STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

SOMMERS SCHWARTZ, P.C.,

Plaintiff/Counter Defendant,

v **NO: 13-133611-CB**
Hon. Michael Warren

ROBERT H. DARLING,

Defendant/Counter Plaintiff.
_______________________________________/

At a session of said Court, held in the County of Oakland, State of Michigan December 2, 2014

PRESENT: HON. MICHAEL WARREN
_______________________________________/

FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT

INTRODUCTION
(OR THE JUDGE'S DIGEST)

At stake in this case are the following:

(1) Whether a law firm is entitled to claw-back previously paid salary and deferred compensation of one of its partners when the payment was made voluntarily, in the ordinary course of business, and without any conditions on the payment? The answer is "no" because the Defendant partner was not unjustly enriched and to force the disgorgement of such funds would be inequitable under the circumstances.

(2) Whether a partner who departed a law firm in 2012 is entitled to a bonus from his prior law firm for work in 2011 when both the firm and lawyer reasonably presumed that such a bonus was earned and would be paid during 2011? The answer is "yes" because payment of such compensation is equitable under the circumstances in accordance with the doctrines of quantum meruit and unjust enrichment.

(3) Whether a partner of a law firm who purposefully delayed working on cases at the firm prior to his departure so that he could collect compensation quickly after he left is entitled to recover compensation for work performed on those cases while at the firm? The answer is "no" because the partner's actions were inequitable and he may not recoup any such compensation through the equitable doctrines of quantum meruit and unjust enrichment.

(4) Whether a partner of a law firm is entitled to deferred compensation when the plain and unambiguous language of the applicable deferred compensation agreement only provides such compensation upon the death, disability, or retirement of the partner (and that the partner not compete against the law firm), and none of those preconditions were met? Because the plain and unambiguous language of a contract controls, the partner is entitled to nothing under the deferred compensation agreement.

(5) Whether a partner of a law firm who refused to agree to a fundamental restructuring of a law firm and departs the firm was the subject of shareholder oppression or a breach of fiduciary duty when he was treated no differently than other shareholders and the Board of Directors did not engage in any concerted action against the partner? Because such does not constitute shareholder oppression or a breach of fiduciary duty, the answer is "no."

(6) Whether a shareholder of a law firm who is no longer employed by law firm is entitled to "his share" of the firm's assets when he is not the subject of shareholder oppression or breach of fiduciary duty and the shareholder fails to cite any authority to support the position? The answer is "no," because absent any governing authority, no such remedy is appropriate and the argument is deemed abandoned.

(7) Whether a law firm that fails to permit full access to its book and records to a shareholder who asserts a proper purpose to so inspect under MCL 450.1487(2) should be required to pay the attorney fees of $3,545 reasonably incurred by the shareholder in obtaining such documents? Because the answer is "yes," the law firm must pay such fees.

THE CLAIM & COUNTER CLAIM (OR WHAT HAPPENS WHEN LAWYERS BATTLE: PLEADINGS, PLEADINGS, AND MORE PLEADINGS)

The gravamen of this case involves the less than amicable departure of Defendant Robert Darling ("Darling"), an equity partner/shareholder, from the Plaintiff law firm Sommers Schwartz, P.C. ("Sommers"). Darling ceased working at the firm on June 15, 2012 (the "Departure Date"). In a series of previously filed cases (collectively, the "Attorney Lien Cases"), the parties have and continue to dispute the amount of attorney fees each party is entitled from cases that originated at Sommers and which Darling took to his new law firm after the Departure Date (the "Departing Cases"). There are nine Departing Cases.

In the instant matter, the original Complaint filed on April 23, 2013 alleged a single count for Declaratory Judgment, seeking that the Court issue a declaratory judgment that (1) "Sommers has paid all compensation due and owing to Darling relative to work he performed and revenues he produced in 2011"; (2) "Sommers does not owe Darling any compensation under the Deferred Compensation Agreement"; and (3) "Sommers has not breached any agreement with, or duty owed to, Darling." Under the apparent belief that a Complaint is really just a first draft, the Plaintiff filed a First Amended Complaint on June 4, 2013, adding allegations to include counts for Breach of Contract by failing to return $22,386.92 in compensation and Unjust Enrichment (in the alternative to the Breach of Contract claim). At the close of its proofs at trial, Sommers withdrew its Breach of Contract claim.

Because no partner break-up is complete without a counter-claim, Darling filed a Counter-Claim on July 15, 2013 that included a mere 16 counts. Count I prayed for Declaratory Judgment that Darling is entitled to (a) "The assets of the cases in progress remaining at" Sommers; (b) "Costs incurred and/or loans made with cases in progress;" (c) "His portion of retained profits;" (d) "His portion of fixed assets"; and (e) "proportionate value of cases in progress, costs invested in cases in progress, and assets of the firm." The Declaratory Judgment Count also prayed that "this Court enter a dissolution of the [Sommers] professional corporation and provide his portion of the distribution of assets." Count II alleged that Darling was improperly terminated and entitled to quantum meruit for the work performed at Sommers prior to the Departure Date (including worked performed at Sommers on the Departure Cases). Count III similarly alleged Unjust Enrichment for failing to compensate Darling in accordance with a compensation plan. Count IV alleged that Sommers breached MCL 450.1489 by engaging in "illegal, fraudulent and/or willfully unfair and oppressive" acts against shareholder Darling, and requested the "liquidation and distribution of its assets to Shareholders . . . ." Count V alleged that Darling suffered shareholder oppression and again sought dissolution and distribution of Sommers' assets. Count VI alleged that Sommers engaged in conversion and prayed for treble damages. Count VII claimed that Sommers breached its fiduciary duty to Darling. Count VIII alleged "discriminatory" invocation of liens. Count IX alleged a breach of contract related to failure to pay Darling compensation in accordance with a compensation plan. Count X also alleged a breach of contract for violating two compensation plans (an "original" plan and its successor "new" plan). Because 10 counts is obviously not enough, the Counter-Claim continued with Count XI, that Sommers violated MCL 600.1478 by denying Darling the right to inspect the books and records of Sommers. Count XII was yet another request for Declaratory Judgment but this time based on age discrimination in violation of the Elliot-Larsen Civil Rights. Count XIII also alleged a violation of the Elliot-Larsen Civil Rights Act. Count XIV alleged Shareholder Oppression claiming that failure of Sommers to compensate him pursuant to the new compensation plan is "willfully unfair, oppressive conduct that substantially interferes with" Darling's interests. Count XV again requested the dissolution and distribution of Sommers' assets under MCL 450.2825. Recognizing that 16 counts is just right, the Counter-Claim ended with a count praying for the Appointment of Receiver.

Under the apparent belief that one Counter-Claim pleading can never be enough, on December 10, 2013, Darling filed an Amended Counter-Claim, jettisoning some counts, while adding and reformulating others. Count I for Declaratory Judgment again alleged that Darling is "entitled to his share" of Sommers' assets, including (a) "The assets of the cases in progress remaining at" Sommers; (b) "Costs incurred and/or loans made with cases in progress;" (c) "His portion of retained profits;" and (d) "His portion of fixed assets." The Count also asked the Court to declare that Darling "is entitled to compensation under the Compensation Plans as with other Shareholders so long as: a. [Darling] remains a Shareholder; b. It continues to seek or [Darling] continues to provide revenues." The Count also asks the Court to declare that when Darling retires, he is entitled to receive the compensation from the Deferred Compensation Agreement and Darling is entitled to the "proportionate value of cases in progress, costs invested in cases in progress, and assets of the firm." The Declaratory Judgment Count also prayed that the Court "order the dissolution of" Sommers' assets.

Count II of the Amended Counter-Claim alleged that Darling was improperly terminated and entitled to quantum meruit for the work performed at Sommers prior to the Departure Date (including worked performed at Sommers on the Departure Cases). Count III similarly alleged Unjust Enrichment for failing to compensate Darling in accordance with the original compensation plan. Count IV alleged that Sommers breached MCL 450.1489 by engaging in "illegal, fraudulent and/or willfully unfair and oppressive" acts against shareholder Darling, but omitted the specific request to dissolve the firm – instead it provides a panoply of suggested remedies. Count V alleged that the Darling suffered shareholder oppression and again omits the request for dissolution and distribution of Sommers' assets but refers to a list of potential remedies. Count VI alleged that Sommers engaged in conversion and prayed for treble damages. Count VII claimed that Sommers breached its fiduciary duty to Darling. Count VIII alleged "discriminatory" invocation of liens. Count IX alleged a breach of contract related to failure to pay Darling compensation in accordance with the original compensation plan. Count X also alleged a breach of contract for violating the original and successor compensation plans. Because 10 counts is clearly not enough in even an Amended Counter-Claim, the Amended Counter-Claim continued with Count XI, that Sommers violated MCL 600.1478 by denying Darling the right to inspect the books and records of Sommers. Count XII alleged Shareholder Oppression claiming that failure of Sommers to compensate him pursuant to the new compensation plan is "willfully unfair, oppressive conduct that substantially interferes with" Darling's interests. The prior Counts XII and XIII alleging a violation of the Elliot-Larsen Civil Rights Act Count, Count XV requesting the dissolution and distribution of Sommers' assets under MCL 450.2825, and Count XVI praying for the Appointment of Receiver were all omitted from the Amended Counter-Claim.

This Court presided over an *exhaustive* bench trial.

FINDINGS OF FACT

(OR PARTING IS SUCH SWEET SORROW)

Based on the Court's assessment of the credibility, demeanor, veracity, vocal tone and expression, tonality, and honesty of the witnesses, exhibits, and reasonable inferences of the same, the Court makes the following Findings of Fact:

A LAWYER AND HIS FIRM

(OR SMOOTH SAILING)

- Darling was a highly successful lawyer at Sommers from 1981 until the Departure Date, who over the course of the years generated well more than $10,000,000 in revenue for the firm. His plaintiff contingency practice has and continues to involve complex automobile, trucking, electrical, fire and explosion, wrongful death, aviation, and products liability cases. His compensation widely varied depending on the revenues he brought to the firm, from nearly $1,000,000 to $79,000 annually. In a parallel fashion, Darling's cost of practice and profitability on an annual basis fluctuated widely based on the nature of his practice.

- Darling became an "A Shareholder" in 1983 (i.e., he was an equity partner; a "B Shareholder" is an non-equity partner), and was always an at-will employee. As an A Shareholder, he signed a guarantee of a line of credit. Darling received $100,000 in salary for the year 2011. In 2011 he was not paid any bonus for work performed in 2011. However, in 2012, he was paid $13,609.96 for the 2011 bonus. Based on the then governing compensation formula, on June 7, 2012, Sommers' Board of Directors Minutes recognized that in connection with the 2011 compensation that the "current balance owed to him is approximately $254,400." This is so because he had an approximately $268,102 bonus allocation for 2011, of which $13,609.96 had been previously paid (in 2012) prior to Darling's departure.

- Sommers provided Darling with professional support, including a secretary, paralegal support, information technology, human resources, messenger clerks, office space and equipment, telephone support, reception, conference room, law library, other research materials, Westlaw, ICLE resources (partnership), librarian, law clerks, nurses, court reporters, process servers, imaging, marketing, social media, press releases, print advertising, a Chief Financial Officer, and accounting staff. His benefits included health, dental, vision, disability, long-term care, profit sharing plan, legal malpractice insurance, life insurance, bar dues, fully vested pension plan, and 401(k) account.

- Sommers is a law firm of long standing which historically possessed a unique mix of corporate and plaintiff's contingency work. The firm is managed by a Board of Directors elected by, and subject to removal by, a majority of the A Shareholders. An A Shareholder can be removed by a majority vote of the A Shareholders. Each A Shareholder has 29 shares. For the pertinent time period there were 18 A Shareholders. A Shareholders are not compensated by virtue of owning shares, but by their performance.

- All A Shareholders were required to purchase their stock. No meaningful appraisal or other stock valuation method has ever been used to fix the price, but nearly all stock purchases (and repurchases by Sommers) have been at $20,000, with one at $17,500 and one or two at approximately

$21,000 and $22,000. The fair market value of the stock at the pertinent time was $25,000.

- All lawyers, regardless of their shareholder status, have been and continue to be at-will employees. All attorneys are expected to dedicate 100% of the working time to the Sommers, and any revenue generated by an employee is considered firm revenue.

- Sommers and Darling had in place a Deferred Compensation Agreement made as of January 1, 1991. Under the Deferred Compensation Agreement, Darling would be paid deferred compensation upon his retirement from Sommers or his death or disability while at Sommers, if Darling did not compete against Sommers for 7 years after the departure event.

FINANCIAL TROUBLES
(OR THE SINKING SHIP)

- In 2007, several key lawyers left Sommers, the economy began to change, tort reform took hold, and significant financial difficulties struck Sommers. Soon the firm was leasing twice as much space as necessary at a rate above fair market value. In 2010, the firm faced a significant cash crisis, leading to the firm to defer 50% of A Shareholders' salaries and declaring a 2010 bonus - but not paying the bonus until cashflow improved. The expectation was to pay the 2010 declared bonus in 2011. However, in 2011, the crisis persisted and paying employee compensation as it became due was problematic, as was the payment of the 2010 declared but deferred bonuses. The firm lost approximately $900,000 in 2011.

- Until the end of 2011, Sommers awarded and paid year-end bonuses every year, but there was no firm policy or contract that mandated any such bonuses. Before 2011, bonuses were paid without reference to cashflow, and were determined by a Compensation Committee and Board of Directors at their discretion. In fact, other than Deferred Compensation Agreements, there was no written compensation plan for A Shareholders at all. For a portion of 2011, Sommers held back portions of otherwise payable compensation to A Shareholders.

FINANCIAL TURNAROUND
(OR RIGHTING THE SHIP)

- For nearly the entirety of 2011, Darling worked diligently and brought income of $1,051,721.02 to Sommers. At the time Darling earned that 2011 income, Darling reasonably expected and presumed he would be paid a bonus of no less than 35% of his income for 2011, and the Compensation Committee and Board of Directors also held that expectation and presumption. Darling was a top producer and without a bonus, his $100,000 salary represented less than 10% of the income he provided. Without Darling's income, Sommers' losses would have been hundreds of thousands of dollars more, i.e., Darling substantially contributed cashflow to the struggling law firm.

- In late 2011, the Board of Directors believed that the implosion and dissolution of the firm was quite possible unless finances substantially improved and the firm's lawyers were confident that future of the firm was bright. On November 15, 2011, the outside consulting company Law Vision put in a bid to provide advice and counsel about the firm's financial emergency. On December 29, 2011, Sommers officially hired Law Vision. The consultant soon engaged in a wide ranging review of the firm, including interviews with A Shareholders and others. During these interviews, Darling revealed to the lead consultant that Darling had over $3,000,000 in expected future revenue in the "pipeline," he was not particularly interested in helping the firm through the existing financial crisis, and he was unlikely to remain with the firm unless he was guaranteed compensation in the manner he desired. At approximately the same timeframe, in front of at least two Sommers lawyers, Darling also stated that he would no longer work his cases or bring more cases into Sommers until he received the future compensation to which he believed he was entitled.

- Law Vision recommended a series of concrete emergency financial measures to save the firm from insolvency. The recommendations included closing practice groups, terminating underperforming lawyers, ending liabilities under the Deferred Compensation Agreement, establishing a new compensation system, and eliminating the compensation committee by adding that function to the Board of Directors. Law Vision also recommended that no 2011 bonuses be awarded as to do so would be the height of financial folly. In fact, at the end of 2011, Sommers did not award any bonuses and made no promises about 2011 bonuses.

- On Valentine's Day, 2012, a new Board of Directors was elected, and the Compensation Committee's functions were folded within it.

- On April 24, 2012, enacting, in part, modified recommendations of Law Vision, the Board of Directors adopted a series of resolutions that required as a condition of continued employment that all A Shareholders sign various Board resolutions, execute guarantees of the firm's financial obligations, and relinquish any rights under the existing Deferred Compensation Agreement. A Shareholders who desired to retire and provided such notice no later than June 1, 2012 maintained their benefits under the Deferred Compensation Agreement. Otherwise, as a condition of continued employment, A Shareholders were required to relinquish their benefits under any Deferred Compensation Agreement. In addition, a firm recapitalization plan was implemented, requiring new A Shareholder contributions to equity over a six year period. Sommers also established a Compensation Plan providing for a $100,000 base salary for A Shareholders, prohibiting the payment of bonuses to A Shareholders unless the firm overall made a profit (with a caveat that "star performers" could be paid "appropriately in years in which the Firm is not profitable"[1]), establishing a 2/3 (collection) and 1/3 (origination) compensation formula, establishing case costs and office overhead costs allocations, and establishing Tier 1 and Tier 2 Profit Pools. Darling refused to sign the Compensation Plan or agree with the resolutions.

- Through a Board Resolution (the "Delayed Compensation Resolution"), Sommers also committed to paying A Shareholders deferred salary and bonus compensation from 2010 and 2011 by the end of 2012, "conditioned

[1] Board of Directors Resolution (Compensation Plan), dated April 24, 2012.

upon the 'A' Shareholder remaining employed by the Firm on a full-time basis and continuing its work diligently to generate fees in connection with their files through December 31, 2012."[2] Certain payments of compensation that had been deferred were made in 2012, including paying all outstanding 2012 salary and 2011 bonuses. In particular, on May 15 and May 31, 2012, Sommers paid Darling a total of $22,386.92 for deferred salary and bonuses (the "Darling Delayed Compensation Payment"). The Darling Delayed Compensation Payment was made with no agreement by Darling to fulfill any of the conditions set forth in the Delayed Compensation Resolution, with no affirmative action by Darling that somehow misled the firm, and with no reasonable expectation by Sommers that it would enforce the Delayed Compensation Resolution against Darling. Instead, the Darling Delayed Compensation Payment was made at the same time as payments to several other A Shareholders who had also not affirmatively met the applicable preconditions of the Delayed Compensation Resolution and with full knowledge that Darling was still negotiating over whether he would remain with Sommers, and that Darling could very well leave Sommers before the end of 2012.

- As noted *supra,* the Board of Directors determined that if Darling fulfilled their demands, he would receive an additional $254,400 in 2011 compensation from Sommers. In 2012, Sommers had the cashflow to pay the $254,400.

- Darling was not singled out for mistreatment, oppression, or fraud; nor was Darling willfully unfairly treated by the Board of Directors or Sommers.

[2] Board of Directors Resolution (Payment of 2010/2011 Deferred Compensation), dated April 24, 2012.

DARLING'S DEPARTURE
(OR A SAILOR JUMPS SHIP)

- After a long drawn out Kubaki dance in which Darling demanded different treatment than all other A Shareholders, Darling refused to meet the conditions for continued employment. Darling wanted 50% of every dollar of revenue he brought to the firm, regardless of his cost, profitability (personal and the firm's), and amount of revenue he originated or collected. The Board of Directors refused to provide Darling such compensation – which would have been unique among the A Shareholders. The Board of Directors believed in good faith to accede to Darling's demands would undermine the progress they had made in resolving Sommers' financial troubles and would only result in a proliferation of additional unique demands by other A Shareholders.

- At a June 7, 2012 Board of Directors meeting, when pressed by the Board, Darling announced he would not accept the new terms of employment and that he was leaving the firm. His employment with Sommers formally ended on June 15, 2012.

- At no time in the history of Sommers, had any lawyer who left the firm prior to the close of a fiscal year received a year-end bonus or a referral fee for cases originated and left at the firm.

DARLING TAKES CLIENTS AND SETTLEMENTS
(OR A SAILOR SWOONS THE GIRLS)

- Even while still on Sommers' premises (as part of the transition), Darling immediately began his own firm and took the nine Departing Cases with him. Because Darling understood that this was a likely outcome, months before he had purposefully slowed down the resolution of most of the Departing Cases to allow his new firm to collect the revenues of any settlements or verdicts. Darling settled only a single case in 2012 while employed with Sommers. In fact, although Darling settled this case while at Sommers, he hid the fact that it was settled and endorsed the check of the settlement proceeds on behalf of Sommers (without the authorization of Sommers) after he departed the firm. Darling also purposefully undervalued the worth of the Departing Cases when he prepared forecasts of revenue for Sommers. Of the nine Departing Cases, eight settled after the Departure Date and before May, 2013. His firm clearly competes with Sommers.

DARLING'S DOCUMENT AND INFORMATION DEMANDS
(OR A SAILOR LOOKS FOR THE CHARTS)

- On January 7, 2013, Darling wrote and sent a letter to Sommers requesting various documents and information, including "All revenues received by the firm in 2012," "All billings collected by each attorney in 2012," "All profits made by the firm in 2012," and other corporate information.

- On January 8, 2013, Darling wrote and sent a second letter requesting similar and additional corporate financial data. On the same date, he wrote and sent a third letter requesting additional financial information, as well as Law Vision's reports and stock purchase negotiation information.

- On January 9, 2013, Darling wrote and sent a fourth letter requesting billing information and hours of the Executive Board members and Compensation Committee.

- On January 10, 2013, Darling wrote and sent a fifth letter requesting information about the Compensation Plan and assignment of cases for departed lawyers.

- On January 10, 2013 and January 14, 2013, Sommers responded to the letters by demanding that Darling "please state in writing the purpose of each your document requests." Each letter ended by stating "Once you have done so, we will advise you whether the Firm is willing to make the documents available to you."

- On February 12, 2013, Darling wrote a sixth letter explaining a multitude of reasons of why the information was being requested, including "an accounting of what the firm made and spent . . . ." The letter also references MCL 450.1487. However, this letter was unsigned and never sent.

- Darling wrote, signed and sent a letter dated March 7, 2013 to Sommers responding to Sommers' January 10 and 14, 2013 letters, stating that he was requesting the information "for my decision whom to vote for the Board of Directors scheduled March 15, 2013. Specifically, the reason is to determine how the present Board of Directors has met their fiduciary obligations to all shareholders." Although Darling was motivated to inspect the records by more than what he disclosed (i.e., this pending lawsuit was part of the calculus too), his proffered purposes were genuine.

- On March 18, 2013, Sommers responded to Darling's March 7, 2013 letter, asserting that Darling's letter was not mailed until March 8, and not received until March 12. Substantively, Sommers stated:

> It is apparent from the face of your requests for information that they are not consonant with the purpose set forth in your letter. Not only does your purported purpose appear to be insincere, but in any event it is insufficient under the applicable statute. Accordingly, your requests are rejected.
>
> Nevertheless, without waiving that position, the Firm is willing to make available to you for inspection our year-end financial statements for 2011, our year-end financial statements for 2012 (which are still preliminary), and our year-to-date financial statements for 2013. If you would like to inspect those financial statements, please contact Brian Stuart to arrange a mutually convenient time for you to come to our office."

- Darling never accepted the limited offer to inspect the records.

- Sommers never mailed Darling any corporate information prior to this case being litigated.

- Darling received the information requested only during the course of this litigation. Darling incurred $3,545 in reasonable attorney fees to obtain such documentation. Sommers did not have a reasonable basis to doubt the right of Darling to inspect the records demanded. Instead, Sommers obstructed access to the records because it opposed cooperating with Darling on just about anything.

- Since the Departure Date, Sommers has filed the Attorney Lien Cases, not out of animus or vindictiveness, but to recover fees to which Sommers in good faith believes it is entitled.

CONCLUSIONS OF LAW

I

SOMMERS' CLAIM FOR UNJUST ENRICHMENT

A

The Arguments

Sommers originally argued that it is entitled to recoup the Darling Delayed Compensation Payment because Darling failed to comply with the conditions imposed on such payment – i.e., that because the Board of Directors conditioned the payment of the Darling Delayed Compensation Payment on Darling remaining at Sommers through the end of 2012, that Darling is required to pay it back. In its trial brief, Sommers shifted to claiming that the payment was a "mistake" and that Darling should not benefit from Sommers' mistaken payment. Darling argued that there was no mistake in paying the Delayed Compensation Payment and that the payment was made voluntarily without any binding preconditions.

B

Because Sommers paid the Darling Delayed Compensation Payment voluntarily, subject to no preconditions or reasonable expectations, the unjust enrichment claim fails

1

The Law

A claim for unjust enrichment, in essence, seeks an implied contract, i.e., a remedy by which the law of equity sometimes indulges in the fiction of a quasi or constructive contact, with an implied obligation to pay for benefits received to ensure that "exact justice" is obtained. *Belle Isle Grill Corp v Detroit,* 256 Mich App 463, 478 (2003); *Morris Pumps v Centerline Piping, Inc,* 273 Mich App 187, 195 (2006). The Court of Appeals has defined the elements of a claim for unjust enrichment:

> (1) receipt of benefit by defendant from the plaintiff, and
>
> (2) inequity resulting to plaintiff because of retention of benefit by defendant. [*Barber v SMH (US), Inc*, 202 Mich App 366, 375 (1993).]

2

Analysis

Sommers' argument is simply unsupported by the facts. The argument that the payment was a "mistake" is bunk. Sommers intended to make the payment and failed to take any action to ensure that its hope that Darling would stay through the end of 2012 would be realized. The Darling Delayed Compensation Payment was made with no agreement by Darling to fulfill any of the conditions set forth in the Delayed

Compensation Resolution, with no affirmative action by Darling that somehow misled the firm, and with no reasonable expectation by Sommers that it would enforce the Delayed Compensation Resolution against Darling. Instead, the Darling Delayed Compensation Payment was made at the same time as payments to several other A Shareholders who had also not affirmatively met the applicable preconditions of the Delayed Compensation Resolution and with full knowledge that Darling was still negotiating over whether he would remain with Sommers, and that Darling could very well leave Sommers before the end of 2012. Darling actually performed the work for which he was paid via the Darling Delayed Compensation Payment. Darling's retention of the Delayed Compensation Payment under these circumstances is not inequitable – it, in fact, is equitable.

II

DARLING'S CLAIM FOR QUANTUM MERUIT AND UNJUST ENRICHMENT RELATING TO COMPENSATION FOR INCOME GENERATED IN 2011

A

The Arguments

Darling argues that he is entitled to compensation from Sommers for income he generated in 2011. In particular, he claims that he generated $1,051,721.02 of income for Sommers in 2011 and only received $100,000 in salary plus $13,609.96 in bonus. Darling argues that he is entitled to receive $254,400 in additional bonus funds via quantum meruit/unjust enrichment. Sommers asserts that like all other bonuses in the past, any bonus payment for 2011 income was discretionary on behalf of Sommers, and that the preconditions for such payment – i.e., compliance with the Delayed Compensation Resolution - were unmet.

B

1
The Law

Quantum meruit means "'as much as he deserves' and it is an expression that describes the extent of liability on a contract implied by law." Black's Law Dictionary (5th ed, 1979), p 1119. The bare fact of a service or benefit does not, standing alone, raise an implied promise to pay. *In re Camfield,* 351 Mich 422, 433 (1958). "The test of an implied contract for compensation is whether such services were performed under circumstances fairly raising a presumption that the parties understood and intended that they should be paid for, or at least that reasonable men in like situation as those who received and are benefited by the service naturally would and ought to understand and expect compensation was to be paid. * * * . . . [T]he presumption that compensation was intended is rebutted by circumstances which negate such intention." *Id.*

The Court incorporates by reference the unjust enrichment analysis *supra.*

2
Analysis

At the time Darling brought in $1,051,721.02 of 2011 income for Sommers, both he and the firm had the expectation and presumption that in accord with past practice, Darling would be paid a 35% bonus for the work he performed. Only after the conclusion of the work, the end of calendar year 2011, the engaging of Law Vision, and dramatic steps to restructure the law firm did that expectation become hinged to meeting the requirements imposed by the Delayed Compensation Resolution. Accordingly, this retroactive application of the Delayed Compensation Resolution on the income earned by Darling would be inequitable. To hold otherwise would allow

Sommers to retain over $900,000 of income generated by Darling when at the time the income was earned both he and the firm expected that the firm would not receive such a windfall. Under both quantum meruit and unjust enrichment, Darling is entitled to an additional $254,400 bonus for the income generated in 2011.

III

DARLING'S CLAIM FOR QUANTUM MERUIT AND UNJUST ENRICHMENT RELATING TO COMPENSATION FOR WORK PERFORMED ON THE DEPARTURE CASES PRIOR TO THE DEPARTURE DATE

A

The Arguments

Darling argues that he is also entitled to compensation from Sommers for income he generated or will generate for Sommers arising from the Departure Cases. In particular, he claims that although he left Sommers long ago, and that he has taken Sommers clients with him through the Departure Cases, that Sommers still owes him compensation for the work performed at Sommers on the Departure Cases prior to the Departure Date. Darling asks this Court to establish a percentage of the funds awarded to Sommers in the Attorney Lien Cases to be allocated to him. Sommers counters that Darling's position is inequitable.

B

1

The Law

The Court incorporates by reference the quantum meruit and unjust enrichment jurisprudence *supra*. In addition, "Equity looks at the whole situation and grants or withholds relief as good conscious dictates." *Thill v Anna,* 240 Mich 595, 597 (1927). See also *Hunter v Slater,* 331 Mich 1, 7 (1951), quoting *Thill, supra* at 597. Accordingly, a fundamental principle of equitable jurisprudence is "'that one who seeks the aid of equity must come in with clean hands.'" *Rose v National Auction Group,* 466 Mich 453, 462 (2002), quoting *Stachnik v Winkel,* 394 Mich 375, 382 (1975), quoting *Charles E Austin, Inc v Secretary of State,* 321 Mich 426, 435 (1948) (internal quotation marks omitted in *Rose*). In fact, our Supreme Court has even noted that "No citation of authority is necessary to establish that one who seeks the aid of equity must come in with clean hands." *Charles E Austin, Inc, supra* at 435. See also *Stachnik, supra* at 382, quoting *Charles E Austin, Inc, supra* at 435. That Court, quoting the United States Supreme Court, elaborated:

> "'[The clean hands maxim] is a self-imposed ordinance that closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of the defendant. That doctrine is rooted in the historical concept of the court of equity as a vehicle for affirmatively enforcing the requirements of conscience and good faith. This presupposes a refusal on its part to be 'the abettor of iniquity.'" [*Stachnik, supra* at 382, quoting *Precision Instrument Manufacturing Co v Automotive Maintenance Machinery Co,* 324 US 806, 814; 65 S Ct 993 (1944), quoting *Bein v Heath,* 6 How [47 US] 228, 247; 12 L Ed 416 (1848). See also *Rose, supra* at 463 (same).]

2

Analysis

Darling has the uncleanest of hands. While an employee and shareholder of Sommers, he purposefully delayed the resolution of the Departure Cases so that he could capture the full amount of the proceeds in his new firm. He even signed a settlement proceeds check on behalf of Sommers without any justification. This attempt to cheat Sommers of its income defeats any equitable claim he might otherwise have on the funds earned by Sommers on the Departure Cases prior to the Departure Date. Fortunately for Darling, this inequitable behavior did not materially effect the income he generated for the firm in 2011; therefore, his recovery of the $254,400 remains unaffected by his inequitable behavior.

IV

DARLING'S CLAIM UNDER THE DEFERRED COMPENSATION AGREEMENT

A

The Arguments

Although the arguments are less than precise and seem to have altered over the course of the litigation, Darling basically argues that he is entitled to compensation under the Deferred Compensation Agreement because he earned such funds and was improperly forced to leave Sommers. Darling asserts that when he retires (not from Sommers, but just generally), he should be eligible for payment under the Deferred Compensation Agreement. Sommers counters that Darling does not meet any of the requirements of payment under the Deferred Compensation Agreement and Darling voluntarily left.

B

1
The Law

"A party claiming a breach of contract must establish by a preponderance of the evidence (1) that there was a contract, (2) that the other party breached the contract and, (3) that the party asserting the breach of contract suffered damages as a result of the breach." *Miller-Davis Co v Ahrens Constr, Inc (On Remand)*, 296 Mich App 56, 71 (2012), rev'd in part on other grounds, 495 Mich 161 (2014). See also *Woody v Tamer*, 158 Mich App 764, 771-772 (1987) (citations omitted).

As the unchallenged jurisprudence before the Court reflects, it is a "bedrock principle of American contract law that parties are free to contract as they see fit, and the courts are to enforce the agreement as written absent some highly unusual circumstance such as a contract in violation of law or public policy." *Quality Products & Concepts Co v Nagel Precision, Inc*, 469 Mich 362, 370 (2003). See also *Rory v Cont'l Ins Co*, 473 Mich 457, 491 (2005) ("[c]onsistent with our prior jurisprudence, unambiguous contracts . . . are to be enforced as written unless a contractual provision violates law or public policy"). In interpreting an agreement, Michigan courts must examine the contractual language at issue and give the words their plain and ordinary meaning. *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 47 (2003). "[A]n unambiguous contractual provision is reflective of the parties' intent as a matter of law," and unambiguous language is construed and enforced as written. *Quality Products & Concepts Co, supra* at 375. Courts may not impose an ambiguity on clear contract language. *Grosse Pointe Park v Mich Mun Liab & Prop Pool*, 473 Mich 188, 198 (2005). See also *Rory, supra* at 468 ("A fundamental tenet of our jurisprudence is that unambiguous contracts are not open to judicial construction and must be *enforced as written*. Courts enforce contracts according to their unambiguous terms because doing so respects the freedom of individuals freely to arrange their affairs via contract. This Court has previously noted that ""'[t]he general rule [of contracts] is that competent persons shall have the utmost liberty of contracting and that their agreements voluntarily and fairly made shall be held valid and enforced in the courts'"" [emphasis in original; citations and footnotes omitted]).

2

Analysis

Darling's argument is simply unsupported by the facts or the contract. The clear and unambiguous language of the Deferred Compensation Agreement provides that Darling was only eligible for payment under three very precise conditions: retirement from Sommers or death or disability at Sommers. None of these conditions were ever triggered. Darling has not retired from Sommers. Whether he was terminated or voluntarily departed is beside the point – the trigger of "retirement" at Sommers has not occurred. Likewise, Darling neither died or was disabled while still at Sommers. Furthermore, even if this Court were disposed to graft onto the clear and unambiguous language of the contract some kind of "forced departure or resignation" trigger, Darling has clearly competed against Sommers in violation of a condition of payment – going so far as taking Sommers' former clients and signing a settlement check on behalf of Sommers without permission. The clear and unambiguous language of the contract controls. As such, Darling is entitled to nothing under the Deferred Compensation Agreement.

V

DARLING'S CLAIM OF SHAREHOLDER OPPRESSION & RELATED CLAIMS

A

The Arguments

Darling's trial briefs and pleadings are replete with claims of shareholder oppression. These arguments have shifted and turned but the core argument is that Sommers oppressed Darling as a shareholder by singling him for unfair treatment by denying him bonus compensation for the 2011 income, forcing him to resign or be terminated if he refused to meet various demands of the board of directors, and pursuing the Attorney Lien Cases. More particularly, Darling argues that Sommers basically seized the money he was otherwise entitled to as compensation for 2011 and diverted it to line the pockets of the other A Shareholders, including members of the Board of Directors; and that Darling was treated like no other attorney when Sommers initiated the Attorney Lien Cases. In some of the pleadings but hardly mentioned but in passing at trial or in the trial briefs, Darling has asked for a portion of Sommers' fixed assets and the dissolution of Sommers' assets. Count XII of the Amended Counter-Claim also argued that the failure of Sommers to compensate Darling under the new compensation plan constitutes shareholder oppression. Sommers counters that Darling was treated just like any other A Shareholder during the financial crisis and that Sommers' behavior was in the best interests of the firm, including requiring that all A Shareholders abide by the restructuring plan and by pursuing the Attorney Lien Cases.

B

1
The Law

In a very recent case, the Supreme Court has explained the statutory basis of a Shareholder Oppression claim:

> Section 489, commonly known as the shareholder-oppression statute, allows for actions by minority shareholders in closely held corporations against directors or those in control of the corporation for acts that are illegal, fraudulent, or willfully unfair and oppressive to the corporation or the shareholder. Section 489 reads as follows:
>
> > (1) A shareholder may bring an action in the circuit court of the county in which the principal place of business or registered office of the corporation is located to establish that the acts of the directors or those in control of the corporation are illegal, fraudulent, or willfully unfair and oppressive to

the corporation or to the shareholder. If the shareholder establishes grounds for relief, the circuit court may make an order or grant relief as it considers appropriate, including, without limitation, an order providing for any of the following:

(a) The dissolution and liquidation of the assets and business of the corporation.

(b) The cancellation or alteration of a provision contained in the articles of incorporation, an amendment of the articles of incorporation, or the bylaws of the corporation.

(c) The cancellation, alteration, or injunction against a resolution or other act of the corporation.

(d) The direction or prohibition of an act of the corporation or of shareholders, directors, officers, or other persons party to the action.

(e) The purchase at fair value of the shares of a shareholder, either by the corporation or by the officers, directors, or other shareholders responsible for the wrongful acts.

(f) An award of damages to the corporation or a shareholder. An action seeking an award of damages must be commenced within 3 years after the cause of action under this section has accrued, or within 2 years after the shareholder discovers or reasonably should have discovered the cause of action under this section, whichever occurs first.

* * *

(3) As used in this section, "willfully unfair and oppressive conduct" means a continuing course of conduct or a significant action or series of actions that substantially interferes with the interests of the shareholder as a shareholder. Willfully unfair and oppressive conduct may include the termination of employment or limitations on employment benefits to the extent that the actions interfere with distributions or other shareholder interests disproportionately as to the affected shareholder. The term does not include conduct or actions that are permitted by an

> agreement, the articles of incorporation, the bylaws, or a consistently applied written corporate policy or procedure. [*Madugula v Taub,* 496 Mich 685, 697-698 (2014) (citations omitted).]

The Court continued:

> A § 489 claim has similarities to two types of claims that existed before the adoption of the 1963 Constitution: shareholder derivative claims against the directors or those in control of the corporation and claims for corporate dissolution. . . .
>
> A § 489 claim allows a shareholder to bring suit against the directors or those in control of the corporation for fraud, illegality, or oppressive conduct. Shareholders have long been able to bring a similar claim for fraud, illegality, abuses of trust, and other oppressive conduct on the part of those in control of the corporation through a shareholder derivative action. Whereas a shareholder in a derivative action sues on behalf of the corporation, a shareholder bringing a § 489 claim may sue the directors directly or derivatively—i.e., on his or her own behalf or on behalf of the corporation. However, even when a shareholder brings a claim on his or her own behalf under § 489, the claim is often derivative in nature because the remedies sought affect the corporation. [*Id.* at 707.]

After determining that § 489 claims were equitable in nature, the Supreme Court explained that a trial court has wide latitude to implement equitable relief – or none at all:

> Despite Madugula's request for specific relief, the [trial] court was free under the language of the statute to grant relief as it considered appropriate, or none at all, even if he were to establish his claim of oppression. The fact that the relief sought did not bind the court is consistent in nature with a claim before a court of equity because the remedies sought by a claimant do not bind a court of equity. That is,
>
>> [t]he premises of a bill in equity—not its prayer—are determinative of the substance thereof, and this is but another way of saying that relief within scope of the bill is the final responsibility of the chancellor and that the prayer aids rather than dictates equity's decretal beneficence. [*Id.* at 711-712 (citations omitted).]

In addition, the Court determined that a breach of a shareholders agreement could be "evidence" of a § 489 claim. *Id.* at 720 ("a breach of the rights and interests contained in the stockholders' agreement could be evidence of shareholder oppression. However, it remains to the trial court to determine on remand whether and to what extent any breach of the stockholders' agreement evidences such oppression in this case").

2

Analysis

Darling's position is untenable. The financial crisis that was threatening the very existence of Sommers led to actions by the Board of Directors that treated all A Shareholders equally. Sommers was faced with an existential crisis and acted in an emergency situation in a nonoppressive fashion. Darling was not singled out for mistreatment, oppression, or fraud or willfully unfairly treated by the Board of Directors or Sommers. Accordingly, the shareholder oppression count and related claims fail.

To the extent shareholder oppression could somehow be found to exist, the sole remedy this Court would impose is the same remedy that was rendered in connection with Darling's claim for quantum meruit/unjust enrichment for the 2011 income generated by Darling – i.e., an award of damages in the amount of $254,400.

VI

DARLING'S CLAIM OF BREACH OF FIDUCIARY DUTY

A

The Arguments

Count VII of the Amended Counter-Claim asserts that Sommers breached its fiduciary duty to Darling. During trial, this claim was indistinguishable from the Shareholder Oppression claims.

B

1

The Law

"A fiduciary duty arises where there is a fiduciary relationship between the parties. Familiar examples are: trustees to beneficiaries, guardians to wards, attorney to clients, and doctors to patients. The duty arises out of the relation subsisting between two persons of such a character that each must repose trust and confidence in the other and must exercise a corresponding degree of fairness and good faith." *Portage Aluminum Co v Kentwood Nat'l Bank,* 106 Mich App 290, 294 (1981), citing Black's Law Dictionary (4th ed) pp 753-754. Relief is granted when such position of influence has been acquired and abused, or when confidence has been reposed and betrayed. *Teadt v Lutheran Church Missouri Synod,* 237 Mich App 567, 581 (1999) (citation omitted). In all circumstances, a breach of fiduciary duty claim "requires that the plaintiff *reasonably* reposed faith, confidence and trust in the fiduciary." *Rose v Nat'l Auction Group,* 466 Mich 453, 469 (2002) (citation omitted; emphasis in original).

The Supreme Court, quoting Justice Cardozo, elaborated:

> "Many forms of conduct permissible in the workday world for those acting at arm's length, are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior. As to this, there has developed a tradition that is unbending and inveterate. Uncompromising rigidity has been the attitude of courts of equity when petitioned to undermine the rule of undivided loyalty by the 'disintegrating erosion' of particular expectation. Only thus has the level of conduct for fiduciaries been kept at a level higher than that trodden by the crowd. It will not consciously be lowered by any judgment of this court." [*In re Culhane's Estate*, 269 Mich 68, 76 (1934), quoting *Meinhard v Salmon*, 249 NY 458, 464 (1928) (citation omitted).]

2

Analysis

For the reasons articulated *supra* regarding Darling's claim of Shareholder Oppression, Darling has failed to substantiate a claim for breach of fiduciary duty.

Again, to the extent any breach of fiduciary duty existed, the sole remedy to be levied is the same as for Shareholder Oppression and Darling's claim for quantum meruit/unjust enrichment for the 2011 income generated by Darling – i.e., an award of damages in the amount of $254,400.

VII

DARLING'S CLAIM FOR "HIS SHARE" OF SOMMERS' ASSETS

A

The Arguments

Count I of Darling's Amended Counter-Claim asks for a Declaratory Judgment that Darling is "entitled to his share" of Sommers' assets, including assets of cases in progress, costs incurred and/or loans made with cases in progress, retained profits, and portion of fixed assets. These requests were nearly if not entirely omitted by Darling in his trial briefs.

B

1

The Law

This Court could speculate that Darling's request arises from § 489 or Darling's status as a shareholder – but that would be speculation.

2

Analysis

As a threshold matter, Michigan jurisprudence is well settled that trial courts need not search for arguments, or otherwise make conclusions on Darling's behalf to sustain his arguments. See, e.g., *Mitcham v City of Detroit,* 355 Mich 182, 203 (1959). Because Darling has not adequately briefed or argued the claims for "his share" of Sommers' assets, it is deemed abandoned. After all, "Trial Courts are not the research assistants of the litigants; the parties have a duty to fully present legal arguments for its resolution of their dispute." *Walters v Nadell*, 481 Mich 377, 388 (2008). Thus, cursorily citing little authority with no analysis constitutes abandonment of the argument. *Houghton v Keller,* 256 Mich App 336, 339-340 (2003) ("failure to properly address the merits of [one's] assertion of error constitutes abandonment of the issue"; a party "may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims . . . nor may he give issues cursory treatment with little or no citation of supporting authority" (citations omitted)); *People v Bennett,* unpublished opinion per curiam of the Court of Appeals decided April 8, 2008, Docket No. 274390, p. 3 ("We similarly decline to address whether the application of MCL 768.27a in this case violated defendant's right to due process. . . . [H]e devotes a single, short paragraph to this issue with no analysis and little citation to relevant authority. A party cannot assert a position and then it to this Court to search for authority to sustain or reject that position, or to unravel and elaborate for him his arguments" (citations omitted)).

In any event, Darling has failed to show why he is entitled to the relief sought relating to "his share" of Sommers' assets. Darling was not subjected to Shareholder Oppression, Sommers did not breach a fiduciary duty, and Sommers did not breach the Deferred Compensation Agreement. Darling has failed to present any authority that his status as a shareholder somehow compels a distribution of assets or his claim to particular assets or a share of assets to the on-going concern of Sommers. Nor has Darling shown that dissolution of Sommers is appropriate for any reason whatsoever.[3]

[3] Although dissolution was specifically removed from the Amended Counter-Claim, it reappeared in the list of remedies under Shareholder Oppression in Darling's initial trial brief.

VIII

DARLING'S CLAIM OF INSPECTION UNDER MCL 600.1478

A

The Arguments

Darling alleges that Sommers violated MCL 600.1478 by denying Darling the right to inspect the books and records of Sommers as required under the statute. Sommers argues that Darling's requests to inspect were simply a pretext to conduct pre-litigation discovery in this case, that Darling now has all the information, and no sanction is available against Sommers.

B

1

The Law

The statutory right of Michigan shareholders to inspect the books and records of a corporation is set forth in MCL 450.1487:

> (1) Upon written request of a shareholder, a corporation shall mail to the shareholder its balance sheet as at the end of the preceding fiscal year; its statement of income for the fiscal year; and, if prepared by the corporation, its statement of source and application of funds for the fiscal year.
>
> (2) Any shareholder of record, in person or by attorney or other agent, shall have the right during the usual hours of business to inspect for any proper purpose the corporation's stock ledger, a list of its shareholders, and its other books and records, if the shareholder gives the corporation written demand describing with reasonable particularity his or her purpose and the records he or she desires to inspect, and the records sought are directly connected with the purpose. A proper purpose shall

mean a purpose reasonably related to such person's interest as a shareholder. The demand shall be delivered to the corporation at its registered office in this state or at its principal place of business. In every instance where an attorney or other agent shall be the person who seeks to inspect, the demand shall be accompanied by a power of attorney or other writing which authorizes the attorney or other agent to act on behalf of the shareholder.

(3) If the corporation does not permit an inspection within 5 business days after a demand has been received in compliance with subsection (2), or imposes unreasonable conditions upon the inspection, the shareholder may apply to the circuit court of the county in which the principal place of business or registered office of the corporation is located for an order to compel the inspection. If the shareholder seeks to inspect the corporation's books and records other than its stock ledger or list of shareholders, he or she shall first establish that he or she has complied with this section respecting the form and manner of making demand for inspection of the documents, that the inspection he or she seeks is for a proper purpose, and that the documents sought are directly connected with the purpose. If the shareholder seeks to inspect the corporation's stock ledger or list of shareholders and has established compliance with this section respecting the form and manner of making demand for the inspection of the documents, the burden of proof shall be upon the corporation to establish that the inspection that is sought is for an improper purpose or that the records sought are not directly connected with the person's purpose. The court may, in its discretion, order the corporation to permit the shareholder to inspect the corporation's stock ledger, a list of shareholders, and its other books and records on conditions and with limitations as the court may prescribe and may award other or further relief as the court may consider just and proper. The court may order books, documents and records, pertinent extracts, or duly authenticated copies, to be brought within this state and kept in this state upon terms and conditions as the court may prescribe.

* * *

(5) If the court orders inspection of the records demanded under subsection (3) or (4), it shall also order the corporation to pay the shareholder's or director's costs, including reasonable attorney fees, incurred to obtain the order unless the corporation proves that it failed to permit the inspection in good faith because it had a reasonable basis to doubt the right of the shareholder or director to inspect the records demanded.

> (6) As used in this section, "the right to inspect records" includes the right to copy and make extracts from the records and, if reasonable, the right to require the corporation to supply copies made by photographic, xerographic, or other means. The corporation may require the shareholder to pay a reasonable charge, covering the costs of labor and material, for copies of the documents provided to the shareholder.

2

Analysis

With regard to MCL 450.1487(1) ("Section 487(1)"), which addresses written demands for a balance sheet, statement of income, and statement and source and application of funds for the fiscal year, there does not appear to a violation of the provision. None of the letters sent by Darling requesting information appear to actually identify the simple information addressed in Section 487(1). Moreover, the statute is silent as to any remedy. The remedial sections of MCL 450.1487 (i.e., MCL 450.1487(3)-(5)), for whatever reason, do not include violations of Section 487(1). To the extent such remedy would otherwise be imposed by a Court through its equitable powers to rectify any purported violation of Section 487(1), it has been rendered moot by the instant litigation.

With regard to MCL 450.1487(2) ("Section 487(2)"), Darling offered a proper purpose to inspect the books and records, and Sommers refused to provide such access (other than with regard to a very limited set of financial statements). Sommers did not have a reasonable basis to doubt the right of Darling to inspect the records demanded. Instead, Sommers obstructed access to the records because it opposed to cooperating with Darling on just about anything. As such, Sommers violated Section 487(2). Pursuant to MCL 1487(3) & (5), Darling is entitled to recover the reasonable attorney fees and costs of $3,545 related to obtaining discovery of the materials otherwise hidden by Sommers in violation of Section 487(2).

IX

DARLING'S AND SOMMERS' REMAINING ARGUMENTS

As evidenced from the Findings of Fact and these Conclusions of Law, the Court has addressed all arguments properly raised and preserved. At times during the trial, in the pleadings, and on occasion in the initial trial briefs, certain arguments were made in passing that this Court finds to be deemed abandoned. For example, Count I of the Amended Counter-Claim requests "Costs incurred and/or loans made with cases in progress . . . ." Although some evidence that might be considered material to such loans was presented at trial, neither party made much of an effort to explain its relevance or any related remedy. Likewise, although a wee bit of testimony might be related to Count VIII of the Amended Counter-Claim's allegation of the "discriminatory" pursuit of liens, no discernible legal argument was made regarding the same. An appellate lawyer with too much time on his or her hands might scour the record for additional such arguments tossed onto the proverbial wall. Because the parties effectively abandoned such arguments, this Court does the same. See, e.g., *Mitcham, supra* 203; *Walters, supra* at 388; *Houghton, supra* at 339-340; *Bennett, supra* at 3.

In light of the foregoing Findings of Fact and Conclusions of law, the following Judgment is entered:

JUDGMENT

1. DARLING IS AWARDED $254,400 IN CONNECTION WITH HIS CLAIM FOR QUANTUM MERUIT/UNJUST ENRICHMENT RELATED TO THE INCOME DARLING BROUGHT TO SOMMERS IN 2011.

2. DARLING IS AWARDED $3,545 IN CONNECTION WITH SOMMERS' VIOLATION OF SECTION 487(2).

3. DARLING IS AWARDED $0 IN CONNECTION WITH THE WORK DARLING PERFORMED AT SOMMERS IN CONNECTION WITH THE DEPARTURE CASES AND 0% OF ANY INCOME AWARDED TO SOMMERS IN THE LIEN CASES.

4. ALL OTHER CLAIMS AND AAMENDED COUNTER-CLAIMS ARE DISMISSED WITH PREJUDICE.

THIS JUDGMENT RESOLVES THE LAST PENDING CLAIM AND CLOSES THE CASE.

/s/Michael Warren

______________________________/

HON. MICHAEL WARREN,
CIRCUIT COURT JUDGE