

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

HUNTINGTON NATIONAL BANK

: JUDGES:

Plaintiff-Appellee

: Hon. John W. Wise, P.J.
: Hon. Patricia A. Delaney, J.
: Hon. Craig R. Baldwin, J.

-VS-

: Case No. 2014CA00128

STANLEY MILLER CONSTRUCTION
CO.

Defendants-Appellants

: OPINION

CHARACTER OF PROCEEDING:

Appeal from the Stark County Court of
Common Pleas, Case No.
2012CV03296

JUDGMENT:

AFFIRMED

DATE OF JUDGMENT ENTRY:

April 13, 2015

APPEARANCES:

For Plaintiff-Appellee:

For Defendants-Appellants:

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Delaney, J.

{¶1} Defendants-Appellants Stanley Miller Construction Co., David S. Miller, and Steven J. Miller appeal the April 26, 2013 and June 17, 2014 judgment entries of the Stark County Court of Common Pleas.

FACTS AND PROCEDURAL HISTORY

{¶2} On June 23, 2011, Plaintiff-Appellee Huntington National Bank (“Lender”) renewed a commercial line of credit with Defendant-Appellant Stanley Miller Construction Co. (“Borrowers”) in the principal amount of \$2,000,000.00 evidenced by a Promissory Note. The Note was secured by the Commercial Guarantees of Defendants-Appellants David S. Miller and Steven J. Miller (“Borrowers”). Borrowers defaulted under the terms of the loan and Note.

{¶3} On October 22, 2012, Lender filed a complaint for cognovit judgment action against Borrowers in the Stark County Court of Common Pleas. Count I, II, and III of the complaint alleged the Note and Commercial Guarantees contained provisions whereby Borrowers were responsible for Lender's attorneys' fees and legal expenses, whether or not there was a lawsuit, including attorneys' fees and legal expenses for bankruptcy proceedings, appeals, and post-judgment collection services. The complaint also alleged that pursuant to R.C. 1319.02, Lender was entitled to recover its reasonable attorneys' fees in connection with the enforcement and collection on the Note and Guarantees.

{¶4} Borrowers filed an answer to the complaint, admitting all allegations of the complaint.

{¶5} On October 23, 2012, the trial court issued a judgment entry. It granted judgment in favor of Lender on Counts I, II, and III of the complaint in the amount of \$855,076.22. The proposed judgment entry submitted by Lender included an award of attorneys' fees and expenses in the amount of \$4,480.00. The trial court, however, crossed out the statement regarding the award of attorneys' fees.

{¶6} On December 10, 2012, Lender filed a Motion for Hearing on Attorneys' Fees. Lender filed with the trial court a "Satisfaction of Judgment (Partial)" on December 12, 2012. The trial court granted the motion for hearing on attorneys' fees on December 14, 2012.

{¶7} Borrowers responded to the motion for hearing on attorneys' fees and filed a Motion to Dismiss Proceedings. The trial court denied the motion to dismiss proceedings.

{¶8} Borrowers filed a Motion for Leave to File an Amended Answer. Lender filed a brief regarding its entitlement to attorneys' fees. Borrowers filed a brief in opposition.

{¶9} On April 26, 2013, the trial court issued its judgment on the pending motions. The trial court denied Borrowers' motion for leave to file an amended answer. It next found Lender had the right, under the Note and Guarantees, to seek recovery for attorneys' fees. It found the October 23, 2012 judgment entry did not bar Lender's claim for attorneys' fees. The trial court set a hearing to determine attorneys' fees on May 17, 2013.

{¶10} Borrowers filed their Notice of Appeal of the April 26, 2013 judgment entry. The hearing on attorneys' fees did not go forward.

{¶11} In *Huntington Natl. Bank v. Stanley Miller Constr. Co.*, 5th Dist. Stark No. 2013CA00087, 2013-Ohio-5878 ("*Huntington I*"), we found the April 26, 2013 judgment entry was not a final appealable order because the issue of attorneys' fees remained unresolved. The matter returned to the trial court for a hearing on attorneys' fees.

{¶12} The trial court held a hearing on February 21, 2014. The trial court issued its judgment entry on June 17, 2014, finding Lender was entitled to recover attorneys' fees pursuant to the Note and Guarantees. The trial court determined that Lender was not entitled to recover attorneys' fees associated with a forbearance agreement and term sheet Lender and Borrowers attempted to enter into prior to the initiation of the litigation. Based on the evidence presented at the hearing, the trial court found Lender was entitled to recover reasonable attorneys' fees in the amount of \$27,474.16.

{¶13} It is from this judgment Borrowers now appeal.

ASSIGNMENTS OF ERROR

{¶14} Borrowers raise three Assignments of Error:

{¶15} "I. THE TRIAL COURT ERRED BY PROCEEDING WITHOUT JURISDICTION FOLLOWING ITS OCTOBER 23, 2012 FINAL JUDGMENT ENTRY RESOLVING ALL CLAIMS SET FORTH IN THE COMPLAINT.

{¶16} "II. THE TRIAL COURT ERRED IN GRANTING APPELLEE'S POST-JUDGMENT REQUEST FOR ATTORNEY'S FEES, CONTRARY TO SECTION 1319.02, AS THE GOVERNING COMMERCIAL CONTRACTS DID NOT COMPLY WITH STATUTORY REQUIREMENTS.

{¶17} “III. THE TRIAL COURT ERRED IN AWARDING ESCALATED ATTORNEY’S FEES WHERE APPELLANTS SUCCESSFULLY CHALLENGED APPELLEE’S TOTAL CLAIMED FEE AMOUNT.”

ANALYSIS

I.

{¶18} Borrowers argue in their first Assignment of Error the October 23, 2012 judgment entry was a final judgment and disposed of all claims, thereby divesting the trial court of jurisdiction to proceed with the case and to award attorneys' fees. Borrowers base their argument on two reasons: (1) the complaint failed to set forth a separate and distinct claim for attorneys' fees and (2) the trial court denied the attorneys' fees claim in the judgment entry. After analyzing both arguments, we disagree.

Specificity of the Claim for Attorneys' fees in the Complaint

{¶19} Borrowers argue Lender did not assert a separate and distinct claim for attorneys' fees. Lender counters Lender specifically alleged in the complaint that it was entitled to the recovery of reasonable attorneys' fees pursuant to R.C. 1319.02 in connection with the enforcement of the Note and Guarantees. The trial court determined Lender properly plead separate and distinct claims for the recovery of attorneys' fees.

{¶20} On October 22, 2012, Lender filed a complaint for cognovit judgment action against Borrowers. Count I, II, and III of the complaint alleged the Note and Commercial Guarantees contained provisions whereby Borrowers were responsible for Lender's attorneys' fees and legal expenses, whether or not there was a lawsuit, including attorneys' fees and legal expenses for bankruptcy proceedings, appeals, and

post-judgment collection services. Count I states in paragraph 5 that pursuant to R.C. 1319.02, Lender was entitled to recover its reasonable attorneys' fees in connection with the enforcement and collection on the Note. Paragraph 11 in Count I states that Borrowers owe \$4,480.00 in unpaid attorneys' fees and expenses. Count II states in paragraph 16 that pursuant to R.C. 1319.02, Lender may recover its reasonable attorneys' fees in connection with the enforcement and collection of the David Miller Guaranty. Paragraph 22 states the unpaid attorneys' fees and expenses are \$4,480.00. Paragraph 27 of Count II states pursuant to R.C. 1319.02, Lender may recover its reasonable attorneys' fees in connection with the enforcement and collection of the Steven Miller Guaranty. Paragraph 33 of the complaint alleged Borrowers owed \$4,480.00 in unpaid attorneys' fees and expenses.

{¶21} “Courts have concluded that a request for attorneys' fees set forth in the complaint's prayer for relief should not be considered a separate and distinct claim * * *.” *Home S. & L. Co. of Youngstown v. Great Lake Plaza, Ltd.*, 11th Dist. Lake Nos. 2011–L–168, 2011–L–171, 2011–L–169, 2011–L–170, 2012-Ohio-3420, ¶ 20 quoting *Scott v. Lyons*, 11th Dist. No. 2008–A–0032, 2009–Ohio–1141, ¶ 30. In the present case, the request for attorneys' fees pursuant to the terms of the Note and Guarantees were not set forth only in the complaint's prayer for relief. Lender specifically requested attorneys' fees pursuant to R.C. 1319.02 in its claim for judgment under the Note in Count I, in its claim for judgment under the David Miller Guaranty in Count II, and in its claim for judgment under the Steven Miller Guaranty in Count III.

The October 23, 2012 Judgment Entry

{¶22} On October 23, 2012, the trial court granted the proposed judgment entry submitted by Lender with its complaint. The October 23, 2012 judgment entry granted judgment in favor of Lender on Counts I, II, and III of the complaint in the amount of \$855,076.22. The proposed judgment entry submitted by Lender included an award of attorneys' fees and expenses in the amount of \$4,480.00. The trial court, however, drew a line through the statement in the proposed judgment entry that would have awarded Lender "unpaid attorney's fees and expenses of \$4,480.00."

{¶23} The final paragraph of the judgment entry stated, "[t]here was no just cause for delay." Neither party appealed the October 23, 2012 judgment entry.

{¶24} Borrowers argue the October 23, 2012 judgment was a final order based on the language of the Ohio Supreme Court in its decision as to attorneys' fees *Intl. Bd. of Electrical Workers, Loc. Union No. 8 v. Vaughn Industries, L.L.C.* 116 Ohio St.3d 335, 2007-Ohio-6439, 879 N.E.2d 187. In *Vaughn*, the Court held that "[w]hen attorneys' fees are requested in the original pleadings, an order that does not dispose of the attorney-fee claim and does not include, pursuant to Civ.R. 54(B), an express determination that there is no just reason for delay, is not a final, appealable order." *Id.* at paragraph 2 of the syllabus.

{¶25} Borrowers point to the language of the October 23, 2012 judgment entry to show that the judgment entry was in fact a final appealable order pursuant to *Vaughn*. Borrowers contend the trial court denied Lender's request for attorneys' fees when it struck out the line in the proposed judgment entry that awarded Lender \$4,480.00 in

unpaid attorneys' fees. Borrowers state that by striking out the line for attorneys' fees, the trial court disposed of the attorneys' fees claim.

{¶26} Upon a review of the record, we find that when the trial court struck out the sentence awarding Lender attorneys' fees and expenses in the amount of \$4,480.00 in the October 23, 2012 judgment entry, it was not rendering a decision as to attorneys' fees. Lender filed a motion for a hearing on attorneys' fees on December 10, 2012. The matter was set for a hearing, but Borrowers challenged Lender's right to recover attorneys' fees. On April 26, 2013, the trial court issued a judgment entry as to whether Lender was entitled to attorneys' fees. The trial court found that pursuant to the terms of the Note and Guarantees, Lender was entitled to attorneys' fees. The trial court also addressed Borrowers' argument that by striking out the sentence that awarded attorneys' fees, the trial court denied the award of attorneys' fees in the October 23, 2012 judgment entry. The trial court stated:

Further, the Court finds that the language regarding the award of the attorneys' fees was removed from the October 23, 2012, entry as the Court was requiring a hearing on the amount of such an award and was not done to deny the request for attorneys' fees.

(April 26, 2013 Judgment Entry).

{¶27} Borrowers appealed the April 26, 2013 judgment entry to this court in *Huntington Natl. Bank v. Stanley Miller Constr. Co.*, 5th Dist. Stark No. 2013CA00087, 2013-Ohio-5878. Borrowers argued in their first Assignment of Error that the trial court was without jurisdiction to conduct any further proceedings following the final entry. *Id.* at ¶ 12. We found the April 26, 2013 judgment entry was not a final appealable order

because the issue of attorneys' fees remained unresolved. The matter returned to the trial court for a hearing on attorneys' fees. After the trial court awarded \$27,474.16 in attorneys' fees to Lender on June 17, 2014, Borrowers appealed, again arguing the October 23, 2012 judgment entry was a final order.

{¶28} R.C. 1319.02(B) states:

If a contract of indebtedness includes a commitment to pay attorneys' fees, and if the contract is enforced through judicial proceedings or otherwise after maturity of the debt, a person that has the right to recover attorneys' fees under the commitment, at the option of that person, may recover attorneys' fees in accordance with the commitment, to the extent that the commitment is enforceable under divisions (C) and (D) of this section.

{¶29} The statute then states:

(D) A commitment to pay attorneys' fees is enforceable only to the extent that it obligates payment of a reasonable amount. In determining the amount of attorneys' fees that is reasonable, all relevant factors shall be considered, including but not limited to, the nature of the services rendered, the time expended in rendering the services, the amount of money and the value of the property affected, and the professional skill and expertise of the attorney or attorneys rendering the services. Unless a court has been requested to make a determination of the amount of attorneys' fees that is reasonable and finds to the contrary by a

preponderance of the evidence, the following are deemed reasonable amounts:

- (1) If the commitment to pay attorneys' fees is based upon a specific percentage of the total principal, interest, and other charges owed on the contract of indebtedness, the percentage of the total so owed as specified in the contract of indebtedness;
- (2) If the commitment to pay attorneys' fees is not based upon a specific percentage of the total principal, interest, and other charges owed on the contract of indebtedness, an amount equal to the attorneys' fees customarily charged by the attorney or attorneys rendering the services.

R.C. 1319.02(D).

{¶30} The trial court is charged with the duty to determine reasonable attorneys' fees. Under Ohio law, “ ‘[a] trial court's determination of reasonable attorney's fees must generally begin with a calculation of “the number of hours reasonably expended on the case times an hourly fee[,]” ’ also termed the ‘lodestar figure.’ ” *Columbus Truck & Equip. Co. v. L.O.G. Transp., Inc.*, 10th Dist. Franklin No. 12AP-223, 2013-Ohio-2738, ¶ 19. The party requesting attorneys' fees “bears the burden of proving evidence of any hours worked that would be properly billed to the client, proving the attorney's hourly rate, and demonstrating that the rate is reasonable.” *Id.* After the requesting party has “adequately proven an appropriate number of hours worked and the attorney's reasonable hourly fee, the trial court may modify the baseline calculation by considering the factors listed in former DR 2–106(B), now found in Prof. Cond. R. 1.5.” *Id.*

{¶31} The record in this case supports the conclusion that the October 23, 2012 did not deny Lender's request for attorneys' fees.

{¶32} Borrowers next argue the inclusion of Civ.R. 54(B) language of "no just cause for delay" in the October 23, 2012 judgment entry rendered the October 23, 2012 judgment entry a final appealable order and the trial court lost jurisdiction to proceed with Lender's claim for attorneys' fees.

{¶33} As we held above, the trial court did not enter final judgment as to Lender's claim for attorneys' fees in the October 23, 2012 judgment entry. The trial court only rendered final judgment as to Borrowers' liability under the Note and Guarantees. Borrowers did not appeal the October 23, 2012 judgment entry.

{¶34} Civ.R. 54(B) provides:

When more than one claim for relief is presented in an action whether as a claim, counterclaim, cross-claim, or third-party claim, and whether arising out of the same or separate transactions, or when multiple parties are involved, the court may enter final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay. In the absence of a determination that there is no just reason for delay, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties, shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

{¶35} The general purpose of Civ.R. 54(B) is to permit judgment on fewer than all claims in an action, to avoid piecemeal litigation. *Noble v. Colwell*, 44 Ohio St.3d 92, 540 N.E.2d 1381 (1989). The effect of the rule is purely procedural. *Alexander v. Buckeye Pipe Line Co.*, 49 Ohio St.2d 158, 159, 359 N.E.2d 702 (1977). Civ.R. 54(B) cannot abridge, enlarge, or modify any substantive right. *Id.* It permits both the separation of claims for purposes of appeal and the early appeal of such claims, within the discretion of the trial court, but it does not affect either the substantive right to appeal or the merits of the claims. *Id.* When the trial court makes an order or decision as to some of the claims a final judgment, the losing party may make an immediate appeal of that claim and the prevailing party may attempt to enforce the judgment as to that claim. *T. R. Barth and Associates v. Marginal Enterprises, Inc.*, 48 Ohio App.2d 218, 222, 356 N.E.2d 766 (8th Dist.1976).

{¶36} In this case, the trial court made no final judgment as to Lender's claim for attorneys' fees and the claim remained pending. The inclusion of the Civ.R. 54(B) language rendered the October 23, 2012 judgment entry final and appealable as to Borrowers' liability under the Note and Guarantees. Borrowers did not appeal the October 23, 2012 judgment entry and Lender properly proceeded in the trial court with its pending claim for attorneys' fees.

{¶37} Borrowers' first Assignment of Error is overruled.

II.

{¶38} Borrowers argue in their second Assignment of Error that the language in the Note and Guarantees regarding attorneys' fees and expenses does not comply with R.C. 1319.02. We disagree.

{¶39} R.C. 1319.02 applies to commercial contracts of indebtedness exceeding \$100,000. The Note and Guarantees in the present case fall within the purview of R.C. 1319.02. R.C. 1319.02 states as follows:

(B) If a contract of indebtedness includes a commitment to pay attorneys' fees, and if the contract is enforced through judicial proceedings or otherwise after maturity of the debt, a person that has the right to recover attorneys' fees under the commitment, at the option of that person, may recover attorneys' fees in accordance with the commitment, to the extent that the commitment is enforceable under divisions (C) and (D) of this section.

(C) A commitment to pay attorneys' fees is enforceable under this section only if the total amount owed on the contract of indebtedness at the time the contract was entered into exceeds one hundred thousand dollars.

(D) A commitment to pay attorneys' fees is enforceable only to the extent that it obligates payment of a reasonable amount. In determining the amount of attorneys' fees that is reasonable, all relevant factors shall be considered, including but not limited to, the nature of the services rendered, the time expended in rendering the services, the amount of money and the value of the property affected, and the professional skill and expertise of the attorney or attorneys rendering the services. Unless a court has been requested to make a determination of the amount of attorneys' fees that is reasonable and finds to the contrary by a

preponderance of the evidence, the following are deemed reasonable amounts:

(1) If the commitment to pay attorneys' fees is based upon a specific percentage of the total principal, interest, and other charges owed on the contract of indebtedness, the percentage of the total so owed as specified in the contract of indebtedness;

(2) If the commitment to pay attorneys' fees is not based upon a specific percentage of the total principal, interest, and other charges owed on the contract of indebtedness, an amount equal to the attorneys' fees customarily charged by the attorney or attorneys rendering the services.

{¶40} The Note states as to attorneys' fees and expenses:

ATTORNEYS' FEES; EXPENSES Lender may hire or pay someone else to help collect this Note if Borrower does not pay. Borrower will pay Lender that amount. This includes, subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees, expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), and appeals. If not prohibited by applicable law, Borrower also will pay any court costs, in addition to all other sums provided by the law.

{¶41} The Guarantees state as to attorneys' fees and expenses:

INDEBTEDNESS. The word "indebtedness" as used in this Guaranty means all of the principal amount outstanding from time to time and at any one or more times, accrued unpaid interest thereon and all collection costs and legal expenses related thereto permitted by law, attorneys' fees,

arising from any and all debts, liabilities and obligations of every nature or form * * *

Attorneys' Fees; Expenses. Guarantor agrees to pay upon demand all of Lender's costs and expenses, including Lender's attorneys' fees and Lender's legal expenses, incurred in connection with the enforcement of this Guaranty. Lender may hire or pay someone else to help enforce this Guaranty, and Guarantor shall pay the costs and expenses of such enforcement. Costs and expenses include Lender's attorneys' fees and legal expenses whether or not there is a lawsuit, including attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Guarantor all shall pay all court costs and such additional fees as may be directed by the court.

{¶42} Borrowers argue the language in the Note and Guarantees as to attorneys' fees do not comply with the requirements of R.C. 1319.02. R.C. 1319.02(D) states that if the contract of indebtedness includes a commitment to pay attorneys' fees, the commitment to pay attorneys' fees is enforceable only to the extent that it obligates payment of a reasonable amount. The language of the Note and Guarantees, Borrowers contend, obligates Borrowers to pay *all* attorneys' fees in contravention of the statute, which obligates Borrowers to pay only *reasonable* attorneys' fees.

{¶43} Courts construe guaranty agreements in the same manner as they interpret contracts. *R.L.R. Invests., L.L.C. v. Wilmington Horsemens Group, L.L.C.*, 2014-Ohio-4757, 22 N.E.3d 233, 240, ¶ 20 (12th Dist.) citing *MidAm Bank v. Dolin*, 6th

Dist. Lucas No. L-04-1033, 2005-Ohio-3353, 2005 WL 1532622, ¶ 59. It is a fundamental principle in contract construction that contracts should “be interpreted so as to carry out the intent of the parties, as that intent is evidenced by the contractual language.” *Skivolocki v. East Ohio Gas Co.*, 38 Ohio St.2d 244, 313 N.E.2d 374 (1974). A reviewing court should give the contract's language its plain and ordinary meaning unless some other meaning is evidenced with the document. *Alexander v. Buckeye Pipe Line Co.*, 53 Ohio St.2d 241, 374 N.E.2d 146 (1978). If the terms of the contract are determined to be clear and unambiguous, the interpretation of the language is a question of law reviewed de novo on appeal. *State ex rel. Parsons v. Fleming*, 68 Ohio St.3d 509, 628 N.E.2d 1377 (1994).

{¶44} Our review of the language of the Note and Guarantees show that while the Note and Guarantees obligates Borrowers to pay Lender all attorneys' fees, the obligation is subject to the limitations of applicable and permitted law. In this case, the applicable law in regards to attorneys' fees and expenses is R.C. 1319.02 that limits the commitment to pay a reasonable amount of attorneys' fees.

{¶45} Borrowers' second Assignment of Error is overruled.

III.

{¶46} Borrowers contend in their third Assignment of Error that the trial court erred by awarding Lender \$27,474.16 in attorneys' fees, when Lender's original demand for attorneys' fees was \$4,480.00. We disagree.

{¶47} In Lender's complaint, Lender originally requested \$4,480.00 in attorneys' fees. The trial court did not award attorneys' fees in the October 23, 2012 judgment entry that found Borrowers liable under the Note and Guarantees. The matter of

attorneys' fees was instead set for a hearing based on Lender's December 10, 2012 motion for hearing on attorneys' fees. (See April 23, 2013 Judgment Entry). Borrowers filed a brief in opposition to the request for attorneys' fees and a motion to dismiss the proceedings. The trial court denied the motion to dismiss the proceedings but continued the hearing on attorneys' fees to March 15, 2013. Borrowers moved to cancel the hearing, which the trial court granted. On March 26, 2013, Lender filed a brief arguing it was entitled to attorneys' fees. Borrowers filed a brief in opposition. On April 26, 2013, the trial court found Lender was entitled to attorneys' fees and set the matter for a hearing on May 17, 2013. Borrowers appealed the April 26, 2013 judgment entry to this court. We found the April 26, 2013 judgment entry was not a final appealable order and we dismissed the appeal. See *Huntington I, supra*. The trial court set the hearing for attorneys' fees for February 21, 2014.

{¶48} The trial court issued its decision on June 17, 2014. The trial court first found Lender was entitled to recover reasonable attorneys' fees pursuant to the language of the Note and Guarantees. The right to recover attorneys' fees, however, was limited to the enforcement of and collection on the Note and Guarantees. In its motion for attorneys' fees, Lender argued it was entitled to recover attorneys' fees associated with a forbearance agreement and term sheet that the parties attempted to enter to resolve the default on the Note. The trial court found the language of the Note and Guarantees did not contemplate modification of the terms of the agreements, but was limited to enforcement and collection.

{¶49} Based on the evidence presented, the trial court determined Lender was entitled to an award of reasonable attorneys' fees in the amount of \$27,474.16.

{¶50} In *Landmark Disposal, Ltd. v. Byler Flea Mkt.*, 5th Dist. Stark Nos. 2005CA00291, 2005CA00294, 2006-Ohio-3935, ¶¶ 13-15, we reviewed the standard by which a trial court is to determine a reasonable amount of attorneys' fees:

The starting point in determining the amount of fees to award under the statute is the computation of the lodestar figure. *Blum v. Stenson* (1984), 465 U.S. 886, 888, 104 S.Ct. 1541, 1543-1544, 79 L.Ed.2d 891, 895-896; *Hensley v. Eckerhart* (1983), 461 U.S. 424, 103 S.Ct. 1933, 76 L.Ed.2d 40. The lodestar is the number of hours expended multiplied by a reasonable hourly rate. *City of Burlington v. Dague* (1992), 505 U.S. 557, 559-561, 112 S.Ct. 2638, 2640, 120 L.Ed.2d 449, 454-456; *Blum*, 465 U.S. at 888; *Hensley*, 461 U.S. at 433. If the court deviates from the lodestar, it must provide a clear explanation. *Hensley*, 461 U.S. at 437.

{¶51} To establish the number of hours reasonably expended, the party requesting the award of attorney fees “should submit evidence supporting the hours worked....” *Hensley*, 461 U.S. at 433, 103 S.Ct. at 1939. The number of hours should be reduced to exclude “hours that are excessive, redundant, or otherwise unnecessary” in order to reflect the number of hours that would properly be billed to the client. *Id.* at 434, 103 S.Ct. at 1939-40. A reasonable hourly rate is defined as “the ‘prevailing market rate in the relevant community.’ “ *Blum*, 465 U.S. at 895.

{¶52} Once the trial court calculates the lodestar figure, the court may modify that calculation by application of the factors listed in DR 2-106(B). *Bittner v. Tri-County Toyota, Inc.*, 58 Ohio St.3d 143, 145, 569 N.E.2d 464 (1991). These factors are: the time and labor involved in maintaining the litigation; the novelty and difficulty of the

questions involved; the professional skill required to perform the necessary legal services; the attorney's inability to accept other cases; the fee customarily charged; the amount involved and the results obtained; any necessary time limitations; the nature and length of the attorney/client relationship; the experience, reputation, and ability of the attorney; and whether the fee is fixed or contingent. Not all factors may be applicable in all cases and the trial court has the discretion to determine which factors to apply, and in what manner that application will affect the initial calculation. *Id.*

{¶53} The party requesting an award of attorney fees bears the burden “to produce satisfactory evidence - in addition to the attorney's own affidavit - that the requested rate [is] in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation.” *TCF Natl. Bank v. Williams*, 5th Dist. Stark No. 2009CA00102, 2010-Ohio-1487, ¶ 26 quoting *Blum v. Stenson*, *supra* 465 U.S. at 895 n. 11.

{¶54} A determination of whether to award attorney fees and the amount of such fees is within the sound discretion of the trial court. Unless the amount of fees determined is so high or so low as to shock the conscience, an appellate court shall not interfere. *Bittner*, *supra* at 146, 569 N.E.2d 464. (Citation omitted).

{¶55} Upon a review of the evidence presented at the hearing, we find the trial court did not abuse its discretion in determining Lender was entitled to attorneys' fees in the amount of \$27,474.16. Pursuant to the terms of the Note and Guarantees, Borrowers will pay the attorneys' fees Lender incurred in order to collect on the Note and enforce the Guarantees, limited by applicable law. The terms of the Note and

Guarantees specifically state attorneys' fees includes those expended during the appellate process and post-judgment proceedings.

{¶56} Borrowers' third Assignment of Error is overruled.

CONCLUSION

{¶57} The judgment of the Stark County Court of Common Pleas is affirmed.

By: Delaney, J.,

Wise, P.J. and

Baldwin, J., concur.