STATE OF MICHIGAN

IN THE 20TH CIRCUIT COURT FOR THE COUNTY OF OTTAWA
SPECIALIZED BUSINESS DOCKET
414 Washington Street
Grand Haven, MI 49417
616-846-8315
* * * * *

PATRICK M. COOPER, individually and dba Z.Ink Tattoo and Piercing,
Plaintiff,

v

JOHN ELIZARDO, JR., individually and dba Don't Tell Mom DTM, **DAKOTA NOVAK, ASHLEY PEREZ, Z&S PROPERTIES, LLC,** and **STEVEN STERKEN,**
Defendants.
_____/

OPINION AND ORDER GRANTING ATTORNEY FEES
File No. 21-006505-CB

Hon. Jon A. Van Allsburg

Plaintiff sued defendants for breach of non-compete agreements, intentional interference with contract, conversion, and trespass in June 2021. On the eve of a second settlement conference in July 2022 the parties reached a settlement agreement that included an installment payment plan and a stipulated judgment to be entered if defendants defaulted on the installment plan. The stipulated judgment also stated the following: "In the event that Plaintiff incurs additional costs of collection including attorney fees at the hourly rate of $300.00 subsequent to July 30, 2022, it shall be entitled to obtain a supplemental judgment against Defendants after notice and hearing."

On February 12, 2024, plaintiff entered the stipulated judgment. Defendants sought relief from the judgment, but this Court denied relief in an order dated October 1, 2024. Defendants appealed this order in the Court of Appeals, which denied relief (*Cooper v Elizardo*, Docket No. 372969, May 20, 2025). Defendants then filed for leave to appeal to the Michigan Supreme Court, which also denied relief (*Cooper v Elizardo*, Docket No. 168705, Sept. 26, 2025). Plaintiff now seeks a supplemental judgment for the attorney fees incurred since July 30, 2022. A hearing was held on January 19, 2026, at which counsel for the parties presented argument. The court granted defendants 14 days to file specific objections to the reasonableness of the hourly rate or time

charges submitted by plaintiff.[1] Defendants filed more specific objections to reasonableness on February 3, 2026 (one day late), repeating many of their prior legal arguments, and plaintiff filed a reply to defendants' objections on the same day.

Attorney fees are not generally recoverable as damages, but an exception exists where attorney fees are provided by contract of the parties.[2] Recoverable attorney fees may include appellate fees where the attorney fee provision in the contract encompasses appellate fees.[3] A claim for attorney fees under a contractual provision is considered to be a claim for contractual damages, not an element of costs.[4] Stipulated judgments are enforced as contracts between parties.[5] Unambiguous contracts must be enforced as written unless a contractual provision violates law or public policy.[6]

Here, the stipulated judgment is not ambiguous. Where plaintiff incurred additional costs of collection after July 30, 2022, plaintiff is entitled to a supplemental judgment for those costs of collection. This may include attorney fees at a maximum rate of $300 per hour. Defendants argue that the circuit courts lack jurisdiction to tax costs on appeal or award appellate fees as sanctions. These fees are not taxed costs or sanctions. Defendants are correct that the Court of Appeals, not the circuit court, has the authority to award costs and fees under MCR 7.219, MCR 7.216(C), and MCL 600.2445. However, the fees at issue here are not sanctions or taxed costs and are not being imposed under MCR 7.219, MCR 7.216(C), or MCL 600.2445.[7] These fees were part of the stipulated judgment agreed to by the parties as part of the settlement of the underlying claims here. The circuit court has the necessary jurisdiction to enforce contractual provisions. As these fees are

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[1] Plaintiff attached counsel's itemized billing statements as Exhibit 2 to its Motion for Supplemental Judgment, filed November 21, 2025.

[2] *Fleet Business Credit v Krapohl Ford Lincoln Mercury Co*, 274 Mich App 584, 589; 735 NW2d 644 (2007).

[3] *Central Transp, Inc v Fruehauf Corp*, 139 Mich App 536, 549; 362 NW2d 823 (1984).

[4] *Pransky v Falcon Group, Inc*, 311 Mich App 164; 874 NW2d 367 (2015).

[5] *Bd of Co Rd Com'rs for Co of Eaton v Schultz*, 205 Mich App 371, 379-80; 521 NW2d 847 (1994).

[6] *Rory v Continental Ins Co*, 473 Mich 457, 491; 703 NW2d 23 (2005).

[7] *de Simone v Barberio*, unpublished opinion of the Court of Appeals, issued July 1, 2021 (Docket No. 351424), 2021 WL 2774142.

not sanctions, defendants' arguments that plaintiff failed to meet procedural requirements for sanctions are without merit.

Defendants also argue that appellate fees are not part of "costs of collection" and therefore may not be recovered under the language of the stipulated judgment. Besides the appellate fees, defendants also wish to exclude attorney fees incurred during settlement negotiations and while responding to defendants' Motion for Relief from Judgment in this Court as "defensive litigation" rather than as collections. Such a narrow definition of "costs of collection" is not warranted.[8] It is apparent from the terms of the stipulated judgment that the obligation to pay "additional costs of collection," including attorney fees, was intended to keep plaintiff whole with respect to the amount of the agreed judgment.

In order to collect on the stipulated judgment, plaintiff first had to defend against defendants' challenge to the judgment. Collection would have been impossible had defendants succeeded in their appeals, so fees incurred in response to defendants' challenge to the judgment must be included in the costs of collection, regardless of whether the fees were incurred at the trial court or appellate court level. Contrary to defendants' assertions, settlement negotiations clearly are a part of the collections process. Settlement negotiations are intended to result in at least some payment by defendants to plaintiff. Plaintiff is not categorically barred from receiving these fees from defendants, but the fees must be reasonable under the *Smith v Khouri* analysis,[9] using the framework laid out in *Pirgu v USAA*.[10]

Defendants argue that equitable considerations support denying or reducing the attorney fees here. However, these equitable considerations appear to be an attempt to relitigate arguments that defendants have already made and lost before this court and on appeal. Furthermore, equity does not generally provide a remedy to avoid the consequences of a party's entry into an unfair bargain in the absence of mistake, fraud, or some other legally recognizable ground.[11] Defendant has not asserted any valid grounds for equitable relief from the stipulated judgment. The only

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[8] *Sparks v EquityExpertsorg, LLC*, 936 F3d 348, 353-54 (CA 6, 2019).

[9] *Smith v Khouri*, 481 Mich 519; 751 NW2d 472 (2008).

[10] *Pirgu v United Servs Auto Ass'n*, 499 Mich 269; 884 NW2d 257 (2016).

[11] *Christner v Anderson, Nietzke & Co, PC*, 433 Mich 1, 13-14; 444 NW2d 779 (1989).

authority cited by defendants in support of their equitable argument is "*Bonkowski v Ostrowski*, 304 Mich App 261, 269; 850 NW2d 266 (2014)." No such case appears at that citation. No published case by that name exists in Michigan. This appears to be an AI hallucination, directly contradicting defendants' claim that all the citations in their AI-assisted brief were verified by counsel.

Where a contract requires a party to pay attorney fees, only reasonable fees should be awarded.[12] "[T]he burden of proving the reasonableness of the requested fees rests with the party requesting them."[13] "If a factual dispute exists over the reasonableness of the hours billed or hourly rate claimed by the fee applicant, the party opposing the fee request is entitled to an evidentiary hearing to challenge the applicant's evidence and to present any countervailing evidence."[14] "However, if the parties created a sufficient record to review the issue, an evidentiary hearing is not required."[15] In evaluating the reasonableness of a fee, the court should first consider "the fee customarily charged in the locality for similar legal services."[16] Then, the fee customarily charged in the locality "should be multiplied by the reasonable number of hours expended in the case."[17] Finally, the court should consider the *Pirgu* factors to determine whether that number should be adjusted up or down.[18] Those factors are:

> (1) the experience, reputation, and ability of the lawyer or lawyers performing the services,
> (2) the difficulty of the case, i.e., the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly,
> (3) the amount in question and the results obtained,
> (4) the expenses incurred,
> (5) the nature and length of the professional relationship with the client,
> (6) the likelihood, if apparent to the client, that acceptance of the particular employment will preclude other employment by the lawyer,

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[12] *Papo v Aglo Restaurants of San Jose, Inc*, 149 Mich App 285 299; 386 NW2d 177 (1986).

[13] *Smith v Khouri*, 481 Mich 519, 528-29; 751 NW2d 472 (2008).

[14] *Id.* at 532.

[15] *Sabbagh v Hamilton Psychological Servs, PLC*, 329 Mich App 324, 359; 941 NW2d 685 (2019).

[16] *Id.* at 530.

[17] *Id.* at 531.

[18] *Pirgu*, 499 Mich at 281-82.

(7) the time limitations imposed by the client or by the circumstances, and
(8) whether the fee is fixed or contingent.[19]

"These factors are not exclusive, and the trial court may consider any additional relevant factors. In order to facilitate appellate review, the trial court should briefly discuss its view of each of the factors above on the record and justify the relevance and use of any additional factors."[20]

Here, the stipulated judgment permits a maximum rate of $300 per hour. The latest Economics of Law Practice Survey reflects that in Ottawa County, the 25th percentile billing rate is $285 per hour and the median billing rate is $340 per hour. A rate of $300 per hour is in line with the prevailing rates in this community. Defendants are not disputing that the $300 per hour rate is appropriate for plaintiff's attorneys, but they do dispute that the number of hours expended on this case was reasonable. The billing records and affidavits already filed here create a sufficient record to review this issue, so an additional evidentiary hearing is not required here.

Defendants argue that hours spent on appeals, defensive litigation, and settlement negotiation are not "costs of collection" and are thus not recoverable as attorney fees under the stipulated judgment. As previously discussed, this argument fails as a matter of law. The specific reasons plaintiff's fees were incurred varied due to the variety of litigation undertaken by defendants, but the court does not find that variety relevant given the broad scope of the consent judgment; the additional costs only need to be reasonable.

Defendants can raise no legitimate objection to plaintiff's counsel's agreed hourly rate as it was agreed in the consent Judgment. However, plaintiff's itemized fee statements show that counsel billed $275.00 per hour for the first 12.5 hours incurred in 2024 and billed $350.00 for the last 19.5 hours billed during the second half of 2025. According to the parties' consent judgment, $312.50 should be added to the 2024 time charges, and $975.00 subtracted from the 2025 time charges, for a net reduction of $662.50. Plaintiff's request of $29,955 is therefore reduced to a baseline calculation of $29,292.50.

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[19] *Id.*

[20] *Id.*

The only objection to the reasonableness of plaintiff's counsel's time charges is found in Sections V.C. and V.D. of defendants' supplemental objections. They argue that plaintiff engaged in "block billing," made vague time entries, and charged excessive time for routine tasks. Defendant references a single date for such billing, on July 3, 2025, but also attached a spreadsheet as Exhibit A to its objections, listing eight specific dates of alleged "block billing." The court does not find "block billing" to be a sufficient objection to the time charges alleged.

Plaintiff cites *Augustine v Allstate Ins Co*[21] for the proposition that "courts do not require line item perfection, and the court "may make a discretionary determination based on the whole record."[22] However, *Augustine* does not say that and did not address block billing. In *Augustine*, the Court of Appeals reversed an award of attorney fees to plaintiff in a no fault case because plaintiff's counsel kept inadequate records in support of their claims, so the trial court's finding that counsel's hours expended were reasonable was clearly erroneous.[23]

It was in *Lakeside Retreats LLC v Camp No Counselors LLC*[24] that the Court of Appeals cited a history of cases in which the court had "consistently rejected the proposition that the use of block billing is per se improper or vague as long as the entries within the blocks themselves are adequately detailed."[25] The court went on to note:

> Plaintiff's attorneys' invoices were broken down by month and by the attorney or staff member who worked on the file. Each month's entry per person contains an enumeration of specific tasks undertaken on specific days. Defendants do not seriously allege that any particular such tasks are, themselves, so vague that it cannot be determined what really occurred or how the task was relevant to the litigation. Rather, defendants argue that the block billing is improper generally because it cannot be discerned how much time was spent on each discrete task. However, such "aggregation" is inherent with block billing, so this is essentially an argument that block billing is improper *per se*. We find no abuse of discretion in the trial court's determination that it was able to make "a very detailed assessment

[21] 292 Mich App 408, 431; 807 NW2d 77 (2011).

[22] Plaintiff's Reply to Objections, filed February 3, 2026, p. 5.

[23] 292 Mich App, at 432-434.

[24] 340 Mich App 79, 97; 985 NW2d 225 (2022).

[25] *Id.*

> as to whether" the services described in plaintiff's invoices "were necessary and whether the amount of time spent on those were reasonable."[26]

Similarly, with respect to defendant's objections to "clerical" tasks within the itemized fee statements, it is not immediately clear that the objected tasks are purely clerical. There are several time charges incurred at a legal assistant's rate of $125.00 per hour, and the court is not persuaded that the charges by plaintiff's attorneys are purely clerical and therefore not reasonable.[27]

The court therefore finds that the reasonable baseline calculation of plaintiff's attorney fees is $29,292.50. The court must then consider all of the nonexclusive factors identified in *Pirgu* "to determine whether an up or down adjustment is appropriate":[28]

> (1) The experience, reputation, and ability of the lawyer or lawyers performing the services. Plaintiff's counsel has been engaged in the practice of law for 25 years in Michigan and has significant experience in both civil litigation and collections work. This could justify an upward adjustment.
>
> (2) The difficulty of the case, i.e., the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly. This case began as straightforward contract and collections litigation but has expanded into extensive civil litigation and appellate work. This could justify an upward adjustment.
>
> (3) The amount in question and the results obtained. Plaintiff has successfully upheld a negotiated $80,000 consent judgment against significant litigation in the trial court and on appeal. This could justify an upward adjustment.
>
> (4) The expenses incurred, other than attorney fees, are not significant.
>
> (5) The nature and length of the professional relationship with the client. The plaintiff has been represented by counsel throughout this litigation. This does not support an upward or downward adjustment.
>
> (6) The likelihood, if apparent to the client, that acceptance of the particular employment will preclude other employment by the lawyer. The present case does not prevent plaintiff's counsel from employment in other matters, but is precluding

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[26] *Id.*, at 98-99.

[27] See id., at 99.

[28] *Pirgu*, 499 Mich at 281-82.

counsel from employment at current, higher hourly rates. This could support an upward adjustment.

(7) The time limitations imposed by the client or by the circumstances. This is a postjudgment matter and the litigation in this case has delayed plaintiff's collections efforts on the underlying judgment. This could support an upward adjustment.

(8) Whether the fee is fixed or contingent. This is not a relevant factor here.

The court concludes that the parties negotiated a reasonable hourly rate at the time of settlement and entry of the consent judgment. While there are factors weighing in favor of an upward adjustment in the baseline calculation, the parties' agreement as to the hourly rate weighs against it. Plaintiff's Motion for Supplemental Judgment is granted. The court awards plaintiff attorney fees and costs in the amount of $29,292.50, to be added to the balance of the outstanding judgment.

IT IS SO ORDERED. This is a final order and resolves all pending claims.

Dated: April 1, 2026

Hon. Jon A. Van Allsburg, Circuit Judge