STATE OF MICHIGAN

COURT OF APPEALS

YASSER ELSEBAEI,

Plaintiff-Appellant/Cross Appellee,

v

JP MORGAN CHASE BANK, N.A.,

Defendant/Cross Defendant/Cross Plaintiff-Appellee/Cross Appellant,

and

CITIZENS BANK,

Defendant/Cross Plaintiff/Cross Defendant,

and

REPUBLIC BANK, N.A.,

Defendant.

UNPUBLISHED
May 18, 2010

No. 289796
Oakland Circuit Court
LC No. 2007-083868-CZ

Before: CAVANAGH, P.J., and O'CONNELL and WILDER, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's final judgment. Defendant, JP Morgan Chase Bank, N.A., (Chase), cross-appeals as of right the same judgment. We reverse and remand.

We first consider Chase's second argument on cross-appeal, because our ruling on this issue renders moot most of the other issues. In its second argument on cross-appeal, Chase argues that the trial court erred in denying its motion for directed verdict of plaintiff's statutory conversion claim under MCL 600.2919a, because plaintiff presented no evidence at trial that Chase knew of the underlying conversion of a two-party check, with only one endorsement, at the time of the conversion. We agree.

Rulings on motions for directed verdict are reviewed de novo on appeal. *Coates v Bastian Bros, Inc*, 276 Mich App 498, 502; 741 NW2d 539 (2007). The motion is properly

granted if, viewing the evidence in a light most favorable to the nonmoving party, reasonable minds cannot differ. *Id*. at 502-503.

MCL 600.2919a provides, in relevant parts:

> (1) A person damaged as a result of either or both of the following may recover 3 times the amount of actual damages sustained, plus costs and reasonable attorney fees:
>
> (a) Another person's stealing or embezzling property or converting property to the other person's own use.
>
> (b) Another person's buying, receiving, possessing, concealing, or aiding in the concealment of stolen, embezzled, or converted property *when the person buying, receiving, possessing, concealing, or aiding in the concealment of stolen, embezzled, or converted property knew that the property was stolen, embezzled, or converted.*
>
> (2) The remedy provided by this section is in addition to any other right or remedy the person may have at law or otherwise. [Emphasis added.]

From the highlighted clause, it is clear that in order to recover under MCL 600.2919a(1)(b), a claimant must prove that the defendant had knowledge of the underlying conversion and wrongdoing. *Echelon Homes, LLC v Carter Lumber Co*, 472 Mich 192, 197-199; 694 NW2d 544 (2005). In *Echelon Homes, LLC*, the plaintiff argued that the defendant had constructive knowledge ("should have known") that the property (lumber) was converted by embezzlement. But the Court held that constructive knowledge was insufficient under the statute, which, it held, requires "awareness or understanding of a fact or circumstance; a state of mind in which a person has *no substantial doubt of the existence of a fact*." *Id*. at 198 (emphasis added).

Chase, as a corporation, could only have knowledge if one of its agents or employees had knowledge. See, generally, *Mossman v Millenbach Motor Sales*, 284 Mich 562, 568; 280 NW 50 (1938) (a corporation can only act through its agents or employees). There was no testimony from any Chase employee that he or she was aware, or understood, or had no substantial doubt, that the check was missing a required endorsement. Accordingly, construing the evidence in a light most favorable to plaintiff, we hold that the trial court erred in denying Chase's motion for directed verdict.

This holding renders moot most of the other issues. This Court is not obliged to decide moot questions. *Snyder v Advantage Health Physicians*, 281 Mich App 493, 506; 760 NW2d 834 (2008).

However, plaintiff's third issue on appeal is not moot. In this issue, plaintiff argues that the trial court erred when evaluating the amount of Chase's attorney's fee for purposes of case evaluation sanctions because the trial court failed to consider the factors required by *Smith v Khouri*, 481 Mich 519, 530; 751 NW2d 472 (2008). We agree.

Whether the trial court made findings required by *Khouri* is a question of law because it concerns whether a trial court complied with case law, not whether the trial court erroneously found too high of a rate or too many hours of attorney work. Questions of law are reviewed de novo. *Fleet Business Credit, LLC v Krapohl Ford Lincoln Mercury Co*, 274 Mich App 584, 588; 735 NW2d 644 (2007).

Khouri governs this issue. The party seeking attorney fees bears the burden of proving the reasonableness of the fees requested. *Khouri*, 481 Mich at 528. A trial court should begin by determining the fee customarily charged in the locality, for similar legal services. *Id*. at 530. Then, the trial court should multiply that figure by the reasonable number of hours expended. The result of that arithmetic serves as the starting point for calculating a reasonable attorney fee. *Id*. at 530-531.

Then, the trial court should consider whether an up or down adjustment is appropriate, and in doing so, "should briefly discuss the remaining factors," which include: (1) the professional standing and experience of the attorneys; (2) the skill, time, and labor required; (3) the amount in controversy and the results achieved; (4) the difficulty of the case; (5) the expenses incurred; (6) the nature and length of the professional relationship with the client; (7) the novelty and difficulty of the questions involved; (8) the likelihood, if apparent to the client, that acceptance of the case will preclude other employment; (9) the time limitations imposed by the client or the circumstances; (10) the reputation and ability of the lawyers; and (11) whether the fee was fixed or contingent. *Id*. at 529-530. The burden is on the fee applicant to produce evidence, and not just his or her own affidavits or anecdotal statements, that the requested rates are in line with those prevailing in the community for similar services by lawyers of comparable skill, experience, and reputation. *Id*. at 531-532.

Here, the trial court did not discuss or make findings on the required factors. Therefore, we reverse and remand to the trial court for compliance with *Khouri*.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ Peter D. O'Connell
/s/ Kurtis T. Wilder