3315 (Rev. 6/11/02) CCG 0015
Memorandum of Judgment

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

JAMES P. WHITMER

v.

LESTER and JUDITH MUNSON

0323032169
Eugene "Gene" Moore Fee: $36.50
Cook County Recorder of Deeds
Date: 08/18/2003 01:43 PM Pg: 1 of 7

Recorder's Stamp

No. 94 CH 3766

MEMORANDUM OF JUDGMENT

On August 14, 2003, **judgment was entered in this court**

in favor of the ~~plaintiff~~ counterclaimants Lester Munson and Judith Munson

and against ~~defendant~~ counterdefendant James P. Whitmer

whose address is 365 N. Canal, Chicago, Illinois 60606

in the amount of $ 173,253.14.

Judge **Judge's No.** 1778

Atty. No.: 91088
Name: Torshen Slobig Genden Dragutinovich & Axel, L
Atty. for: Lester Munson and Judith Munson
Address: 105 West Adams Street - Suite 3200
City/State/Zip: Chicago, Illinois 60603
Telephone: 312/372-9282

JUDGE RICHARD A. SIEBEL
AUG 15 2003
Circuit Court - 1778

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

JAMES P. WHITMER,	)	
	)	
Plaintiff-Counterdefendant,	)	
	)	
v.	)	94 CH 3766
	)	
LESTER MUNSON and JUDITH MUNSON,	)	
	)	
Defendants-Counterclaimants.	)	

ORDER

This matter comes before the Court upon remand from the Illinois Appellate Court. Whitmer v. Munson, 335 Ill. App. 3d 501 (1st Dist. 2002). The Appellate Court has directed this Court to determine the proper amount of sanctions to be awarded to Lester and Judith Munson.

Background

This case involves a dispute between two neighbors. James P. Whitmer ("Whitmer") and Judith and Lester Munson ("Munsons") live in townhouses on the Chicago River. Whitmer decided to build a seawall and construct a hoist for his boat. The Munsons objected and Whitmer sued the Munsons for interfering with his contracts to complete work on his property. The Munsons counterclaimed alleging Whitmer had no right to do the work based on restrictive covenants. The case continued for years; questions arose over the work permits and restrictive covenants. Injunctions were sought from Judge Lester D. Foreman. Some were allowed and some were refused. Sanctions were sought by the Munsons but refused. At the end of the trial the Munsons appealed Judge Foreman's denial of their request for

sanctions. The Appellate Court agreed with the Munsons and sent the case back to this Court for a determination as to the proper amount of sanctions.

Proceedings Before This Court

Upon remand this Court conducted a hearing to determine the proper amount of sanctions. The Munsons filed a Motion for Award of Sanctions in Accord with Appellate Court Mandate, Whitmer filed a Response and the Munsons a Reply. Both parties were allowed to present evidence in support of their positions. The Munsons presented the testimony of Attorney Abigail Spreyer, a partner of Torshen Spreyer & Garmisa, Ltd., who represented them before Judge Foreman. Ms. Spreyer testified as to her experience in the Chancery Division of the Circuit Court. Ms. Spreyer testified extensively about her representation of the Munsons on direct examination. Ms. Spreyer performed 90% of the legal work for the Munsons and the remainder of the work, except for a quarter of an hour preformed by Jerome H. Torshen, was performed under her supervision. Ms. Spreyer had left the Torshen law firm two months before the date of the hearing and testified she had no financial interest in the case. Ms. Spreyer identified invoices prepared by the Torshen firm detailing the legal work done on behalf of the Munsons requesting payment. These invoices were sent to the Munsons at the time the work was performed. The Munsons paid the invoices submitted. Ms. Spreyer was extensively cross-examined by Whitmer. Following Ms. Spreyer's testimony, the Munsons informed the Court that they were available for cross-examination. Whitmer chose not to call the Munsons as adverse witnesses and the Munsons rested their case. Whitmer presented no witnesses or evidence in his own behalf. Arguments were heard and the parties rested on the pleadings filed with the Court. The Court has

examined all documents filed by the parties, the Appellate Court Opinion, the Record on Appeal, and all pleadings filed before Judge Foreman and considered the arguments made.

Law

The purpose of holding an evidentiary hearing on a request for sanctions under Supreme Court Rule 137 is so the parties can place before the Court facts it may rely upon in making an informed and reasonable decision. Olsen v. Staniak, 260 Ill. App. 3d 856 (1st Dist. 1994). When a Court imposes sanctions under Rule 137 it is to penalizing the wrongdoing party for filing false pleadings when he knew or should have known that the allegations in the pleadings were false. Riverdale Bank v. Papastratakos, 266 Ill. App. 3d 31 (1st Dist. 1994). Rule 137 is designed to protect wronged parties from baseless legal onslaughts by compensating them for all legal expenses actually incurred as a result of the untrue pleading, because but for that pleading, the movant would not have been involved in the lawsuit in the first place. Ashley v. Scott, 266 Ill. App. 3d 302 (2nd Dist. 1994). However, an isolated focus on each reimbursable component part of preparation and trial is not necessary where false allegations made without reasonable cause are determined to be the cornerstone of the entire baseless lawsuit. Dayan v. McDonald's Corp., 126 Ill. App. 3d 11 (1st Dist. 1984).

Analysis

The Munsons request this Court to impose as sanctions $160,721.25 in attorney fees and $13,264.89 in costs. The Munsons contend they have expended those amounts because of Whitmer's false pleadings. The Munsons argue they are entitled to all reasonable attorney fees and costs expended. Whitmer's response is three-fold. First, Whitmer argues the Munson's Motion for Award of Sanctions should be stricken. Whitmer claims the Munsons have failed to meet their burden of proving that their attorney fees and costs were incurred

because of Whitmer's false pleading. This Court denies that request. Second, Whitmer requests the Court award only reasonable fees and expenses which were incurred because of the filing of Whitmer's false pleading. Whitmer's request is granted and fully addressed below. Whitmer's third request was for the Court to hold an evidentiary hearing; that was done on July 15, 2003. A hearing was held and the parties were allowed to present evidence and arguments in support of their positions.

This Court will award reasonable attorney fees and costs incurred because of the false pleading filed by Whitmer. The Appellate Court has determined Whitmer's Verified Complaint, Amended Verified Complaint, Verified Answer to Motion for Preliminary Injunction, and Response to Munsons' Amended Counterclaim all contained material allegations of fact that were false. The Appellate Court determined Whitmer knew or upon reasonable inquiry would have known those pleadings were false when filed. The Appellate Court opinion adopts other findings by Judge Foreman describing additional actions taken by Whitmer which further evidence the strong likelihood that Whitmer knew material allegations of facts he pled were false. These pleadings filed by Whitmer permeated the entire litigation. The lawsuit began with false pleadings and continued with false pleadings even after Whitmer dismissed his complaint.

Whitmer argues he should not be responsible for attorney fees and costs incurred by the Munsons after he dismissed his complaint. However, following the dismissal of Whitmer's complaint, Whitmer did not withdraw his response to the Munsons' counterclaim. The response to the counterclaim was another of Whitmer's pleadings which the Appellate Court found sanctionable. The response to the counterclaim remained on file during the entire time the case was pending in the Circuit Court. Even if a party withdraws

the offensive pleading he is accountable for the damage done by violating Rule 137. Edward Yavitz Eye Center, Ltd. v. Allen, 241 Ill. App. 3d 562 (2nd Dist. 1993). If a party who withdraws an offensive pleading is still responsible for the damage done then clearly a party who allows an offensive pleading to stand is all the more responsible. At the hearing before this Court, Ms. Spreyer testified that by the time Whitmer dismissed his complaint everyone knew his response to the Munsons' counterclaim was false. However, without a judicial determination of that fact the Munsons were still expending resources to disprove Whitmer's false claims.

Based on a review of all pleadings filed and the Appellate Court's opinion, this Court finds the false allegations of Whitmer were the cornerstone of the entire baseless lawsuit and pursuant to Supreme Court Rule 137, the Munsons should be reimbursed for all reasonable fees and expenses they have shown were actually incurred because of Whitmer's false pleading. The award of sanctions shall include the time the Munsons were defendants, continuing during the time the Munsons were counterplaintiffs and for the time spent litigating the sanctions motion in this Court and the Appellate Court. Bosch Die Casting Co. v. Lunt Mfg. Co., 236 Ill. App. 3d 18 (1st Dist. 1992). This Court has examined documentation supporting the Munsons' claims for attorney fees and costs which include the billing records from the Torshen firm, the affidavits of Abigail Spreyer, Lester and Judith Munson and Richard Burke, and based on the evidence presented, will award the Munsons as sanctions reasonable attorney fees of $160,196.25 and reasonable costs of $13,056.89.

The amounts were arrived at after deducting those charges the Munsons have not provided sufficient evidence to persuade this Court were incurred because of Whitmer's false pleadings. Attorney fees and costs will not be awarded for the following:

Date	Attorney Fee or Cost	Amount
10/10/95	Telephone conference with insurer re: burglary	43.75
02/13/96 to 02/16/96	Attorney fees not allowed pursuant to Judge Foreman's Order of 02/16/96 where by agreement of parties, both parties to bear own fees in connection with the Petition for Rule to Show Cause against Whitmer.	87.50 43.75 218.75 131.25
02/29/96	Shamrock Electric	208.00

Based on the foregoing, the Munsons' request for reasonable attorney fees and cost are granted. The Munsons are awarded $160,196.25 in attorney fees and $13,056.89 in costs.

August 13, 2003

Entered:

ENTERED
AUG 14 2003
JUDGE DEBORAH MARY DOOLING-1591

Deborah Mary Dooling
Circuit Court, Chancery Division