

STATE OF MICHIGAN
COURT OF APPEALS

DARLENE M. STARIHA,

Plaintiff-Appellant,

v

CHRYSLER GROUP, L.L.C., f/k/a
DAIMLERCHRYSLER CORPORATION,

Defendant-Appellee.

UNPUBLISHED
June 28, 2012

No. 301238
Oakland Circuit court
LC No. 2008-094601 - NZ

Before: WHITBECK, P.J., and JANSEN and K. F. KELLY, JJ.

PER CURIAM.

Plaintiff, Darlene M. Stariha, appeals as of right from a trial court order assessing attorney fees against defendant, Chrysler Group, L.L.C., f/k/a DaimlerChrysler Corporation, in the amount of \$2,000. We affirm.

I. BASIC FACTS

This action arises out of plaintiff's claim that a vehicle she leased from defendant was defective. On September 17, 2008, plaintiff brought an action against defendant under the Magnuson-Moss Warranty Act (MMWA), 15 USC 2301 *et seq* and the Michigan Consumer Protection Act (MCPA), MCL 445.901 *et seq*.

Plaintiff and defendant attempted to settle the case through a series of offers and rejections. On November 10, 2008, defendant sent a letter to plaintiff's counsel, Dani Liblang, stating that defendant was considering repurchasing the vehicle or offering a replacement. On December 3, 2008, defendant emailed Liblang with a formalized offer to repurchase the vehicle for \$19,842.31, which would go to Chrysler Financial to satisfy the remaining lease payments, and to reimburse plaintiff in the amount of \$4,776.17. The \$4,776.17 reflected 12 payments of \$302.06 (payments plaintiff had made on the lease), plus \$967 (the down payment plaintiff had paid), minus \$1,815.55 (mileage offset), plus \$2,000 (attorney fees). Approximately a month passed with no response from Liblang. Defendant sent an email on January 2, 2009, indicating that if plaintiff did not reply by January 6, 2008, the offer would be revoked. Defendant also stated that if litigation resulted, defendant would object to paying attorney fees accrued after December 3, 2008. On January 22, 2009, with still no reply, defendant sent a letter to Liblang, informing her that further silence would constitute a rejection of the offer, defendant would oppose any attorney fees after December 3, 2008, and if plaintiff ultimately received a settlement

less favorable than the one offered, defendant would seek attorney fees. Defendant also extended the closing date of the offer until January 23, 2009.

On January 23, 2009, Liblang sent an email to defendant, stating that while plaintiff was willing to accept the offer to repurchase the vehicle, the issue of attorney fees would prevent the issue from settling. Liblang claimed that when forced to file a lawsuit, her fees were \$3,500. She concluded the email by stating, "please do not misunderstand our intentions [as] Plaintiff will accept the portion of your offer regarding a repurchase of the vehicle[,] however, regarding the amount of attorney fees we cannot accept less than \$3,500" and if that defendant did not agree, "I suggest we continue with the repurchase part of the offer and permit the Court to decide the issues of Fees and Costs."

Defendant replied to Liblang's email, stating that partial acceptance of the offer would constitute a rejection of the offer. On February 2, 2009, defendant sent another email to Liblang, formally rejecting plaintiff's counteroffer to increase the attorney fee to \$3,500. Defendant stated that it was willing to increase the original offer of attorney fees to \$2,250. Plaintiff rejected this offer, due to the inadequacy of attorney fees.

On October 30, 2009, defendant sent another letter to Liblang, stating that defendant was still interested in settling the case. At this point, plaintiff had returned the vehicle because her lease had expired. Defendant's settlement offer was for \$11,745.56, representing the total lease payments plaintiff made, with no offset for use. Defendant also stated that it would not offer more than \$2,250 in attorney fees and that while the offer was "not contingent upon [the] acceptance of the attorney fee," if plaintiff filed a fee petition, defendant would defend against such an action and "move for an award of attorney fees for having to defend this case unnecessarily." On November 10, 2009, Liblang sent an email to defendant stating that the offer of \$11,745.56 was accepted, but that plaintiff intended to "submit the issue of statutory attorney fees and costs to the court for decision."

On January 26, 2010, plaintiff filed a motion to enforce the settlement agreement and to assess statutory costs and attorney fees pursuant to the MMWA and the MCPA. Defendant responded that the only reason defendant had not issued a settlement check was because the amount of attorney fees was unsettled. Defendant also alleged that Liblang purposely prolonged settlement negotiations in order to increase attorney fees.

On January 27, 2010, defendant filed a motion for attorney fees and sanctions pursuant to MCR 2.114, arguing that Liblang had prolonged the case for the sole purpose of increasing attorney fees. Defendant claimed that since plaintiff unreasonably rejected the offer, discovery was needlessly conducted solely on the issue of attorney fees.

On February 3, 2010, the trial court denied defendant's motion for sanctions under MCR 2.114(d). The trial court also ordered that an evidentiary hearing be held regarding the issue of attorney fees.

Before the evidentiary hearing occurred, an issue arose concerning plaintiff testifying at the hearing. Plaintiff had testified at a deposition, stating that she had never seen defendant's initial offer. Plaintiff moved to quash the subpoena, claiming that the information defendant was

seeking was confidential communications between Liblang and plaintiff, and thus, was protected by attorney-client privilege . The trial court denied plaintiff's motion, reasoning that it would be impossible to discern whether attorney fees were reasonable if the issue of whether Liblang informed plaintiff of the initial offer was not explored.

The evidentiary hearing took place over four different days from April to July 2010. Plaintiff testified that she was not aware of when the initial offer was made, but that she thought she became aware that a settlement offer had been made in January of 2009. Plaintiff did not remember if she knew whether the initial offer included two components, namely, the offer for the vehicle and the offer for attorney fees. Plaintiff did not know that the initial offer was rejected on the basis of inadequate attorney fees; however, plaintiff knew about the initial offer and was satisfied that it was within her counsel's discretion to reject it.

Liblang testified that she "absolutely" conveyed all settlement offers to plaintiff, plaintiff rejected the initial offer, and that the ultimate settlement was better for plaintiff because there was no mileage offset. Extensive additional testimony was taken regarding the Liblang's reputation and expertise and the method for arriving at her fees.

The trial court assessed Liblang's attorney fees at \$2,000. The trial court stated:

To observe that this Evidentiary Hearing was exhaustive is an understatement of the first order. The parties raised a comprehensive array of perplexing issues, including the propriety of certain evidence with regard to the determination of the reasonable hourly fee, the propriety of a flat fee, the propriety of the paralegal fees, the propriety of the scope of work undertaken under the circumstances, the applicability of various attorney fee surveys, and a host of other matters. Yet, nearly all of these intriguing issues have been rendered moot by the Plaintiff's counsel's failure to appropriately inform her client of a good faith settlement offer made by the Defendant early in the proceedings. This failure to convey the offer appropriately led to rejection of the offer, which in turn, led to the needless incurring of substantial attorney fees in litigating the case. To allow the Plaintiff to recover attorney fees which would never have been incurred but for her failure to meet the basic obligations as counsel would be a grave injustice and turn the system of fee recoveries topsy-turvy. Such fees are anything but reasonable.

The finding of fact leading to this conclusion was that:

[Liblang] did not fully convey the terms of the offer to her client. [Liblang] did not share the offer letter with her client, and instead recommended against accepting the offer solely on [Liblang's] belief that the attorney fees were insufficient. Despite that being the sole reason why she recommended against accepting the offer to her client, [Liblang] did not reveal or otherwise explain that reasoning to the client. Because the real reason for rejecting the offer was hidden from the client, the Plaintiff rejected the offer. In other words, the Plaintiff would have accepted the offer had she fully understood its terms but rejected it based solely on the advice of her counsel who concealed the real reason she was advising against its acceptance.

Plaintiff filed a motion for reconsideration, arguing that the trial court erroneously concluded that plaintiff was not fully informed of the initial offer. Plaintiff also attached her affidavit, stating that she was aware of the initial offer, was fully informed about the issue of attorney fees, and rejected the offer because \$2,000 would not cover her attorney's actual costs.

The trial court denied plaintiff's motion:

For all of its bluster, the 14 page brief misses the fundamental point of the Court's ruling: but for Liblang's misconduct, the client would have accepted a \$2000 attorney fee award. Accordingly, all attorney fees incurred thereafter were not reasonably incurred. None of the remedial purposes of the various state and federal statutes proffered by the Plaintiff require this Court to order the Defendant to pay for fees and expenses unreasonably incurred because of Liblang's failure to fully inform her client of the full terms of the settlement offer. That would be rewarding inappropriate behavior – indeed, creating windfalls and incentives for improper behavior. Remember, this is not a case in which the client is being deprived of fees – this is all about the lawyer trying to harvest fees that were improperly allowed to be planted and grown based on the lawyer's own failings. Can the Plaintiff really be arguing a lawyer is allowed to wrack [sic] up unreasonable attorney fees and then force her opponent to pay for it? This is nothing short of pilfering the opposing party. This is not justice.

The trial court reiterated that credibility determinations were “at the heart of [the trial court's] authority.” The trial court also held that plaintiff's affidavit was untimely, improper new evidence, and “simply a thinly veiled desperate attempt to undo the testimony at trial.”

Plaintiff now appeals as of right.

II. ANALYSIS

A. APPLICABILITY OF SMITH V KHOURY

Plaintiff argues that the trial court abused its discretion in awarding attorney fees where the trial court failed to adhere to *Smith v Khouri*, 481 Mich 519; 751 NW2d 472 (2008). We disagree. A trial court's award of attorney fees is reviewed for an abuse of discretion. *Moore v Secura Ins*, 482 Mich 507, 516; 759 NW2d 833 (2008). An abuse of discretion occurs when the court chooses an outcome that falls outside the range of reasonable and principled outcomes. *Id.* The findings of fact underlying an award of attorney fees are reviewed for clear error. *Marilyn Froling Revocable Living Trust v Bloomfield Hills Country Club*, 283 Mich App 264, 296; 769 NW2d 234 (2009). “A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire record is left with a definite and firm conviction that a mistake was made.” *Id.* Any questions of law underlying an attorney fee award are reviewed de novo. *Id.* at 297.

Generally, “attorney fees are not ordinarily recoverable unless a statute, court rule, or common-law exception provides the contrary.” *Nemeth v Abonmarche Dev, Inc*, 457 Mich 16, 37-38; 576 NW2d 641 (1998). In MCL 445.911(2) of the MCPA, “a person who suffers loss as a result of a violation of this act” may recover reasonable attorney fees. Also, the MMWA

“allows recovery of attorney fees upon successful suit under a written or implied warranty under state law.” *King v Taylor Chrysler-Plymouth, Inc*, 184 Mich App 204, 221; 457 NW2d 42 (1990); 15 USC 2310(d). Thus, these two statutes authorize the possibility of attorney fees in this case.

The Court in *Smith* was confronted with the issue of determining attorney fees in the context of case evaluation situations. *Smith*, 481 Mich at 530. The Court stated that the method being used needed “some fine tuning.” *Id.* The Court stated that trial courts should first determine the “reasonable hourly rate [which] represents the fee customarily charged in the locality for similar legal services,” relying on “reliable surveys or other credible evidence of the legal market.” *Id.* at 530-531. The Court then instructed that trial courts should multiply that number by the “reasonable number of hours expended in the case.” *Id.* at 531. The Court emphasized that the burden is on the fee applicant to produce satisfactory evidence of these factors. *Id.*

While this is a clear and concise method for determining attorney fees, the issue confronted in *Smith* was reasonable attorney fees in the context of case evaluations. MCR 2.403 provides for attorney fees when “one party accepts the award and one rejects it...and the case proceeds to a verdict, the rejecting party must pay the opposing party’s actual costs unless the verdict is, after several adjustments, more than 10 percent more favorable to the rejecting party than the case evaluation.” In terms of calculating the actual costs of the attorney fee, MCR 2.403(O)(6) specifically states that:

For the purpose of this rule, actual costs are

- (a) those costs taxable in any civil action, and
- (b) a reasonable attorney fee based on a reasonable hourly or daily rate as determined by the trial judge for services necessitated by the rejection of the case evaluation.

In *Univ Rehab Alliance, Inc v Farm Bureau Gen Ins Co of Mich*, 279 Mich App 691, 700 n 3; 760 NW2d 574 (2008), this Court recognized the limited applicability of *Smith*. This Court was confronted with the issue of determining a reasonable attorney fee pursuant to the no-fault act, which provided that “an attorney is entitled to a reasonable fee for advising and representing a claimant in an action for personal or property protection insurance benefits which are overdue....” MCL 500.3148. Ultimately, this Court held that the trial court did not abuse its discretion in awarding attorney fees based on a contingency fee agreement. *Univ Rehab Alliance, Inc*, 279 Mich App at 702. Specifically, this Court held that:

Smith does not affect our analysis in this case of the question whether the trial court abused its discretion when determining a reasonable attorney fee under MCL 500.3148(1) [because] *Smith* addressed MCR 2.403(O)(6)(b), which explicitly requires that the reasonable-attorney-fee portion of actual costs be based on a reasonable hourly or daily rate as determined by the trial court.... [*Id.* at 700 n 3, 701.]

Likewise in this case, the statute at issue is not MCR 2.403. Moreover, the MCPA and the MMWA do not refer to any type of rigid formula to be used when calculating reasonable

attorney fees. Additionally, plaintiff fails to cite any case where the specific method articulated in *Smith* has been applied to a MMWA or a MCPA claim.

Furthermore, while decided prior to *Smith*, this Court in *Smolen v Dahlmann Apartments, Ltd.*, 186 Mich App 292, 296-297; 463 NW2d 261 (1990), expressly confronted the issue of attorney fees and the MCPA. This Court's opinion, which has not been overruled, specifically rejected "the application of any rigid formula, whether based on a contingent fee arrangement or an hourly formula, that fails to take into account the totality of the special circumstances applicable to the case at hand." *Id.* This Court went on to cite *Crawley v Schick*, 48 Mich App 728, 737; 211 NW2d 217 (1973), for the proposition that:

[t]here is no precise formula for computing the reasonableness of an attorney's fee. However, among the facts to be taken into consideration in determining the reasonableness of a fee include, but are not limited to, the following: (1) the professional standing and experience of the attorney; (2) the skill, time and labor involved; (3) the amount in question and the results achieved; (4) the difficulty of the case; (5) the expenses incurred; and (6) the nature and length of the professional relationship with the client. [*Smolen*, 186 Mich App at 295-296, quoting *Crawley*, 48 Mich App at 737.]

This Court concluded that "[w]hile the trial court should consider the guidelines of *Crawley*, it is not limited to those factors in making its decision." *Smolen*, 186 Mich App at 296. Also on the issue of how to assess attorney fees in the context of the MCPA and the MMWA, this Court in *Jordan v Transnational Motors, Inc.*, 212 Mich App 94, 97; 537 NW2d 471 (1995), referenced the Michigan Rules of Professional Conduct 1.5(a) factors,¹ and stated that a trial court "is not limited to these factors." *Id.* at 97.

In this case, significant evidence was presented at the evidentiary hearing regarding the various factors cited above. Plaintiff presented two witnesses who testified that plaintiff's counsel had great experience and skill in these types of cases. Plaintiff's counsel also submitted her resume to the court, and testified to her various accomplishments and awards. Evidence of the initial offer and the settlement were introduced at the evidentiary hearing as well. Plaintiff's counsel's billing statements were submitted to the court, along with defendant's arguments that this bill was inflated. Defendant presented evidence that the fee typically offered before discovery was \$2,000, while plaintiff's counsel testified that it was \$3,500.

¹ The factors are: (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent. *Smith*, 481 Mich at 529-530.

The trial court referenced such evidence, but found that most of it was rendered moot due to Liblang's failure to communicate the terms of the initial settlement offer to plaintiff. Thus, while the trial court did reflect on the evidence presented at the evidentiary hearing, the trial court considered that the most compelling factor was the failure of plaintiff's counsel to fully inform plaintiff about the initial offer. This did not constitute an abuse of discretion, because a trial court should consider the "totality of the special circumstances applicable to the case at hand" and "[w]hile the trial court should consider the guidelines of *Crawley*, it is not limited to those factors in making its decision." *Smolen*, 186 Mich App at 292, 296; See also *Jordan*, 212 Mich App at 97.

Contrary to plaintiff's contention, the trial court's award of a \$2,000 attorney fee did not contravene the purposes of the attorney fee provisions in the MMWA or the MCPA. This Court has specifically stated that "[o]ne of the purposes behind both the [MMWA] and the MCPA is to provide, via an award of attorney fees, a means for consumers to protect their rights and obtain judgments where otherwise prohibited by monetary constraints." *Jordan*, 212 Mich App at 97-98. Plaintiff has failed to illustrate that the attorney fee in this case was unreasonable or that it contravened the purpose of consumer protection. Plaintiff's reliance on *Jordan* is also problematic. This Court held that a trial court's reduction of the attorney fee in a MMWA and MCPA case solely based on the results obtained and the low value of the case undermined the remedial nature of the statutes. *Jordan*, 212 Mich App at 98. Yet, in this case, the trial court did not reduce the fee award because of such factors. Moreover, this Court in *Jordan* reaffirmed that, "[b]y our holding, we do not mean to suggest that a court must, in a consumer protection case, award the full amount of a plaintiff's requested fees. Rather, we hold that after considering all of the usual factors, a court must also consider the special circumstances presented in this type of case." *Id.* at 99.

B. ATTORNEY CLIENT PRIVILEGE

Plaintiff next argues that the attorney-client privilege prevented disclosure of confidential communications regarding the initial settlement offer. We disagree.

"The question whether the attorney-client privilege applies to a communication is a question of law that this Court reviews de novo." *Leibel v Gen Motors Corp*, 250 Mich App 229, 236; 646 NW2d 179 (2002).

"[A]ttorney-client privilege attaches to direct communication between a client and his attorney as well as communications made through their respective agents." *Reed Dairy Farm v Consumers Power Co*, 227 Mich App 614, 618; 576 NW2d 709 (1998). "Confidential client communications, along with opinions, conclusions, and recommendations based on those communications, are protected by the attorney-client privilege because they 'are at the core of what is covered by the privilege.'" *McCartney v Attorney General*, 231 Mich App 722, 735; 587 NW2d 824 (1998), quoting *Hubka v Pennfield Twp*, 197 Mich App 117, 122; 494 NW2d 800 (1992), rev'd on other grounds 443 Mich 863 (1993). Yet, "[t]he scope of the attorney-client privilege is narrow, attaching only to confidential communications by the client to his advisor that are made for the purpose of obtaining legal advice." *Reed Dairy Farm*, 227 Mich App at 618-619. Thus, attorney-client privilege does not prevent disclosure of a client's knowledge of

the underlying relevant facts simply because those facts were communicated to her attorney. *Upjohn Co v US*, 449 US 383, 396; 101 S Ct 677; 66 L Ed 2d 584 (1981).

In this case, plaintiff testified at the deposition that she never saw the initial offer. Plaintiff testified at the evidentiary hearing that she became aware of the initial offer in January of 2009, that she could not remember if she knew the offer had two components, and that she did not know the initial offer was rejected because of attorney fees. These questions and responses did not elicit information about any advice plaintiff's counsel gave to plaintiff or the content of their communication. Instead, the information related to plaintiff's knowledge that there was an initial offer and knowledge of the stated reasons for rejecting that offer. Since such information goes to plaintiff's knowledge of the underlying facts of an event, and not the content of communications between plaintiff and counsel, attorney-client privilege does not protect this information. Thus, the trial court did not clearly err in holding that attorney-client privilege was inapplicable.

C. TERMS OF THE AGREEMENT

Furthermore, the trial court did not clearly err in finding that Liblang failed to fully convey the terms of the offer to plaintiff. While plaintiff testified that she eventually became aware of the offer, and authorized her counsel to reject it, plaintiff also could not remember when she was informed about the offer or whether she knew the offer contained the component of attorney fees. Liblang's billing statement did not include any reference to a discussion regarding the initial offer. Also, at the deposition, plaintiff testified that she never saw this initial offer.

Even more revealing was plaintiff's testimony that she did not know that the initial offer was rejected solely on the basis of inadequate attorney fees. Plaintiff claims that this testimony was taken out of context, because the initial settlement offer was rejected both because attorney fees were too low and because of the mileage offset. Yet, the evidence presented in the lower court directly contradicts such a conclusion. On January 23, 2009, plaintiff's counsel finally responded to defendant's initial offer and stated that:

We received your letter of January 22, 2009 lack of response to Defendant's settlement offer. Please allow this letter to confirm that Plaintiff will accept your offer to repurchase Plaintiff's vehicle regarding Plaintiff's damages only however, the issue regarding attorney fees (or this aspect of Plaintiff's damages) is not resolved and seems to be the reason the case did not settle....

While I needed to address some of the statements in your letter of January 22, 2009, please do not misunderstand our intentions. Plaintiff will accept the portion of your offer regarding a repurchase of the vehicle however, regarding the amount of attorney fees we cannot accept less than \$3,500. If Defendant is agreeable to the \$3,500 which is what is usually agreed to in our other cases settled with the Sutter Firm, please send me a release and dismissal. If not, since it is early in the case and if Defendant is adamant on its position, I suggest we continue with the repurchase part of the offer and permit the Court to decide the issue of Fees and Costs.

Nowhere is there any mention of dissatisfaction with the mileage offset. In fact, plaintiff's counsel specifically indicates that plaintiff was willing to accept the offer but for the attorney fee issue. Yet, plaintiff clearly testified she did not know the offer was rejected because of attorney fees. Thus, it was not clearly erroneous to conclude that plaintiff's counsel did not fully convey the terms of the offer to plaintiff, since plaintiff's testimony indicates both a lack of knowledge about the content of the offer and the reasons for rejection.

D. PLAINTIFF'S PRESUMED ACCEPTANCE OF THE INITIAL OFFER

Next, plaintiff argues that the trial court clearly erred in finding that plaintiff would have accepted this initial offer if her counsel had fully informed and advised her. We disagree.

Plaintiff suggests that since the ultimate settlement was better than the initial offer, the trial court clearly erred in finding that the only reason plaintiff refused the initial offer was the failure of plaintiff's counsel to properly inform and advise plaintiff. However, such an argument is based on the flawed premise that the ultimate settlement was better than the initial offer. Defendant initially offered to repurchase the vehicle for \$19,842.31, a sum that would go to Chrysler Financial to satisfy the remaining lease payments. Defendant also offered a reimbursement of \$4,776.17 (\$2,000 attorney fees, a mileage offset of \$1,815.55, and reimbursement of \$4,591.72 for the down payment and lease payments plaintiff had already made). By the time of defendant's second offer on October 30, 2009, the vehicle had already been returned, so defendant offered plaintiff \$11,745.56 as reimbursement for the amount plaintiff paid on the lease, and not more than \$2,250 in attorney fees.

The most significant difference between the two offers is that the second offer did not include an offset for mileage. Initially, this seems to render the second offer an improvement. However, there were other unfavorable consequences resulting from a rejection of the initial offer. First, plaintiff was still obligated under her lease and had to continue to pay her lease payments since the matter had not been settled. Plaintiff also had to wait significantly longer to receive her reimbursement. This was a disadvantage for plaintiff, since the concept of the "time value of money" illustrates that, "a dollar received today is worth more than a dollar to be received in the future." *ANR Pipeline Co v Dept of Treasury*, 266 Mich App 190, 194 n 2; 699 NW2d 707 (2005). Moreover, plaintiff alleged in her complaint that the vehicle could not be reasonably relied on "for the ordinary purpose of safe, comfortable, reliable and efficient transportation," and that plaintiff was suffering and would continue to suffer damages such as the cost of obtaining alternative transportation, wage loss, anxiety, embarrassment, anger, fear, frustration, disappointment, worry, aggravation, and inconvenience. Thus, plaintiff was forced to endure all of this for much longer by rejecting the initial offer.

Furthermore, plaintiff's argument, that the trial court clearly erred in not considering this mileage offset as a reasonable explanation for plaintiff's rejection of the initial offer, is also flawed because there is no evidence that plaintiff rejected the initial offer because of the mileage offset. As discussed above, the evidence actually indicates that the only basis for rejecting the initial offer was inadequate attorney fees. Plaintiff's counsel was clear in her email on January 23, 2009, stating, "please do not misunderstand our intentions[,] [p]laintiff will accept the portion of your offer regarding a repurchase of the vehicle" but for the issue of "the amount of attorney fees[,] we cannot accept less than \$3,500."

Moreover, the fact that the initial offer was rejected only because of inadequate attorney fees was strong evidence that, but for the failure of plaintiff's counsel to inform and advise plaintiff, plaintiff would have accepted the offer. At the evidentiary hearing, plaintiff's counsel stated that in this case, her fee was only derived either from what she negotiated in a settlement or was awarded by the court. Hence, since plaintiff would not be responsible for any additional attorney costs, the amount of attorney fees achieved through negotiation or a court award had no effect on plaintiff. The only person who had something to gain by rejecting the initial offer on the basis of attorney fees was plaintiff's counsel. Thus, it was not clearly erroneous for the trial court to conclude that plaintiff would have accepted the initial offer "had she fully understood its terms" and had plaintiff's counsel not "concealed the real reason [plaintiff's counsel] was advising against its acceptance."

E. DEFENDANT'S GOOD FAITH OFFER

Plaintiff next argues that the trial court improperly considered defendant's good faith when assessing attorney fees. We disagree.

While the opinion and order assessing attorney fees does refer to defendant's initial offer as one made in good faith, the trial court did not actually indicate that defendant's good faith played any role in the assessment of the attorney fees. Instead, the trial court very clearly stated that it was the failure of plaintiff's counsel to fully inform plaintiff about the initial offer that rendered any fees over \$2,000 unreasonable. Thus, there is no evidence that the trial court relied on defendant's good faith when assessing reasonable attorney fees.

Affirmed. As the prevailing party, defendant may tax costs. MCR 7.219.

/s/ Kathleen Jansen
/s/ Kirsten Frank Kelly