

STATE OF MICHIGAN
CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
OAKLAND COUNTY

SUSAN BISIO,

Plaintiff,

Case No. 2015-150462-CZ

v

Hon. Leo Bowman

THE CITY OF THE
VILLAGE OF CLARKSTON,

Defendant.

Richard Bisio (P30246)
Kemp Klein Law Firm
Attorneys for Plaintiff
201 West Big Beaver Road, Suite 600
Troy, MI 48084
(248) 740-5698
richard.bisio@kkue.com

James E. Tamm (P38154)
Kerr, Russel and Weber, PLC
Attorneys for Defendant
500 Woodward Ave., Suite 2500
Detroit, MI 48226
(313) 961-0200
jtamm@kerr-russell.com

PLAINTIFF'S MOTION FOR ENTRY OF ORDER ON FEE AWARD

Plaintiff Susan Bisio moves for entry of an order on her Motion for an Award of Fees, Costs, and Disbursements awarding plaintiff \$160,000 based on the city's agreement in facilitation to an award of that amount. In support, she states:

1. Plaintiff filed her Motion for an Award of Fees, Costs, and Disbursements on October 26, 2020. The motion sought an award of \$280,313.50 in fees and \$4,860.52 in costs and disbursements. Plaintiff has incurred additional fees, costs, and disbursements since filing that motion.

2. The Court set a hearing on the motion for January 13, 2021.

FEE

3. In December 2020, the defendant city requested and plaintiff agreed to facilitation of the fee request. As a result, the January 13, 2021 hearing on plaintiff's fee motion was adjourned without date.

4. The parties participated in a facilitation on February 1, 2021. At that time, the accrued fees plaintiff sought were \$313,977 and costs and disbursements were \$4,932.32.

5. Facilitation on February 1 was unsuccessful, but, with the parties' consent, the facilitator recommended an amount to settle the fee claim and asked the parties to accept or reject that amount. Exhibit 1 (email from facilitator to counsel for the parties recommending a settlement of \$160,000).

6. Plaintiff accepted the amount, with a condition that a judgment be entered against the city. Exhibit 2 (email from plaintiff's counsel).

7. The city accepted the amount. Although the city has not disclosed the contents of its communications with the facilitator, it filed a 2/22/21 Motion to Enforce Settlement, stating, in paragraph 4: "All parties timely communicated their acceptance via email to Judge Sosnick [the facilitator]."

8. Plaintiff has shown in her Response Opposing City's Motion to Enforce Purported Settlement that there was no binding settlement because the parties did not agree on material terms of a settlement other than the amount of fees. Rather, each side proposed a settlement agreement that contained terms conflicting with the other side's proposed agreement, there was no meeting of the minds, and there was no settlement.

9. Notwithstanding that there is no enforceable settlement agreement, plaintiff is at this time willing to settle her fee motion for an award of \$160,000 for fees incurred to date. The city likewise has stated it is willing to settle the motion for that amount. Based on the parties' mutual expression that they are willing to settle the fee motion for that amount, the Court should enter an order granting the fee motion in the amount of \$160,000. Since this is the last dispute to be resolved in this case, the Court should enter a final order.

For these reasons, plaintiff requests the Court to enter a final order in the form attached to this motion as exhibit 3 granting her Motion for an Award of Fees, Costs, and Disbursements in the amount of \$160,000 for fees incurred to date.

KEMP KLEIN LAW FIRM

/s/ Richard Bisio
Richard Bisio (P30246)
201 West Big Beaver Road, Ste. 600
Troy, MI 48084
(248) 740-5698
Attorneys for Plaintiff

Dated: March 9, 2021

Richard Bisio

From: Edward Sosnick <edward@sosnickmediation.com>
Sent: Monday, February 8, 2021 2:05 PM
To: Richard Bisio; Mark W. Peyser
Subject: Bisio/Village of Clarkston

Dear Richard and Mark,

Thank you for agreeing to let me give you a mediator's settlement number.

As we know, this has been a difficult case and we have now reached an impasse

When that happens, I try to help resolve the case from a truly objective position and offer a number which I feel is a good and fair settlement number.

I also rely on my 28 years experience as a district and circuit court judge. I emphasize that it is impossible to know the trial outcome. You can, however, control the result by reaching an agreement.

It is often said a good settlement is one where both sides may pay more or accept less to limit their risk/exposure and might experience some pain.

With that said, and after much deliberation, I feel that for this case the appropriate number is \$160,000.00.

I am giving both sides until Wednesday February 10th by 5pm to email me your position (accept/reject).

If both sides accept, we have a settlement. If not, the matter will proceed in court.

I will not disclose to each whether the other side objected or rejected the number.

I thank you for allowing me to act as mediator and will always be available if needed.

Retired Judge Edward Sosnick, Mediator.

This email has been scanned for viruses and malware, and may have been automatically archived by **Mimecast Ltd**, an innovator in Software as a Service (SaaS) for business. Providing a **safer** and **more useful** place for your human generated data. Specializing in; Security, archiving and compliance. To find out more [Click Here](#).

Richard Bisio

From: Richard Bisio
Sent: Wednesday, February 10, 2021 5:03 PM
To: Edward Sosnick
Subject: Bisio v Clarkston

Dear Judge Sosnick:

Plaintiff will accept \$160,000 in settlement of her fee claim. I previously circulated a form of settlement agreement before the facilitation started and want to see a signed agreement in that form, including agreement to entry of a judgment for \$160,000 plus judgment interest, all contingent on approval of the settlement by the city council at or before its next scheduled meeting on February 22. In addition, plaintiff will not withdraw her motion for summary disposition, which is scheduled for hearing on February 18. The city can easily settle that motion by agreeing that entry of a disclosure order is not necessary after the city disclosed the records, that the city has waived all affirmative defenses, and that the notice for trial of the case should be vacated.

Thank you for your efforts in this case.

Richard Bisio



201 W. Big Beaver Rd., Ste. 600
Troy, MI 48084-4161
Phone: (248) 740-5698
FAX: (248) 528 5129
e-mail: richard.bisio@kkue.com
<http://www.kempklein.com>

IRS CIRCULAR 230 NOTICE: Any U.S. federal tax advice contained in this communication (including any attachments) was neither written nor intended by the sender to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing, or recommending to another person any tax related matter.

The name and "signature block" of Kemp Klein Law Firm and/or its attorneys or staff in this electronic communication shall not be construed as the signature of the firm or of any individual, unless that intention is clearly stated in the text of the communication.

This email contains information from Kemp Klein Law Firm, which is confidential and/or privileged. The information is intended to be for the use of the individual(s) or entity(ies) to which this email is addressed. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited. If you have received this email in error, please notify us by telephone immediately at (248) 528-1111, return the email to the sender and delete the email from your system (including from your trash).

STATE OF MICHIGAN
CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
OAKLAND COUNTY

SUSAN BISIO,

Plaintiff,

Case No. 2015-150462-CZ

v

Hon. Leo Bowman

THE CITY OF THE
VILLAGE OF CLARKSTON,

Defendant.

Richard Bisio (P30246)
Kemp Klein Law Firm
Attorneys for Plaintiff
201 West Big Beaver Road, Suite 600
Troy, MI 48084
(248) 740-5698
richard.bisio@kkue.com

James E. Tamm (P38154)
Kerr, Russel and Weber, PLC
Attorneys for Defendant
500 Woodward Ave., Suite 2500
Detroit, MI 48226
(313) 961-0200
jtamm@kerr-russell.com

**ORDER GRANTING PLAINTIFF'S MOTION FOR
AN AWARD OF FEES, COSTS, AND DISBURSEMENTS**

Plaintiff filed a Motion for an Award of Fees, Costs, and Disbursements and a Motion for Entry of Order on Fee Award. The Court considered the parties' filings and heard argument.

IT IS ORDERED that plaintiff's Motion for an Award of Fees, Costs, and Disbursements is granted in the amount of \$160,000 for fees incurred to date. All other pending motions are DENIED as moot. This order disposes of the last pending claim and closes the case.

Hon. Leo Bowman
Circuit Judge

Dated: March __, 2021