on Henderson’s refusal to certify for payment the retainage owed to Furness. And that given this absence of certification, the retainage did not become “due and payable,” under the contract. On December 6, 1999, Henderson gave notice to Furness that, Furness “has achieved Total Completion of their work on the Arcadia Bluffs Project.”⁶ The notice also provided that Henderson would not certify for payment the owed retainage because of the instant dispute.

However, provisions 14.7 and 14.8 together indicate that the retainage did become due and payable ten days after the Total Performance of the Work certificate was issued. Provision 14.7, provides that once a “Total Performance of the Work” certificate is issued, “the Owner shall, no later than ten (10) days after the issuance of this certificate, make payment to the

⁵ This appears a typographical error in which the number “4” replaced the number “3.” Section A-4 of the contract is entitled “Rights and Remedies,” and does not address payment to the Contractor.

⁶ There is no indication that the phrase “Total Completion,” has independent significance under the contract. Further, given the context in which this phrase is used, the phrase appears synonymous with “Total Performance of the Work.”

Contractor in accordance with the provision of Article A-[3]- Payment.” The phrase, “this certificate,” in provision 14.7 does not refer to a certification for payment, but rather the Total Performance of the Work certificate. The first phrase in provision 14.8 states that, “[t]he release of the remaining holdback monies shall then become due and payable.” Read together with provision 14.7, the phrase “shall then become payable” refers to the consequence of failing to make payment within ten days of issuance of the Total Performance of the Work certificate. Thus, Henderson’s refusal to certify for payment the retainage owed is irrelevant once the Total Performance of the Work certificate is issued. Without deciding whether RVP’s interpretation is reasonable,⁷ we conclude that RVP’s interpretation would conflict with the above interpretation of the relevant contract provisions. A contract is ambiguous when its provisions are capable of conflicting interpretations. *Klapp, supra* at 467. Therefore, the trial court properly held that the ascertainment of the meaning of this ambiguous contractual language presents a question of fact which must be decided by a jury. *Id.* at 469.

Last, because sufficient evidence was presented to create an jury question on whether Furness was entitled to contractual interest, the trial court properly denied RVP’s motion for JNOV on this basis. *Pontiac School Dist, supra*.

V. Attorneys’ Fees

A. Standards of Review

The amount of sanctions imposed by the trial court is reviewed for an abuse of discretion. *Cambell v Sullins*, 257 Mich App 179, 197; 667 NW2d 887 (2003). The interpretation and application of court rules is a question of law that this Court reviews de novo. *Id.* citing *Attard v Citizens Ins Co of America*, 237 Mich App 311, 328; 602 NW2d 633 (1999).

This Court reviews a trial court’s decision to award attorneys’ fees under the Construction Lien Act (CLA) for an abuse of discretion. *Solution Source, Inc v LPR Associates Ltd Partnership*, 252 Mich App 368, 381; 652 NW2d 474 (2002). A trial court is required to

⁷ The provision triggering interest on retainage provides in relevant part that, “[i]f the Owner fails to make payments to the Contractor as they become due and owing under the terms of this Contract or in an award by arbitration or court, interest of (18%) per annum on such unpaid amounts shall also become due and payable until payment.” Provision 14.7 of the contract, states that “[w]hen the Designer finds that Total Performance of the Work has been reached he will issue a certificate of Total Performance of the Work and certify for payment the remaining monies due under the Contract less holdback monies that are required to be retained.” RVP’s interpretation does not address how Henderson, after finding that Furness reached had completed the contract of Total Performance of the Work, could refuse to certify payment under the contract. The word “will” is defined as “[a]n auxiliary verb commonly having the mandatory sense of ‘shall’ or ‘must.’” *Black’s Law Dictionary*, 6th ed. Henderson had no power to withhold certification for payment, and RVP had no right to rely Henderson’s refusal to issue the certificate. Thus, a rational jury could find that payment on retained funds was due and owing to Furness, and that in accordance with Article A-3 Payment, RVP was required to make payment to Furness.

make findings of fact in determining whether to award attorneys' fees under the CLA, and such findings are reviewed for clear error; findings are clearly erroneous when, although there is evidence to support it, the reviewing court on the entire record is left with a definite and firm conviction that a mistake was made. *Id.*

B. Analysis

1. Case-Evaluation Sanctions

“The overall purpose of the mediation rule is to encourage settlement and deter protracted litigation. The purpose behind the mediation sanction rule is to place the burden of litigation costs upon the party which requires a trial by rejecting a proposed mediation award.” *Michigan Basic Property Ins Ass’n v Hackert Furniture Distributing Co, Inc*, 194 Mich App 230, 235; 486 NW2d 68 (1992), citing *Warren v Pickering*, 192 Mich App 153, 156; 480 NW2d 306 (1991) and *Bien v Venticinque*, 151 Mich App 229, 232; 390 NW2d 702 (1986). “[A] party who rejects a case-evaluation award is generally subject to sanctions if he fails to improve his position at trial.” *Cambell, supra*, citing *Elia v Hazen*, 242 Mich App 374, 378; 619 NW2d 1 (2000). Under MCR 2.403(O)(6)(b), case-evaluation sanctions include “a reasonable attorney fee based on a reasonable hourly or daily rate as determined by the trial judge for services necessitated by the rejection of the case evaluation.”

RVP argues the trial court abused its discretion in awarding attorneys' fees based on an hourly rate of \$385 for attorney Verwys. Attorney Verwys' services were billed at an hourly rate of \$115.

The language of MCR 2.403(0)(6) does not limit the hourly rate for attorneys' fees to the rate actually charged by the attorney for the prevailing party. *Cleary v The Turning Point*, 203 Mich App 208, 211-212; 512 NW2d 9 (1993). Instead, the trial court must determine a reasonable hourly rate. *Id.*⁸ In evaluating the reasonableness of an attorneys' fees, the trial court

⁸ RVP argues that *McAuley v General Motors*, 457 Mich 513; 578 NW2d 282 (1998), limits attorneys' fees to those actually charged. However, *McAuley* addressed whether MCR 2.403 permitted a party to recover attorneys' fees after receiving an award of attorneys' fees under a statute providing for “actual costs.” See *Rafferty v Markovitz*, 461 Mich 265, 269-273; 602 NW2d 367 (1999); *Haliw v City of Sterling Heights*, 257 Mich App 689, 703-704; 69 NW2d 563 (2003). Here, there is only one source of recovery for attorneys' fees at issue, and RVP's reliance on *McAuley* is therefore misplaced. Moreover, cases subsequent to *McAuley* have rejected arguments “that ‘actual costs,’ MCR 2.403(O)(6), [] limit the hourly rate for attorney fees to the rate actually charged by the attorney for the prevailing party.” *Ghaffari v Turner Constr Co*, 259 Mich App 608, 618; ___ NW2d ___ (2003). In addition, our Supreme Court has differentiated between attorneys' fee-shifting statutes based on whether they “simply authorize the trial court to award ‘reasonable attorney fees’ without regard to the fees actually charged,” and those that “give[] the trial court discretion to determine ‘[t]he reasonableness of the [a party's] attorney fees.’” *Dept of Transportation v Randolph*, 461 Mich 757, 765-766; 610 NW2d 893 (2000). MCR 2.403(0)(6) is the former, and therefore, RVP's claim that the hourly rate must be limited to the rate actually charged by attorney Verwys must be rejected.

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should consider the following factors: (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. *Zdrojewski v Murphy*, 254 Mich App 50, 72, 657 NW2d 721 (2002). Other factors considered by the trial court may include, the likelihood, if apparent to the client, that the acceptance of the employment will preclude other employment by the attorney, the fee customarily charged in that locality for similar services and the time limitations imposed by the client or by the circumstances. *Bolt v City of Lansing* 238 Mich App 37, 60; 604 NW2d 745 (1999), citing *In re Condemnation of Private Property for Hwy Purposes*, 209 Mich App 336, 341-342, 530 NW2d 183 (1995); MRPC 1.5(a)(1)-(8).

While the trial court need not render detailed findings on the factors considered, *Michigan Nat'l Bank v. Metro Institutional Food Service, Inc.*, 198 Mich App 236, 241, 497 NW2d 225 (1993), the trial court here provided a detailed analysis considering every factor. And though the lower court record contains evidence to support the findings made by the trial court, there is no evidence to support the conclusion that \$385 is a reasonable hourly billing rate in this case. The trial court expressly relied on information contained in the 2000 Desktop Reference on the Economics of Law Practice in Michigan to establish attorney Verwys' hourly rate. However, even accepting that attorney Verwys could reasonably charge the highest rates in Michigan, the hourly rate of \$385 is higher than any hourly rate listed. Moreover, several of the categories considered in the 2000 Desktop Reference on the Economics of Law Practice in Michigan are not appropriately considered in establishing reasonable attorneys' fees, such as the size of firm or practitioner classification. *Bolt, supra*. In other words, an attorney billing in the top five percentile with the same office location, experience, and type of practice as attorney Verwys would charge an hourly rate of \$259. Therefore, the record lacks evidence to justify the conclusion that a reasonable hourly rate is higher than the highest hourly rates charged in Michigan. Accordingly, the trial court's finding of "reasonableness" is grossly violative of fact and logic. Therefore, we remand for determination of attorneys' fees pursuant to MCR 2.403(0)(6) consistent with this opinion.

2. Legal Assistant' Fees

MCR 2.626 provides:

An award of attorney fees may include an award for the time and labor of any legal assistant who contributed nonclerical, legal support under the supervision of an attorney, provided the legal assistant meets the criteria set forth in Article 1, § 6 of the Bylaws of the State Bar of Michigan.

RVP argues the trial court abused its discretion in awarding legal assistants' fees based on an hourly rate of \$115 for attorney Verwys' legal assistant. Attorney Verwys' legal assistant billed an hourly rate of \$50.

(...continued)

Attorney Verwys' legal assistant is qualified under MCR 2.626. Moreover, she has over twenty years of experience. However, an award for the time and labor of legal assistants under MCR 2.626 allows only for "the time and labor" of a legal assistant. Unlike MCR 2.403(O)(6), MCR 2.626 does not express that the award for time and labor of legal assistants be based upon an "reasonable hourly or daily rate." Legal assistants' wages are considered fixed overhead costs. *Joeger v Gorgon Food, Inc*, 224 Mich App 167, 181; 568 NW2d 365 (1997), citing *Johnston v Detroit Hoist & Crane Co*, 142 Mich App 597, 601; 370 NW2d 1 (1985). Because wages of legal assistants are considered fixed and MCR 2.626 does not indicate otherwise, an award for the time and labor of legal assistants cannot exceed the actual charge. Moreover, MCR 2.626 limits an award for legal assistants' fees to time and labor that a legal assistant spends on "nonclerical, legal support." Here, the trial court's award for legal assistants' fees was based on all work performed by attorney Verwys' legal assistant. Therefore, the trial court committed error requiring reversal in awarding legal assistants' fees exceeding the actual charge and not limiting the award for legal assistants' fees to "nonclerical, legal support."

3. Attorneys' Fees Under the CLA

Under the CLA, "in each action in which enforcement of a construction lien through foreclosure is sought, the court must examine each claim and defense which is presented, and determine the amount, if any, due to each lien claimant or to any mortgagee or holder of an encumbrance, and their respective priorities. MCL 570.1118(1) "The court may allow reasonable attorneys' fees to a lien claimant who is the prevailing party." MCL 570.1118(2).

Here, Furness' sought to collect \$397,366.63 from RVP under the CLA. RVP did not contest that it owed \$397,366.63 to Furness. However, RVP retained the monies, believing the \$397,366.63 would be set-off against its future favorable verdict. The jury returned its verdict in favor of Furness on the CLA claim, also finding that Furness' was entitled to interest on its retainage under the contract.

On appeal, RVP argues that the trial court's award was error because Furness did not incur attorneys' fees or costs prosecuting the CLA claim because RVP had never disputed, but stipulated, that it owed Furness \$397,366.63. However, while RVP did stipulate that it owed Furness \$397,366.63, RVP's refusal to pay placed Furness in the position of litigating an entire case to collect those funds. Moreover, the trial court adequately addressed RVP's argument that Furness did not prosecute the CLA claim when stating that the CLA claim "was a small part of the total effort." The trial court accordingly awarded attorneys' fees of three percent of the jury's verdict on Furness' CLA claim. The trial court did not abuse its discretion in awarding reasonable attorneys' fees to Furness under the CLA.

VI. Conclusion

We reverse ¶ 5 of the November 26, 2001, order of partial judgment, and remand to the

trial court to determine reasonable attorneys' fees under MCR 2.403, and time and labor for the legal assistant under MCR 2.626, consistent with this opinion. We affirm in all other respects. We do not retain jurisdiction.

/s/ Brian K. Zahra
/s/ Henry William Saad
/s/ Bill Schuette