

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

KAREN PRASSER,)	Case No. CV 13-802183
)	
)	
PLAINTIFF/COUNTERCLAIM)	JUDGE MICHAEL E. JACKSON
DEFENDANT,)	
)	JOURNAL ENTRY AND OPINION:
v.)	SANCTIONS AWARD AGAINST
)	ATTORNEY CARYN M. GROEDEL AND
CITY OF SOLON, ET AL)	CARYN GROEDEL & ASSOCIATES,
)	L.P.A.
DEFENDANTS/COUNTERCLAIM)	
PLAINTIFFS.)	
)	

The Court grants Defendant/Counter-Claim Plaintiff City of Solon and Mayor Susan Drucker (collectively, Solon) \$21,387.50 in reasonable attorney fees and costs as sanctions concerning the frivolous conduct of Caryn M. Groedel and her law firm Caryn Groedel & Associates, L.P.A. (collectively, Groedel) determined by this Court in its Journal Entry and Opinion dated June 9, 2017, as discussed below. She has served as counsel for Plaintiff/Counter-Claim Defendant Karen Prasser (Prasser) during this entire case.

BACKGROUND

Frivolous Conduct & Contempt of Court

On December 19, 2016, pursuant to R.C. 2323.51, the Court held a hearing on cross motions for sanctions, and the Court’s own motion for sanctions against counsel for both parties. On June 9, 2017, the Court published its ruling and order finding both Groedel and Solon’s counsel, Barry Y. Freeman (Freeman) of Buckingham, Doolittle, & Burroughs, LLC, (Buckingham) in contempt of court, granting in-part Solon’s motion for sanctions against

Groedel, and denying Prasser's motion for sanctions against Freeman. The Court fined Freeman and Groedel \$2,000.00 each. Each counsel paid his and her respective fines on July 6, 2017.

The Court also set a hearing for June 16, 2017 to determine the reasonable attorney fees and costs incurred by Solon. R.C. 2323.51(B)(1). The Court rescheduled that hearing to July 17, 2017, after granting Groedel's motion to continue the hearing so that she could offer an expert witness that she previously advised the Court she would not use¹.

The Court's findings of contempt, and of Groedel's frivolous conduct in the June 9, 2017 order remain in effect as set forth in that Journal Entry and Opinion. Groedel maintains an objection to the Court's finding her conduct frivolous and subject to sanctions.

Sanctions Award Hearing

Freeman, and the Solon Law Director, Thomas G. Lobe, testified on behalf of Solon. Solon requested \$70,709.20² in reasonable attorney fees and costs as sanctions concerning Groedel's frivolous conduct. Solon argued that it was entitled to recover fees and costs incurred beginning in 2013 through May 24, 2017. Lobe testified that all billing statements from Buckingham have been paid in full by Solon, after his review and approval as Solon Law Director. Solon also argued that its proof of payment of Buckingham's invoice is proof of reasonableness, and provided for the first time, three case citations for the Court and Groedel to review. The Court admitted Solon's exhibits into evidence without objection.

The Court granted Groedel time until July 21, 2017 to file a brief in response to the argument that proof of payment is proof of reasonableness based on the three cases cited by

¹The Court held a telephone conference with counsel on June 8, 2017 and counsel for both parties represented that they did not intend on using experts. June 13, 2017 Journal Entry.

² This was the request made during the hearing.

Solon. The Court also granted Groedel's request to file "entries" that were referenced during the hearing. Both parties provided testimony and argument regarding the Court's June 9, 2017 Journal Entry and Opinion, but neither party offered it into evidence. In this context Groedel requested leave to file "entries," and the Court granted her request based on the belief that she wanted to make sure the June 9, 2017 Journal Entry and Opinion or other appropriate journal entries were part of the record for the sanctions determination. Those "entries" were also due by July 21, 2017.

Attorney Subodh Chandra of the Chandra Law Firm LLC testified as an expert witness on behalf of Groedel. He stated and Groedel argued that based on their understanding the Court's June 9, 2017 Journal Entry and Opinion she was not being sanctioned for her conduct prior to the January 31, 2016 discovery deadline. As a result, Groedel argued that Solon, is not entitled to any attorney fees or costs before January, 31, 2016, and that the Court should only consider attorney fees and costs on or after February 4, 2016, the date she filed for leave to file a third amended complaint to add Prasser's false light claim. Groedel's exhibits were admitted into evidence without objection.

The parties stipulated that the hourly attorney rate of \$250.00 for service provided by Buckingham is a reasonable rate.

Following this hearing, July 17, 2017, Groedel filed notice of the following transcripts: July 10, 2015, April 27, 2016, and December 19, 2016 Hearings. She filed a Notice of Affidavits Pertaining to Occurrence Not on the Record. On July 21, 2017, Groedel filed a Notice of Affidavit of Attorney Fischbach. On July 22, 2017, she filed a Statement Regarding Solon's Bills Submitted in Connection with the July 17, 2017 Hearing (Statement). Within this Statement is

Section V Case Law pages 4 and 5 that address the cases Solon referenced during the hearing. On July 24, 2017, Groedel filed two Notices of Revised Affidavits and a Request to Withdraw the July 17, 2017 Affidavits. (All of these filings are identified as the “Groedel Filings.”).

On July 24, 2017, Solon filed a Motion to Partially Strike Groedel’s Statement, and requested additional sanctions against Groedel for violating the Court’s order concerning what Groedel was to file. On July 27, 2017, Groedel filed a motion for time until August 10, 2017 to oppose Solon’s motion. The Court granted her motion; Groedel filed her brief in opposition on August 4, 2017.

Court’s Award

The Court considered all the testimony, admitted exhibits, stipulation of the reasonableness of the attorney rate, Prof.Cond.R 1.5, and the arguments of each party to determine Solon’s request for attorney fees associated with the Court’s previous finding of frivolous conduct by Groedel. The Court did not admit or consider any of Groedel’s Filings as evidence in determining the reasonable attorney fees incurred by Solon, except for Section V Case Law, pages 4 and 5 from her Statement, which addresses the cases cited by Solon. The Affidavits and Hearing Transcript are not “entries,” and if admitted, each would be highly prejudicial to Solon because no cross-examination occurred regarding this testimony.

Further, except for the two pages accepted by the Court, Groedel’s Statement exceeded the scope of what she was granted leave to file, which was only a response to Solon’s argument that proof of payment is proof of reasonableness. Accordingly, Solon’s motion to partially strike

Groedel's Statement is granted³. The Court did not grant Groedel leave to file additional arguments on any other issue; therefore, all parts of Groedel's Statement except Section V Case Law on pages 4 and 5, are stricken, as are all of the Hearing Transcripts and all Affidavits that were also filed without leave of court. The Court accepts Groedel's late filing of Section V Case Law on pages 4 and 5, only, and notes that Solon did not object to the late filing. The Court will address the issue of additional sanctions against Groedel by separate journal entry.

The Court finds Groedel's argument that Solon is not entitled to reasonable fees and cost before the discovery deadline on January 31, 2016 well taken because it is consistent with the Court's June 9, 2017 Journal Entry and Opinion. Therefore, the Court denies Solon's request for all the fees and costs incurred before the discovery deadline. Solon is entitled to the reasonable attorney fees and costs associated with Solon's preparation and defense beginning February 4, 2016, when Groedel filed Prasser's Motion for Leave to File a Third Amended Complaint. Furthermore, the Court finds Groedel's argument well taken in challenging Solon's reliance on the three cases it cited that proof of payment is proof of reasonableness. Solon's argument is misplaced because those cases were disputes to determine reasonable attorney fees between counsel and former clients; these cases do not involve the issue of reasonable attorney fees in the context of sanctions.

The parties stipulated to the reasonableness of the hourly attorney rate of \$250.00 because Buckingham only billed for legal work Freeman performed between February 4, 2016

³ The Court considered striking the entire brief because it was not filed by the July 21, 2017 deadline to file the brief regarding the case law Solon cited. Thereafter, on July 27, 2017, Groedel filed an untimely motion for time to file her brief on Solon's case law on whether proof of payment is proof of reasonableness. Her motion fails to comply with Civ.R. 6(B). Additionally, the Court questions the validity of the Certificate of Service on Groedel's Statement, which contains the "e-signature" of Attorney Tiffany Fischbach whose employment with Groedel and representation of Prasser ended on May 12, 2017. Plf.'s Not. Sub. Counsel dated May 10, 2017. However, Solon did not raise these objections in its motion to strike, and did not oppose the timeliness of Groedel's filing of Section V Case Law.

and May 24, 2016, the Court is left to determine which attorney fees and costs were reasonably incurred by Solon because of Groedel's frivolous conduct during this time⁴.

The Court's award applies to attorney fees and costs related to the following filings: Prasser's Motion to Amend the Complaint for a Third Time; Prasser's Motion for Summary Judgment on Her Claims for Age Discrimination, Retaliation, and Promissory Estoppel; Prasser's Motion for Summary Judgment on all of Solon's Claims Against Prasser; and time spent preparing for the motion for summary judgment hearing related to these motions. Additionally, Solon is entitled to the reasonable attorney fees and costs associated with its preparation and prosecution of its motion for summary judgment as it relates to Prasser's claims for Defamation and False Light. This includes time spent preparing for the motion for summary judgment hearing, and reviewing the Court's granting summary judgment in Solon's favor on Prasser's claims for Defamation and False Light.

The Court reviewed Buckingham's billing statements sent to Solon regarding this case from January 2016 through May 24, 2016, the day the Court granted Solon judgment as a matter of law on Prasser's claims for Defamation and False Light to determine the number of hours at issue, and Solon payment history. Although Solon was billed for a total of 166.9 hours during this time, the Court finds that 85.55 hours of legal service provided by Freeman at the hourly rate of \$250.00 are reasonably related to attorney fees and costs Solon incurred because of Groedel's frivolous conduct.

⁴ Solon conceded that not all of the attorney fees and costs it incurred during this time were related to Groedel's conduct that the Court determined was frivolous, and proposed its own calculations for determining which billed hours were the ones incurred because of Groedel's frivolous conduct.

The Court determines that Groedel is sanctioned and ordered to pay Solon \$21,387.50 (\$250.00 per hour multiplied by 85.55 hours), the reasonable attorney fees and costs incurred by Solon because of Groedel's frivolous conduct. Interest will accrue at the current statutory rate from the date of this judgment entry. Costs assessed to Groedel.

IT IS SO ORDERED.

DATED: _____

JUDGE MICHAEL E. JACKSON

THE CLERK OF COURT SHALL SERVE A COPY OF THE FOREGOING JOURNAL ENTRY AND OPINION ON ALL COUNSEL OF RECORD AT THE ADDRESS LISTED ON THE COURT DOCKET.