

STATE OF MICHIGAN
COURT OF APPEALS

GROSSE ILE TOWNSHIP,

Plaintiff-Appellant/Cross-Appellee,

v

GROSSE ILE BRIDGE COMPANY,

Defendant-Appellee/Cross-Appellant.

UNPUBLISHED
September 28, 2010

No. 291255
Wayne Circuit Court
LC No. 03-325491-CC

Before: Fitzgerald, P.J., and MARKEY and Beckering, JJ.

PER CURIAM.

In this case, plaintiff unsuccessfully sought to condemn defendant's toll bridge pursuant to the Uniform Condemnation Procedures Act (UCPA), MCL 213.51 *et seq.* The trial court dismissed plaintiff's condemnation action, ruling that plaintiff had abused its discretion in finding public necessity. In *Grosse Ile Twp v Grosse Ile Bridge Co*, unpublished opinion of the Court of Appeals, issued April 4, 2006 (Docket No. 255759), this Court affirmed. Our Supreme Court, however, held that MCL 213.56(1) did not permit judicial review of the public purposes stated in the complaint. *Grosse Ile Twp v Grosse Ile Bridge Co*, 477 Mich 890, 891; 722 NW2d 220 (2006). Nevertheless, the Court affirmed this Court and the trial court because plaintiff's power to condemn private property does not extend beyond its jurisdictional limits, and the subject toll bridge is situated partly outside plaintiff's boundaries. *Id.* Plaintiff now appeals by right the trial court's postjudgment order awarding defendant its "actual reasonable attorney fees and other expenses incurred in defending against the improper acquisition." MCL 213.66(2). Defendant cross-appeals the trial court's denial of prejudgment interest. We affirm.

I. LIMITATIONS ON APPEAL BY RIGHT

We first note that plaintiff includes as an issue in its brief on appeal a claim that the trial court and the chief judge pro tem erred by denying plaintiff's motion to disqualify the trial judge. Judge William J. Giovan entered an order on November 29, 2007, denying plaintiff's motion to disqualify Judge Susan D. Borman. After Judge Giovan's order was entered, additional proceedings were conducted on defendant's motion for reimbursement of attorney fees and costs, including proceedings before a special master and an evidentiary hearing before the trial court. The trial court heard arguments of counsel over two days before entering its order regarding attorney fees and costs on March 6, 2009. That order may be appealed by right pursuant to MCR 7.203(A)(1), which provides this Court "has jurisdiction of an appeal of right filed by an

aggrieved party from . . . [a] final judgment or final order of the circuit court . . . as defined in MCR 7.202(6)” MCR 7.202(6)(iv) defines “final judgment” as “a postjudgment order awarding or denying attorney fees and costs under MCR 2.403, 2.405, 2.625 or other law or court rule.” Thus, plaintiff may appeal the trial court’s March 6, 2009, order by right. But, “[a]n appeal from an order described in MCR 7.202(6)(a)(iii)-(v) is limited to the portion of the order with respect to which there is an appeal of right.” MCR 7.203(A)(1). Here, Judge Giovan’s order denying plaintiff’s motion to disqualify the trial judge is not included in the trial court’s order regarding attorney fees and costs. Consequently, this Court lacks jurisdiction to consider plaintiff’s claims regarding judicial disqualification within the ambit of plaintiff’s appeal by right of the trial court’s March 6, 2009, order. See *Pierce v City of Lansing*, 265 Mich App 174, 182; 694 NW2d 65 (2005). Although we could consider this issue as on leave granted, *id.* at 182-183, plaintiff did not timely seek leave to appeal the November 29, 2007 order, and the parties continued to expend considerable time and effort on the merits of defendant’s motion for attorney fees and costs. We decline to consider plaintiff’s judicial disqualification claims.

II. STANDARD OF REVIEW

This Court reviews for an abuse of discretion the trial court’s decision whether to award attorney fees and costs under the UCPA and also the court’s determination of reasonableness of the fees. *Detroit v Detroit Plaza Ltd Partnership*, 273 Mich App 260, 292; 730 NW2d 523 (2006). The trial court abuses its discretion when its decision is outside the range of reasonable and principled outcomes. *Smith v Khouri*, 481 Mich 519, 526; 751 NW2d 472 (2008). In other words, the trial court must provide a “‘reasoned basis’” for its decision.” *Detroit Plaza Ltd*, 273 Mich App at 294, quoting *Dep’t of Transportation v Randolph*, 461 Mich 757, 768; 610 NW2d 893 (2000). We review for clear error the court’s findings of fact underlying an award of attorney fees. MCR 2.613(C); *Dep’t of Transportation v Robinson*, 193 Mich App 638, 646; 484 NW2d 777 (1992). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire record is left with a definite and firm conviction that a mistake was made. *Univ Rehab Alliance, Inc v Farm Bureau General Ins Co*, 279 Mich App 691, 693; 760 NW2d 574 (2008). Finally, part of plaintiff’s appeal presents issues of statutory interpretation, which are questions of law reviewed de novo. *Detroit Int’l Bridge Co v Commodities Export Co*, 279 Mich App 662, 666; 760 NW2d 565 (2008).

III. THE STATUTE

The controlling statute is § 16(2) of the UCPA, MCL 213.66(2), which provides:

If the property owner, by motion to review necessity or otherwise, successfully challenges the agency’s right to acquire the property, or the legal sufficiency of the proceedings, and the court finds the proposed acquisition improper, the court shall order the agency to reimburse the owner for actual reasonable attorney fees and other expenses incurred in defending against the improper acquisition.

In the trial court and on appeal, plaintiff asserts on the basis of its interpretation of the § 16(2) and § 16(6) of the UCPA, MCL 213.66(6), that under the circumstances of this case defendant is not entitled to its actual reasonable attorney fees and other expenses. First, plaintiff argues that the plain meaning of the words “incurred”, “actual”, and “reimburse” as used in § 16(2) require that defendant establish that it actually paid its attorneys, Ackerman and

Ackerman, P.C., for services defending against the condemnation action before plaintiff can be ordered to reimburse defendant for the those actual fees. It is undisputed that here defendant did not pay its attorneys for services rendered in this case, at least through the hearings on the motion for attorney fees and costs. Indeed, in one of the two letters stating the terms of defendant's agreement with its attorneys, Alan J. Ackerman, defendant's lead attorney, wrote to Paul J. Smoke, defendant's president, the following:

On the attorney fees, if I challenge the condemnation, I will await the Order for reimbursement of a reasonable fee as determined by the Court. The timing of the payment will have no effect on you, and will be ordered by the Court at the time of dismissal, if there is a dismissal. If there is no dismissal, I will not receive a fee. This contemplates a reasonable basis for a challenge to necessity. I do not, and will not, challenge necessity if there is no basis for challenge whatsoever. However, a precise review of a public use is an issue of concern in this specific situation. I would suggest to you that, as set forth more fully in my earlier letter, there are a number of issues which deserve further review before allowing a government to take your property.

If we move forward to just compensation, I would seek reimbursement of your fees. There is no guarantee, but I have been successful in the past. [Ex 12, Evidentiary Hearing 09/15/2008.]

The trial court ruled that plaintiff's interpretation of the statute was tortured and that nothing in the statute required a property owner that successfully challenges a government agency's condemnation action to pay its attorneys before it can obtain reimbursement of its reasonable attorney fees from the agency. In its August 22, 2007 order appointing a special master pursuant to the parties' consent to review the reasonableness of the number of hours claimed by the Ackerman firm, the trial court denied plaintiff's challenge to attorney fees and costs on the basis that defendant had not previously been paid by defendant.

Like the trial court, we reject plaintiff's tortured interpretation of the statute. A statute must be applied according to the plain, ordinary meaning of its terms unless some contrary intent is clearly manifested. *Randolph*, 461 Mich at 765 (where statutory language is clear and unambiguous, it must be applied as written); *Detroit Plaza Ltd Partnership*, 273 Mich App at 276 ("When interpreting a statute, this Court's goal is to ascertain and give effect to the intent of the Legislature by enforcing plain language as it is written."). It is axiomatic that nothing will be read into a clear statute that is not within the manifest intention of the Legislature as derived from the language of the statute itself. *Booker v Shannon*, 285 Mich App 573, 578; 776 NW2d 411 (2009). Furthermore, once the intention of the Legislature is discovered, it must prevail regardless of any conflicting rule of statutory construction. *Thompson v Thompson*, 261 Mich App 353, 361 n 2; 683 NW2d 250 (2004). In that regard, this Court has long held that the Legislature's primary purpose in the attorney fee provisions of the UCPA is that property owners "not be forced to suffer because of an action that they did not initiate and that endangered, through condemnation proceedings, their right to private property[.]" *Detroit Int'l Bridge Co*, 279 Mich App at 675, or stated otherwise, that the property owner be placed in as good a position as that occupied before the taking, *Detroit Plaza Ltd Partnership*, 273 Mich App at 294. See also *Escanaba & Lake Superior R Co v Keweenaw Land Ass'n, Ltd*, 156 Mich App 804, 815, 402 NW2d 505 (1986).

Upon a property owner's successful challenge to an agency's condemnation action, the plain language of § 16(2) requires that the court "shall order the agency to reimburse the owner for actual reasonable attorney fees and other expenses incurred in defending against the improper acquisition." The word "shall" renders the entry of such an order mandatory. See *Macomb Co Rd Comm v Fisher*, 170 Mich App 697, 700; 428 NW2d 744 (1988). The word "actual" clearly modifies "attorney fees," meaning that the focus of the statute is on the attorney fees actually "incurred" by the owner, rather than a reasonable attorney fee in the abstract. See *Randolph*, 461 Mich at 765-766 ("the focus of the reasonableness determination clearly is on the owner's attorney fees"); *Village of Lexington v Harbor Dev*, unpublished opinion per curiam issued June 3, 2008 (Docket No. 273770). Although *Randolph* addressed reimbursement of a property owner's attorney fees and costs under § 16(3) of the UCPA—when just compensation is determined to be greater than the agency's good faith offer—we agree with the *Lexington* panel that *Randolph*'s analytical framework also applies to § 16(2) because the two provisions share the same purpose and use similar language. See *Lexington*, unpub op at 5. Under this framework, a property owner is entitled to recover its actual attorney fees incurred "defending against [an] improper acquisition," provided the actual fee does not exceed the outer limit of a reasonable fee in light of the factors listed in MRPC 1.5(a). *Randolph*, 461 Mich at 766. But unlike an award of attorney fees under § 16(3), the trial court does not have additional discretion under § 16(2) to award a property owner less than its actual reasonable attorney fee. See *Randolph*, 461 Mich at 767.

Contrary to plaintiff's argument, the words "incurred" and "reimburse" in § 16(2) do not require a property owner to have actually paid its attorney before the property owner's right to recover from the government agency its "actual reasonable attorney fees and other expenses incurred" arises. The Random House Webster's College Dictionary (2007) defines "incur" as "to become liable for" and "reimburse as "to make repayment to for expense or loss incurred." A dictionary may be consulted regarding the ordinary meaning of undefined statutory words. *Haynes v Neshewat*, 477 Mich 29, 36; 729 NW2d 488 (2007). Additionally, both this Court and our Supreme Court have employed similar definitions in other contexts. See *Macomb Co Taxpayers Ass'n v L'Anse Creuse Pub Schs*, 455 Mich 1, 6; 564 NW2d 457 (1997) (incur attorney fees); *Hiltz v Phil's Quality Market*, 417 Mich 335, 346; 337 NW2d 237 (1983) (reimburse workers compensation benefits); and *Williams v AAA Michigan*, 250 Mich App 249, 268-269; 646 NW2d 476 (2002) (incur medical expenses). Particularly apropos, in the context of Headlee Amendment litigation, our Supreme Court held in *Macomb Co Taxpayers*, 455 Mich at 12, that in the absence of a specific agreement to the contrary an attorney becomes entitled to reasonable remuneration, and the client has incurred attorney fees upon the rendering of legal services on behalf of the client. Consequently, when we apply the plain meaning of the terms "incurred" and "reimburse" in the context of the purpose of the UCPA and give effect to every phrase, clause, and word in the statute, *Sun Valley Foods Co v Ward*, 460 Mich 230, 237; 596 NW2d 119 (1999), we must reject plaintiff's interpretation of § 16(2).

Plaintiff also argues that defendant is not legally obligated to pay the Ackerman firm because the retainer letter Smoke signed after the letter quoted above did not specifically detail compensation in the event that the condemnation action were dismissed. We disagree as a matter of fact and as a matter of law. In a letter dated July 7, 2003, defendant entered into a contingency fee agreement to pay Ackerman one-third of any increase in just compensation over plaintiff's good faith offer. The July 7, 2003, letter also stated:

If the services rendered by Ackerman & Ackerman, P.C. result in a non-cash benefit to the property, Ackerman & Ackerman, P.C. shall be paid the quantum meruit value of its services. Quantum meruit is a legal term that means “the value of the services rendered.”^[1] One example of a non-cash benefit to the property that occurred as a result of services rendered by Ackerman & Ackerman, P.C. is a change in construction plans that reduce[] the amount your property is damaged. This is not the exclusive definition of a non-cash benefit.

We conclude that the dismissal of plaintiff’s condemnation action that Ackerman’s firm obtained conferred a “non-cash benefit to the property” within the meaning of the retainer agreement. Therefore, as provided in the retainer agreement, defendant “incurred” or became liable to the Ackerman firm for the market value for their legal services—“the value of the services rendered”—bounded by the trial court’s determination regarding reasonableness as stated in the prior letter. Moreover, even in the absence of the retainer agreement, defendant incurred attorney fees due to the Ackerman firm under an implied contract theory. See *Macomb Co Taxpayers*, 455 Mich at 11-12, and *Detroit v Goodwill Community Chapel*, 190 Mich App 297, 299; 475 NW2d 379 (1991) (property owner’s attorney retained under contingent fee agreement entitled to compensation after obtaining dismissal of the condemnation action under a theory of implied contract or quasi contract).

Plaintiff also argues that defendant did not incur attorney fees with respect to other counsel Ackerman retained to assist in specific aspects of the litigation, the appeal of the dismissal and the post appeal efforts to collect “actual reasonable attorney fees and other expenses incurred in defending against the improper acquisition” under § 16(2) of the UCPA. Plaintiff contends because Ackerman hired the other counsel, there was no contractual relationship with defendant; therefore, defendant was not liable for their services. But under the July 7, 2003, retainer agreement, defendant accorded the Ackerman firm the “full and complete discretion to act on [defendant’s] behalf in this matter” Thus, Ackerman was acting on behalf of defendant when retaining co-counsel to perform specific tasks during the litigation. We therefore reject plaintiff’s claim that defendant did not incur attorney fees with respect to other counsel.

Plaintiff’s final legal challenge to the award of “actual reasonable attorney fees” relies on § 16(6) of the UCPA, which at the time pertinent to these proceedings provided: “An agency shall not be required to reimburse attorney or expert witness fees that are attributable to an unsuccessful challenge to necessity or to the validity of the proceedings.” MCL 213.66(6).² Plaintiff argues that because our Supreme Court ultimately affirmed the trial court’s dismissal of

¹ This Court has stated that “quantum meruit” means “as much as deserved.” *Keywell & Rosenfeld v Bithell*, 254 Mich App 300, 359; 657 NW2d 759 (2002), quoting Black’s Law Dictionary (6th ed, 1990), p 1243.

² 2006 PA 370 amended subsection 6 to subject it to an added subsection 7, which is not pertinent to this case. The 2006 amendment also modified the wording subsection 6 slightly but did not affect its substance.

its condemnation action on grounds other than necessity, defendant's challenge to necessity was unsuccessful. Therefore, plaintiff argues, it is not liable for defendant's attorney or expert witness fees. We agree with the trial court that plaintiff's interpretation of § 16(6) ignores its last phrase, "or to the validity of the proceedings." Plaintiff's reading of § 16(6) also fails in light of the clear and unambiguous provisions of § 16(2), because defendant "by motion to review necessity or otherwise, successfully challenge[d] the agency's right to acquire the property, or the legal sufficiency of the proceedings" In short, plaintiff's reading of § 16(6) fails to give effect to every phrase, clause, and word in the statute, *Sun Valley Foods*, 460 Mich at 237, so as to produce a harmonious whole in light of the purposes of the statute, *Macomb Co Pros Attorney v Murphy*, 464 Mich 149, 159; 627 NW2d 247 (2001). We conclude that defendant's argument regarding § 16(6) must fail because defendant successfully challenged the validity of plaintiff's condemnation action and because the provisions of § 16(2) clearly apply under these facts and circumstances. Indeed, we find plaintiff's interpretation so contrary to the purpose of the statute as to be absurd. See *Detroit Int'l Bridge Co*, 279 Mich App at 675.

IV. THE TRIAL COURT'S DISCRETIONARY RULINGS

Plaintiff first argues that the trial court abused its discretion by awarding the Ackerman firm as an "actual reasonable attorney fee" a "blended" hourly rate of \$550 an hour for the reasonable number of hours Ackerman and his partner, Darius Dynkowski, expended on the case. Plaintiff asserts that the court erred by focusing on an average hourly rate of what the Ackerman firm had been awarded in other condemnation cases or were paid by clients, rather than focusing on "the fee customarily charged in the locality for similar legal services," MRPC 1.5(a)(3), as required by *Smith*, 481 Mich at 522, 530. Additionally, plaintiff argues that the trial court failed to fully consider all the other factors of MRPC 1.5(a) in determining a reasonable attorney fee. Finally, plaintiff argues no authority exists for the trial court's use of a blended rate for the two Ackerman firm attorneys, and likewise, no authority exists for the methodology the trial court employed. We disagree.

First, the analytical framework that our Supreme Court held was required by the plain language of § 16(3) of the UCPA, *Randolph*, 461 Mich at 765-766, is equally required by the plain language of § 16(2) of the UCPA. In awarding "actual reasonable attorney fees" under § 16(2), the trial court must first focus on the owner's actual attorney fees and determine whether those fees are reasonable in light of all the factors listed in MRPC 1.5(a). *Randolph*, 461 Mich at 766. The *Smith* Court's approach to determining a reasonable attorney fee in the abstract on the basis of MRPC 1.5(a), with a preeminent focus on subsection 3, *Smith*, 481 Mich at 522, 530-531, simply does not apply to a determination of "actual reasonable attorney fees" under § 16(2). Although *Smith* was decided after *Randolph*, the Court specifically noted that its decision in *Smith* "does not contradict, undermine, or overrule *Randolph*." *Smith*, 481 Mich at 537. While an abstract reasonable attorney fee "may differ from the *actual* fee charged or the highest rate the attorney might otherwise command," *id.* at 528, § 16(2) commands that the government agency reimburse the owner's actual attorney fee even if it is the highest rate the attorney might otherwise command, provided the actual attorney fee is not unreasonable in light of all the factors listed in MRPC 1.5(a). Only if the trial court first determines the owner's actual attorney fees are unreasonable may the trial court determine, in the exercise of its discretion, a reasonable attorney fee in the abstract. *Randolph*, 461 Mich at 768.

The trial court conducted a unitary analysis regarding defendant's actual attorney fees and their reasonableness in light of the eight factors stated in MRPC 1.5(a). In considering MRPC 1.5(a)(3), "the fee customarily charged in the locality for similar legal services," the trial court determined that reasons existed why fees charged by attorneys representing government agencies in condemnation cases might be lower. The court further reasoned that the "only and the best way" to apply this factor to the Ackerman firm "was to look at the awards that [the Ackerman firm] has gotten in other cases." The court reasoned, "[t]here really wasn't anything else comparable." The trial court, after reviewing the evidence submitted at the evidentiary hearing and discussing all the MRPC 1.5(a) factors, concluded:

So the rate to be awarded in this case after consideration of all the factors here and including the fact that the majority of the work was being done in the years 2003 to 2004 which is not the present and the fact that it's a blended rate. And the average, and I took into account also the average when we look to the other awards of attorney fees from Mr. Ackerman's office, the rate to be awarded will be \$550 per hour.

As discussed above, defendant agreed to pay the Ackerman firm the "quantum meruit value of its services" or "the value of the services rendered." In other words, defendant agreed to pay the Ackerman firm what they were worth, which would be the rate that the Ackerman firm might otherwise command for their services. Consequently, although the trial court did not explicitly state that it was doing so, by focusing on what the Ackerman firm had been awarded or earned for their services in the past, the trial court was, in essence, focusing on the actual attorney fee that defendant had agreed to pay. The trial court's reasoned analysis that this approach provided the best evidence of the value of the Ackerman firm's legal services in a condemnation case was sound. The court's approach focused on the "quantum meruit value of [the Ackerman firm's] services" or "the value of the services rendered"—the owner's actual attorney fee. The fact that with respect to one of the surveyed prior awards to Ackerman, the trial court estimated an hourly rate from a lump sum attorney fee settlement does not diminish the analytical soundness of the court's reasoning. We hold that the trial court's analysis was consistent with the requirement of § 16(2) to first determine the actual attorney fees that the property owner incurred and then determine whether they are reasonable. *Randolph*, 461 Mich at 765-766; *Lexington*, unpub op at 5-6.

Contrary to plaintiff's argument, the trial court thoroughly reviewed all the MRPC 1.5(a) factors in making its reasonableness determination. The trial court heard expert testimony that Ackerman is the preeminent attorney specializing in condemnation law in the state of Michigan. The testimony also showed that the Dynkowski's expertise in condemnation law was second only to Ackerman. In addition, expert testimony supported finding that the quantum meruit fee agreement that Ackerman entered with defendant was typical in condemnation cases. The testimony further supported the reasonableness of using a "blended" hourly rate, at a rate even greater than the one the court determined primarily on the basis of averaging past attorney fee awards and earned fees. Because the trial court provided a well-reasoned basis for its decision that the evidence supported, the trial court did not abuse its discretion setting rate of \$550 an hour to award defendant as its "actual reasonable attorney fees . . . incurred in defending against the improper acquisition." MCL 213.66(2); *Randolph*, 461 Mich at 768; *Detroit Plaza Ltd*, 273

Mich App at 294. In the current lexicon regarding a trial court's discretionary decisions, the result was within the range of reasonable and principled outcomes. *Smith*, 481 Mich at 526.

Next, plaintiff argues that the trial court abused its discretion or clearly erred finding the Ackerman firm was entitled to be paid for 350 hours during the period of time between the completion of briefing and the decision of this Court in Docket No. 255759. We disagree.

The parties agreed to the entry of an order appointing a special master to review the reasonableness of the hours the Ackerman firm claimed it was entitled to reimbursement under § 16(2). Under the stipulated order, the parties were required to provide the special master with all written contracts and records of time spent on the case since its inception through July 31, 2007. The special master was ordered to submit a report regarding the reasonableness of the hours claimed, broken down by various time periods. The parties submitted documents, briefs, and appeared for a hearing before the special master. The special master issued its report on July 16, 2008, which recommended that of the 2469.9 hours the Ackerman firm claimed, 2016.6 should be found by the court to be reasonably necessary to defending against the condemnation action. Regarding the category at issue, between September 16, 2004 and April 4, 2006, the special master recommended that of the 557.3 hours claimed, 360³ were reasonably necessary.

At a hearing held in the trial court on August 15, 2008, at which the parties sought to narrow the issues that would require testimony at an evidentiary hearing, the trial court initially expressed skepticism that the hours the Ackerman firm claimed were reasonable, considering that the parties were presumably simply waiting for this Court's decision. At the evidentiary hearing, Ackerman testified in support of the hours claimed and produced a document showing what services were performed for 521.9 hours during the time period in question. Defense counsel argued below and again on appeal that although plaintiff's counsel argued that the hours claimed were unreasonable, plaintiff presented no evidence to contradict Ackerman's testimony regarding this issue at the evidentiary hearing. In reviewing the trial court's reasons for its ruling on this issue, it is obvious that the court generally credited Mr. Ackerman's testimony. The trial court found that "Mr. Ackerman was leaving no stone unturned in preparing the case on behalf of his client. . . . And I don't find that [the hours] were unreasonable at all." The trial court also considered the fact that the special master had reviewed the issue and found that 350 of the claimed hours were reasonably necessary. Plaintiff's argument ignores that the trial court's ruling significantly reduced the number of hours that the Ackerman firm claimed for this time period. Given the deference this Court must accord to the trial court's superior fact-finding ability, MCR 2.613(C), we are not left with a definite and firm conviction that a mistake was made. *Univ Rehab Alliance*, 279 Mich App at 693.

Plaintiff next argues that the trial court's award of attorney fees to the Ackerman firm was contrary to an agreement the parties placed on the record at the issue-narrowing hearing held on August 15, 2008. Plaintiff contends the agreement was reached in relation to plaintiff agreeing not to contest the hours of co-counsel in the collection proceedings—Carson Fisher,

³ The 360 hours included 10 hours by the firm of Plunkett & Cooney, which are not disputed.

P.L.C. Timothy E. Galligan on behalf of plaintiff and Robert M. Carson on behalf of defendant appeared at the hearing. Mr. Galligan, apparently speaking to Mr. Carson, stated that plaintiff would not challenge the reasonableness of the Carson Fisher hours: “Our position is the time incurred by your office will not be subject to challenge for reasonableness.” After the parties noted the only disputed area of the special master’s report regarding reasonable hours was the period of time awaiting this Court’s decision, the following colloquy occurred:

THE COURT: So really you’ve agreed on the reasonableness of the hours except for the time on appeal after Briefs were submitted, correct?

MR. GALLIGAN: Yes, Your Honor.

THE COURT: Correct?

MR. CARSON: Correct.

THE COURT: Okay, so I’m not even going to look at those things.

MR. CARSON: That’s right. It is as submitted by—so there’s no misunderstanding on the record, it is submitted by the Special Master subject to the Plaintiff’s claim on the hours that you just identified.

THE COURT: Yes.

MR. CARSON: But increased by the hours for collection costs as he’s identified.

MR. GALLIGAN: Correct, yes.

MR. CARSON: Okay, then --

THE COURT: But he’s not objecting to your - -

MR. CARSON: No, I just want the record to be clear as to what’s going on. That’s the issue on hours, on reasonableness on hours. [Hearing 08/15/2008, pp 9-10.]

A stipulation is an agreement, admission, or concession made in a judicial proceeding by the parties and is generally binding on the parties if made in open court. MCR 2.507(G); *Ypsilanti Twp v Kircher*, 281 Mich App 251, 270; 761 NW2d 761 (2008); *Eaton Co Rd Comm’rs v Schultz*, 205 Mich App 371, 378; 521 NW2d 847 (1994). “Stipulations differ in character, some being mere admissions of fact relieving a party from the inconvenience of making proof, while others embody all the essential characteristics of a contract.” *Id.* at 379, quoting 73 Am Jur 2d, Stipulations, § 1, p 536. A stipulation to settle a lawsuit, or in this case, part of a lawsuit, is a contract, “governed by the legal principles applicable to the construction and interpretation of contracts.” *Eaton Co Rd Comm’rs*, 205 Mich App at 379. “It is hornbook law that a valid contract requires a ‘meeting of the minds’ on all the essential terms.” *Kamalath v Mercy Memorial Hosp Corp*, 194 Mich App 543, 548; 487 NW2d 499 (1992). There can be no contract

if there is no meeting of the minds between the parties. *46th Circuit Trial Court v Crawford Co*, 476 Mich 131, 158-159; 719 NW2d 553 (2006).

Here, from our review of the colloquy above, we glean no meeting of the minds to waive the Ackerman firm's claim to hours spent on the § 16(2) proceedings. We discern the discussion on the record simply clarified that the only dispute over the special master's report on the reasonableness of the number of attorney's hours defendant claimed was the time period previously discussed. Further, viewed in light of the discussion between the court and Mr. Carson immediately before the quoted colloquy, the record indicates there existed no dispute that the special master's report would be supplemented by all defense attorney time spent in the attorney fee collection proceedings. Mr. Carson stated: "And [Mr. Galligan] agrees that the time for collection which was not part of [the special master's report] can be brought forward and subject only to the hourly rate." To this the trial court responded, essentially, that the law permitted billing for the collection costs. We conclude that while it might have been in Mr. Galligan's mind to attempt to exclude Ackerman's collection time by his comments referring to "your office," we do not discern any intent on Mr. Carson's part to exclude the Ackerman firm's collection time from defendant's claim for its "actual reasonable attorney fees and other expenses incurred in defending against the improper acquisition." MCL 213.66(2). One party's unilateral intent cannot form a contract; and, plaintiff bears the burden of proving that a contract existed. *Kamalnath*, 194 Mich App at 549. Plaintiff has failed to establish there was a meeting of the minds regarding the alleged stipulation; consequently, there can be no enforceable stipulation. *Id.* at 548-549; *46th Circuit Trial Court*, 476 Mich at 159.

Next, plaintiff argues that the trial court abused its discretion by awarding an unreasonably high hourly rate of \$525 for attorney Robert Carson. We disagree. Plaintiff repeats arguments it asserted regarding the hourly rate for the Ackerman firm that we have already rejected. Specifically, plaintiff argues that no contract existed between Carson Fisher and defendant;⁴ therefore, plaintiff argues, the trial court was required to determine a reasonable hourly attorney fee rate in the abstract under the framework of *Smith v Khouri*, 481 Mich 519. This approach stresses as its key determinant, "a fee similar to that customarily charged in the locality for similar legal services, which, of course, may differ from the *actual* fee charged or the highest rate the attorney might otherwise command." *Id.* at 528 (emphasis in original). On the other hand, in determining a property owner's "actual reasonable attorney fee," MCL 213.66(2), the plain language of the statute requires that the focus of the reasonableness determination clearly is on the *owner's* attorney fees." *Randolph*, 461 Mich at 766; see also *Lexington*, unpub op at 5. Only if the trial court determines the owner's actual attorney fee is unreasonable in light of the eight factors listed in MRPC 1.5(a) may the court proceed to determine a reasonable attorney fee in the abstract. Thus, under the UCPA, the focus is on the "fee actually charged to defendants" and whether it is unreasonable. *Randolph*, 461 Mich at 768.

⁴ As previously discussed, Mr. Ackerman possessed complete authority under his retainer agreement to retain co-counsel. During closing arguments on this issue, Mr. Carson advised the court that defendant's corporate counsel also approved his retention at his usual rate (\$525/hour).

Evidence presented to the trial court established that Carson's usual hourly rate was \$525 an hour. Further, an expert testified this hourly rate for Carson was reasonable, if not low. No evidence was presented to establish that Carson's fee was unreasonable. During closing arguments on this issue, the parties argued the eight factors listed in MRPC 1.5(a). The only additional argument plaintiff presented was that the attorney fee proceedings could have been handled by a less senior litigator. The trial court rejected this claim, noting that the proceedings were not simple, involved a great deal of money, and defendant wanted the best possible representation. After considering all the factors listed in MRPC 1.5(a), the trial court ruled that Carson's hourly rate of \$525 was reasonable. We conclude that the trial court provided a well-reasoned basis for its decision supported by the evidence. The trial court did not abuse its discretion determining that Carson's rate of \$525 an hour to award defendant as its "actual reasonable attorney fee." MCL 213.66(2); *Detroit Plaza Ltd*, 273 Mich App at 294.

The last claim on appeal that plaintiff asserts, and we consider, is whether the trial court abused its discretion ordering reimbursement for the expense of certain experts.

An award of reasonable expert witness fees under § 16(1) and § 16(5) of the UCPA is mandatory. *Detroit Plaza Ltd*, 273 Mich App at 295-296. Before the effective date of 2006 PA 370, the statute provided:

(1) Except as provided in this section, an ordinary or expert witness in a proceeding under this act shall receive from the agency the reasonable fees and compensation provided by law for similar services in ordinary civil actions in circuit court, including the reasonable expenses for preparation and trial.

* * *

(5) Expert witness fees provided for in subsection (1) and this subsection shall be allowed with respect to an expert whose services were reasonably necessary to allow the owner to prepare for trial. For the purpose of subsection (1) and this subsection, for each element of compensation, each party is limited to 1 expert witness to testify on that element of compensation unless, upon showing of good cause, the court permits additional experts. The agency's liability for expert witness fees shall not be diminished or affected by the failure of the owner to call an expert as a witness if the failure is caused by settlement or other disposition of the case or issue with which the expert is concerned. [MCL 213.66; See *Detroit Plaza Ltd*, 273 Mich App at 295-296.]

The § 16(2) proceedings at issue in this appeal began in 2007, after the December 23, 2006, effective date of 2006 PA 370. The amendment did not change subsection 1 of section 16 but eliminated reference to subsection 1 in subsection 5, which as amended now reads:

(5) Expert witness fees provided for in this section shall be allowed with respect to an expert whose services were reasonably necessary to allow the owner to prepare for trial. For the purpose of this section, for each element of compensation, each party is limited to 1 expert witness to testify on that element of compensation unless, upon showing of good cause, the court permits additional experts. The agency's liability for expert witness fees shall not be diminished or

affected by the failure of the owner to call an expert as a witness if the failure is caused by settlement or other disposition of the case or issue with which the expert is concerned. [MCL 213.66(5), as amended by 2006 PA 370.]

We find no abuse of discretion in the trial court's awarding defendant the expense of two valuation experts used to prepare for trial of the underlying action. The plain language of subsection 5 permits more than one expert for trial preparation where each witness would testify to a different "element of compensation." Furthermore, the trial court is also plainly accorded the discretion to permit additional experts. Here, the trial court based its ruling on the fact that plaintiff retained at least two valuation experts and that more than one element of valuation was at issue in the underlying action. We conclude that the trial court's decision was within the range of reasonable and principled outcomes, and therefore, not an abuse of discretion. *Univ Rehab Alliance*, 279 Mich App at 698.

Plaintiff also argues that the trial court erred by ordering reimbursement of defendant's expert witness fees for the so-called collection proceedings under § 16(2) of the UCPA. Plaintiff asserts defendant did not formally request reimbursement of these expenses and that they were precluded by § 16(5), which limits experts to those reasonably necessary for trial preparation. The second argument lacks merit because on the basis of the 2006 amendment, expert witness fees for the § 16(2) proceedings are governed by § 16(1). Subsection 1 applies to any proceeding under the UCPA, and on the basis of the 2006 amendment, is not limited by subsection 5. This Court has held that the plain language of subsection 1 requires an award to defendant for expert witness fees, subject only to review for reasonableness. *Macomb Co Rd Comm*, 170 Mich App at 700. Because plaintiff does not assert that the expert fees were unreasonable, plaintiff's complaint about formality is also without merit. The trial court's decision regarding the § 16(2) expert witness fees was within the range of reasonable and principled outcomes, and therefore, not an abuse of discretion. *Univ Rehab Alliance*, 279 Mich App at 698.

IV. PREJUDGMENT INTEREST

Defendant cross-appeals, arguing the trial court erred by denying an award of prejudgment interest under the general interest statute, MCL 600.6013. Defendant contends that this issue is controlled by *Escanaba & Lake Superior R Co*, 156 Mich App at 820-821, which held that in a § 16(2) proceeding, the property owner may recover prejudgment interest under MCL 600.6013 on its award of actual reasonable attorney fees and costs. Here, the trial court denied interest, believing it must follow the subsequent case of *Flint v Patel*, 198 Mich App 153, 160-161; 497 NW2d 542 (1993), which held that interest may not be recovered on a § 16(3) attorney fee awarded because (1) the UCPA prevailed over the general interest statute and (2) the UCPA did not provide for interest on attorney fees awarded under § 16(3). We agree and are also bound to apply the rule of law established by *Patel*. MCR 7.215(J)(1). Because the pertinent rule of law *Patel* establishes is that the UCPA prevails over the general interest statute, defendant's effort to distinguish that case on the basis that these proceedings were under § 16(2) is unavailing. Under the UCPA, an award of prejudgment interest is not applicable to a § 16(2) award of actual reasonable attorney fees and costs. *Escanaba & Lake Superior R Co*, 156 Mich App at 820-821. "If the UCPA interest statute were applied in the instant case, defendants would receive no interest, since they were never ousted from their property." *Id.* at 821.

Moreover, even if we were not bound by *Patel*, we would hold that the general interest statute, MCL 600.6013, does not apply to a post-judgment order for reimbursement of attorney fees and costs. The statute provides: “Interest is allowed on a money judgment recovered in a civil action, as provided in this section.” MCL 600.6013(1). But § 6013 repeatedly refers to “complaint” or “complaints,” which limit its scope. See *In re Forfeiture of \$176,598*, 465 Mich 382, 387-388; 633 NW2d 367 (2001). In that case, the Court held an owner obtaining an order for the return of seized money had not obtained money judgment in a civil action within the meaning of MCL 600.6013(1). *In re Forfeiture of \$176,598*, 465 Mich at 383. The Court reasoned that the property owner “did not file [a] complaint . . . [and] rather than being the prevailing claimant in a civil action, . . . was merely the owner of property that the prosecutor unsuccessfully sought to seize in a forfeiture action initiated by the latter.” *Id.* at 388. An unsuccessful forfeiture action is closely analogous to the unsuccessful condemnation action in this case. Here, defendant did not file a complaint for the purpose of seeking money damages but rather filed a post-judgment motion for attorney fees and costs after successfully defending against the government agency’s effort to seize its property, albeit for just compensation. Indeed, this Court has applied the rationale of *In re Forfeiture of \$176,598*, *supra*, in other contexts. See *Olson v Olson*, 273 Mich App 347; 729 NW2d 908 (2006) (denying interest under § 6013 on an attorney fee award in a divorce case). “A party, despite prevailing in the underlying action, has not obtained ‘a money judgment recovered in a civil action’ if that party has not filed a complaint in the proceeding.” *Olson*, 273 Mich App 353. Consequently, even without *Patel*, we would not follow *Escanaba* with respect to its ruling regarding § 6013; we would hold that the order awarding defendant attorney fees and costs pursuant to MCL 213.66(3) was not a “money judgment recovered in a civil action” within the meaning of MCL 600.6013(1).

We affirm.

/s/ E. Thomas Fitzgerald

/s/ Jane E. Markey

/s/ Jane M. Beckering