

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

CORPORATE EXPRESS
OFFICE PRODUCTS, INC.,
a Delaware corporation,

Plaintiff,

v.

STUART BROWN,

Defendant.

ORDER

00-C-608-C

STUART P. BROWN,

Plaintiff,

v.

BT OFFICE PRODUCTS INTERNATIONAL,
INC., n/k/a CORPORATE EXPRESS OFFICE
PRODUCTS, INC., CORPORATE EXPRESS
OFFICE PRODUCTS, INC.,

Defendants.

00-C-666-C

In an order dated July 25, 2001, I determined that Stuart Brown is entitled to interest

and reasonable attorney fees for his claim for breach of the commercial lease, interest for his claim for breach of the separation agreement and general release and reasonable attorney fees for Corporate Express's claim for breach of the covenants not to compete. Pursuant to that order, Brown submitted an itemized accounting of (1) the total interest due on the claims for breach of the commercial lease and breach of the separation agreement and general release and (2) the time expended on the claims for breach of the commercial lease and breach of the covenants not to compete, with identification of the tasks performed, together with an itemization of the costs Brown reasonably incurred in prosecuting and defending these claims. Presently before the court is Corporate Express's objection to the attorney fees and costs requested by Brown; it does not disagree with Brown's calculation of the interest due.

A. Interest

The parties agree that for the claim for breach of the commercial lease, the interest on the damages (\$23,968.00) totals \$989.89 and that for the claim for breach of the separation agreement and general release, the interest on the damages (\$58,280.96) totals \$3,093.56. They also agree that Brown is entitled to post-judgment interest on the total awarded at the rate of 12% per year. Because the parties agree to the post-judgment interest rate, I need not determine whether federal or state interest rates apply.

B. Attorney Fees

Although Brown was awarded attorney fees for only two of the claims in these consolidated cases (breach of the covenant not to compete and breach of the commercial lease), Brown argues that he is entitled to all of his attorney fees. Brown reasons that the two claims for which he was awarded attorney fees constitute the main issues in this case; the state law claims were ancillary to these issues and the claim for breach of the separation and release agreement turned upon resolution of the claim for breach of the covenant not to compete.

Brown is correct that the resolution of these two claims constitutes the majority of the dispute. However, it is not reasonable for Brown to collect attorney fees for the entire case. Corporate Express's state law claims for misappropriation of trade secrets, breach of fiduciary duty, tortious interference with business relations and conspiracy each required some degree of factual discovery and legal research. Moreover, Brown's claim for breach of the separation and release agreement required factual discovery beyond Corporate Express's defense that Brown had breached the covenant not to compete. A review of the opinion and order of July 18, 2001, reveals that roughly half the discussion is dedicated to the two claims for which Brown is entitled to attorney fees and the other half addresses the remaining five claims. Although this observation is not a direct indication of how much time Brown's attorney spent on the remaining five claims, it does suggest that the remaining five claims

required a significant amount of attention.

Corporate Express proposes to award Brown two-thirds of his total attorney fees in order to approximate the amount of time spent on the two claims of breach of the covenant not to compete and breach of the commercial lease. Because Brown has not submitted any documentation itemizing the tasks performed for these two claims, I find this method of calculation reasonable. Accordingly, I will award Brown attorney fees in the amount of \$18,397.53 (\$27,459.00 multiplied by 0.67). (Corporate Express noted an addition error in Brown's calculation of the total fee as \$27,508.00).

Corporate Express also disagrees with the inclusion of two specific time entries. First, it asserts that a one-hour conference with Stuart and Jeanine Brown regarding depositions dated May 7, 2001 should be reduced by half. Corporate Express asserts that Jeanine Brown was not a party to the case and did not need to be prepared by Stuart Brown's attorney. However, it is reasonable to assume that Jeanine Brown's deposition related to the issue whether Stuart Brown breached his covenant not to compete. For this reason, I will not exclude this half-hour's time from Brown's attorney fees.

Second, Corporate Express argues that a three-hour period on May 28, 2001 spent preparing Todd Brown's affidavit and completing a reply to contested proposed findings of fact should be reduced by half. Corporate Express asserts that Todd Brown was represented by his own attorney in this matter and that, therefore, this cost should not be assessed to

Corporate Express. I disagree. As with the case of time spent with Jeanine Brown, it is reasonable to assume that the affidavit prepared for Todd Brown related to the issue whether Stuart Brown breached his covenant not to compete. I will not exclude this specific time from Brown's attorney fees.

C. Costs

Corporate Express asserts that Brown is not entitled to all the costs that he submitted because not all of them are substantiated by receipts. Specifically, Corporate Express argues that none of the telephone charges are supported by telephone bills and, therefore, that the amount for telephone charges should be reduced from \$443.69 to \$0.00. It is true that documentation might have explained the rounded off telephone charges Brown submitted. However, rather than require Brown to submit the supporting documentation and delay resolution of this case simply to resolve a dispute of a few hundred dollars, I deem it reasonable to reduce the amount requested for telephone charges by one-half to \$221.85 (\$443.69 times 0.5).

Corporate Express argues further that the postage and express mail charges submitted by Brown are inaccurate. Although Brown has asked for postage costs totaling \$22.78 and express mail costs totaling \$232.30, Brown's only supporting documentation shows Federal Express charges in the amount of \$177.60. (Corporate Express calculated a total of \$187.30

but the accurate total is \$177.60.) Accordingly, I will reduce Brown's reimbursement for postage to \$0.00 and for express mail to \$177.60.

ORDER

IT IS ORDERED that Stuart Brown is awarded \$4,083.45 in interest on damages, \$18,397.53 in attorney fees, \$4,001.63 in costs and post-judgment interest at the rate of 12% per year.

Entered this 14th day of August, 2001.

BY THE COURT:

BARBARA B. CRABB
District Judge