IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-2705

Summary Calendar

PRO-MOR, INC., and
FRANK J. VROSS

Defendants-Appellants,

versus

DAVID MARGULIES, d/b/a
COLUMBIA MINT, INC.,

Plaintiff-Appellee.

Appeal from the United States District Court
for the Southern District of Texas
(CA H 91 2682)

(March 22, 1995)

Before GARWOOD, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:*

Pro-Mor, Inc., and its president, Frank J. Vross, appellants, challenge the district court's award of $125,000 in attorney's fees to appellee David Margulies, d/b/a Columbia Mint, Inc. Because we do not find the award improper, excessive or unsupported by the evidence, we affirm.

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*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

This case centers upon the sale of miniature replicas of a $20 St. Gauden's gold piece. Columbia Mint advertised the sale of the St. Gauden's gold pieces through credit card statement inserts they had developed. In 1981, Columbia Mint agreed to have Pro-Mor ask certain companies to include in their credit card statements their inserts promoting the sale of Columbia Mint products, including the St. Gauden's pieces. Later, Pro-Mor began buying its gold pieces from a third party, compensating Columbia Mint based on the number of gold pieces Pro-Mor bought.

Margulies's and Pro-Mor's relationship soured when Pro-Mor, without Columbia Mint's permission, started selling a similar St. Gauden's piece for Pro-Mor's own account and promoting it with Columbia Mint's advertising materials. Margulies, the president, chairman, founder, and a principal shareholder of Columbia Mint, Inc., then brought this action.

Margulies sued under eight theories: (1) breach of contract, or (2) quantum meruit, (3) negligent misrepresentation, (4) breach of fiduciary duty, (5) violation of the Defective Trade Practices Act, Tex. Bus. & Com. Code § 17.41 et seq., (6) conversion, (7) unfair competition, and (8) violations of the Lanham Act, 15 U.S.C. § 1125(a). The jury found for Margulies on all of his theories except for his quantum meruit claim, but awarded him damages only for his claims of breach of contract, $21,561.15; conversion $5,000; and the Lanham Act, $18,000. With pre-judgment interest, Margulies's award came to $66,333.94.

After a hearing, the district court, sitting without a jury, awarded $125,000 in attorney's fees. At the hearing, Margulies introduced the testimony of his counsel, as well as a summary of all hours charged to the case and a record of work performed on the case, including hourly rates.

On appeal, Pro-Mor challenges the fee award on three grounds. First, Pro-Mor argues that the award improperly rewards Margulies for his success on some of his non-contract claims. Under Texas law, the only claim for which Margulies may collect fees is his contract claim. See V.T.C.A. Civil Practice & Remedies § 38.001; Stine v. Marathon Oil Company, 976 F.2d 254, 264 (5th Cir. 1992). In general, "Texas law requires that attorney's fees arising from multiple claim litigation be allowed only for those claims for which they are authorized." Stine, 976 F.2d at 264. However, "when the attorney's fees rendered are in connection with claims arising out of the same transaction and are so interrelated that their 'prosecution or defense entails proof or denial of essentially the same facts,'" the fee claimant need not segregate his fees and instead may recover everything he reasonably spent on all of his tightly related claims. See Stewart Title Guaranty Co. v. Sterling, 822 S.W.2d 1, 11 (Tex. 1991) (citation omitted). Here, the district court determined that a "common nucleus of facts surround[s] all the causes of action." (Order of November 12, 1993 at 4.) We agree. All eight of Margulies's causes of action center on Pro-Mor's single, wrongful act of selling a similar St. Gauden's gold piece with Columbia Mint's advertising materials.

Accordingly, the district court properly refused to order Margulies to segregate his fees.

Second, Pro-Mor argues that the fee award was excessive. Like Pro-Mor, we are concerned that the fee award is roughly twice as big as the total jury verdict. However, Texas courts have awarded fees that have exceeded jury verdicts by as much as a factor of three (see Murrco Agency, Inc., v. Ryan, 800 S.W. 2d 600, 606-07 (Tex. App. Dallas 1990), or even seven (see Flint & Assoc. v. Intercontinental Pipe & Steel, Inc., 739 S.W.2d 622, 626 (Tex. App. Dallas 1987)), if the circumstances warrant it. Texas courts have held that the time and money spent on a case, the nature of the case, the skill and experience demanded by the case, and the size of the claim may justify such a large award. See, e.g., Murrco, 800 S.W.2d at 607; Flint, 739 S.W.2d at 626.

Here, the district court noted that Margulies sought $500,000, an amount far larger than the fees awarded here. Pro-Mor argues on appeal that Margulies should have known that this figure was ridiculously high. Yet the district court has rejected this argument, and we will defer to the district court's superior knowledge of the merits of Margulies's $500,000 claim. The district court also noted that the case took over 900 hours to prepare and that the jury trial lasted three days. Margulies's claims -- both state and federal, statutory and common law -- were "relatively complex" and entailed many legal issues. The facts of the case, although less complicated than the legal claims, still required depositions, written discovery, and expert opinion to

develop. Based on these and other factors, the district court found its award of $125,000 in attorney's fees justified. We find no clear error in this determination.

Finally, Pro-Mor argues that there is insufficient evidence in the record to support the fee award. Specifically, Pro-Mor argues that Margulies's counsel, who testified at the fee hearing, did not explicitly state that the fees he charged were customary and usual. Margulies's counsel did testify that his charges were "fair, reasonable and necessary in preparation of this case," but Margulies concedes that his counsel did not testify directly as to whether the fees were customary and usual. That failing is not fatal. "When attorney fees are to be found by the court without a jury, the court may determine a reasonable fee . . . based upon its knowledge of usual and customary rates and its review of its own file, even if no other evidence is offered." Flint, 739 S.W.2d at 626. The district court appears to have properly done that here.

AFFIRMED.