

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

MENARD, INC.,

Plaintiff & Counter-defendant,

OPINION and ORDER

v.

18-cv-844-wmc

DALLAS AIRMOTIVE, INC.,

Defendant & Counter-claimant,

and

TEXTRON AVIATION, INC.,

Defendant.

A civil jury found in favor of plaintiff Menard, Inc. as to liability against defendant Dallas Airmotive, Inc., and awarded \$685,000 in damages to Menard. (Dkt. #388.) The clerk of court then entered an order under Rule 54(d) of the Federal Rules of Civil Procedure, taxing costs in favor of Menards against Dallas Airmotive. (Dkt. #419.) The only issue remaining for the court is Menards' motion for additional costs authorized by Wisconsin law. Specifically, Menards contends that it is entitled to an additional \$500 in costs for its attorney fees under Wis. Stat. § 814.04(1), and to double costs and post-judgment interest under Wis. Stat. § 807.01. For the reasons below, the court will award Menards an additional \$500 in costs but will deny its request for double costs and post-judgment interest.

OPINION

A. Attorney fees under Wis. Stat. § 814.04(1)

Under Wis. Stat. § 814.04(1), a party can seek up to \$500 in attorney's fees if it recovers more than \$10,000. Menards contends that it is entitled to \$500 in attorney's fees because the jury awarded it \$685,000 in damages. (Dkt. #388.) Dallas Airmotive does not dispute that § 814.04(1) applies; nor does it deny that Menards is entitled to the \$500 award. Accordingly, the court will award Menards an additional \$500 under §814.04(1).

B. Double costs and post-judgment interest under Wis. Stat. § 807.01

Next, Menards contends that it is entitled to double costs and post-judgment interest because Dallas Airmotive rejected an offer of settlement that was lower than the amount Menards recovered at trial. Under Wis. Stat. § 807.01, if a party makes an offer of settlement that conforms to § 807.01, that offer is rejected, and the offeror recovers a more favorable judgment, costs may be doubled and post-judgment interest may be imposed. Wis. Stat. § 807.01(3) (discussing double costs for prevailing parties who recovered a judgment greater than an offer of settlement that was rejected if “written offer of settlement” is made before trial, and if “the offer of settlement is not accepted and the plaintiff recovers a more favorable judgment, the plaintiff shall recover double the amount of the taxable costs”); § 807.01(4) (discussing post-judgment interest for prevailing parties who recovered a judgment greater than an offer of settlement that was rejected).

Menards contends that it made a statutory offer of settlement on September 18,

2020, when it emailed Dallas Airmotive the following:

The purpose of this correspondence is to extend an offer from Plaintiff Menard, Inc.” (“Menards”) to your client, Dallas Airmotive, Inc (“Dallas Airmotive”) to resolve the above entitled matter. In return for your settlement payment of \$625,000 by Dallas Airmotive, Menards is willing to dismiss with prejudice all pending claims against Dallas Airmotive. Dallas Airmotive would additionally be required to dismiss with prejudice its counterclaim against Menards. After you have had an opportunity to discuss this offer with your client, please advise as to whether it is agreeable. Feel free to let me know if you require further information. As noted above, this correspondence constitutes an inadmissible offer to compromise under Federal Rule of Evidence 408.

(Dkt. #403-5.) Dallas Airmotive rejected the offer in a two-page letter with a detailed explanation for the rejection. Menards subsequently recovered \$60,000 more than the offer at trial, and now contends that because it was awarded more than its offer of settlement, it is entitled to double costs and post-judgment interest.

However, Menards did not make a valid offer of settlement under Wis. Stat. § 807.01. The Wisconsin Supreme Court has explained that because § 807.01 is a cost-shifting statute “in derogation of common law,” it must be construed “very strictly.” *DeWitt Ross & Stevens, S.C. v. Galaxy Gaming & Racing Ltd. P'ship*, 2004 WI 92, ¶¶ 30–33, 273 Wis. 2d 577, 682 N.W.2d 839. Thus, a “settlement offer is valid for purposes of statutory prejudgment interest” under § 807.01 only if the offer is “absolutely unambiguous.” *Id.* ¶ 34. This means that “the offer must allow the defendant to fully and fairly evaluate his or her own exposure to liability.” *Id.* In addition, the offer of settlement must “state[] on its face that it is made pursuant to § 807.01.” *Sachsenmaier v. Mittlestadt*, 145 Wis. 2d 781, 790, 429 N.W.2d 532, 535 (Ct. App. 1988). Applying these standards,

the offer at issue in *DeWitt* was invalid for purposes of § 807.01 because it required payment within 15 days of acceptance of the offer, a provision which was not contemplated by § 807.01. *Id.* ¶ 36. The offer of settlement in *Stahl v. Sentry Ins.*, 180 Wis. 2d 299, 308, 509 N.W.2d 320 (Ct. App. 1993), was invalid because it stated that the plaintiff would “accept the sum of One Hundred Thousand Dollars (\$100,000), pursuant to Section 807.01(3), Wisconsin Statutes,” but failed to specify “whether costs were separate from or included in the proposed offer.” *See also Soria v. Classic Custom Homes of Waunakee, Inc.*, 2019 WI App 48, ¶ 70, 388 Wis. 2d 474, 934 N.W.2d 570 (settlement offers stating that a “payment of \$9600 would resolve this case today” and “we can settle the case now for \$9,735” were not valid under § 807.01(3) because they failed to state whether costs were included in the offers). Finally, the offer in *Sachsenmaier* was invalid because “the letter failed to expressly invoke § 807.01.” 145 Wis. 2d at 790.

Menards’ offer of settlement was not a statutory offer under § 807.01 for similar reasons. Like the offer in *Sachsenmaier*, Menards did not reference the statute, assert a 10-day expiration deadline or provide any other indication that the offer was intended to be a statutory offer under § 807.01. Nor did Menards follow up to clarify that its offer was intended to be a statutory offer after Dallas Airmotive rejected it. In addition, like the offers in *Stahl* and *Soria*, Menards did not state whether costs were separate to or included in the offer. Because Menards’ offer did not satisfy the requirements of § 807.01, it is not entitled to double costs or post-judgment interest.

ORDER

IT IS ORDERED that plaintiff Menard, Inc.'s request for additional costs and fees (dkt. #401) is GRANTED IN PART and DENIED IN PART: the request for \$500 in attorney's fees under Wis. Stat. § 814.04(1) is GRANTED, but its request for double costs under Wis. Stat. § 807.01(3) is DENIED.

Entered this 8th day of May, 2023.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge