

Circuit Court of Michigan.
Oakland County
Mark WOJCIK, et al, Plaintiffs,
v.
William J. MCNISH, et al., Defendants.
No. 03-052-644-CK.
July 24, 2007.

Opinion and Order

Hon. [John J. McDonald](#).

At a session of Court held in the City of Pontiac, County of Oakland, State of Michigan, on July 24, 2007.

PRESENT: HON. JOHN J. McDONALD CIRCUIT COURT JUDGE

This matter is before the Court upon Plaintiff's motion and amended motion for entry of judgment; the Court being fully advised in the premises and has considered the pleadings and supplemental pleadings:

The Court finds that both Defendants rejected the case evaluation award of \$100,000 against the corporate defendant and 0 against the individual defendant and that the jury award in this case was \$115,000. Since neither defendant improved their position by 10%, the Court finds that Plaintiff is entitled to case evaluation sanctions under [MCR 2.403 \(O\)](#) and that Plaintiff did prevail on the case. Included in the sanctions are reasonable attorney fees.

The case was originally filed as a multiple count complaint. This Court granted summary disposition as to all of Plaintiff's claims and the Court of Appeals affirmed that decision, with one exception. The Court of Appeals reversed this Court's granting of summary disposition of Plaintiff's stock purchase agreement claim and reinstated that claim holding that "Plaintiff had performed al of the clearly stated prerequisites to trigger his contractual right to have the company purchase his stock, with a personal guarantee of payment by defendant McNish." (Court of Appeals op. at pg 8). That claim was the Plaintiff's sole claim at trial. And it should be noted that the case evaluation award of \$100,000 was a valuation of the stock owned by Plaintiff. It should also be noted that Plaintiff is currently seeking over \$175,000 in attorney fees on a \$115,000 judgment and that Plaintiff's counsel had originally entered into a contingency agreement with Plaintiff on this case. [FN1]

FN1. The Court acknowledges that an attorney can seek mediation fees in excess of what he would have received with a client however the Court can consider the original agreement with the client when determining reasonableness of the fees sought.

As to the amount of costs and fees sought by Plaintiff, the court finds as follows:

1. Plaintiff is entitled to reasonable attorney fees. Plaintiff is ordered to submit a new bill of particulars with attorney fees beginning from the date of September 9, 2006, the date that the case evaluation award was rejected though trial within 14 days from the date of this order. Plaintiff shall only include those fees which pertain to the stock purchase agreement claim and counterclaims. Plaintiff will be allowed the fee of \$200/hour for associates and \$325/hour for lead counsel.

2. Plaintiff shall also be allowed to collect certain interest from the date the complaint was filed but must include a detailed calculation which explains how Plaintiff arrived at the amount sought.

3. Plaintiff shall not be permitted to recover expert witness fees for the non-testifying expert.

4. Once Plaintiff has submitted this new bill of particulars to the Court and opposing counsel, Defendants have 14 days to file any objections, if necessary. Should Defendant object to the new amount of sanctions, and the parties are unable to resolve the matter among themselves, the Court will hold an evidentiary hearing to determine the reasonableness of the fees still sought.

IT IS SO ORDERED.

JOHN J. McDONALD

CIRCUIT COURT JUDGE

NCAS

Mark WOJCIK, et al, Plaintiffs, v. William J. MCNISH, et al., Defendants.

2007 WL 2211363

END OF DOCUMENT