

STATE OF MICHIGAN
COURT OF APPEALS

CIGL PROPERTIES, LLC,

Plaintiff/Counter-Defendant-
Appellant,

v

CM RENOVATION SERVICES, LLC and
PATRICK A. MICHAEL,

Defendants/Counter-Plaintiffs-
Appellees,

and

CHRIS MICHAEL,

Defendant-Appellee.

UNPUBLISHED
May 27, 2021

No. 353595
Oakland Circuit Court
LC No. 2017-157415-CB

Before: RONAYNE KRAUSE, P.J., and RIORDAN and O’BRIEN, JJ.

PER CURIAM.

CIGL Properties, LLC (“CIGL”), appeals by leave granted¹ the trial court’s order denying, in relevant part, CIGL’s motion for entry of consent judgment. We reverse and remand.

I. BACKGROUND FACTS

This case arises from a “house flipping” arrangement between CIGL and CM Renovation Services, LLC, Patrick A. Michael, and Chris Michael (collectively, “CM”). Under the arrangement, CIGL purchased residential properties, and CM acted as general contractor to renovate the properties. In 2016, the relationship between the parties broke down, and CIGL filed a lawsuit against CM, whereupon CM filed a counterclaim against CIGL. The trial court ordered

¹ *CIGL Props, LLC v CM Renovation Servs, LLC*, unpublished order of the Court of Appeals, entered August 12, 2020 (Docket No. 353595).

the parties to participate in mediation. The parties negotiated a settlement agreement, under which CM agreed to pay CIGL \$49,000 via monthly installments of \$924.69, and, critically to this appeal, “[a]ny payment not received by the date due shall constitute a default of this provision.” CIGL reserved the right to enter a consent judgment for damages “in the amount of \$85,000.00 less any payments made.” Further, the parties agreed that in the event of further litigation, “the prevailing party shall be awarded its costs and reasonable attorney fees.”

CM made timely payments for more than a year. However, in February 2020, CM failed to make its monthly payment. Thereafter, CIGL, claiming a violation of the settlement agreement, moved for entry of a consent judgment seeking damages totaling \$61,649.84, which included \$440 in attorney fees and costs. The trial court conducted a hearing on CIGL’s motion, at which CIGL asserted that it was seeking “strict enforcement” of the damages portion of the settlement agreement. Patrick Michael and Chris Michael, appearing *in propria persona*, did not dispute that CM failed to remit the February 2020 payment. When the trial court asked the Michaels what had happened, Chris explained that he had undergone surgery and had forgotten to send the check. The trial court expressed dismay that CIGL was pursuing the judgment after only a single missed payment, where Chris had a medical problem and, apparently, there were other parties in the courtroom pursuing judgments after twenty missed payments.

The trial court denied CIGL’s request to enforce the damages portion of the settlement agreement, ruling that the settlement agreement would remain “in effect as long as payments are current by this Friday” and paid \$200 to CIGL for its attorney fees. CIGL moved for reconsideration, which the trial court denied. This appeal followed.

II. STANDARDS OF REVIEW

“[T]he bedrock principle of American contract law [is] that parties are free to contract as they see fit, and the courts are to enforce the agreement as written absent some highly unusual circumstance, such as a contract in violation of law or public policy.” *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 51; 664 NW2d 776 (2003). “The cardinal rule in the interpretation of contracts is to ascertain the intention of the parties. To this rule all others are subordinate.” *Shay v Aldrich*, 487 Mich 648, 660; 790 NW2d 629 (2010) (quotation marks and citation omitted). Courts must enforce unambiguous contracts as written, and courts may not deviate from the terms of an unambiguous contract based on their own assessment of reasonableness. *Kendzierski v Macomb Co*, 503 Mich 296, 312; 931 NW2d 604 (2019). In so doing, courts must “give effect to every word, phrase, and clause in a contract and avoid an interpretation that would render any part of the contract surplusage or nugatory.” *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 468; 663 NW2d 447 (2003). “[I]n ascertaining the meaning of a contract, we give the words used in the contract their plain and ordinary meaning that would be apparent to a reader of the instrument.” *Rory v Continental Ins Co*, 473 Mich 457, 464; 703 NW2d 23 (2005). “The existence and interpretation of a contract are questions of law reviewed de novo.” *Kloian v Domino’s Pizza LLC*, 273 Mich App 449, 452; 733 NW2d 766 (2006).

“This Court reviews the trial court’s decision to award attorney fees for an abuse of discretion.” *Featherston v Steinhoff*, 226 Mich App 584, 592; 575 NW2d 6 (1997). “An abuse of discretion occurs when the decision resulted in an outcome falling outside the range of principled outcomes.” *Hayford v Hayford*, 279 Mich App 324, 325; 760 NW2d 503 (2008). “A trial court

necessarily abuses its discretion when it makes an error of law.” *Ronnisch Constr Group, Inc v Lofts on the Nine, LLC*, 499 Mich 544, 552; 886 NW2d 113 (2016).

III. ENTRY OF JUDGMENT

CIGL argues that the trial court ignored the clear language of its settlement agreement with CM when it declined to enter a consent judgment in favor of CIGL. As such, CIGL asks this Court to reverse the trial court’s order and remand this case to the trial court for entry of judgment in favor of CIGL. We agree.

A settlement agreement is treated and construed as a contract. *In re Lett Estate*, 314 Mich App 587, 599-600; 887 NW2d 807 (2016). The parties’ settlement agreement provided, in relevant part, that any payment not received on its due date constituted a default. The settlement agreement further provided, in relevant part:

In the event Defendants fail to comply with [the payment provision] above, CIGL shall be entitled to the entry of an order reinstating Litigation 2 [i.e., the settled underlying action] and entering a consent judgment in favor of CIGL and against Defendants in Litigation 2 in the amount of \$85,000.00 less any payments made pursuant to this Agreement. The parties agree and understand that the consent judgment shall be entered in accordance with [MCL 600.2906]. Defendants further agree to waive any notice of default and any right to cure prior to the entry of judgment contemplated herein. Further, CIGL shall be entitled to such judgment on an ex parte basis and upon presentation of an affidavit of counsel setting forth: a) the factual basis behind the default of this Agreement and b) the outstanding balance owed by Defendants on this Agreement at the time of the default. In the event that CIGL has complied with the requirements of this paragraph, then Defendants waive any and all defenses to the entry of the judgment as contemplated herein other than the right to file an objection solely pertaining to a miscalculation of the balance owed. . . . In any CIGL action to enforce or interpret any or all of [the preceding provisions] above, the prevailing party shall be awarded its costs and reasonable attorney fees.

The agreement further provided that any waiver of any right under the agreement “must be explicit and in writing.”

CIGL presented the trial court with an affidavit of noncompliance, stating that CM had failed to make its February 15, 2020, payment. It further averred that CIGL had incurred \$440 in attorney fees and costs, and that a balance of \$61,649.84 remained due under the consent judgment. CM merely provided an explanation for why it had missed the payment. There is nothing ambiguous about the parties’ agreement. The word “shall” is presumed to be mandatory. *Oakland Co v Michigan*, 456 Mich 144, 154 n 10; 566 NW2d 616 (1997). It is unambiguous, and indeed undisputed, that CM defaulted under the agreement’s terms, which constituted a default. Because CIGL clearly presented the affidavit required by the agreement, CIGL was entitled to its requested entry of the consent judgment and actual attorney fees and costs. The trial court made no finding that the agreement was illegal or in violation of public policy, so it was required to enforce the parties’ agreement as written. *Wilkie*, 469 Mich at 51; *Kendzierski*, 503 Mich at 312. Instead, the

trial court effectively ordered that CM's default be overlooked in exchange for its reimbursement of less than half of CIGL's attorney fees.

The trial court abused its discretion and exceeded its authority by refusing to enforce the parties' agreement. Consequently, we reverse the decision of the trial court and remand the case to the trial court for entry of judgment consistent with the terms of the settlement agreement.

IV. ATTORNEY FEES

CIGL argues the trial court abused its discretion in declining to award the entire amount of attorney fees requested because its "request for \$440 in attorneys' fees was not unreasonable." We agree.

Attorney fees are generally not recoverable from a losing party, but they may be recovered pursuant to a contractual agreement between the parties. *Fleet Business Credit v Krapohl Ford Lincoln Mercury Co*, 274 Mich App 584, 589; 735 NW2d 644 (2007). Such contractual provisions are enforceable, and attorney fees awarded under such provisions are considered damages. *ABCS Troy, LLC v Loancraft, LLC*, ___ Mich App ___, ___; ___ NW2d ___ (2021) (Docket No. 349835, slip op at pp 3, 7). Nevertheless, the party claiming contractual attorney fees may only recover reasonable attorney fees and must make a prima facie showing of reasonableness. *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195-196; 555 NW2d 733 (1996). The party requesting attorney fees has the burden of establishing that they are reasonable, and our Supreme Court has explained that courts should consider a multitude of factors when evaluating reasonableness. *Smith v Khouri*, 481 Mich 519, 528-530; 751 NW2d 472 (2008).

As discussed above, the parties' settlement agreement unambiguously provides that, under the circumstances, CIGL was entitled to "its costs and reasonable attorney fees." CIGL explained that its requested fee award was based on two hours of its attorney's time expended on the motion to reinstate, at a rate of \$220 an hour. CIGL presented proofs to the trial court which included an "Attorney Income and Billing Rate Summary Report" issued by the State Bar of Michigan articulating the average hourly rates for attorneys on the basis of an attorney's location, area of expertise, and years of experience. CIGL also provided a biography of its attorney, which included his legal experience and areas of expertise. CM did not challenge CIGL's request for attorney fees, nor did it challenge the reasonableness or amount of CIGL's requested attorney fees. The trial court made no findings regarding the reasonableness of CIGL's requested fees, but rather simply ordered CM to pay \$200 with no explanation.

For the same reasons discussed above, the trial court was not authorized to depart from the plain terms of the parties' agreement. Ordinarily, we would remand for the trial court to make a determination of the reasonableness of the attorney fee request. However, under the circumstances of this case, doing so would not be an efficient use of judicial resources under the circumstances, especially in light of the ongoing COVID-19 crisis and the evidence already in the record or readily available. We have consulted the 2020 edition of the State Bar of Michigan's Economics of Law Practice survey, see *Smith*, 481 Mich at 530, and the biography of CIGL's lawyer attached to its motion. CIGL's requested hourly rate of \$220 an hour is less than the 25th percentile billed in Oakland County, and it is less than the 25th percentile for the average billing rates in the attorney's stated practice areas. We find it extremely unlikely that \$220 an hour was an unreasonable rate,

and we find it equally unlikely that two hours of work was unreasonably long. Therefore, we conclude that the trial court abused its discretion by refusing to award CIGL the entirety of its requested attorney fees.

We reverse the trial court and remand for entry of CIGL's requested judgment and attorney fee award. We do not retain jurisdiction.

/s/ Amy Ronayne Krause

/s/ Michael J. Riordan

/s/ Colleen A. O'Brien