

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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DENNIS BURNHAM,

Plaintiff/Counter-Defendant-  
Appellant,

and

JANET BURNHAM,

Plaintiff,

v

D.F. BURNHAM & COMPANY,

Defendant/Counter-Plaintiff/Third-  
Party-Plaintiff-Appellee,

and

METRIC HYDRAULIC COMPONENTS, INC.,

Third-Party-Defendant.

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UNPUBLISHED

March 23, 2010

No. 287635

Macomb Circuit Court

LC No. 2006-004122-CK

Before: M.J. KELLY, P.J., and TALBOT and WILDER, JJ.

PER CURIAM.

Plaintiff/Counter-Defendant-Appellant, Dennis Burnham (plaintiff), appeals as of right an order denying his motion for relief from judgment request for attorney fees and costs. We affirm.

Plaintiff was a sales representative for defendant, D.F. Burnham & Company. He was paid five percent commission for sales made on his block of accounts, but ultimately resigned after defendant allegedly avoided payment of plaintiff's commissions by engaging in 'direct sales' to plaintiff's alleged accounts and reassigning plaintiff's alleged accounts to different salesmen. Following his resignation, plaintiff filed a complaint against defendant alleging breach of contract, fraud, misrepresentation, tortious interference, and unjust enrichment, and further requested that defendant be enjoined from asserting an alleged non-compete agreement. In addition, plaintiff alleged that defendant violated the Sales Representatives' Commissions Act

(SRCA), both by failing to pay commissions due prior to the termination of the parties' employment contract and by failing to pay commissions due after the termination of the contract. On May 24, 2007, the trial court entered a written order dismissing *all* of plaintiff's claims with prejudice. Without reinstating any of plaintiff's claims, the trial court subsequently issued an opinion and order on May 27, 2008, finding that plaintiff was entitled to \$2,350 in unpaid commissions for one sale. Plaintiff thereafter moved for attorney fees and costs pursuant to MCL 600.2961(6). On August 18, 2008, the trial court denied plaintiff's motion.

Plaintiff argues that the trial court erred in denying his claim for attorney fees and costs pursuant to MCL 600.2961(6). We disagree. Under the SRCA, "if a sales representative brings a cause of action pursuant to this section, the court shall award to the prevailing party reasonable attorney fees and court costs." MCL 600.2961(6). MCL 600.2961(1)(c) defines "prevailing party" as "a party who wins on all the allegations of the complaint or on all of the responses to the complaint." Because the trial court dismissed all of plaintiff's claims with prejudice, we conclude that plaintiff did not win on all the allegations of the complaint as required by the SRCA. Therefore, the trial court did not err when it denied plaintiff's claim for attorney fees and costs under MCL 600.2961(6).<sup>1</sup>

Affirmed.

Defendant, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Michael J. Kelly  
/s/ Michael J. Talbot  
/s/ Kurtis T. Wilder

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<sup>1</sup> We note that defendant argues in its brief that plaintiff's claims were dismissed pursuant to a settlement agreement between the parties. The record before us makes no specific reference to a settlement between the parties other than the trial court's May 27, 2008 opinion and order. However, we do note that the May 24, 2007 order was entered on the same day as a scheduled settlement conference. Defendant asserts that the parties agreed pursuant to a settlement that the trial court would determine at a subsequent hearing what, if any, commissions were owing to plaintiff. Following the hearing, the trial court concluded that of the multiple sales for which plaintiff sought commissions, plaintiff was only entitled to recover a total of \$2,350 for one sale. Therefore, even if plaintiff's allegations under the SRCA were justiciable following the May 24, 2007 dismissal, plaintiff's claims under MCL 600.2961(6) would fail because the trial court determined that plaintiff did not win on all of the allegations.