

STATE OF MICHIGAN
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

METAL STANDARD CORPORATION,

Plaintiff,

Case No. 18-07744-CBB

vs.

HON. CHRISTOPHER P. YATES

CHEMICAL BANK, successor by merger
to The Bank of Holland,

Defendant.

_____/

OPINION AND ORDER GRANTING DEFENDANT'S MOTION
FOR ATTORNEY'S FEES AND FOR ENTRY OF JUDGMENT

On February 22, 2021, the Court rendered findings of fact, conclusions of law, and a verdict directing Plaintiff Metal Standard Corporation ("Metal Standard") to pay Defendant Chemical Bank \$1,234,942.61 to satisfy the balance on a line of credit, reduced by a modest setoff of \$118,450, for a net verdict in favor of Chemical Bank in the amount of \$1,116,492.61. Chemical Bank moved for an award of attorney fees followed by the entry of judgment, and its supplemental brief submitted on May 4, 2021, itemized its requests to support a total award of \$1,417,436.95. The Court then held a hearing to address each component of Chemical Bank's request. Based upon the parties' written submissions and oral arguments, the Court shall direct the entry of a judgment and invite Chemical Bank to submit a proposed judgment memorializing the Court's rulings, including an award of the net verdict of \$1,116,492.61 augmented by "reasonable" attorney fees of \$180,592.50 and court costs of \$22,625.14. The Court shall permit Chemical Bank to recover prejudgment interest at the parties' contract rate under MCL 600.6013(7) on its counterclaim, as well as interest on its attorney fees and court costs under MCL 600.6013(8) from the date on which the counterclaim was filed.

I. Attorney Fees

Although Plaintiff Metal Standard fired the first shot by initiating this legal action, Defendant Chemical Bank responded with a counterclaim on which it eventually prevailed by obtaining a net verdict in the amount of \$1,116,492.61. That award consists of the balance due on Metal Standard's line of credit with Chemical Bank reduced by a setoff of \$118,450. Based upon that result, Chemical Bank seeks to recover its attorney fees from Metal Standard under fee-shifting terms in the contracts signed by the parties. "As a general rule, attorney fees are not recoverable from a losing party unless authorized by a statute, court rule, or other recognized exception." Great Lakes Shores, Inc v Bartley, 311 Mich App 252, 255 (2015). "One such other exception is when attorney fees are recoverable pursuant to a contract between the parties." Id. Accordingly, the Court must turn to the language in the parties' contracts to determine whether Chemical Bank is entitled to its attorney fees expended in this litigation.

Two contracts between the parties define Defendant Chemical Bank's right to seek attorney fees from Plaintiff Metal Standard. First, Metal Standard agreed in a promissory note that "Lender may hire or pay someone else to help collect this Note if Borrower does not pay[.]" and "Borrower will pay Lender that amount[.]" including "Lender's reasonable attorneys' fees and Lender's legal expenses whether or not there is a lawsuit[.]" Similarly, the parties' business loan agreement states that "Borrower agrees to pay upon demand all of Lender's costs and expenses, including Lender's reasonable attorneys' fees and Lender's legal expenses, incurred in connection with the enforcement of this Agreement." Thus, the parties contractually agreed that Metal Standard would pay Chemical Bank's "reasonable" attorney fees resulting from enforcement of its rights under the agreements that the parties signed.

Plaintiff Metal Standard not only refused to pay the balance due on its line of credit, but also haled Defendant Chemical Bank into court on the claim that Chemical Bank breached its contractual obligations to Metal Standard. At no time did Metal Standard offer to pay the balance due on its line of credit. Instead, Metal Standard aggressively asserted that Chemical Bank was in the wrong as a matter of contract law. In the fullness of time, the Court determined that Metal Standard breached the parties' contracts by failing to pay the outstanding balance on the line of credit, thereby making clear that Chemical Bank had a right to the payment that Metal Standard intentionally withheld. To be sure, the Court found that Metal Standard was entitled to a modest setoff against that obligation, see McCoig Materials, LLC v Galui Construction, Inc., 295 Mich App 684, 694-696 (2012), but that setoff merely decreased Chemical Bank's "recovery by reducing [the] judgment in its favor" by the claim Metal Standard had "to damages arising out of the same contract or transaction." Id. at 696. Metal Standard contends that it properly withheld payment because Chemical Bank demanded an amount in excess of what Metal Standard owed because Chemical Bank did not reduce its demand to account for the setoff ultimately awarded by the Court. But nothing in the fee-shifting provisions in the parties' contracts suggests that Chemical Bank's right to recover its "reasonable" attorney fees turned upon the accuracy of its demand down to the penny. The simple fact remains that Chemical Bank had to pursue a counterclaim to obtain Metal Standard's payment of the seven-figure balance on the line of credit. For that effort, Chemical Bank is entitled to its reasonable attorney fees.¹

¹ The Court need not wrestle with the first-breach argument that Defendant Chemical Bank anticipated in its motion and brief. As Plaintiff Metal Standard insisted in its response: "The issue of 'first substantial breach' was irrelevant in Majic Windows [sic], *and it is irrelevant here.*" See Plaintiff/Counter-Defendant's Response in Opposition to Defendant/Counter-Plaintiff's Motion for Attorney's Fees and for Entry of Judgment at 2-3. Even if Metal Standard had made a first-breach argument to try to defeat Chemical Bank's request for attorney fees, the Court would have rejected the argument by relying upon the language of the fee-shifting provisions in the parties' contracts.

Under Michigan law, the calculation of “reasonable” attorney fees requires the Court to walk through the three-step analysis prescribed in Pirgu v United Services Automobile Ass’n, 499 Mich 269, 281 (2016). First, the Court must determine “the reasonable hourly rate customarily charged in the locality for similar services.” Id. Second, the Court must “multiply that rate by the reasonable number of hours expended in the case to arrive at a baseline figure.” Id. Finally, the Court must give consideration to eight factors “to determine whether an up or down adjustment is appropriate.” Id. The Court shall consider each of these three issues in turn.

A. Reasonable Hourly Rates.

Attorney Andrew Shier pulled the laboring oar for Chemical Bank throughout this litigation. As a partner in the Grand Rapids law firm McShane & Bowie, P.L.C., he billed at the hourly rate of \$330, which the Court finds eminently reasonable pursuant to the 2020 Economics of Law Practice Attorney Income and Billing Rate Summary Report published by the State Bar of Michigan. As our Supreme Court has noted, that survey provides an excellent source of information about reasonable hourly billing rates in the State of Michigan. See Smith v Khouiri, 481 Mich 519, 532 (2008). Thus, the Court concludes, without any real opposition from Plaintiff Metal Standard, that the billing rate of Attorney Shier is reasonable.

B. Reasonable Number of Hours.

Defendant Chemical Bank has properly supported its request for reasonable attorney fees by “submit[ting] detailed billing records,”² Smith, 481 Mich at 532, “which the court must examine and

² The billing records are attached as Exhibit 6 to Defendant Chemical Bank’s brief in support of its motion for attorney fees. Ordinarily, the Court appends the billing records to its opinion, but the billing records in this case are so voluminous that the Court has chosen not to attach them.

opposing parties may contest for reasonableness.” Id. The Court’s painstaking review of the billing records leads to four basic conclusions. First, Attorney Shier was careful and modest in his billing, so the hours he devoted to this matter are generally reasonable. Second, several professionals other than Attorney Shier billed on the matter, but the Court has no information about those professionals, so the Court shall disallow all hours billed by anyone other than Attorney Shier. Third, some of the billing entries for Attorney Shier are completely redacted, so the Court cannot count those hours in determining the reasonable number of hours billed because the Court has no idea what was done for those billing entries.³ Fourth, Chemical Bank did not demand payment of the outstanding balance on the line of credit until March 8, 2019,⁴ so attorney fees incurred before that date should not be included in the “reasonable” attorney fees awarded to Chemical Bank under the provisions set forth in the parties’ contracts.

Applying the four basic conclusions explained in the previous paragraph, the Court finds that Attorney Shier reasonably billed a total of 578.65 hours on this matter,⁵ but 31.4 hours were billed for time prior to March 8, 2019, that should not be counted, so the Court finds that Attorney Shier

³ To its credit, Defendant Chemical Bank removed “[a]ll redacted entries . . . appearing on the billing statements . . . from the Bank’s request for fees.” See Defendant’s Brief in Support of its Motion for Attorney’s Fees and for Entry of Judgment, Exhibit 6 (Summary of Attorney Fees, fn 1).

⁴ Defendant Chemical Bank filed its counterclaim several days later on March 13, 2019.

⁵ Defendant Chemical Bank calculated its reasonable hours at 577.55, See Defendant’s Brief in Support of its Motion for Attorney’s Fees and for Entry of Judgment, Exhibit 6, which is slightly *below* the Court’s figure of 578.65 hours despite the Court’s deductions. As it turns out, Chemical Bank incorrectly added up the hourly billings on its monthly time sheets and arrived at the figure of 577.55 hours, rather than the correct sum of the hourly billings, which is 597.55. After checking and rechecking the figures, the Court has reached the conclusion that Chemical Bank erroneously cheated itself out of 20 hours of billing due to a simple error in addition. The Court has attached Chemical Bank’s “Summary of Attorney Fees” with the Court’s own edits as Appendix A to illustrate where the Court’s calculations differ from those of Chemical Bank and where the addition error occurred.

reasonably billed 547.25 hours of recoverable time. Multiplying that approved number of hours by Attorney Shier's approved hourly billing rate of \$330, the Court arrives at a "baseline figure" in the amount of \$180,592.50. See Pirgu, 498 Mich at 281.

C. Consideration of Adjustments.

Neither side has presented arguments in favor of an upward or downward adjustment of the "baseline figure" in this case, but the Court nonetheless must consider eight factors identified by our Supreme Court in Pirgu, 499 Mich at 282, to determine whether to make any adjustment. First, "the experience, reputation, and ability" of Attorney Shier has already been factored into his hourly rate, so the Court need not make any adjustment to account for that factor. See Pirgu, 499 Mich at 282. Second, although this case was challenging, its level of difficulty does not warrant an adjustment of the "baseline figure." See id. Third, "the amount in question and the results obtained" require no adjustment because Defendant Chemical Bank scored a major victory, but it did not run the table. See id. Fourth, the expenses that Chemical Bank incurred are largely subsumed in its bill of costs, so the Court need not make any adjustment of the "baseline figure" to reward Chemical Bank. See id. Fifth, Attorney Shier's firm has enjoyed a longstanding relationship with Chemical Bank, but that relationship has already redounded to the benefit of Chemical Bank in this case because the bank received a preferred-customer rate in retaining Attorney Shier to handle the case. See id. Sixth, the record contains no evidence that Attorney Shier and his firm had to turn down other work in order to represent Chemical Bank in this case. See id. Seventh, neither Chemical Bank nor the Court ever placed onerous time limitations upon Attorney Shier. See id. Eighth, Attorney Shier and his firm billed on an hourly basis, rather than through a "fixed or contingent" fee. See id. Because none of

the eight factors identified by our Supreme Court in Pirgu militates in favor of any adjustment either upward or downward, the Court shall simply award Chemical Bank as its “reasonable” attorney fee the “baseline figure” of \$180,592.50. See Pirgu, 499 Mich at 281.

II. Court Costs

Under MCR 2.625(A)(1), “the prevailing party” ordinarily is entitled to tax its court costs. Here, the Court concludes that Defendant Chemical Bank is “the prevailing party” because it won the lion’s share of its dispute with Plaintiff Metal Standard. To be sure, Metal Standard obtained a small measure of success in the form on a modest setoff. But the Court must bear in mind that Metal Standard initiated this legal action, yet Chemical Bank walked away with a seven-figure verdict in its favor. “A ‘prevailing party’ is ‘[t]he party to a suit who successfully prosecutes the action . . . , prevailing on the main issue, even though not necessarily to the extent of his original contention.’” Ronnisch Construction Group, Inc v Lofts on the Nine, LLC, 499 Mich 544, 563 (2016). Because that language fits Chemical Bank to a tee, the Court concludes that Chemical Bank is entitled to tax its court costs.

Because “[t]he power to tax costs is purely statutory,” Guerrero v Smith, 280 Mich App 647, 670 (2008), Defendant Chemical Bank “cannot recover such expenses absent statutory authority.” Id. Although a bill of costs can be contested if it includes expenses that do not fall within statutory definitions of taxable costs, e.g., Van Elslander v Thomas Sebold & Associates, Inc, 297 Mich App 204, 216-227 (2012), Chemical Bank has presented a bill of costs that carefully hews to the standards of Michigan statutes. See Defendant’s Brief in Support of its Motion for Attorney’s Fees and for Entry of Judgment, Exhibit 7. Wisely, Plaintiff Metal Standard has offered no objection to the costs

claimed by Chemical Bank, which add up to \$22,625.14. See id. The Court has reviewed Chemical Bank's bill of costs and has concluded that each item is taxable under Michigan law. Accordingly, the Court shall award Chemical Bank \$22,625.14 in court costs.

III. Interest

The most challenging aspect of Defendant Chemical Bank's request for enhancements of the verdict involves interest. In a nutshell, Chemical Bank has asked for interest on the promissory note as well as statutory prejudgment interest, whereas Plaintiff Metal Standard considers that approach impermissible double (or even triple) dipping because the verdict already provided interest and late fees to Chemical Bank. Thus, the Court must consider the interplay between interest recoverable as a matter of contract under a promissory note and statutory prejudgment interest.

Pursuant to MCL 600.6013(8), "interest on a money judgment recovered in a civil action is calculated at 6-month intervals from the date of the filing of the complaint at a rate of interest equal to 1% plus the average interest rate paid at auctions of 5-year United States treasury notes during the 6 months immediately preceding July 1 and January 1 . . . and compounded annually[.]" Standard prejudgment interest of that sort is available in all civil actions, Everett v Nickola, 234 Mich App 632, 639 (1999), as opposed to a mere subset of civil actions involving interest-bearing instruments such as promissory notes. But MCL 600.6013(7) makes clear that, "if a judgment is rendered on a written instrument evidencing indebtedness with a specified interest rate, interest is calculated from the date of filing the complaint to the date of satisfaction of the judgment at the rate specified in the instrument if the rate was legal at the time the instrument was executed." The promissory note that supported Defendant Chemical Bank's successful counterclaim has a variable interest rate as well

as a four-percent increase of that rate upon default. See Defendant’s Brief in Support of its Motion for Attorney’s Fees and for Entry of Judgment, Exhibit 2. To prevent a double recovery, Chemical Bank has neither requested standard prejudgment interest on the verdict nor asked for interest at the stated rate in the promissory note for the time period covered in the verdict. Instead, Chemical Bank has cited MCL 600.6013(7) and asked for “a supplemental award of prejudgment interest from” the date of the verdict “through the date of Judgment, with interest to continue to accrue compounded annually at the [contract] rate of 7% until satisfied.” See Defendant’s Brief in Support of its Motion for Attorney’s Fees and for Entry of Judgment at 10. The Court agrees with that analysis and, thus, shall award Chemical Bank that measure of interest on its successful counterclaim.

Additionally, Defendant Chemical Bank has requested prejudgment interest in its award of its “reasonable” attorney fees and court costs. According to MCL 600.6013(8), “[i]nterest under this subsection is calculated on the entire amount of the money judgment, *including attorney fees and other costs.*” In other words, that “statute makes no exception for attorney fees and costs” because “the statute expressly applies to ‘attorney fees and other costs.’” Ayer v Foodland Distributors, 472 Mich 713, 717 (2005). Consequently, Chemical Bank is entitled to standard prejudgment interest under MCL 600.6013(8) – as opposed to enhanced prejudgment interest at the contract rate pursuant to MCL 600.6013(7) – on the “reasonable” attorney fees and court costs awarded by the Court. But because MCL 600.6013(8) makes clear that prejudgment interest runs from “the date of filing the complaint” and Chemical Bank did not file its counterclaim until March 13, 2019, Chemical Bank cannot recover prejudgment interest for any period of time before that date. Phinney v Perlmutter, 222 Mich App 513, 562 (1997) (“‘the complaint’ for purposes of this statute is the ‘formal complaint filed against the defendant upon whom the prejudgment interest is being taxed’”).

IV. Conclusion

For all of the reasons stated in this opinion, the Court shall award Defendant Chemical Bank the net verdict of \$1,116,492.61 augmented by “reasonable” attorney fees of \$180,592.50 and court costs of \$22,625.14. Chemical Bank may also include prejudgment interest at the parties’ contract rate under MCL 600.6013(7) on its counterclaim, as well as interest on its “reasonable” attorney fees and court costs under MCL 600.6013(8) from the date on which it filed the counterclaim. Finally, the Court invites Chemical Bank to submit a proposed judgment under the so-called seven-day rule, see MCR 2.602(B)(3), that memorializes the verdict, computes appropriate prejudgment interest, and closes the case.⁶

IT IS SO ORDERED.

Dated: September 13, 2021



HON. CHRISTOPHER P. YATES (P41017)
Kent County Circuit Court Judge

⁶ In response to Defendant Chemical Bank’s “Motion for Attorney’s Fees and for Entry of Judgment,” Plaintiff Metal Standard made sophisticated arguments about the applicable interest rate, including the assertion that the penalty interest provision does not apply (so the interest rate should be 4.75 percent) and the award of interest should not commence until April 8, 2019, because Metal Standard paid interest up to that date. Chemical Bank has not yet responded to those arguments, so Metal Standard can present its arguments again if it is dissatisfied with the rate and timing of interest in the proposed judgment. Obviously, if Chemical Bank accepts Metal Standard’s contentions about the rate and timing of interest in drafting the proposed judgment, the Court will not have to provide further analysis of Chemical Bank’s right to interest.

Appendix A: Summary of Attorney Fees

Court's numbers are denoted in blue.

SUMMARY OF ATTORNEY FEES

Date	Invoice #	Adjusted ¹ Hours	Adjusted Fees
3/6/2019	87978	25.9 / 24.9	\$8,552.00
4/10/2019	88973	✓ 15.6	\$5,148.00
5/8/2019	89453	✓ 11.5	\$3,795.00
6/5/2019	90103	40.9 / 32.3	\$12,551.00
7/9/2019	91220	✓ 30.6	\$10,098.00
8/6/2019	91579	✓ 17.5	\$5,775.00
9/5/2019	92324	19.5 / 14.4	\$5,874.00
10/4/2019	93164	✓ 22.3	\$7,359.00
11/4/2019	93683	39.7 / 39.2	\$13,106.00
12/4/2019	94555	✓ 34.5	\$11,385.00
1/8/2020	95399	✓ 25.4	\$8,382.00
2/10/2020	96134	✓ 30.4	\$10,032.00
3/10/2020	97088	✓ 19.2	\$6,336.00
5/4/2020	98278	✓ 11.6	\$3,828.00
6/4/2020	98917	✓ 3.2	\$1,056.00
7/2/2020	99652	✓ 32.6	\$10,758.00
8/5/2020	100510	✓ 21.1	\$6,963.00
9/3/2020	101158	✓ 8.9	\$2,937.00
10/30/2020	102630	154.1 / 150.4	\$45,801.00
12/8/2020	103924	✓ 1.9	\$627.00
1/6/2021	104369	✓ 2.3	\$759.00
3/2/2021	105840	✓ 8.45	\$2,788.50
3/29/21	106514	✓ 20.4	\$6,732.00
Totals		577.55	\$190,642.50

Should be
597.55

Court's total
is 578.65

¹ All redacted entries and voluntarily discounts appearing on the billing statements have been removed from the Bank's request for fees.