

IN THE SUPREME COURT OF THE STATE OF NEBRASKA

IVAN EICHER and DELORES EICHER,)
PATRICK SWEENEY and LOIS SWEENEY,)
EMMET GULLEY, STEVEN W. STARMAN,)
WILLIAM STREET, DAVID WELTON,)
DON NOVACHICH, JERRY GILLS, RENEE)
RICHTER, LORI HILL and JENNIFER FRANS)
GRIESS,)

Appellees,)

vs.)

MID AMERICA FINANCIAL INVESTMENT)
CORPORATION, SCOTT W. BLOEMER,)
and ELENA [sic] HOLLINSHEAD,)

Appellants.)

CASE NO. S-04-001184

MOTION FOR ATTORNEYS' FEES

IN THE SUPREME COURT OF THE STATE OF NEBRASKA

IVAN EICHER and DELORES EICHER,)
PATRICK SWEENEY and LOIS SWEENEY,)
EMMET GULLEY, STEVEN W. STARMAN,)
WILLIAM STREET, DAVID WELTON,)
DON NOVACHICH, JERRY GILLS, RENEE)
RICHTER, LORI HILL and JENNIFER FRANS)
GRIESS,)

Appellees/Cross-Appellants,)

vs.)

MID AMERICA FINANCIAL INVESTMENT)
CORPORATION, SCOTT W. BLOEMER,)
and ELENA [sic] HOLLINSHEAD,)

Appellants.)

CASE NO. S-03-001257

COMES NOW the Plaintiffs, and pursuant to Neb. R. Sup. & App. Cts. Prac. 9(F) move this Court for an Order awarding them reasonable attorneys' fees for the appeal of this case. In support of their Motion, Plaintiffs state and allege as follows:

1. Plaintiffs submit the legal bill from Fraser Stryker Law Firm in the amount of \$48,281.78. This does not include the 1.3 multiplier applied by the District Court. This is a substantial request. However, for the reasons listed below, this appeal required a substantial investment of time.

2. This appeal is actually two appeals which were consolidated and thus there were two sets of briefings.

3. The record in the main case (S-03-001257) was substantial as it was the result of a five week trial. The Bill of Exceptions contained 16 volumes totaling 2,434 pages and there were 413 exhibits.

4. Mid America chose to appeal numerous issues, some of which necessitated close review of the record and/or case law review. Mid America's appeal issues include:

Mid America's Arguments (S-03-001257):

- a. Severance. The Trial Court erred in failing to sever Plaintiffs' claims.
- b. Pretrial and Trial Procedure. It was unfair and prejudiced them.
- c. Fraud. Plaintiffs failed to prove the elements of fraud, including reasonably reliance and damages.
- d. Conspiracy. The Trial Court erred in finding in Plaintiffs' favor because a corporation cannot conspire with an agent acting within the scope of his authority and there was not sufficient evidence that Defendants acted outside the scope of their employment. Plaintiffs failed to properly plead conspiracy.
- e. Attorney Fees. The Trial Court erred in awarding attorney fees. There was no basis for fees under the Nebraska Deceptive Trade Practices Act. The Trial Court erred in using a 1.3 multiplier.
- f. Mid America's Counterclaim.

Mid America's Arguments (S-04-001184):

- a. The Trial Court was without jurisdiction to entertain Plaintiffs' Motion to Modify Order dated June 16, 2003.
 - b. To the extent Plaintiffs' Motion to Modify Order dated June 16, 2003 was a request to modify the prior Order, it was untimely.
 - c. The Trial Court erred in entering an Order Nunc Pro Tunc purportedly correcting its June 16, 2003 Order.
 - d. The Trial Court erred in purportedly correcting the June 16, 2003 Order to award attorney fees pursuant to the Nebraska Consumer Protection Act instead of the Nebraska Deceptive Trade Practices Act.
5. In support of its Motion, Plaintiff submits the Affidavit of Mark C. Laughlin.

WHEREFORE, Plaintiffs move this Court for an Order awarding attorneys' fees and costs as set forth above.

IVAN EICHER and DELORES EICHER,
PATRICK SWEENEY and LOIS SWEENEY,
EMMET GULLEY, STEVEN W. STARMAN,
WILLIAM STREET, DAVID WELTON,
DON NOVACHICH, JERRY GILLS, RENEE
RICHTER, LORI HILL and JENNIFER FRANS
GRIESS, Appellees/Cross-Appellants

By: 

Mark C. Laughlin, #19712
Andrea F. Scioli, #21716
Tamara D. Borer, #22870
Fraser, Stryker, Meusey, Olson,
Boyer & Bloch, P.C.
500 Energy Plaza
409 South 17th Street
Omaha, NE 68102-2663
(402) 341-6000
Attorneys for Appellees/Cross-Appellants

Catherine Mahern
Creighton Legal Clinic
2120 Cass Street
Omaha, NE 68178

Associate Counsel:
The Nebraska Appleseed Center
D. Milo Mumgaard, #19919
941 "O" Street, Suite 105
Lincoln, NE 68508

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Motion for Attorneys' Fees was forwarded, via First Class U. S. Mail, postage prepaid, on this 22nd day of August, 2005 to the following:

Mark Weber, Esq.
Betty Egan, Esq.
11240 Davenport
P. O. Box 540125
Omaha, NE 68154-0125
Attorneys for Appellants



391011.01