

STATE OF MICHIGAN
COURT OF APPEALS

SOUTHWIND PROPERTIES, LLC,

Plaintiff-Appellee,

v

JANICE WIGHTMAN,

Defendant-Appellant

and

DANIEL C. WIGHTMAN and JOHN
BRUURSEMA,

Defendants.

UNPUBLISHED

March 22, 2005

No. 250175

Ottawa Circuit Court

LC No. 01-042052-CH

Before: Murray, P.J., and Markey and O'Connell, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's prejudgment decisions granting in part plaintiff's motion for summary disposition and holding that plaintiff was entitled to attorney fees. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff entered into an agreement with Progressive Metal Products, Inc., for the lease of commercial property. Defendant was secretary-treasurer of Progressive. Defendant, nonparticipating defendant Daniel Wightman (defendant's now-former husband), and nonparticipating defendant John Bruursema signed the lease as personal guarantors. The lease provided that in the event a dispute arose under the lease, or a default by a party, the prevailing party would be entitled to recover costs, including reasonable attorney fees.

Plaintiff filed suit alleging that Progressive had defaulted on its obligations under the lease, and that the guarantors had not honored the guaranty.¹ Plaintiff sought summary

¹ Plaintiff and Bruursema entered into a settlement pursuant to which Bruursema agreed to pay plaintiff \$15,161.63 in exchange for a dismissal with prejudice from the instant action. The trial
(continued...)

disposition pursuant to MCR 2.116(C)(9) and (10), arguing that defendant failed to state a valid defense to the claims against her and that, except as to damages, no genuine issue of material fact existed. The trial court granted the motion in part and denied it in part, finding, inter alia, that defendant received consideration for her signature on the guaranty. The trial court rejected defendant's assertion that plaintiff was not entitled to recover attorney fees as provided in the lease. Subsequently, the trial court entered judgment in favor of plaintiff in the amount of \$129,746.33, including an award of \$11,515.00 for attorney fees.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

Legal consideration is an essential element of a contract. *Yerkovich v AAA*, 461 Mich 732, 740; 610 NW2d 542 (2000). Consideration is a bargained-for exchange, with a benefit on one side and a detriment or service rendered on the other side. As a general rule, a court will not inquire into the sufficiency of consideration. *Gen Motors Corp v Dep't of Treasury*, 466 Mich 231, 238-239; 644 NW2d 734 (2002).

Defendant argues that the trial court erred in granting plaintiff's motion for summary disposition on the ground that her stated defense of lack of consideration was invalid. We disagree. At the time defendant signed the guaranty, she was an officer of Progressive. She benefited directly from the lease in that Progressive received access to property in which to conduct its operations, in return for its promise to pay rent to plaintiff and the promise made by defendant and the others to guarantee Progressive's obligations. The fact that Progressive's operations may not have been profitable does not mandate the conclusion that consideration failed. The bargained-for exchange met the definition of consideration, and the trial court was not required to inquire into the adequacy of that consideration. *Id.*

As a general rule, attorney fees are not recoverable as an element of costs or damages unless expressly allowed by statute, court rule, judicial exception, or contract. *Dessart v Burak*, 470 Mich 37, 42; 678 NW2d 615 (2004). Contract provisions that provide for the payment of reasonable attorney fees as damages are enforceable. *Central Transport, Inc v Fruehauf Corp*, 139 Mich App 536, 548-549; 362 NW2d 823 (1984).

Defendant argues that plaintiff was not entitled to an award of attorney fees. We disagree. A contractual clause providing that in the event of a dispute the prevailing party is entitled to recover attorney fees is valid. *Sentry Ins v Lardner Elevator Co*, 153 Mich App 317, 326; 395 NW2d 31 (1986). This exception to the general rule regarding attorney fees applies to contracts generally, even specialized ones.

(...continued)

court entered a consent judgment in favor of plaintiff requiring Daniel Wightman to pay plaintiff \$30,774.86. Janice Wightman filed a third-party complaint against Bruursema seeking contribution in the event that judgment should enter against her in the instant case. The parties entered into a settlement agreement, and stipulated to the dismissal of the third-party complaint.

Affirmed.

/s/ Christopher M. Murray

/s/ Jane E. Markey

/s/ Peter D. O'Connell