

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
CARROLL COUNTY

LINDA M. FISCUS, SUCCESSOR TRUSTEE OF THE MORVATZ
FAMILY REVOCABLE LIVING TRUST DATED JULY 27, 1999,

Plaintiff-Appellee,

v.

THOMAS NORDQUIST,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 19 CA 0936

Motion for Supplemental Attorney's Fees/ Motion for Reconsideration

BEFORE:

David A. D'Apolito, Gene Donofrio, Cheryl L. Waite, Judges.

JUDGMENT:

Motion for Supplemental Attorney's Fees Overruled. Motion for Reconsideration
Overruled.

Atty. James Wherley Jr. and Atty. Whitney Willits, Black, McCuskey, Souers & Arbaugh,
220 Market Avenue South, Suite 1000, Canton, Ohio 44702, for Plaintiff-Appellee and

Atty. Mary L'Hommedieu and Atty. Kevin L'Hommedieu, L'Hommedieu & McGrievy,
LLC, 100 North Main Street, Suite 350, Chagrin Falls, Ohio 44022, for Defendant-
Appellant.

Dated: December 30, 2020

PER CURIAM.

{¶1} On September 24, 2020, we issued our opinion and judgment entry in the above-captioned appeal affirming the entry of summary judgment by the Carroll County Common Pleas Court in favor of Appellee, Linda M. Fiscus, Successor Trustee of the Morvatz Family Revocable Living Trust dated July 27, 1999, and against Appellant Thomas D. Nordquist. In short, the trial court ordered specific performance by Appellant of a contract to purchase real property executed by the parties.

{¶2} On October 5, 2020, Appellee filed a motion for award of supplemental attorney's fees or, alternatively, for reconsideration. No response was filed by Appellant.

{¶3} In her motion, Appellee seeks an award of attorney's fees pursuant to Section 13(A) of the contract, which authorizes Appellee to bring an action for damages and specific performance upon Appellant's default, "which action shall include the right to collect all attorneys' fees and costs incurred by [Appellee] in bringing such action." Appellee asks us to award the fees directly, or, in the alternative, to amend our September 24th opinion and judgment entry to include language remanding this matter to the trial court for consideration of the pending motion.

{¶4} On October 15, 2019, the trial court entered an award of attorney's fees in the amount of \$33,953.50 and expenses in the amount of \$2,480.00 relating to the proceedings before the trial court. With respect to the previous motion for attorney's fees, the trial court's judgment entry reflects that Appellant conceded to Appellee's right to attorney's fees and costs under the contract, and further conceded that the amounts sought by Appellee were reasonable.

{¶5} In her motion before this Court, Appellee seeks to collect attorney's fees incurred as a result of the appeal pursuant to Section 13(A) of the contract. Because Appellee seeks to enforce a provision of the contract, the motion for supplemental attorney's fees should have been filed with the trial court. Accordingly, Appellee's motion for supplemental attorney's fees is overruled. Further, as remand is not necessary to vest the trial court with jurisdiction to consider such a motion, Appellee's alternative motion for reconsideration is likewise overruled.

JUDGE DAVID A. D'APOLITO

JUDGE GENE DONOFRIO

JUDGE CHERYL L. WAITE

NOTICE TO COUNSEL

This document constitutes a final judgment entry.