

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

COASTAL MART, INC.,	:	CIVIL ACTION
	:	
Plaintiff,	:	
v.	:	
	:	
JOHNSON AUTO REPAIR, INC. and	:	
RICHARD C. JOHNSON,	:	
	:	
Defendants.	:	NO. 99-3606

Reed, S.J.

March 14, 2001

M E M O R A N D U M

It is high time this case came to a conclusion. This Court has already granted default judgment on liability in favor of plaintiff, and the only remaining issue is the amount of the damages, attorneys' fees, and costs owed by defendants. Plaintiff now seeks resolution of that issue, having filed a motion for summary judgment on damages pursuant to Rule 56 of the Federal Rules of Civil Procedure (Document No. 40). Plaintiff's motion will be granted.

Background

This case stems from a business arrangement gone awry. Plaintiff Coastal Mart, Inc., entered into a series of agreements with defendants Johnson Auto Repair, Inc. ("Johnson Auto") and Richard C. Johnson under which Johnson Auto, a retail gasoline service station in the Philadelphia area, promised to buy gasoline from Coastal Mart. When defendants allegedly breached those agreements, Coastal Mart brought this suit. As discussed more fully in this Court's decision granting default judgment on liability, defendants stonewalled throughout discovery, refusing to respond to numerous discovery requests and refusing to appear for scheduled depositions in direct contravention of a number of this Court's orders. See Coastal

Mart, Inc. v. Johnson Auto Repair, Inc., 196 F.R.D. 30, 31-34 (E.D. Pa. 2000). Applying the analysis set forth by the Court of Appeals for the Third Circuit in Poulis v. State Farm Fire & Cas. Co., 747 F.2d 863, 868 (3d. Cir. 1984), this Court concluded that in light of the extraordinary, bad faith conduct of defendants, the proper sanction was default judgment. See Coastal Mart, 196 F.R.D. at 33-35. Because there was insufficient evidence to make a ruling as to damages, I entered default judgment as to liability only, ordered that discovery should continue on damages, and ordered the case listed for arbitration. See id. at 35.

The arbitration concluded with a ruling awarding damages, attorneys' fees, and costs to plaintiff. (Arbitration Award, Document No. 36, Nov. 2, 2000.) Defendants appealed the arbitration award to this Court, and a trial *de novo* was stayed pending the outcome of the instant motion. (Order, Document No. 39, Dec. 5, 2000.)

Analysis

In deciding a motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure, "the test is whether there is a genuine issue of material fact and, if not, whether the moving party is entitled to judgment as a matter of law." Medical Protective Co. v. Watkins, 198 F.3d 100, 103 (3d Cir. 1999) (citing Armbruster v. Unisys Corp., 32 F.3d 768, 777 (3d Cir. 1994)). "As to materiality, the substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505 (1986). Furthermore, "summary judgment will not lie if the dispute about a material fact is 'genuine,' that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Id. at 250.

On a motion for summary judgment, the facts should be reviewed in the light most favorable to the non-moving party. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S. Ct. 1348 (1986) (quoting United States v. Diebold, Inc., 369 U.S. 654, 655, 82 S. Ct. 993 (1962)). The nonmoving party “must do more than simply show that there is some metaphysical doubt as to the material facts,” Matsushita, 475 U.S. at 586, and must produce more than a “mere scintilla” of evidence to demonstrate a genuine issue of material fact in order to avoid summary judgment. See Big Apple BMW, Inc. v. BMW of North America, Inc., 974 F.2d 1358, 1363 (3d Cir. 1992).

1. Damages Against Johnson Auto

The question now before this Court is not whether plaintiff is entitled to money, but how much. Plaintiff has submitted copious documentation of its damages. Defendants respond to plaintiff’s motion with a late-filed, six-page memorandum that fails to demonstrate a genuine issue of material fact as to the amount of damages, attorneys’ fees, or costs.¹

a. *The Agreements*

Coastal Mart’s claimed damages derive from the agreements between plaintiff and defendant. In the course of Johnson Auto’s efforts to become a branded dealer of Coastal Mart gasoline, Johnson Auto and Richard Johnson entered into the following agreements with Coastal Mart, including:

- (1) a Sales Agreement with addenda, under which Johnson Auto was obligated to purchase, and Coastal Mart was obligated to sell, Coastal Mart branded gasoline

¹ In keeping with its prior dilatory conduct, the defendants filed their reply 6 weeks late, in violation of Local Civil Rule 7.1.

(Plaintiff's Exh. A, Tabs 1, 2 and 3);

- (2) a Reimbursement Agreement, under which Johnson Auto was required to pay Coastal Mart \$.0171 for every gallon Johnson Auto failed to purchase under a fixed amount (Plaintiff's Exh. A, Tab 11);
- (3) a Security Agreement, under which Johnson Auto was obligated to pay any late charges, and pay reasonable attorneys' fees, costs and expenses expended by Coastal Mart in the collection of any amounts due (Plaintiff's Exh. A, Tab 13);
and
- (4) a personal Guaranty, under which Richard Johnson personally promised the full compliance of Johnson Auto with the terms of the Reimbursement Agreement (Plaintiff's Exh. A, Tab 8) (collectively, the "Agreements").

Plaintiff alleges that Johnson Auto breached these agreements. "A consequence of the entry of a default judgment is that 'the factual allegations of the complaint, except those relating to the amount of damages, will be taken as true.'" Comdyne I, Inc. v. Corbin, 908 F.2d 1142, 1149 (3d Cir. 1990) (quoting 10 C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure, § 2688 at 444 (2d ed. 1983)). Having granted default judgment in favor of Coastal Mart, this Court accepts as true plaintiff's allegations that Johnson Auto breached the agreements.

b. *Monetary Damages*

Plaintiff contends that defendants' breaches entitle plaintiff to two different categories of damages, excluding attorneys' fees and costs: (1) amounts owed to Coastal Mart for unpaid purchases of Coastal Mart gasoline and (2) monies owed to Coastal Mart under the

Reimbursement Agreement. The Affidavit of Kevin Macolley (“Macolley Affidavit”) and its numerous exhibits explain that the first category of damages consists of: (1) three checks from Johnson Auto totaling \$30,462.60 that were returned unpaid due to insufficient funds (Macolley Affidavit, Plaintiff’s Exh. K, ¶¶ 6 A-C and Tabs 2, 5, 8); (2) unpaid gasoline delivery totaling \$10,286.58 (Macolley Affidavit, Plaintiff’s Exh. K, ¶ 6 D and Tabs 10 and 11); (3) insufficient or partial payments totaling \$7,456.91 (Macolley Affidavit, Plaintiff’s Exh. K, ¶ 6 E and Tabs 12-29); and (4) finance charges totaling \$21,607.93 (Macolley Affidavit, Plaintiff’s Exh. K, ¶ 6 F and Tab 30). The second category of damages – the money due to Coastal Mart under the Reimbursement Agreement to compensate for the gasoline Johnson Auto failed to buy – is derived from a multiplication of the number of gallons under the minimum amount set forth in the agreement (\$1,082,913) by the agreed upon reimbursement rate of \$.0171 per gallon. This results in an unamortized balance of \$18,517.81, which Johnson Auto owes to Coastal Mart. (Macolley Affidavit, Plaintiff’s Exh. K, ¶ 6 G and Tab 31.)

The total amount of damages claimed by Coastal Mart under the Sales and Reimbursement Agreements is \$88,331.83. Defendants offer no persuasive rebuttal of plaintiff’s characterization of its damages. While defendants point to a few factual disputes, none of them are sufficient to allow a reasonable jury to find that the amount of damages is in dispute. I conclude that there is no genuine issue of material fact as to the amount of damages due plaintiff for the defendants’ breaches of the Agreements. Therefore, summary judgment will be granted in favor of plaintiff and against defendant Johnson Auto as to damages, exclusive of attorneys’ fees and costs, in the sum of \$88,331.83.

c. *Replevin*

Coastal Mart also claims it is entitled to replevin under the Security Agreement, which secures Johnson Auto's obligations under the Reimbursement Agreement. As security for Johnson Auto's obligations under the Reimbursement Agreement, Johnson Auto granted Coastal a security interest in the following property (the "Collateral"):

- (4) Southwest MPD 3 product with control box
- (1) canopy 52 x 15
- (1) 12,000 gallon doublewall fiberglass tank with vapor recovery system
- (2) 6,000 gallon doublewall fiberglass tanks with vapor recovery systems
- (1) electric control panel
- (4) sitewells / borings

(Plaintiff's Exh. A, Tab 12.) Coastal perfected its security interest in this "Collateral" by filing the appropriate UCC-1 financing statements. (Id.)

Paragraph 2(f) of the Security Agreement provides that upon a default by Johnson Auto, the obligations secured "shall immediately become due and payable in full without notice or demand and the Secured Party [Coastal] shall have all the rights, remedies and privileges with respect to repossession, retention and sale of the collateral and disposition of the proceeds as are accorded to a Secured Party by the applicable sections of the Uniform Commercial Code respecting 'Default' in effect as of the date of this Security Agreement [March 30, 1992]."

(Plaintiff's Exh. A, Tab 13, at ¶ 2 (f).)

In its complaint, plaintiff alleges that "Johnson Auto defaulted in its obligations to

Coastal Mart under the Security agreement by, inter alia, failing to pay and perform all of its obligations under the Reimbursement Agreement, and Coastal Mart notified Johnson Auto that it was in default.” (Complaint, at ¶ 33.) Again, because this Court has entered default judgment in favor of plaintiff on this issue, plaintiff’s allegations must be accepted as true. Under the Security Agreement language quoted above, Johnson Auto’s default triggered the right of Coastal Mart to repossession, retention, and sale of the collateral. Therefore, I conclude that Coastal Mart is entitled to repossession, retention, and sale of the following property: four Southwest MPD 3 products with control box; one canopy 52 x 15; one 12,000 gallon doublewall fiberglass tank with vapor recovery system; two 6,000 gallon doublewall fiberglass tanks with vapor recovery systems, one electric control panel; and four sitewells / borings.

c. *Attorneys’ Fees and Costs*

The agreements entered into by the parties also govern the award of attorneys’ fees and costs in this case. Each of the agreements provides that in the event of a breach by defendants, defendants will pay the attorneys’ fees and costs of Coastal Mart. (Sales Agreement, Plaintiff’s Exh. A, Tab 1, at ¶ 34; Reimbursement Agreement, Plaintiff’s Exh. A, Tab 11, at p.2; Guaranty, Plaintiff’s Exh. A, Tab 8, at § 1; Security Agreement, Plaintiff’s Exh. A, Tab 13, at ¶ 2 (f).) Again, because this Court has entered default judgment in favor of plaintiff on liability, plaintiff’s allegations that defendants Johnson Auto and Johnson breached the Agreements is accepted as true. Because there is no genuine issue of material fact that defendants have breached the Agreements, I conclude that defendant Johnson Auto is therefore obligated to reimburse plaintiff, as prescribed in the Agreements, for the reasonable attorneys’ fees and costs plaintiff incurred prosecuting its lawsuit.

It remains to be determined whether the amount of attorneys' fees and costs incurred by plaintiff is reasonable. The party seeking attorneys' fees has the burden of proving that its request is reasonable. See Rode v. Dellarciprete, 892 F.2d 1177, 1183 (3d Cir. 1990). The district court should exclude hours that are not reasonably expended; that is, hours that are excessive, redundant or unnecessary. See Hensley v. Eckerhart, 461 U.S. 424, 433, 434, 103 S. Ct. 1933 (1983); Rode, 892 F.2d at 1183. The starting point for determining the amount of reasonable attorneys' fees is "the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate," or the "lodestar." Hensley, 461 U.S. at 434.

Counsel for plaintiff has provided for *in camera* review unredacted billing records that describe the efforts of plaintiff's counsel in this case. The billing records break down the activities of plaintiff's attorneys in detail and show the amount of time spent by the attorneys in drafting pleadings, motions, and other papers; managing discovery issues; preparing for arbitration; and communicating with the client. The primary billing attorney for plaintiff was outside counsel Deborah Epstein Henry of the law firm of Schnader Harrison Segal & Lewis, who, over the course of the 20-month course of this litigation, billed just over 230 hours at a rate of \$190 per hour. Senior attorney Margaret S. Woodruff provided 5.4 hours of work at a billing rate of \$305 per hour. Supporting attorneys and staff at Schnader Harrison billed approximately 44 hours at rates ranging from \$35 to \$100 an hour. In addition, in-house counsel for Coastal Mart, John L. Shoemaker, devoted 133 hours to the case at \$190 per hour.

I have reviewed the billing records carefully, and conclude that the amount of time spent on the case by the plaintiff's attorneys was reasonable. The individual descriptions of the activities of counsel reflect reasonable efforts by plaintiff's counsel to litigate a fairly

straightforward case against an unreasonable, intransigent defendant. This litigation has spanned just under 20 months, and all plaintiff's counsel spent an average of approximately 20 hours per month on the case, which I consider a reasonable amount in light of the obstreperous conduct of defendants and their counsel. I see no evidence of unnecessary, excessive, or redundant efforts in the billing records, and no indication that the hours reflected there were not reasonably expended.

I also conclude that the hourly rates charged by plaintiff's counsel were reasonable. The highest rate among plaintiff's attorneys was the \$305-per-hour rate of Margaret S. Woodruff, and she billed less than six hours on the case. The bulk of the work was done by Deborah Epstein Henry and John L. Shoemaker, at the reasonable rate of \$190 per hour, and some work was done by associates and staff charging reasonable rates of \$100 per hour or less.

In addition, plaintiff seeks costs incurred during the course of the litigation. These costs include duplication expenses, postage, telephone calls, messenger services, computer research, and filing and court costs. I have reviewed those costs and find them to be reasonable.

Defendants argue that some of the fees were unnecessary, particularly those fees plaintiff incurred in preparing sanctions motions. To the extent that plaintiff incurred substantial attorneys' fees and costs during discovery, it did so largely due to the dilatory conduct of defendants.² I find it disingenuous for defendants to now argue that plaintiff's fees were unnecessary when it was defendants' own past conduct that caused the discovery problems that forced plaintiff to incur such fees. Accordingly, the Court will award the total amount of

² This Court on four separate occasions was required to compel discovery from defendants, and on three of those occasions found that defendants were liable to pay counsel fees for causing delays in, or refusing to provide, discovery. See Coastal Mart, Inc. v. Johnson Auto Repair, Inc., 196 F.R.D. 30 (E.D. Pa. 2000); Order, Document No. 28, dated May 11, 2000; Order, Document No. 27, dated May 11, 2000; Order, Document No. 12, dated December 9, 1999.

attorneys' fees and costs requested by plaintiff, calculated in the following manner: \$41,067.85 for the work of outside counsel; and \$25,270 for the work of inside counsel, for a total of \$66,237.85.

2. Damages and Attorneys' Fees and Costs Against Richard C. Johnson

In granting default judgment against defendants, this Court held that defendant Richard C. Johnson was personally liable for breach of contract. See Coastal Mart, 196 F.R.D. at 35. The Agreements demonstrate that Richard Johnson agreed to subject himself to personal liability for damages and attorneys' fees and costs. The personal guaranty signed by Richard Johnson assures the punctual and complete performance of all indebtedness, liabilities and obligations of any kind owed by Johnson Auto to Coastal Mart, including any and all attorneys' fees, costs, and other expenses incurred by Coastal Mart in collecting or enforcing such obligations against Johnson Auto or Richard Johnson. (Guaranty, Plaintiff's Exh. A, Tab 8.) Under the Guaranty, Richard Johnson accepted joint and several liability for payment and performance of the obligations undertaken by himself and Johnson Auto in the Agreements. Additionally, in the Reimbursement Agreement, Richard Johnson personally guaranteed prompt and full performance and payment of Johnson Auto's obligations under the Reimbursement Agreement and authorized Coastal Mart in the event of default, to proceed without notice or demand against him personally for any amounts, including attorneys' fees, owed by Johnson Auto to Coastal Mart under the Reimbursement Agreement. (Reimbursement Agreement, Plaintiff's Exh. A, Tab 11.)

I conclude that a reasonable jury would have no choice but to find Richard Johnson personally liable for the damages, attorneys' fees, and costs incurred by plaintiff. Therefore, summary judgment will be granted against Richard Johnson, and he will be held personally liable for damages, attorneys' fees, and costs in the amounts set forth above, jointly and severally with Johnson Auto.

An appropriate Order follows.

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COASTAL MART, INC.,	:	
	:	CIVIL ACTION
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Plaintiff,	:	
v.	:	
	:	
JOHNSON AUTO REPAIR, INC. and	:	
RICHARD C. JOHNSON,	:	
	:	
Defendants.	:	NO. 99-3606

O R D E R

AND NOW on this 14th day of March, 2001, upon consideration of the Motion of plaintiff Coastal Mart, Inc. for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure (Document No. 34), the response of defendants Johnson Auto Repair, Inc., and Richard C. Johnson, the motion of plaintiff to file a reply (Document No. 41), and plaintiff's reply, and having thoroughly reviewed the motions, pleadings, evidence of record and affidavits submitted therewith, and having concluded, for the reasons set forth in the foregoing memorandum, that there is no genuine issue of material fact and that plaintiff is entitled to judgment as a matter of law, **IT IS HEREBY ORDERED** that the motion of plaintiff to file a reply brief is **GRANTED**, and the motion of plaintiff is for summary judgment is **GRANTED**.

IT IS FURTHER ORDERED and that **FINAL JUDGMENT** is hereby **ENTERED** in favor of Coastal Mart, Inc., and against defendants Johnson Auto Repair, Inc., and Richard C. Johnson jointly and severally in total amount of \$154,569.68, being contractual damages of \$88,331.83 and attorneys' fees and costs in the amount of \$66,237.85.

IT IS FURTHER ORDERED that plaintiff Coastal Mart is entitled to immediately remove, repossess, retain, and/or sell the following items now in the possession of defendants: four Southwest MPD 3 products with control box; one canopy 52 x 15; one 12,000 gallon doublewall fiberglass tank with vapor recovery system; two 6,000 gallon doublewall fiberglass tanks with vapor recovery systems, one electric control panel; and four sitewells / borings. Defendants shall allow representatives of plaintiff onto the property at Bishop and Springfield Roads in Clifton Heights, Pennsylvania, for the purpose of removing, repossessing, retaining, and/or selling the foregoing items.

This is a final Order.

LOWELL A. REED, JR., S.J.