STATE OF MICHIGAN

COURT OF APPEALS

NORMAN YATOOMA & ASSOCIATES PC, Plaintiff-Appellant, v 1900 ASSOCIATES LLC, CRAIG SCHUBINER, BRUCE MEASOM, and THE HARBOR COMPANIES LLC, Defendants-Appellees.	UNPUBLISHED June 12, 2014 No. 313487 Oakland Circuit Court LC No. 11-119400-CH
NORMAN YATOOMA & ASSOCIATES PC, Plaintiff-Appellant, v 1900 ASSOCIATES LLC, CRAIG SCHUBINER, BRUCE MEASOM, and THE HARBOR COMPANIES LLC, Defendants-Appellees.	No. 316754 Oakland Circuit Court LC No. 11-119400-CH

Before: JANSEN, P.J., and MURRAY and BOONSTRA, JJ.

PER CURIAM.

These consolidated cases arise out of a contract dispute involving a commercial lease agreement for professional office space. In Docket No. 313487, plaintiff appeals as of right the circuit court's November 14, 2012 order dismissing plaintiff's case, and all orders there under. We affirm. In Docket No. 316754, plaintiff appeals as of right the circuit court's May 29, 2013 opinion and order and June 11, 2013 judgment in favor of defendant 1900 Associates and against plaintiff for attorney fees and costs. We affirm.

I. FACTS AND PROCEDURAL HISTORY

This case involves a complicated procedural history involving numerous motions filed by both parties. Plaintiff's complaint, as subsequently amended as of right, alleged the following claims: (1) breach of contract for failure to provide "a footprint for construction of Suite 104 that was approximately 2,000 square feet" and "7,516 square feet for Suite 201," (2) breach of contract for failure to complete the improvements to Suite 201 in the time period required by the lease, (3) fraudulent misrepresentation regarding the square footage of the suites leased to plaintiff, (4) innocent misrepresentations regarding the square footage of the suites, (5) silent fraud regarding the square footage of the suites and defendant 1900 Associates' failure to disclose use of an unreasonably high load factor in calculating the suite sizes, (6) reformation to cure the fraud perpetrated on plaintiff through defendant 1900 Associates' material misrepresentations regarding the square footage of the suites, and (7) conspiracy between Bruce Measom and Craig Schubiner, agents of defendant Harbor Companies, to commit extortion involving filing a baseless police report alleging that Norman Yatooma assaulted defendant Measom.

Defendants collectively answered the amended complaint, denying the allegations. Regarding count one, defendants indicated that (1) the lease is clear that suite 104 would have approximately 2,000 rentable square feet and Suite 201 was 7,516 rentable square feet, (2) plaintiff fails to disclose the difference between "square feet" and "rentable square feet," (3) the lease indicates the rentable square footage of the suites would contain a proportionate share of the common areas, and (4) the rentable square footage figures were mutually agreed to and not subject to change or measurement. Regarding count two, defendants answered that plaintiff was the first party to breach the lease and interfered with Suite 201's completion and that defendant 1900 Associates continued to work on the remodeling of the suite in a commercially reasonable manner despite the interference. Regarding counts three, four, and five, defendants denied the allegations of fraudulent misrepresentation, innocent misrepresentation, and silent fraud; noted the difference between square feet and rentable square feet; asserted that the lease speaks for itself and any alleged representations are inadmissible because all agreements and understandings were merged into the lease, except for those in the Letter of Understanding signed by the parties; and argued that the rentable square foot figures were mutually agreed to and not subject to change or measurement. Regarding count six, reformation, defendants denied that plaintiff expressed any intention other than what was reflected in the signed lease and made note of the integration clause contained in the lease agreement. Regarding count seven, defendants denied the allegations of conspiracy to commit extortion, asserting that Measom did not file a baseless police report and any discussions between the parties were settlement discussions. Finally, defendants asserted various affirmative defenses.

Defendants The Harbor Companies, Schubiner, and Measom filed a motion for summary disposition, asserting that six of the seven allegations in plaintiff's amended complaint were only directed at defendant 1900 Associates and requested sanctions. Additionally, they alleged, pursuant to MCR 2.116(C)(8), that plaintiff failed to state a claim against these defendants, and pursuant to MCR 2.116(C)(10), there was no genuine issue of material fact regarding the fact that these defendants were not liable to plaintiff and moved for sanctions pursuant to MCR 2.114 because the complaint against these defendants was frivolous on its face. The circuit court granted the motion for summary disposition, but denied the request for sanctions, dismissed the cause of action as to these defendants with prejudice, and ordered that plaintiff would not be permitted to amend its complaint.

Defendant 1900 Associates—the only remaining defendant—filed a motion for partial summary disposition pursuant to MCR 2.116(C)(10) regarding all but count two of plaintiff's complaint, asserting that there was no genuine issue of material fact regarding counts one, three, four, five, and six because the terms of the lease governs the parties relationship. The circuit court granted this motion, and dismissed with prejudice counts one, three, four, five, six, and seven as to defendant 1900 Associates. Only count two—breach of contract for failure to complete improvements timely—remained with regard to defendant 1900 Associates for trial.[1]

Plaintiff filed a motion to amend its complaint to add a count seeking (1) a declaratory ruling regarding the parties' rights pertaining to plaintiff's outdoor signage and construction of Suite 104 and (2) an injunction compelling defendant 1900 Associates to commence the build-out of Suite 104. Plaintiff also filed a motion for mandatory injunction regarding these issues. A hearing was then held on the motions on December 14, 2011, and the circuit court suggested that a status conference would be appropriate, which the parties accepted, and held the motions in abeyance. The parties attended a settlement conference on January 6, 2012 and stipulated to an order referring the case to facilitation, ordering that the parties submit their joint signage application to the township no later than January 23, 2012, and extending the scheduling dates. A few months later, plaintiff filed a renewed motion to amend its complaint, as well as a motion for mandatory injunction, regarding the signage and build-out issues, and added that issues with the HVAC system had caused the temperature in Suite 201 to exceed 80 degrees.

Mediation that was completed on May 1, 2012, between the parties in front of Henry Nirenberg did not result in settlement. The circuit court then entered an order submitting the matter to a combined special case evaluation and facilitation "so the parties can focus their efforts on trying to resolve this matter."

Defendant 1900 Associates filed another motion for summary disposition pursuant to MCR 2.116(C)(10) regarding the remaining count II of plaintiff's amended complaint alleging breach of contract due to delay in completion of the build-out of Suite 104—arguing that there was no genuine issue of material fact. Shortly after, plaintiff filed another motion for a mandatory injunction to compel defendant 1900 Associates to approve the signage. The court denied this motion in a stipulated order and ordered the parties to cooperate and submit a variance application for the signage and ordered that if the application was denied, that plaintiff be permitted to install a sign pursuant to the lease and subject to the permit and township requirements.

[1] Plaintiff filed a delayed application for leave to appeal from the orders entered by the circuit court (1) granting summary disposition to defendants The Harbor Companies, Schubiner, and Measom and dismissing these defendants from the action with prejudice, and (2) granting defendant 1900 Associates partial summary disposition and dismissing with prejudice counts one, three, four, five, six, and seven of plaintiff's amended complaint. This Court denied leave to appeal. *Norman Yatooma & Associates PC v 1900 Associates LLC*, unpublished order of the Court of Appeals, entered July 27, 2012 (Docket No. 307225).

Plaintiff then filed another renewed motion to amend its complaint, which in substance was the same as the April 2012 motion to amend. The circuit court denied this motion without prejudice, such that plaintiff was not precluded from bringing another motion, because the parties agreed that the Suite 104 issue was moot and the signage issue was currently being addressed.

Defendant 1900 Associates filed a motion in limine, asserting that plaintiff relied on a non-party's damages as the basis for its damages and has also relied upon unsupported and speculative claims for damages and asserted that, because of this, plaintiff should be precluded from introducing evidence that is not relevant or reliable. The court granted this motion in part, ordering that plaintiff not mention the nonparty or damages related to this entity and ordering plaintiff to "supplement its prior discovery responses to provide Defendant with an explanation, along with specific evidence, to demonstrate the damages Plaintiff suffered as a result of the alleged delay in the construction of the two offices in Suite 201, which form the basis of the remaining count . . . ." The court also made clear that plaintiff's failure to provide this explanation and specific evidence would result in the court granting defendant's motion in limine in full. Plaintiff filed a supplemental response to defendant's interrogatories and request for production of documents two weeks after the deadline set by the court in its order.

Plaintiff filed another renewed motion to amend its complaint, asserting damages resulting from defendant 1900 Associates' failure to complete the build-out of Suite 104 in a timely manner and failure to approve plaintiff's signage and again reiterating the HVAC issue. Defendant 1900 Associates filed an emergency motion for involuntary dismissal pursuant to MCR 2.504(B), alleging that plaintiff violated two court orders.

On the date trial was to occur, the circuit court first heard arguments regarding defendant 1900 Associates' motion to dismiss and plaintiff's renewed motion to amend its complaint. The circuit court granted defendant's motion, dismissing the action with prejudice, and denied plaintiff's renewed motion to amend its complaint.

Defendant 1900 Associates and plaintiff both filed motions for attorney fees. In an initial motion hearing, the court concluded that an evidentiary hearing was necessary. Following the evidentiary hearing, the court ultimately granted defendant's motion for attorney fees and denied plaintiff's motion.

Judgment was entered in favor of defendant 1900 Associates and against plaintiff. Plaintiff filed a motion to stay enforcement and execution of the judgment, which the court granted.

Plaintiff now seeks relief in this Court: (1) in Docket No. 313487, plaintiff appeals as of right the circuit court's order dismissing the case, and all orders there under, and (2) in Docket No. 316754, plaintiff appeals as of right the circuit court's May 29, 2013 opinion and order and June 11, 2013 judgment in favor of defendant 1900 Associates and against plaintiff for attorney fees and costs.

II. ANALYSIS

A. SUMMARY DISPOSITION

Defendants The Harbor Companies, Schubiner, and Measom filed a motion for summary disposition pursuant to MCR 2.116(C)(8) and MCR 2.116(C)(10), and defendant 1900 Associates filed a motion for partial summary disposition pursuant to MCR 2.116(C)(10). The court granted defendant The Harbor Companies, Schubiner, and Measom's motion for summary disposition regarding all seven counts, dismissing the action against these defendants with prejudice, and granted defendant 1900 Associates' motion for partial summary disposition regarding counts one, three, four, five, six, and seven.

This Court reviews a circuit court's resolution of a summary disposition motion de novo. *Corley v Detroit Board of Education*, 470 Mich 274, 277; 681 NW2d 342 (2004). "A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint on the basis of the pleadings alone . . . . to determine whether the plaintiff has stated a claim upon which relief can be granted." *Id.* (quotation marks and citations omitted). Summary disposition motions pursuant to MCR 2.116(C)(10) "tes[t] the factual sufficiency of the complaint." *Id.* at 278 (quotation marks and citation omitted). "In evaluating such a motion, a court considers the entire record in the light most favorable to the party opposing the motion, including affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties." *Id.* A moving party is entitled to judgment as a matter of law when "the proffered evidence fails to establish a genuine issue regarding any material fact . . . ." *Id.* Moreover, "[w]hen a motion under [2.116(C)(10)] is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his or her pleading, but must . . . set forth specific facts showing that there is a genuine issue for trial." *Paul v Glendale Neurological Associates, P.C.*, 304 Mich App 357; __ NW2d __ (2014) (quotation marks and citations omitted; second set of brackets and ellipses in original.)

The circuit court granted defendant 1900 Associates' motion for partial summary disposition based in part on the parties' lease; therefore, this case also involves interpretation of a contract, which is a question of law we review de novo. *In re Smith Trust*, 274 Mich App 283, 285; 731 NW2d 810 (2007).

1. BREACH OF CONTRACT CLAIM – COUNT I

Plaintiff argues that the circuit court erred in granting summary disposition pursuant to MCR 2.116(C)(10) because (1) the sentence in the lease discussing "rentable square feet" was ambiguous and (2) genuine issues of material fact regarding count one remained.

"A party asserting a breach of contract must establish by a preponderance of the evidence that (1) there was a contract (2) which the other party breached (3) thereby resulting in damages to the party claiming breach." *Miller-Davis Co v Ahrens Constr, Inc*, 495 Mich 161; __ NW2d __ (2014).

This Court has an obligation "to determine the intent of the parties" when it interprets a contract, and "[t]his Court must examine the language of the contract and accord the words their ordinary and plain meanings, if such meanings are apparent." *In re Smith Trust*, 274 Mich App at 285. Importantly, when the language in the contract is unambiguous, "courts must interpret and enforce the contract as written" because "an unambiguous contract provision is reflective of the parties' intent as a matter of law." *Id.* (quotation marks and citation omitted). "A contract is

ambiguous only if its terms are unclear or are reasonably susceptible to more than one meaning." *Island Lake Arbors Condominium Ass'n v Meisner & Assoc, PC*, 301 Mich App 384, 392; 837 NW2d 439 (2013). Moreover, interpretation of clear and unambiguous contract language is a question of law for the court; however

> [i]f the contract is subject to two reasonable interpretations, factual development is necessary to determine the intent of the parties and summary disposition is therefore inappropriate. If the contract, although inartfully worded or clumsily arranged, fairly admits of but one interpretation, it is not ambiguous. The language of a contract should be given its ordinary and plain meaning. [*Wells Fargo Bank, NA v Cherryland Mall Ltd Partnership (On Remand)*, 300 Mich App 361, 386; 835 NW2d 593 (2013) (quotation marks and citation omitted).]

In its motion for summary disposition pursuant to MCR 2.116(C)(10), defendant 1900 Associates argued that there was no genuine issue of material fact regarding plaintiff's breach of contract claim regarding the square footage of the suites because under the terms of the lease, the parties agreed that defendant would provide suites that consisted of a certain number of rentable square feet, which included a proportionate share of the common areas, and plaintiff was making its claim based upon the actual square footage of the suites, rather than the *rentable* square footage. In response, plaintiff argued a genuine issue of material fact existed regarding whether defendant 1900 Associates provided the rentable square footage promised in the lease and provided in support of this argument an affidavit of Rickie Robinson, an individual with experience in measuring the square footage of buildings. Robinson indicated that he calculated the square footage of the suites, "measured to interior walls," and calculated Suite 201 to be 5,552 square feet and Suite 104 to be 1,402 square feet.[2]

---

[2] Plaintiff argues in its reply brief that "Plaintiff's measurements to verify the number of Suite 201 and Suite 104 square feet implicitly included each suite's common areas." To the extent that plaintiff is arguing that the common areas of the building were implicitly included in Robinson's measurements, we reject that argument. Robinson's affidavit clearly states:

> 7. Based on my measurements, I calculated that Suite 201 is approximately 5,552 square feet, measured to interior walls.
>
> * * *
>
> 9. Based on my measurements, I calculated that Suite 104 is approximately 1,402 square feet, measured to interior walls.

Robinson does not give any indication that the common areas of the building were included in these measurements. Plaintiff also seems to backtrack on this argument later in its reply brief, stating, "When Plaintiff's measurements showed that each suite's *(excluding common areas)* measurements were far less than the above rentable square feet numbers . . . ." (Emphasis added.)

The circuit court granted the motion for partial summary disposition, stating:

> In sum, Plaintiff law firm brings this lawsuit claiming he [sic] was deprived of the true amount of square footage of which it contractually bargained for. . . . Plaintiff takes issue with the fact that the actual square footage in Suite 201 is much less than the agreed upon 7,516 rentable square feet to which it agreed. The lease addresses what is meant by rentable square feet, specifically, Section 2.2 of the lease provides, the rentable square foot area of the demised premises, as well as the building, shall contain a proportionate share of the common areas of the building.
>
> As it relates to Suite 104, which remains incomplete, the parties acknowledge that the size of the suite was approximate, consisting of approximately 2,000 rentable square feet of new space, as roughly shown on the floor plans. Further, Section 5.7 of the lease provides, in the event Suite 104 is found to be more or less than 2,000 rentable square feet, the basic rental shall be adjusted, based upon the actual rentable square footage. This adjustment language is absent in the provisions relating to Suite 201.
>
> With regard to the intention to adjust the square footage of Suite 104, the parties executed a letter of understanding, contemporaneous with the lease, which memorializes the approximate square footage of this suite. No mention is made of Suite 201 in this letter.
>
> * * *
>
> The distinction between rentable square feet and actual square feet has been explained in the terms of the lease, as well as the approximate square footage values for Suite 104. Although Plaintiff continues to assert that the space rented does not measure the specification set forth in the lease, an assertion which 1900 does not deny, 1900 states that suites will never precisely match what is in the lease because the lease does not account for the space taken up by the common areas. This is something Plaintiff acknowledged when executing the lease. . . .
>
> . . . Here the Court finds the language contained within the lease to be clear and unambiguous. In addition, the subject lease contains an express integration clause. Any evidence offered by Plaintiff to support a different understanding would [r]un afoul of the Parol Evidence Rule. . . .
>
> Further, an explicit integration clause is conclusive and parol evidence is not admissible to determine whether a contract is integrated when a written contract contains such a clause . . . .

Sections 2.1 and 2.2 of the subject lease provide:

> 2.1 Landlord is the owner of certain land and improvements located at 1900 S. Telegraph Road, Bloomfield Hills, Michigan, upon which is a building

(hereinafter referred to as the "Building"), together with certain *interior and exterior common and public areas, restrooms, and facilities* including the surface parking facilities (hereinafter referred to as the "Common Areas") as may be designated by Landlord for the use in common by tenants of the Building. The Building and appurtenant Common Areas hereinafter referred to as the "Development."

2.2 Subject to the terms, covenants, agreements and conditions therein set forth, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, those certain premises (herein referred to as the "Demised Premises") designated in Section 1(d) hereof, known as Suite 201, consisting of 7,516 *rentable square feet* and Suite 104, consisting of approximately 2,000 *rentable square feet* of new space, as roughly shown on the floor plans attached hereto as Exhibits "A" and "B", together with the nonexclusive right to use the Common Areas. *The rentable square foot area of the Demised Premises, as well as the Building, shall contain a proportionate share of the Common Areas of the Building*. . . . [Emphasis added.][3]

The plain language of these contract provisions indicates that the square footage defendant 1900 Associates promised to lease to plaintiff is *rentable* square feet, which includes "a proportionate share of the Common Areas of the Building," which is different, and necessarily greater, than the *actual* square footage of the suites.

Plaintiff did not argue below that the portion of the common areas attributed to the subject suites is not proportionate, as required by the language of the lease; instead, plaintiff ignored the express language in the lease that indicates *how* the rentable square footage of the subject suites is calculated—i.e., by including a proportionate share of the common areas in the total rentable square footage figure—and broadly argued that defendant 1900 Associates failed to provide what it had promised.[4] Plaintiff also did not argue below, as it does now on appeal, that the provision indicating that a proportionate share of the common areas is included in the rentable square feet figure is ambiguous. Essentially, plaintiff's position below was that "Suite 201 was to consist of 7,516 square feet" and it was to be provided "a footprint for construction of

[3] A Letter of Understanding, dated March 22, 2011, four days after the lease was signed, states that "it is understood that in the event that the rentable square footage of Suite 104 is found to be more or less than 2,000 rentable square feet, the Basic Rental shall be adjusted based upon the actual rentable square footage of Suite 104 . . . ."

[4] In stating its request for relief, plaintiff stated in its response to defendant's motion for summary disposition, "1900 Associates should provide approximately 2000 rentable square feet for Suite 104, as promised in the Lease, not 1,758 rentable square feet. The court should recognize the material misrepresentation of the size of Suite 201 and reform the lease to reflect the *actual square footage of Suite 201* and adjust the rent accordingly." This statement further confirms that plaintiff's position below was that the actual square footage should equal the rentable square footage.

Suite 104 that was approximately 2,000 square feet." Additionally, plaintiff broadly stated in its response to defendant's motion for partial summary disposition that there was an issue of material fact regarding whether defendant provided what it promised, pointing to the discrepancies between the actual square footage of the suites and the rentable square footage indicated in the lease. In its arguments below, plaintiff's focus was on the size of the suites—the actual square footage compared to the rentable square footage stated in the lease—but on appeal, plaintiff shifts its focus and argues that defendant 1900 Associates never provided the number of rentable square feet attributable to the common areas, that plaintiff could not verify the actual rentable square feet that was provided, and that this provision in the lease was ambiguous. Because these arguments were not raised below, they are unpreserved, and "[w]e need not address issues first raised on appeal." *Polkton Charter Twp v Pellegrom*, 265 Mich App 88, 95; 693 NW2d 170 (2005).

To argue that defendant 1900 Associates did not provide the square footage agreed to under the terms of the lease, plaintiff continues to rely on Robinson's affidavit, whose measurements included only the square footage "measured to the interior walls" of the subject suites, without including any proportionate share of the common areas. Looking at the record in the light most favorable to plaintiff, the proffered evidence failed to demonstrate that a genuine issue of material fact existed regarding whether there was a breach of the contract—i.e., whether plaintiff received the rentable square footage it bargained for—because the evidence it presented was consistent with the terms of the lease given that the lease made clear that the actual square footage of the suites would never equal the rentable square footage figures provided in the lease. Therefore, the circuit court did not err in granting defendant's motion for partial summary disposition on count one breach of contract (failure to provide what was bargained for). *Corley*, 470 Mich at 278.

2. FRAUD, MISREPRESENTATION, AND REFORMATION CLAIMS AND THE PAROL EVIDENCE RULE

Plaintiff argues that the circuit court's determination that there were no genuine issues of material fact regarding plaintiff's fraud claims was erroneous because it was based on an incorrect assumption that the parol evidence rule applied.

Plaintiff alleged in its amended complaint that defendant 1900 Associates made fraudulent misrepresentations, innocent misrepresentations, and engaged in silent fraud with respect to the square footage of the subject suites, and asserted that, as a result, reformation of the contract was necessary. In support of its claims, plaintiff submitted affidavits, letters, and other evidence indicating that defendant 1900 Associates represented that Suite 201 consisted of 7,516 rentable square feet and Suite 104 would consist of approximately 2,000 rentable square feet. Plaintiff argues that because this evidence is consistent with the terms of the lease, the parol evidence rule does not bar admission of this evidence, and therefore, summary disposition regarding the fraud, misrepresentation, and reformation claims was unjustified because a genuine issue of material fact was present.

Under the parol evidence rule, "evidence of contract negotiations, or of prior or contemporaneous agreements that contradict or vary the written contract, is not admissible to vary the terms of a contract which is clear and unambiguous." *Hamade v Sunoco Inc (R & M)*,

271 Mich App 145, 166; 721 NW2d 233 (2006) (quotation marks and citation omitted). The purpose of this rule is to prevent parties from attempting to evade the express terms of their contract. *Id.* at 167. However, extrinsic evidence is admissible when a contract is ambiguous in order to determine the intent of the parties. *Shay v Aldrich*, 487 Mich 648, 667; 790 NW2d 629 (2010). Moreover, if there is no inconsistency between the parol evidence and the written language of the contract, then the parol evidence is admissible. *Union Oil of California v Newton*, 397 Mich 486, 488; 245 NW2d 11 (1976). While the parol evidence rule is generally a bar against admission of extrinsic evidence, there are exceptions to this rule, as this Court has explained:

> First, it is a prerequisite to application of the parol evidence rule that there be a finding that the parties intended the written instrument to be a complete expression of their agreement with regard to the matters covered. For this reason, extrinsic evidence of prior or contemporaneous agreements or negotiations is admissible as it bears on this threshold question of whether the written instrument is such an "integrated" agreement. Second, extrinsic evidence may be presented to attack the validity of the contract as a whole. Thus, extrinsic evidence may be presented to show (1) that the writing was a sham, not intended to create legal relations, (2) that the contract has no efficacy or effect because of fraud, illegality, or mistake, (3) that the parties did not integrate their agreement or assent to it as the final embodiment of their understanding, or (4) that the agreement was only partially integrated because essential elements were not reduced to writing. [*Hamade*, 271 Mich App at 167-168 (quotation marks and citations omitted).]

However, "when the parties include an integration clause in their written contract, it is conclusive and parol evidence is not admissible to show that the agreement is not integrated except in cases of fraud that invalidate the integration clause or where an agreement is obviously incomplete on its face and, therefore, parol evidence is necessary for the filling of gaps." *UAW-GM Human Resource Center v KSL Recreation Corp*, 228 Mich App 486, 502; 579 NW2d 411 (1998) (quotation marks and citations omitted). Moreover, while parol evidence is generally admissible to prove fraud, "when a contract contains a valid merger clause, the only fraud that could vitiate the contract is fraud that would invalidate the merger clause itself, i.e., fraud relating to the merger clause or fraud that invalidates the entire contract including the merger clause." *Id.* at 503.[5]

---

[5] Section 35 of the subject lease indicates the parties' intent for the lease to be an integrated agreement, stating:

> There are no oral agreements between Landlord and Tenant affecting this Lease, and this Lease supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements and understandings, if any, between Landlord and Tenant or displayed by Landlord to Tenant with respect to the subject matter of this lease or the Building. There are no representation between Landlord and Tenant and/or Landlord's representatives (including leasing agents

Plaintiff argues that because the evidence it provided in support of these claims was consistent with the terms of the contract, the evidence was not barred by the parol evidence rule and a genuine issue of material fact existed regarding whether reformation was required as a result of fraud and misrepresentation by defendant 1900 Associates.

Plaintiff is correct that parol evidence that is consistent with the contract language is admissible, *Union Oil Co of California*, 397 Mich at 488; however, we disagree that summary disposition was inappropriate regarding these claims. While the circuit court mentioned the parol evidence rule while giving its ruling, the circuit court's ruling centered on the fact that the contract language unambiguously indicated that the rentable square feet included a proportionate share of the common areas of the building. Plaintiff expressly admits that the evidence it used to support is claims of fraud, misrepresentation, and reformation is consistent with the contract language, and the documents relied on by plaintiff indicate that the phrase "rentable square feet," not merely square feet, was consistently used in reference to the square footage of the spaces.

Therefore, because (1) the lease indicates that a proportionate share of the common areas is included within the rentable square feet figures and (2) the proffered evidence was consistent with the lease and failed to demonstrate that there was a genuine issue of material fact regarding whether defendant 1900 Associates provided rentable square footage that was different than the rentable square footage indicated in the lease, it is likewise the case that the proffered evidence did not demonstrate that the representations made by defendant were false. Hence, plaintiff failed to establish a genuine issue of material fact regarding a necessary element of its fraud and misrepresentation claims because plaintiff failed to demonstrate that a false representation was made, or that defendant otherwise suppressed a material fact, which is a necessary element of plaintiff's silent fraud claim. See *Barclae v Zarb*, 300 Mich App 455, 476; 834 NW2d 100 (2013) (indicating that fraudulent misrepresentation requires a false representation of a material fact and silent fraud requires suppression of a material fact); *United States Fidelity & Guaranty Co v Black*, 412 Mich 99, 115-117; 313 NW2d 77 (1981) (indicating that innocent misrepresentation requires a false statement). Because plaintiff's claim of reformation relied upon its allegations of fraud and misrepresentation, this claim likewise fails.[6] Therefore, viewing

---

> and brokers) and Tenant other than those contained in this Lease and all reliance with respect to any representations is solely upon such representations and all prior discussions and/or negotiations with respect to the terms and conditions of this Lease are of no force or effect whatsoever unless specifically set forth herein. No alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by each party and delivered to each party. No prior term sheets or prior lease drafts shall be construed or used in any way to establish the intent or meaning of this Lease.

[6] Plaintiff also argues that the false token exception applies and overrides the parol evidence rule. The false token exception is an exception "to the general rule that broken promises of future action are not actionable torts." *Hi-Way Motor Co v International Harvester Co*, 398 Mich 330, 339; 247 NW2d 813 (1976). This exception applies "where, although no proof of the promisor's intent exists, the facts of the case compel the inference that the promise was but a device to perpetuate a fraud." *Id.* However, because plaintiff's fraud claims fail, this exception is

the record in the light most favorable to plaintiff, summary disposition regarding these claims was proper. *Corley*, 470 Mich at 278.

3. CONSPIRACY AND EXTORTION CLAIM

Plaintiff argues a genuine issue of material fact existed regarding whether defendants are liable under the theory of respondeat superior for the conspiracy and extortion committed by their employees Measom and Schubiner in threatening to press criminal charges in order to get Yatooma to approve of the Suite 104 footprint and floor plan.

Civil conspiracy is defined as "a combination of two or more persons, by some concerted action, to accomplish a criminal or unlawful purpose, or to accomplish a lawful purpose by criminal or unlawful means." *Urbain v Beierling*, 301 Mich App 114, 131-132; 835 NW2d 455 (2013) (quotation marks and citation omitted). However, no private action for conspiracy alone exists—a "plaintiff must establish some underlying tortuous conduct" before liability can attach. *Id.* at 132.

The circuit court granted defendant 1900 Associates motion for summary disposition, pursuant to MCR 2.116(C)(10), and defendants The Harbor Companies', Schubiner's, and Measom's motion for summary disposition, pursuant to both MCR 2.116(C)(8) and MCR 2.116(C)(10), concluding that there was no basis for plaintiff's civil conspiracy claim because the police report pre-existed the alleged phone call to plaintiff's associate and "[o]ne cannot conspire to do something that has already been done." The court also laid out the elements of extortion pursuant to MCL 750.213 and concluded that a phone call from Schubiner to one of plaintiff's people "relative to the lease[d] premises does not amount to extortion, even if a pre-existing police report was mentioned."

Plaintiff correctly recognized that there must be an underlying tort for an action for civil conspiracy to lie, and plaintiff pleaded extortion as the underlying tort. On appeal, plaintiff cites to MCL 750.213, the criminal statute regarding extortion, for the elements of this offense.[7]

MCL 750.213 makes it a felony for any person to:

> maliciously threaten to accuse another of any crime or offense, or . . . maliciously threaten any injury to the person or property . . . with intent thereby to extort money or any pecuniary advantage whatever, or with intent to compel the person so threatened to do or refrain from doing any act against his will . . . .

However, because this is a civil cause of action in tort, an additional element of damages is also required. See *In re Bradley Estate*, 494 Mich 367, 384, 391-392; 835 NW2d 545 (2013)

---

inapplicable because the facts do not compel an inference that a promise was devised to *perpetuate* a fraud. *Id.*

[7] Neither party challenges the use of a criminal offense as the basis for the requisite underlying tort. See *Gardner v Wood*, 429 Mich 290, 301; 414 NW2d 706 (1987).

(recognizing that the purpose of a tort action is to recover damages and that damages are an element of a traditional tort claim).

Contrary to the circuit court's opinion, plaintiff's complaint does properly allege a civil conspiracy claim because it asserts that "defendants," which constitute two or more individuals, "illegally, maliciously, and wrongfully conspired with one another with the intent to and for the illegal purpose of extorting Plaintiff," which constitutes a concerted action to accomplish a criminal or unlawful purpose. *Urbain*, 301 Mich App at 131. The circuit court improperly assumed that the conspiracy occurred after the incident that resulted in the police report being filed against Yatooma.

However, plaintiff's extortion claim fails because there was no malicious threat to accuse another of a crime or offense. Plaintiff alleged that after a baseless police report was filed alleging assault against Yatooma, "[l]ater in the day, Defendant Schubiner contacted Plaintiff via telephone and told one of Plaintiff's employees that if Plaintiff approved the footprint and floor plan proposed by Defendant 1900 Associates, LLC for Suite 104, Defendant Schubiner would reduce Plaintiff's rent and have Defendant Meason stop pursuing charges against Yatooma."[8] Because the accusation, in the form of a police report, against Yatooma had already been made, the later phone call, as a matter of law, could not constitute a malicious threat to accuse Yatooma of a crime or offense—he had *already* been accused. MCL 750.213. Therefore, plaintiff neither pleaded in its amended complaint, nor provided evidence, sufficient to prove the elements of extortion, and summary disposition was proper under both MCR 2.116(C)(8) and MCR 2.116(C)(10). Therefore, the trial court did not err in granting defendant 1900 Associates and defendants The Harbor Companies', Schubiner's, and Measom's motions for summary disposition because plaintiff's claim of civil extortion and cause of action for conspiracy fail as a matter of law.

B. DISMISSAL OF BREACH OF CONTRACT CLAIM – COUNT II

Plaintiff argues that the circuit court abused its discretion by dismissing plaintiff's remaining claim that was disposed of for failure to obey court orders because the decision was

[8] Schbuiner's phone call with Kennedy on May 26, 2011 was recorded and transcribed, and Schubiner stated:

> Hold on, hold on wait a minute, I'll lower the rent for ya in that suite, if you accept the lower level plan, the latest one we've given you and based on that square footage and, and, we'll lower the rent effective from the original start date per whatever that square footage is from the architects chart. It's down a couple hundred square feet, you guys are going to have a better deal and let's just move on. This is, this is cheap, this is too, too annoying for everybody. And Bruce will, Bruce will withdraw his complaint to the police and let's just move on. And, and, just stop over and see Bruce, tell him which doors you need keys t[o]; I mean this is, this is just, just . . . ."

not the result of a reasoned evaluation of relevant factors, but an "emotional response to present transgressions and undefined earlier transgressions."

"We review a dismissal of a case for failure to comply with a court order for an abuse of discretion." *Woods v SLB Property Management, LLC*, 277 Mich App 622, 630; 750 NW2d 228 (2008). An abuse of discretion occurs when the outcome is outside the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

Pursuant to MCR 2.504(B)(1), a defendant may move to dismiss a plaintiff's claims for failure to comply with a court order. Because our legal system favors disposing of litigation on the merits, "dismissal with prejudice is . . . to be applied only in extreme situations." *North v Dep't of Mental Health*, 427 Mich 659, 662; 397 NW2d 793 (1986) (quotation marks and citation omitted; ellipsis in original). "Before imposing such a sanction, the trial court is required to carefully evaluate all available options on the record and conclude that the sanction of dismissal is just and proper." *Vicencio v Ramirez*, 211 Mich App 501, 506; 536 NW2d 280 (1995). This Court has established factors to evaluate the appropriateness of dismissal for failure to comply with a court order:

> (1) whether the violation was willful or accidental; (2) the party's history of refusing to comply with previous court orders; (3) the prejudice to the opposing party; (4) whether there exists a history of deliberate delay; (5) the degree of compliance with other parts of the court's orders; (6) attempts to cure the defect; and (7) whether a lesser sanction would better serve the interests of justice. [*Woods*, 277 Mich App at 631 (citation omitted).]

In its pretrial order, the court ordered that "[t]he final pretrial order shall be one document prepared jointly by all parties" and that "[p]laintiff shall have primary responsibility for filing this order." This final pretrial order was never filed. Additionally, in response to defendant 1900 Associates' motion in limine, which asserted that plaintiff was improperly asserting damages of a non-party as the basis for plaintiff's damages and relied on unsupported and speculative claims for damages, the circuit court granted the motion in part. The court ordered plaintiff to "supplement its prior discovery responses to provide Defendant with an explanation, along with specific evidence, to demonstrate the damages Plaintiff suffered as a result of the alleged delay in the construction of the two offices in Suite 201, which form the basis of the remaining count . . . ." and made it clear that plaintiff's failure to provide this explanation and specific evidence would result in the court granting defendant's motion in limine in full, preventing it from relying on speculative damages that had no factual or expert testimonial support.

The circuit court provided a lengthy discussion of its reasoning for dismissing plaintiff's case, stating:

> [W]hen the Court required that you provide within two weeks the information with respect to damages, and that wasn't done. Nor was a pretrial order done, which was required. There has been absolutely nothing done. You know, it just flies in the face of reason here. What has been going on in this case has been filing of pleading after pleading after pleading, getting nowhere.

> Orders are entered. They're not followed. Your motion to amend, I looked through it. Most of the things that you want to amend the complaint for, this Court already dealt with in a summary disposition motion. What is the purpose? This resolved the issue. You wish to raise them again.
>
> This Court has—although the issue with respect to Suite 104 was not part of your original complaint, other than the square footage issue and the issue of signage was not part of your original complaint, I took those anyways and dealt with them, hoping that we could just resolve all of those issues. But they weren't properly before the Court.
>
> * * *
>
> But what has happened here is that there has been one motion or another. And I'm not just saying from you, there have been motions from the other side, also. . . . [T]here's plenty of blame to go around here. But it has been a contest between the two sides as to who can file more pleadings and who could obfuscate the issues before this Court. All right?
>
> * * *
>
> There has been absolutely no completion of any order that this Court has issued.
>
> * * *
>
> The motion to amend again, I know I denied it without prejudice, but your motion is—and the amended complaint that you wish to file, as I said, is resurrecting issues that weren't in your original complaint, that were taken care of in the summary disposition motion that this Court heard, and that's more of it. There's been no joint pretrial order.
>
> * * *
>
> I am going to grant the Defendant's motion to dismiss based upon the fact that my orders have not been complied with.

While the circuit court did not expressly discuss the factors set forth in *Woods*, the court's discussion demonstrates that it considered the substance of the bulk of these factors, and through its discussion, indicated that: (1) the failures to comply with court orders were willful, (2) plaintiff had a history of not complying with court orders, explaining that plaintiff failed to comply with the order requiring it to provide evidence regarding damages and failed to file the final pretrial order as it was ordered to do, and (3) there was a history of deliberate delay on the

part of both parties when it discussed the repeated filing of motions that were preventing the case from progressing.[9]

While the court did not expressly evaluate on the record the other options available other than dismissal, we conclude that it was unnecessary to do so under the specific facts of this case. The court ordered plaintiff to provide "specific evidence" of its damages regarding the remaining count and made it clear that plaintiff's failure to provide this explanation and evidence would result in the court granting defendant 1900 Associates' motion in limine in full, preventing it from submitting speculative damages that had no factual or expert testimonial support. As defendant argued in the motion hearing below and argues on appeal, plaintiff did provide a list of damages in its supplemental response to defendant's interrogatories; however, it failed to provide "specific evidence" to support each of its items of alleged damages. Specifically, regarding plaintiff's damages resulting from the alleged untimely completion of improvements, plaintiff stated:

> - For Suite 104, NYA was promised a full suite of approximately 2,000 rentable square feet. Eighteen (18) months into the Lease, nothing had been built. NYA has received no benefit. NYA is paying $833.33 per month for space that is completely unusable. To date, NYA has paid $15,327.33 for space it has gotten no use out of until recently.
>
> * * *
>
> - Plaintiff was unable to lease space in Suite 201 to Trade This, Inc. for the time the work was incomplete, costing Plaintiff $10,930.90.

Nothing was attached to the supplemental response that explained from where these figures were derived or otherwise provided evidence of these damages.

Plaintiff's violation of the court's order by failing to provide specific evidence of its alleged damages was more than a procedural failure on the part of plaintiff—it went to the substance of plaintiff's claim because plaintiff had not demonstrated that it could prove the damages it alleged, despite being given a second opportunity to do so in a supplemental response to its interrogatories. In light of the circuit court's thorough explanation of its reasoning for dismissing plaintiff's claim with prejudice and given these facts, a less drastic sanction would not have better served the interests of justice, and the court did not abuse its discretion in dismissing plaintiff's complaint regarding count two. See *Woods*, 277 Mich App at 631-632 (concluding that "no lesser sanctions would have served the interests of justice" where the plaintiff's action was dismissed for failure to comply with the court's orders when the amended complaint was filed late and, failed to conform with the court rule and order).

---

[9] Plaintiff argues that the circuit court failed to evaluate the factors set out in *North*, 427 Mich 659. However, as defendant 1900 Associates correctly asserts, *North* involved dismissal for a lack of progress, not dismissal for a failure to follow court orders. Therefore, while these factors are similar, the most appropriate factors are those in *Woods*.

C. PLAINTIFF'S NOVEMBER 2011 AND APRIL 2012 MOTIONS TO AMEND ITS COMPLAINT

Plaintiff argues that the circuit court abused its discretion by failing to exercise its discretion when it failed to rule on plaintiff's November 30, 2011 and April 18, 2012 motions to amend its complaint, and plaintiff further argues that this error was not harmless.

This Court reviews a trial court's decision whether to grant a plaintiff's motion to amend its complaint for an abuse of discretion. *Sanders v Perfecting Church*, 303 Mich App 1, 8-9; 840 NW2d 401 (2013). Likewise, this Court reviews "a claim alleging a failure to exercise discretion" for an abuse of discretion. *Rieth v Keeler*, 230 Mich App 346, 348; 583 NW2d 552 (1998).

Pursuant to MCR 2.118(A)(1), a plaintiff can "amend a pleading once as a matter of course," which plaintiff was permitted to do in this case. However, pursuant to MCR 2.118(A)(2), a party can make subsequent amendments "only by leave of the court or by written consent of the adverse party[,]" and "[l]eave shall be freely given when justice so requires." Moreover, motions to amend a complaint "should ordinarily be denied only for particularized reasons such as undue delay, bad faith or dilatory motive, repeated failures to cure by amendments previously allowed, or futility." *Decker v Rochowiak*, 287 Mich App 666, 682; 791 NW2d 507 (2010) (quotation marks and citation omitted).

Plaintiff filed numerous motions to amend its complaint, two of which were filed on November 30, 2011, and April 18, 2012. In the November motion, plaintiff sought to add a count seeking a declaratory ruling regarding the parties' rights pertaining to plaintiff's signage and construction of Suite 104 and an injunction compelling defendant 1900 Associates to commence the build-out of Suite 104. A hearing was then held on the motion on December 14, 2011, and the circuit court suggested that a status conference would be appropriate, which the parties accepted, and the court held the motions in abeyance. The parties attended a joint settlement and status conference on January 6, 2012, and they ultimately stipulated to an order (1) referring the case to facilitation, (2) ordering that the parties submit their joint signage application to the township no later than January 23, 2012, and (3) extending the scheduling dates.

In April, plaintiff filed a renewed motion to amend its complaint regarding the build-out of Suite 104, the HVAC issue, and the signage issue. Plaintiff acknowledged in that motion that "[a]t the original hearing on Plaintiff's Motion to Amend its Complaint, the Court took this matter under advisement, ordered a settlement conference, and required the parties to attend facilitation." On April 20, 2012, the court notified the parties that plaintiff's renewed motion to amend its complaint would be heard on May 2, 2012. However, on May 1, 2012, the court entered an order submitting the dispute to special case evaluation. The facilitation was unsuccessful.

Plaintiff filed another renewed motion to amend its complaint on September 19, 2012. The court denied plaintiff's motion without prejudice because the motion included moot issues due to the fact that the build-out of Suite 104 had been completed and the only remaining issue with the signage was for defendant 1900 Associates to take down its sign and put up plaintiff's

sign pursuant to the lease. However, plaintiff was not precluded from bringing another motion to amend the complaint that did not include mooted issues.[10]

It is evident from the lower court record that the court was actively attempting to facilitate resolution of plaintiff's concerns raised in the November 2011 and April 2012 motions to amend its complaint. Therefore, because the court's delay in ruling on the motions to amend was due to the court facilitating resolution of the issues, through means stipulated to by both parties, the trial court's decision to delay its ruling on these motions did not constitute an abdication of its responsibilities or an abuse its discretion. Regardless, even if the court's failure to rule on these motions did constitute an abuse of discretion, this error was harmless because plaintiff asserted, with regard to its motion for attorney fees, that it prevailed on all three of the issues it raised in its motions to amend its complaint, i.e., plaintiff admitted that it received the relief it sought; therefore, plaintiff was not prejudiced by the court's failure to rule on these motions and for this Court to act would be inconsistent with substantial justice. MCR 2.613(A).

D. ATTORNEY FEES

Known as the American rule, Michigan law provides that "[a]ttorney fees are not recoverable as an element of damages or costs unless expressly allowed by court rule, statute, common-law exception, or contract." *Talmer Bank & Trust v Parikh*, 304 Mich App 373; __ NW2d __ (2014). Although contractual provisions that provide for recovery of attorney fees in the event of a dispute are valid, when attorney fees are awarded pursuant to a contract provision they are considered damages, rather than costs. *Id.*

Because attorney fees were granted pursuant to the terms of the lease agreement, whether defendant 1900 Associates was entitled to attorney fees is a legal question of contract interpretation that we review de novo. *Id*. However, we review a lower court's decision to grant or deny a request for attorney fees for an abuse of discretion and any underlying factual findings for clear error. *Id*.

1. PREVAILING PARTY

Plaintiff argues that the circuit court erred when it concluded that defendant 1900 Associates was the sole prevailing party; plaintiff argues it was a prevailing party because due to this action defendant completed the Suite 104 build-out, defendant remedied the HVAC problems, and plaintiff was able to install its sign. In order to succeed on this argument, plaintiff argues that we should adopt an "expanded prevailing party rule" such that it does not matter that it lost on every claim it brought. Instead, plaintiff argues, the focus should simple be on whether it improved its position vis-à-vis defendant 1900 Associates while this litigation was pending.

For two reasons we reject plaintiff's argument. First, plaintiff has offered no case law, contract provision, statute or court rule that provides for such an "expanded" rule. Thus, plaintiff

[10] Plaintiff does not challenge the trial court's denial of its October 2012 motion to amend its complaint.

cannot prevail on this issue. *DeGeorge v Warheit*, 276 Mich App 587, 600-601; 741 NW2d 384 (2007) (an issue is abandoned where the party fails to brief the merits her argument); *Schellenberg v Rochester Michigan Lodge No 2225*, 228 Mich App 20, 49; 577 NW2d 163 (1998) (the failure to cite to supporting legal authority results in abandonment of the issue). It is not enough to simply assert an error and then leave it up to this Court to search for authority to sustain or reject their position. *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002).

Second, the parties agree that the lease affords a "prevailing party" the right to recover a reasonable attorney fee, and prevailing party uniformly means "a party who wins on the entire record." *Meagher v Wayne State Univ*, 222 Mich App 700, 729; 565 NW2d 401 (1997). As defendant 1900 Associates argues, plaintiff cannot fall into this category—despite resolving three issues during the litigation that were not a part of the complaint—for where "a party does not succeed on its claim, it is not a prevailing party even if its position is improved as a result of litigation." *McMillan v Auto Club Ins Ass'n*, 195 Mich App 463, 466; 491 NW2d 593 (1992).

Here, it is undisputed that plaintiff did not receive a favorable judgment, in whole or in part, from the circuit court. To the contrary, summary disposition was granted in favor of defendant 1900 Associates regarding counts one, three, four, five, six, and seven, and the court subsequently dismissed plaintiff's final count. Therefore, the circuit court did not clearly err in finding that defendant 1900 Associates was a prevailing party, see *Citizens Ins Co of America v Juno Lighting, Inc*, 247 Mich App 236, 246; 635 NW2d 379 (2001) (defendant was prevailing party when the claims against it were dismissed), and that plaintiff was not. *McMillan*, 195 Mich App at 466.

Because of our decision on this issue, we need not address plaintiff's evidentiary issue that is related to it being a prevailing party.

2. ATTORNEY FEE AWARD

Plaintiff argues that the circuit court abused its discretion by awarding defendant 1900 Associates $39,600 in attorney fees and clearly erred in finding that defense counsel's invoices were sufficiently detailed.

In the context of an award of attorney fees as part of a case-evaluation sanction, our Supreme Court has discussed determination of the "reasonable" number of hours billed by attorneys. *Smith v Khouri*, 481 Mich 519, 531-532; 751 NW2d 472 (2008) (opinion by TAYLOR, C.J.).[11] The Court stated:

> [T]he court must determine the reasonable number of hours expended by each attorney. The fee applicant must submit detailed billing records, which the court must examine and opposing parties may contest for reasonableness. The fee

[11] Then Justice Young and Chief Justice Taylor constituted a two-justice plurality, and they were joined by two concurring justices, Justices Corrigan and Markman.

> applicant bears the burden of supporting its claimed hours with evidentiary support. If a factual dispute exists over the reasonableness of the hours billed or hourly rate claimed by the fee applicant, the party opposing the fee request is entitled to an evidentiary hearing to challenge the applicant's evidence and to present any countervailing evidence. [*Id.* at 532.]

While attorney fees are provided for by contract in this case, rather than as a case-evaluation sanction, the Court's guidance regarding "reasonableness" of fees is applicable.

During the evidentiary hearing regarding attorney fees, the parties stipulated that $250 was a reasonable fee rate. In the lower court and on appeal, plaintiff only challenges the reasonableness of the number of hours billed.

Matthew Miller, attorney for defendant 1900 Associates, testified regarding the invoices from Swistak Levine, Miller's law firm, to defendant for services rendered. Miller provided testimony regarding the content of the invoices and the total number of hours billed, and, because it was unclear from the bill itself, he explained what hours billed on the invoice needed to be excluded because they were billed only with regard to defendants other than defendant 1900 Associates. Plaintiff's attorney cross-examined Miller, challenging the invoices as insufficient evidence of the hours spent by Miller on the case, and plaintiff's counsel argued that the descriptions lacked sufficient specificity regarding the work performed. Miller repeatedly indicated that he billed defendant fewer hours than he actually spent, and provided more detail regarding the billings when asked by plaintiff's attorney at the hearing. Plaintiff's counsel had a full opportunity for cross-examination. The circuit court made the following explicit findings regarding reasonableness of the hours billed:

> The Court does not find the bills to be vague or in any way unclear. In fact, just the opposite is true; the bills are very clear and sufficiently detailed. To the extent there was any confusion on the issue, counsel's testimony clarified which work was performed on behalf of 1900 and which work was performed on behalf of the remaining Defendants—which work is not being considered for purposes of an award of fees. Defendant's counsel reduced the number of hours billed by utilizing the services of Bruce Measom, in-house counsel for 1900. In addition, Defendant's counsel's testimony established that he routinely under-billed his client and in fact refrained from billing for certain services. The Court finds the work performed is more than reasonable in this case.

The record makes clear that plaintiff's counsel had the opportunity to seek further detail regarding the billing statement entries during the evidentiary hearing, took that opportunity regarding several entries, and ultimately abandoned that opportunity regarding the remaining entries. Moreover, having reviewed Miller's invoice descriptions, the court did not clearly err in finding these descriptions sufficiently detailed. The circuit court's finding that the attorney fees sought by defendant 1900 Associates were reasonable is not clearly erroneous.

In Docket No. 313487 and Docket No. 316754, we affirm. Because defendant 1900

Associates prevailed, it may tax costs. MCR 7.219.

/s/ Kathleen Jansen
/s/ Christopher M. Murray
/s/ Mark T. Boonstra