STATE OF MICHIGAN

COURT OF APPEALS

ROMAN, INC.,

Plaintiff-Appellee,

v

KEVIN P. O'BRIEN d/b/a JUST BE CLAUS,

Defendant-Appellant.

UNPUBLISHED
November 6, 2001

No. 220180
Wayne Circuit Court
LC No. 97-740531-CZ

Before: Bandstra, C.J., and Doctoroff and White, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's order entering judgment for plaintiff. We affirm.

In or about 1987, defendant began doing business as Gold In Motion selling automobile lubricants. Beginning in December 1989, defendant sold Christmas items at trade shows out of Gold In Motion's booth. On October 22, 1993, defendant incorporated Gold In Motion in Canada. In 1994, defendant stopped selling lubricants altogether but continued selling Christmas products. On June 14, 1994, defendant, seeking to buy Christmas products from plaintiff, provided a credit application listing the business as Just Be Claus—Division of Gold In Motion. Plaintiff extended credit and began shipping products to Just Be Claus at a Detroit address. After defendant failed to pay debts that were due in October 1996, plaintiff filed this action against defendant. Defendant argued that Just Be Clause, Inc. was liable for the debt and that he was not personally liable for the corporation's debt. However, after a bench trial, the court found that plaintiff did not have actual knowledge of the corporate status of Just Be Clause and that defendant was liable to plaintiff for $19,382.83.

Defendant first argues that the trial court erred in holding defendant personally liable for the debt because corporate shareholders are not liable for the debts of a corporation. We review a trial court's findings of fact in a bench trial under the clearly erroneous standard. MCR 2.613(C); *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake was made. *Id.* In applying this principle, regard shall be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. MCR 2.613(C); *Attorney General ex rel Director of Dep't of Natural Resources v ACME Disposal Co*, 189 Mich App 722, 724; 473 NW2d 824 (1991); *Morris v Clawson*, 459 Mich 256, 275; 587 NW2d 253 (1998).

If a corporation's agent wishes to avoid personal liability for corporate debts, the duty rests upon the agent to disclose his agency and not upon others to discover it. *Stevens v Graf*, 358 Mich 122, 126; 99 NW2d 356 (1959). It is not enough that the other party has the means of ascertaining the name of the principal; the agent must either bring to the other party actual knowledge or that which to a reasonable man is equivalent to knowledge or the agent will be bound. *Id.* A principal is considered undisclosed unless a party transacting with the principal's agent has notice that the agent is acting for the principal and notice of the principal's identity. *Penton Publishing v Markey*, 212 Mich App 624; 626; 538 NW2d 104 (1995); *Dodge v Blood*, 299 Mich 364, 370; 300 NW 121 (1941). An agent contracting for an undisclosed principal is personally liable for contractual obligations. *Penton Publishing*, *supra*; *Detroit Pure Milk Co v Patterson*, 138 Mich App 475, 478; 360 NW2d 221 (1984).

In this case, when defendant provided a credit application to plaintiff on June 14, 1994, Just Be Claus was not a corporate entity and defendant signed the application as owner of Just Be Claus—a division of Gold In Motion. Gold In Motion, was incorporated in October 1993 and changed its corporate name to Just Be Claus, Inc. in October 1995. Defendant never sent a letter to plaintiff indicating that Just Be Claus, Inc. was operating as a corporation. Just Be Claus' manager initially testified that she could not remember whether she had provided notification and later testified that she did fax notification but did not have a copy of what was sent. Plaintiff's credit manager testified that she had no knowledge that Just Be Claus was doing business as a corporation. A credit reference sheet, which the credit manager admitted receiving, was not sent until June 1996, had Just Be Claus (without Inc.) written across the top, and, further down, indicated that the legal name Just Be Claus, Inc. took effect in 1995.

Defendant cites a credit memo bearing the name Just Be Claus, Inc. as evidence that plaintiff knew of defendant's corporate status. However, at trial defendant presented no corroboration that this memo was actually sent by defendant or received by plaintiff. On appeal, defendant cites only a memo from plaintiff as proof that plaintiff received defendant's memo, but plaintiff's memo makes no reference to defendant's memo. The trial court was free to reject this evidence as unpersuasive. *Morris*, *supra* at 275.

Defendant had a duty to disclose his agency and to provide plaintiff with actual knowledge of the corporate principal in order to avoid personal liability. *Stevens*, *supra* at 122. It is apparent that defendant did not provide actual knowledge and plaintiff was not aware of the corporate status of Just Be Claus. We find no error in the trial court's conclusion that defendant was personally liable because he did not adequately disclose the identity of his principal, Just Be Claus, Inc.

Defendant also argues that the trial court abused it discretion in awarding $7,000 in attorney fees as a mediation sanction and $40 in motion fees, $100 in filing fees, and $20 in service of process fees to plaintiff as the prevailing party pursuant to MCR 2.625.[1] We disagree. We review a trial court's award of attorney fees for an abuse of discretion. *In re Attorney Fees & Costs*, 233 Mich App 694, 704; 593 NW2d 589 (1999). A trial court's decision to tax costs is

[1] Both defendant and plaintiff address mediation and facilitation fees in their briefs. However, the trial court did not award these fees.

also reviewed for abuse of discretion. *Portelli v IR Construction Products Co*, 218 Mich App 591, 604; 544 NW2d 591 (1996).

A party who rejects mediation evaluation is subject to sanctions if the party fails to improve its position at trial. *Elia v Hazen*, 242 Mich App 374, 378; 619 NW2d 1 (2000). If sanctions are appropriate, the actual costs to be charged are the costs taxable in any civil action plus a reasonable attorney fee. MCR. 2.403(O)(6); *Forest City Enterprises, Inc v Leemon Oil Co*, 228 Mich App 57, 81; 577 NW2d 150 (1998). A reasonable attorney fee must be based on a reasonable hourly rate, as determined by the trial judge, for services necessitated by the rejection of evaluation. MCR 2.403(O)(6)(b); *Rafferty v Markovitz*, 461 Mich 265, 267; 602 NW2d 367 (1999). In determining a reasonable hourly rate, the trial court should use empirical data contained in the Law Practice Survey and other reliable studies coordinated with criteria such as: (1) the professional standing and experience of the lawyer, (2) the skill, time and labor involved; (3) the amount in question and the results achieved; (4) the difficulty of the case; (5) the expense incurred; and (6) the nature and length of the professional relationship with the client. *Temple v Kelel Distributing Co*, 183 Mich App 326, 333; 454 NW2d 610 (1990).

The trial court awarded plaintiff $7,000 in attorney fees. Attached to plaintiff's motion for mediation sanctions, plaintiff 's counsel submitted a detailed list of time he spent working on the case. The time spent after defendant's rejection of mediation sanctions totaled 56.7 hours. Plaintiff's counsel billed $150 per hour. The trial court reduced the hours by ten and awarded $7,000, stating that the case was contentious and citing defendant's refusal to agree to a settlement. In light of the fact that this case proceeded to trial, that plaintiff was awarded the total amount of damages claimed, and that defendant refused to settle after a case evaluation in plaintiff's favor, the trial court did not abuse its discretion in awarding plaintiff $7,000 in attorney fees.

The trial court also awarded plaintiff a motion fee, service of process fee, and a filing fee. MCR 2.625(A)(1) provides that "[c]osts will be allowed to the prevailing party in an action, unless prohibited by statute or by these rules or unless the court directs otherwise for reasons in writing and filed in the action." MCL 600.2421b defines "costs and fees" as "the normal costs incurred in being a party in a civil action." Motion fees, filing fees, and fees involved in serving process are all clearly normal costs incurred in a civil action. Therefore, the trial court did not abuse its discretion in awarding these costs to plaintiff.

Affirmed.

/s/ Richard A. Bandstra
/s/ Martin M. Doctoroff
/s/ Helene N. White