2012 IL App (1st) 11-3750-U

FOURTH DIVISION
January 17, 2013

Nos. 1-11-3750, 1-12-1051 (cons.)

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

SUBHASH SALUJA,	)	Appeal from the
	)	Circuit Court of
Plaintiff, Counterdefendant and Appellant,	)	Cook County.
	)	
v.	)	07 L 591
	)	
MIDWESCO SERVICES, INC.,	)	The Honorable
	)	James P. Flannery, Jr.,
Defendant, Counterplaintiff and Appellee.	)	Judge Presiding.

PRESIDING JUSTICE LAVIN delivered the judgment of the court.
Justices Fitzgerald Smith and Pucinski concurred in the judgment.

ORDER

¶ 1 *Held*: The jury verdict determining that plaintiff counterdefendant Subhash Saluja breached a contract with defendant counterplaintiff Midwesco and that Midwesco, correspondingly, did not breach the contract was not against the manifest weight of the evidence. The trial court did not abuse its discretion in awarding Midwesco's fee petition.

¶ 2 Following trial, a jury rejected plaintiff-appellant Subhash Saluja's ("Saluja") breach of contract claim against defendant-appellee Midwesco Services, Inc., but found favorably on Midwesco's ("Midwesco") identical counterclaim for breach and contract termination in the amount of $8,772.60. The trial court subsequently held a separate hearing on the issue of attorney fees and determined that Midwesco was entitled to $271,200.13 to cover its attorney fees and costs attributable to the resulting litigation. Saluja contends on appeal that the jury verdict was against the manifest weight of the evidence and the trial court improperly awarded

Midwesco attorney fees and costs. We affirm.

¶ 3 BACKGROUND

¶ 4 This appeal stems from Subhash Saluja's misadventures in rehabbing his two-story commercial property in Chicago. The aging property had been functioning as a food court, but Saluja wanted to rehab it and bring in more lucrative tenants. During the course of this work, appellant entered into a contract with Midwesco to perform heating, ventilation and air conditioning work ("HVAC") at the building, which basically consisted of four rooftop units (one for each tenant space), the related exhaust fans and duct work, along with necessary electric installation. The contract amount was $87,726.00.

¶ 5 This aspect of the overall project seemed to hit a snag when Saluja's architect requested additional drawings during the permitting process. The cost of the pre-permitting work and outlay for material by Midwesco amounted to $8,551. This activity took place during the fall of 2004 through the early spring of 2005. Thereafter, it waited for the building permits to be approved by the city of Chicago before it could begin its HVAC work. Saluja's architect, Michael Realmuto, testified at trial that none of the delay was attributable to Midwesco. The permits were eventually approved in July 2005, but Saluja and his architect failed to inform Midwesco of that fact.

¶ 6 A couple months later, Saluja persuaded a soon-to-be tenant, Panda Express, to do the HVAC work at its own expense, to facilitate its opening in one of the four available tenant spaces. The work contemplated was suited to the restaurant chain's particular purposes and was inconsistent with various aspects of the work as envisioned in the contract with Midwesco.

Evidence at trial revealed that Panda Express was cited for performing this work without the necessary permit. Remarkably, Saluja waited until Panda Express had completed its HVAC work to inform Midwesco that a portion of the HVAC work that was the subject of its contract had already been completed by somebody else. Even more remarkably, Saluja then informed Midwesco it should complete the rest of the work at a discount for the original contract price.

¶ 7 This prompted Midwesco to inform Saluja that his unilateral actions had materially affected the way in which it could physically install the necessary HVAC work, leading to an increase in price for its services. Saluja employed his own method of ciphering, which involved reducing the contract price by 25%, which, in his mind, merely reflected the fact that Panda Express had already installed one of the four units that were contemplated by the contract. This ratiocination was based on his logic that one-quarter of the work had already been done, so the contractor should only be entitled to 75% of what it was supposed to receive. His negotiating strategy, however, conveniently ignored the fact that the Panda Express work may have complicated the completion of the other work. Midwesco detailed exactly how that work had in fact affected its efforts to get the rest of the work done. As a result of the divergent viewpoints, occasioned because of Saluja's preemptive solicitation of Panda Express without any notice to Midwesco, the parties were approximately $37,000 apart, with Midwesco demanding just over $98,000 and Saluja offering only $61,000.

¶ 8 Saluja responded to Midwesco's demand by terminating his relationship and hiring another contractor who agreed to do the remaining work for approximately $6,000 less than Midwesco. Ever consistent, Saluja then refused to pay the new contractor for its final invoice

and filed a breach of contract action against it.

¶ 9 Despite the foregoing circumstances, Midwesco decided to end its relationship with the landowner and sent Saluja a check for his entire deposit of more than $37,000, which would have meant that it would forego payment for its work in the permitting process. On June 20, 2006, almost ten months after the check was sent, Saluja sent notice that Midwesco hadn't met its contractual obligations. Six months later, he filed suit, in which he demanded $300,000.

¶ 10 Midwesco filed a counterclaim based on the factual scenario outlined above and the parties engaged in lengthy discovery and ultimately a four-day jury trial, with the jury returning a verdict in Midwesco's favor on Saluja's complaint and Midwesco's own counterclaim. The jury awarded Midwesco $8,772.60, which represented the termination fee under the contract. The jury also answered a special interrogatory confirming that Saluja had, in fact, breached the contract between the parties, which entitled Midwesco to petition the trial court for its fees and costs in defending the Saluja claim and in bringing its own counterclaim. The trial court then denied Saluja's posttrial motion in its entirety. After reviewing copious information to support the demand for fees and costs and after lengthy arguments of counsel, the trial court entered an order finding that Midwesco was entitled to $271,200.13 to cover its attorney fees and costs attributable to Saluja's breach of contract.

¶ 11 This timely appeal followed.

¶ 12 ANALYSIS

¶ 13 Saluja claims that the jury's verdict was against the manifest weight of the evidence, and therefore his posttrial motion should have been granted, because Midwesco did not install any of

the four HVAC units in Saluja's commercial building and thus failed to fulfill the central purpose of the contract. It is axiomatic that a jury's verdict can be held to be against the manifest weight of the evidence only if it was manifestly arbitrary, not based on trial evidence and if the opposite conclusion is clearly apparent. *Leonardi v. Loyola University of Chicago*, 168 Ill. 2d 83, 106 (1995). In addition, a motion for a new trial is addressed to the sound discretion of the trial court, and its decision will not be disturbed absent a clear abuse of discretion. *Pecaro v. Baer*, 406 Ill. App. 3d 915, 918 (2010). The record offers no support to overturn the jury verdict.

¶ 14 The evidence offered at this trial was so one-sided in favor of Midwesco as to suggest that Saluja's breach of contract claim was almost entirely frivolous and that, in fact, it was Saluja who acted contrary to his contractual obligations on a consistent basis. The jury heard testimony that there were various delays in the permitting process, most of which were occasioned as a result of typical municipal bureaucracy, not Midwesco's actions. The architect of record, hired by Saluja, confirmed that none of the delays were caused by the HVAC contractor. Although the parties contracted for Midwesco to perform the HVAC work in its entirety, the jury heard that, right around the time that the permit came back from the city, Saluja was negotiating a contract with tenant Panda Express to build out its space and supply its own HVAC, at its own cost. Midwesco was not informed of these developments and was not notified of Panda Express doing the HVAC work for its space until it was completed. The jury heard evidence that the work done by Panda Express necessitated significant changes in the manner and method that Midwesco would have to employ in order to complete the remaining work. The jury heard testimony that confirmed that the placement of the original HVAC units was rendered "impossible" by the

Panda Express activities in performing the HVAC work for its fast food restaurant that was to occupy a portion of the building. While Saluja unilaterally allowed his tenant to partially perform that work, incredibly, he then demanded that Midwesco accept significantly less payment than contemplated to complete the remaining work even though his actions had complicated the ability of the contractor to complete the necessary HVAC work. Based on the foregoing, it was Saluja who materially changed the scope of the work provided for in the contract. The record thus supports the jury's entirely consistent determination that it was Saluja who breached this contract, to the detriment of Midwesco. Based on this evidence, it is nigh impossible to find *any* evidence in this record to support Saluja's claim.

¶ 15 We would further note that the jury also heard testimony about Midwesco's attempt to make the best of this situation by coming up with an alternate plan to finish the work at a reasonable rate, only to be improperly terminated by Saluja. Saluja, then, committed yet another breach of the contract and went on to hire another contractor to finish the work at nearly the same price. It, too, was rewarded with a lawsuit filed by Saluja. The jury heard evidence that Midwesco went out of its way in an avowed effort to deal with this contrary client by attempting to return his entire deposit, an action that would have deprived it of the value of significant work done in the process of helping to complete the permitting process. Instead of accepting 100% of his deposit, Saluja elected to file this suit in which he ultimately only requested a nominal amount of damages to represent his rather questionable claim that he had to pay more money to the contractor that ultimately performed the HVAC work than Midwesco should have been paid, under his 75%-25% scenario. Because of his "election of remedies," Saluja wound up on the

receiving end of a rather small jury verdict which represented only the termination fee, a fee which Midwesco had previously agreed to waive, along with the money to which it was entitled for its work on the initial plans for the HVAC work. But the jury's finding of a breach on Saluja's behalf triggered the fees and costs provision of the contract. Given the litigiousness of the plaintiff in this matter, that turned out to be no small amount of money.

¶ 16 ATTORNEY FEES AND COSTS

¶ 17 Saluja finally complains that he should not be obligated to pay attorney fees. Provisions in contracts for awards of attorney fees are an exception to the general rule that the unsuccessful litigant in a civil action is not responsible for the payment of the opponent's fees. *Kaiser v. MEPC American Properties, Inc.*, 164 Ill. App. 3d 978, 983 (1987).

¶ 18 In this case, the contract provided that upon Saluja's refusal to sign a change of work order, his failure to pay the termination fee or "any other breach of the terms and conditions of this Agreement[,]" Midwesco would be "entitled to collect its reasonable attorneys' fees and costs resulting from Buyer's breach of any of the terms of this Agreement or Seller's enforcement of the terms of this Agreement, including but not limited to fees incurred from settlement discussions, inspections, fact gathering, arbitration proceedings, and litigation proceedings." According to the special interrogatory, proposed by the parties, the jury determined that either Saluja breached the terms of the agreement or Midwesco enforced the terms of the agreement. This special finding was consistent with the general jury verdict ruling that Saluja was in breach, and Midwesco compliant, with the contract provisions and further validates Midwesco's subsequent fee petition filed with the trial court.

¶ 19 In fee petition cases, the trial judge's familiarity with the underlying litigation allows him to independently assess the necessity and reasonableness of the legal services rendered in light of other qualifying factors, such as the skill of the attorneys involved, the nature of the case, the novelty and/or difficulty of the issues and work, the importance of the matter, the responsibility required, the usual and customary charges for comparable services, the benefit to the client, and whether there is a reasonable connection between the fees and the amount involved in the litigation. *Wildman, Harrold, Allen and Dixon v. Gaylord*, 317 Ill. App. 3d 590, 595 (2000); *International Insurance Co. v. Rollprint Packaging Products, Inc.*, 312 Ill. App. 3d 998, 1010 (2000). When ruling on a fee petition, the trial court has broad discretionary powers in awarding the attorney fees sought, and its decision will not be reversed unless the court has abused its discretion. *Wildman, Harrold, Allen and Dixon v. Gaylord*, 317 Ill. App. 3d at 595.

¶ 20 Given the general and special jury verdicts mentioned above, we reject Saluja's contention that the fees to which Midwesco were entitled were limited only to those expended in relation to Saluja's failure to pay the termination fee. We similarly reject Saluja's contention that "enforcement" of the contract did not encompass money spent by Midwesco in defense of Saluja's lawsuit. The defense was part and parcel of Saluja's repeated violations of the contract and Midwesco's pursuit of its counterclaim. See *Wanderer v. Plainfield Carton Corp.*, 40 Ill. App. 3d 552, 560-61 (1976). The learned trial judge did not err in interpreting the contract in light of the jury verdict to mean that Midwesco was entitled to all attorney fees and costs in litigating the suit.

¶ 21 Nor is there an iota of proof that the trial judge abused his discretion in determining the

reasonableness of the attorney fees and costs awarded. The evidence Midwesco presented to the trial court in support of his fee petition was more than sufficient to fulfill its burden and proved the full extent of the legal work that was prompted by Saluja and his legal team. That evidence included a time line of the litigation starting in 2007 and ending in 2011 and an affidavit by one of Midwesco's senior attorneys detailing the attorneys and staff performing the services in the case; their hours, and rates; and their daily billing records, listing the hours that corresponded to different litigation tasks, accompanied by invoices. After hearing extensive oral argument on the matter and reviewing relevant case law, including *Kaiser*, the trial court examined the billing record in detail and issued a ruling revealing that all of the requested fees were appropriately recoverable. See *International Insurance Co.*, 312 Ill. App. 3d at 1010-11 (noting a petition for fees must specify the services performed, by whom they were performed, the time expended thereon, and the hourly rate). We thus reject Saluja's contention that the daily time entries constituted impermissible block-billing or that the court failed to set forth adequate reasons for its decision. To the extent certain services could even be considered "aggregated," we would note that aggregation alone is insufficient to warrant reversing a fee award, and regardless, the entries provided were adequate to determine the reasonableness of the time spent on the tasks. See *Sampson v. Miglin*, 279 Ill. App. 3d 270, 281-82 (1996); *cf. Lasday v. Weiner*, 273 Ill. App. 3d 461, 467 (1995) (case remanded for hearing on reasonableness of fees where itemized statement provided only the total amount of time expended for a particular day and a general description of the tasks performed). Viewing the record as a whole, Saluja's claim must fail.

¶ 22 CONCLUSION

¶ 23 Based on the foregoing, we affirm the decision of the circuit court of Cook County.

¶ 24 Affirmed.