In the
Missouri Court of Appeals
Western District

ACOMA DEVELOPMENT, LLC, ET AL.,	)	
	)	
Appellants,	)	**WD87977**
	)	
v.	)	**OPINION FILED:**
	)	**OCTOBER 28, 2025**
COMMERCE TOWER PLACE, ET AL.,	)	
	)	
Respondents.	)	

Appeal from the Circuit Court of Jackson County, Missouri
The Honorable J. Dale Youngs, Judge

Before Division Two: Edward R Ardini, Jr., Presiding Judge, Alok Ahuja, Judge and Cynthia L. Martin, Judge

Acoma Development, LLC ("Acoma") and Michael Knight ("Knight") appeal from the trial court's grant of summary judgment in favor of multiple defendants in a lawsuit where Acoma and Knight sought to recover a percentage of net proceeds received from the settlement of claims involving the design and installation of a heating, ventilation, and air conditioning system (the "HVAC Claims"). Acoma and Knight argue that the trial court should have granted them a continuance to obtain discovery about whether attorney's fees incurred in pursuing the HVAC Claims had been paid, as the fees

incurred were used to fully offset the gross settlement proceeds. Finding no error, we affirm. We remand this matter to the trial court to determine and award the Defendants' reasonable attorney's fees on appeal.

Factual and Procedural Background[1]

A settlement agreement and full release of claims ("Settlement Agreement") was entered into as of May 4, 2021 between numerous entities and individuals. The Settlement Agreement resolved complex business disputes relating to the ownership of, operation of, and provision of services to, four entities: Commerce Tower Place, LLC (the fee owner of the Commerce Tower Property located at 911 Main Street in Kansas City, Missouri); Commerce Tower Garage, LLC (the fee owner of the Commerce Tower Garage located at 921 Main Street in Kansas City, Missouri); Monogram Building, LLC (the fee owner of the Monogram Property located at 1706 Washington Avenue in St. Louis, Missouri): and 1600 Washington, LLC (the fee owner of the Washington Property located at 1600 Washington Avenue in St. Louis, Missouri).

At the time of the Settlement Agreement, Acoma held a membership interest in 1600 Washington, LLC, and held membership interests in other LLC entities which themselves held membership interests in Commerce Tower Place, LLC; Commerce

[1]When reviewing the grant of summary judgment, we review the undisputed material facts properly established by the process set forth in Rule 74.04(c). *Alvis v. Morris*, 520 S.W.3d 509, 512 (Mo. App. S.D. 2017). The factual and procedural background is thus drawn from the uncontroverted facts in the summary judgment record, and from the procedural history of this dispute.

All Rule references are to *Missouri Court Rules, Volume I - State, 2025* unless otherwise noted.

Tower Garage, LLC; and Monogram Building, LLC. The Settlement Agreement required Acoma to redeem, effective as of January 1, 2021, all of its membership interests in the LLC entities identified in the Settlement Agreement, subject to settlement payments contemplated by the Settlement Agreement.

The majority of the complex business disputes resolved by the Settlement Agreement are not at issue in this appeal. The single exception involves a provision of the Settlement Agreement addressing an intent to pursue legal action regarding the design and installation of the HVAC system for the Commerce Tower Property. In a recital in the Settlement Agreement, Commerce Tower Place, LLC ("CTP"), CTP MT, LLC ("CTPMT") (which held a 45% ownership interest in CTP), and CTP MM, LLC ("CTPMM") (which held a 55% ownership interest in CTPMT), were identified as the parties who potentially possessed claims involving the HVAC system. At the time of the Settlement Agreement, Acoma held a 15.3% membership interest in CTPMM, though that interest was redeemed effective January 1, 2021 as described in the Settlement Agreement. Knight is the sole member in Acoma. The Settlement Agreement made provision for the HVAC claims in paragraph 5, as follows:

> **The HVAC Claims.** Acoma and Fitch[2] shall each retain an interest in and be entitled to 20% of the net proceeds from the HVAC Claims, which shall be the gross proceeds minus all litigation costs, including but not limited to attorney fees and expert expenses. Acoma and Fitch hereby consent to the filing of legal action regarding the HVAC Claims. All decisions regarding the HVAC Claims shall be made by and subject to the sole discretion of the

[2]Fitch Development, LLC ("Fitch") also owned a membership interest in CTPMM. Fitch is not a party to the present lawsuit, however.

> Manager[3] and shall not require any consent of Acoma or Fitch, including but not limited to (a) the decision whether to settle and (b) the amount of such settlements. The 20% each of net proceeds shall be paid to each, Acoma and Fitch, within 15 days of an LLC Entities' confirmed receipt and bank clearance of any settlement or litigation proceeds from the HVAC Claims.

On October 22, 2021, a lawsuit involving the HVAC Claims was filed in the Circuit Court of Jackson County, Missouri (the "HVAC Lawsuit"). The only plaintiff named in the HVAC Lawsuit was CTP. The HVAC Lawsuit named Daikin Applied Americas Inc., Thermal Mechanics, Inc., FSC, Inc., and Hoss & Brown Engineers, P.C., as defendants.

Acoma and Knight believed that settlements had been reached with some of the defendants in the HVAC Lawsuit. Acoma and Knight made demand on CPT and others for an accounting and disbursement of 20% of the net proceeds of those settlements. When no amounts were disbursed to Acoma, Acoma and Knight filed suit on September 27, 2024 in the Circuit Court of Jackson County, Missouri for breach of the Settlement Agreement. Acoma and Knight sought damages in the amount of 20% of the net proceeds of the settlement of HVAC Claims, and for attorney's fees and expenses incurred in recovering the net proceeds, as authorized by the Settlement Agreement. Acoma and Knight named CTP; CTPMM; CTPMT; Commerce Tower Garage, LLC; CTG MM, LLC; CTG MT, LLC; CTP Development, LLC; Carver Holdings, LLC; and Roy J. Carver, Jr. as defendants ("Defendants") in their lawsuit.

[3]"Manager" referred to Carver Holdings, LLC, an Iowa limited liability company, which held a 68.5% membership interest in CTPMM, and which managed CTPMM.

On December 31, 2024, the Defendants filed a motion to dismiss the lawsuit, to which Acoma and Knight filed a response. On January 22, 2025, the trial court entered an order noting that because the motion to dismiss relied on alleged facts and other matters outside the pleadings, the motion would be treated as a motion for summary judgment. The trial court ordered the Defendants to resubmit the motion as a motion for summary judgment in accordance with the requirements of Rule 74.04(c).

On February 7, 2025, the Defendants filed a motion for summary judgment and an accompanying statement of uncontroverted facts. Material to this case, Defendants alleged that the following facts were uncontroverted: (i) Knight is the owner and sole member of Acoma, but was never a member or owner of CTP because his interest in CTP was owned through Acoma (paragraphs 6 and 7); (ii) all of the HVAC Claims in the HVAC Lawsuit had been settled (paragraphs 11 and 12); (iii) the settlement agreements that resolved all of the HVAC Claims in the HVAC Lawsuits yielded gross proceeds of $415,000, and copies of the settlement agreements had been provided to Acoma and Knight (paragraph 13); (iv) the Settlement Agreement defined "net proceeds" as gross proceeds minus all litigation costs including but not limited to attorney fees and expert expenses (paragraph 14); (v) the litigation costs involved in pursuing the HVAC Claims totaled around $1,175,000, with attorney's fees included in this amount of over $800,000 (paragraph 15); (vi) there are no "net proceeds" from the HVAC Claims because the "gross proceeds" do not exceed the litigation costs (paragraphs 16 and 17); (vii) pursuant to a confidentiality agreement, the Defendants had provided counsel for Acoma and Knight with fully or partially executed settlement agreements resolving the HVAC

Claims, and with a ledger showing all attorney's fees, costs and expenses for the HVAC Claims (paragraph 21); (viii) a copy of the provided ledger for litigation costs on the HVAC Claims along with a declaration by an attorney who represented CTP in the HVAC Lawsuit was attached (paragraph 23); and (ix) the documents provided to Acoma's and Knight's counsel on December 30, 2024 established that the litigation costs from the HVAC Lawsuit exceeded the gross proceeds (paragraph 24).

In response, Acoma and Knight acknowledged that the Defendants' uncontroverted facts were, in fact, uncontroverted, except for paragraphs 15, 16, 17, and 24. Acoma and Knight thus agreed that Knight did not own an interest in CTP; that the settlement of the HVAC Claims yielded gross proceeds of $415,000; that the Settlement Agreement defined "net proceeds" as gross proceeds minus litigation costs, including but not limited to attorney fees and expert expenses; that they had been provided a copy of the ledger showing all attorney's fees, costs and expenses for the HVAC Claims; and that a copy of that ledger showing litigation costs for work on the HVAC Claims, along with an accompanying affidavit from counsel for CTP, were attached to the Defendants' motion for summary judgment.

Acoma's and Knight's response controverting paragraphs 15, 16, 17, and 24 of the Defendants' statements of uncontroverted facts was the same. Fairly paraphrased, the lengthy response made three arguments. First, Acoma and Knight argued that the invoices for legal services and expenses produced in discovery reflect that $343,211.75 in billed attorney's fees and $37,367.97 in billed expenses were incurred before the HVAC Lawsuit was filed, and thus were not "litigation costs" contemplated by the Settlement

Agreement. Acoma and Knight supported this assertion by attaching confidential documents produced by the defendants during discovery which included attorney billing statements, and a client ledger showing all amounts billed, paid, and owed. In a written reply to the response, the Defendants argued that even assuming that attorney's fees and expenses incurred before the HVAC Lawsuit was filed do not qualify as "litigation costs" under the Settlement Agreement, the ledger provided to Acoma and Knight and attached to the motion for summary judgment shows that $981,658.97 was paid for attorney's fees and expenses on the HVAC Claims.[4] Subtraction of the amounts alleged to have been incurred before the HVAC Lawsuit was filed would still leave a total amount for paid attorney's fees and expenses well in excess of the gross settlement proceeds of $415,000.

Second, Acoma and Knight argued in their response to the motion for summary judgment that paragraphs 15, 16, 17, and 24 were controverted because billing statements produced by Defendants during discovery show that 2,757 hours of time were billed by attorneys on the HVAC Claims, "which was not reasonably or causally related to the case." Acoma and Knight attached no documents or evidence to support their bare assertion that the time billed by attorneys as shown on attached billing statements was not reasonable or causally related to the HVAC Claims.

Finally, Acoma and Knight argued that paragraphs 15, 16, 17, and 24 were controverted because the Defendants had previously objected to two requests for

[4]In separate columns on the ledger, the total amount billed was shown as $1,174,379.78, the total amount paid was shown as $981,658.97, and the amount remaining unpaid was shown as $192,720.81.

production of documents which sought "cancelled checks or other payment records" reflecting payment of attorney's fees, expert expenses, or other litigation expenses on the basis that the request to produce cancelled checks was "overbroad and unduly burdensome" as a detailed accounting report identifying all payments for work on the HVAC Claims had been previously provided. Acoma and Knight argued in their response to the motion for summary judgment that they needed "an opportunity to conduct additional discovery pursuant to [Rule] 74.04(f) in order to obtain an order compelling the production of documents evidencing Defendants' actual payment(s) of attorney's fees related to the HVAC Claims." Acoma and Knight attached an affidavit of counsel supporting this request. In the affidavit, counsel for Acoma and Knight repeated the Defendants' objection to two requests for production of documents seeking cancelled checks or other payment records, and noted that a "Golden Rule Letter" had been sent to the Defendants, and that additional time was needed to enforce discovery. The affidavit's referenced attachment for the "Golden Rule Letter" was a brief email from counsel for the Defendants to Acoma's and Knight's counsel dated March 4, 2025, which stated that "all of the payment information mentioned in the attached [Golden Rule] letter is reflected on the [Law Firm] records that were already produced. For your convenience, I have highlighted below the payment information on the Client Ledger." The actual Golden Rule Letter, and the Client Ledger mentioned in the March 4, 2025 email, were not attached to the affidavit.

In their reply, the Defendants argued that there was no need for additional discovery to obtain "the amounts actually paid by the Defendants" for litigation costs

because the Client Ledger and billing statements already provided to Acoma and Knight established the amounts billed for litigation costs on the HVAC Claims, and the date and amount of payments made for litigation costs totaling $981,658.97. The Defendants' reply also attached the March 4, 2025 email from their counsel responding to a Golden Rule letter, and included the referenced Client Ledger. The Client Ledger was identical to the ledger attached to the motion for summary judgment.

On March 18, 2025, the trial court entered its order and judgment ("Judgment"), which noted that "the Court agrees with defendants that plaintiffs have failed to meet their burden to show a genuine issue of material fact, and that defendants are entitled to judgment as a matter of law on plaintiffs' claims herein." Accordingly, the trial court entered the Judgment in favor of the Defendants and against Acoma and Knight.

Acoma and Knight appealed.

Analysis

Acoma and Knight raise a single issue on appeal. They claim that the trial court erred in granting summary judgment because it should have granted a continuance for discovery pursuant to Rule 74.04(f) in that Acoma and Knight "did not have an opportunity to litigate and obtain discovery of whether [a]ttorney's [f]ees billed to the [Defendants] were actually paid by the [Defendants]" as to "in fact" offset the gross proceeds of settlement of the HVAC Claims.

The single point on appeal does not address the previously asserted contention that amounts billed on the HVAC Claims included sums incurred before the HVAC Lawsuit was filed. Nor does the single point on appeal address the previously asserted contention

that the number of hours billed on the HVAC Claims was unreasonable. These contentions are not addressed in the Rule 74.04(f) affidavit that is at issue in this appeal, and have been abandoned as a basis for challenging the grant of summary judgment in favor of the Defendants.

In addition, the single point on appeal ignores that the grant of summary judgment in favor of the Defendants and against Knight can be independently supported by the uncontroverted facts that although Knight is a member of Acoma, he is not a member in or an owner of CTP with a right to pursue a claim for a share of net proceeds from resolution of the HVAC Claims. It is uncontroverted that the Settlement Agreement afforded Acoma, but not Knight, a right to 20% of the net proceeds from the resolution of HVAC Claims. We therefore affirm the grant of summary judgment in favor of Defendants and against Knight. *Central Missouri Elec. Co-op. v. Balke*, 119 S.W.3d 627, 635 (Mo. App. W.D. 2003) ("Where a trial court has granted summary judgment without specifying the basis upon which the motion was granted, this court will affirm the grant of summary judgment under any appropriate theory.").

The sole and only issue to be addressed in this appeal is whether the trial court committed error when it did not grant Acoma's Rule 74.04(f) request for an opportunity to obtain discovery on whether attorney's fees billed on the HVAC Claims were actually paid. Rule 74.04(f) provides:[5]

[5]Prior to an amendment that was effective January 1, 2003, Rule 74.04(c)(2) used to include language providing that "[i]f the party opposing a motion for summary judgment has not had sufficient time to conduct discovery on the issues to be decided in the motion for summary judgment, such party shall file an affidavit describing the

> Should it appear from the affidavits of a party opposing the motion [for summary judgment] that for reasons stated in the affidavits facts essential to justify opposition to the motion cannot be presented in the affidavits, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

"Rule 74.04(f) contemplates that the opponent to the motion for summary judgment must call the court's attention to the uncompleted discovery and show by affidavit why it is material and important for the discovery to be completed." *Adams v. City of Manchester*, 242 S.W.3d 418, 427 (Mo. App. E.D. 2007) (quoting *State ex rel. Conway v. Villa*, 847 S.W.2d 881, 886 (Mo. App. E.D. 1993)). Because a "trial court has discretion to grant or deny additional time" to conduct discovery "before ruling on a pending summary judgment motion," we review for an abuse of discretion. *Id.* "Absent a showing that additional discovery would have shown the existence of [a] genuine issue of material fact, a trial court does not err or abuse its discretion in refusing a request for a continuance to permit discovery prior to ruling on a summary judgment motion." *Id.* (quoting *Binkley v. Palmer*, 10 S.W.3d 166, 173 (Mo. App. E.D. 1999)).

Acoma has not sustained its burden to show that additional discovery would have shown the existence of a genuine issue of material fact, and thus has not established that

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additional discovery needed in order to respond to the motion for summary judgment and the efforts previously made to obtain such discovery," upon which the trial court could, for good cause shown, continue the motion for summary judgment for a reasonable time to allow discovery to be completed. At the same time, 74.04(f) also addressed continuances to obtain discovery, in the same manner as it does today. Though the referenced language in Rule 74.04(c)(2) was deleted effective January 1, 2003, a trial court retains authority to entertain requests for continuances to obtain discovery if properly captured in an affidavit as required by Rule 74.04(f).

the trial court abused its discretion in refusing to afford it additional time to obtain discovery pursuant to Rule 74.04(f). Though the affidavit from Acoma's counsel affirmed that "cancelled checks or other payment records reflecting payment" of attorney's fees and legal expenses had been requested in discovery, the same affidavit verified the Defendants' response objecting to the request because Acoma had already been provided with "an accounting report that identified all payments for work" on the HVAC Claims. In responding to the Defendants' motion for summary judgment, Acoma admitted as uncontroverted the factual statement that an accounting ledger in the form attached to the motion had been previously provided, and admitted that the ledger, affirmed as accurate by an affidavit from CPT's counsel, was attached. The ledger reflects detailed entries for amounts billed, paid, and remaining due on the HVAC Claims. Acoma's Rule 74.04(f) affidavit does not explain why further evidence to confirm the amounts paid for attorney's fees on the HVAC Claims is needed.

Though Acoma does not expressly so state, it appears that Acoma is challenging the veracity of the ledger it admits it received, without describing any basis in fact for doing so that would be established with further discovery. "[I]t is not sufficient for [Acoma] to speculatively claim that [the cancelled checks] [are] necessary. [The] affidavit fails to show that additional discovery will likely establish a genuine issue of material fact as to the [ledger's] authenticity." *White v. City of Ladue*, 422 S.W.3d 439, 448 (Mo. App. E.D. 2013) (citing *Adams*, 242 S.W.3d at 427) (internal quotations omitted).

In addition, the Rule 74.04(f) affidavit does not explain why proof of payment of attorney's fees incurred on the HVAC Claims is required. The Settlement Agreement provides that "net proceeds" are to be calculated by subtracting from the "gross proceeds" of any resolution of the HVAC Claims "all litigation costs, including but not limited to attorney fees and expert expenses." The Settlement Agreement does not require litigation costs to have been paid as a condition of calculating "net proceeds." Acoma does not contest that CPT incurred (and is thus liable for) attorney's fees and litigation costs well in excess of the $415,000 in gross proceeds received from settlement of the HVAC Claims. Rule 74.04(f) contemplates an affidavit that explains why uncompleted discovery is "material." *Adams*, 242 S.W.3d at 427 (quoting *State ex rel. Conway*, 847 S.W.2d at 886). Acoma's counsel's affidavit does not satisfy this standard, as it does not explain why proof of payment of litigation costs admittedly incurred is "material." *Id.*

The trial court did not abuse the discretion afforded by Rule 74.04(f) when it chose not to order "a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had" before ruling on the merits of the Defendants' motion for summary judgment. Rule 74.04(f).

Point on appeal is denied.

Motion for Attorney's Fees on Appeal

The Defendants have filed a motion in this Court for an award of attorney's fees against Acoma and Knight for amounts incurred on appeal. Although Rule 74.16 has altered the procedure for seeking attorney's fees in the circuit court, Rule 74.16 does not alter the procedure for obtaining attorney's fees on appeal. *Wiseman v. Missouri Dep't of*

Corr., 710 S.W.3d 29, 40 (Mo. App. W.D. 2025). Thus, the Defendants properly filed their motion for attorney's fees on appeal in this Court.

The Settlement Agreement provides that should any party bring suit to enforce the Settlement Agreement, "the prevailing party in any such suit shall be entitled to an award of reasonable attorney's fees and litigation expenses associated with such enforcement effort." The Defendants are the prevailing party in this appeal. Accordingly, we grant their motion for attorney's fees.

"Although appellate courts have authority to allow and fix the amount of attorney's fees on appeal, we exercise this power with caution, believing in most cases that the trial court is better equipped to hear evidence and argument on this issue and determine the reasonableness of the fee requested." *Id*. (quoting *Hays v. Dep't. of Corrs.*, 690 S.W.3d 523, 529 (Mo. App. E.D. 2024)). We therefore remand this matter to the trial court to determine and award the Defendants reasonable attorney's fees on this appeal.

Conclusion

The trial court's Judgment is affirmed. We remand this matter to the trial court to determine and award the Defendants' reasonable attorney's fees on appeal.

Cynthia L. Martin, Judge

All concur