

10/30/2019 11:02 AM

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT  
IN AND FOR SARASOTA COUNTY, FLORIDA  
KAREN E. RUSHING  
CLERK OF THE CIRCUIT COURT  
SARASOTA COUNTY, FLORIDA  
CIVIL COURTS  
Receipt # 2441208

STANLEY A. GOLDSMITH,

Plaintiff/Counter-Defendant,

v.

Case No.: 2018 CA 002189 SC

MARIAN WALCZAK AND  
BOZENA WALCZAK,

Defendants/Counter-Plaintiffs

**FINAL JUDGMENT AGAINST DEFENDANTS  
MARIAN WALCZAK AND BOZENA WALCZAK**

**THIS CAUSE** came before the Court for non-jury trial on September 19, 2019. The Court heard testimony of witnesses, received evidence, and heard argument of counsel for Plaintiff/Counter-Defendant, Stanley A. Goldsmith (“Goldsmith”), and argument of the *pro se* Defendants/Counter-Plaintiffs, Marian Walczak and Bozena Walczak (“Walczaks”). The Court took the matter under advisement, and reviewed the evidence in accordance with the relevant legal authority.

On October 7, 2019 the Court orally pronounced the findings of fact and legal analysis. All proceedings were digitally recorded (a court reporter was also present). A transcript of that proceeding is attached to this Final Judgment as Exhibit “A”. At that proceeding the Court directed the parties to submit additional legal authority regarding the recovery of pre-judgment interest and expert witness fees. The Court received and reviewed the parties’ supplemental submissions,<sup>1</sup> and finds as follows:

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<sup>1</sup> Plaintiff/Counter-Defendant’s Motion for Award of Pre-Judgment Interest and Costs, Including Expert Witness Fees, With Incorporated Memorandum of Law (including attached Affidavit of Costs) filed October 17, 2019; and Defendants/Counter-Plaintiffs’ Opposition to Plaintiff/Counter-Defendant’s Motion for Award of Pre-Judgment Interest and Costs, Including Expert Witness Fees filed October 18, 2019.

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1. The Court must award expert witness fees. The evidence established that Attorney Stephen Ellis expended 6 hours of legal time preparing for and testifying at the trial. He charged an hourly rate of \$250, and he expected to be compensated for his work. Both the number of hours and the hourly rate are reasonable. It is settled law in the Second District that “[e]xpert witness fees paid to the testifying expert are not discretionary if the attorney expects to be compensated for his testimony.” *D’Alusio v. Gould & Lamb*, 36 So.3d 842 (Fla. 2d DCA 2010) (citing *Rock v. Prarie Bldg. Solutions, Inc.* 854 So.2d 722, 724 (Fla. 2d DCA 2003). Attorney Ellis’ testimony was a necessary cost to Mr. Goldsmith.

2. The Court must award pre-judgment interest based upon the Walczak’s breach of contract. In *SP Healthcare Holdings, LLC. v. Surgery Center Holdings, LLC.*, 208 So.3d 775 (Fla. 2d DCA 2016) the Second District held:

Florida has adopted the “loss theory” approach to prejudgment interest. Under this theory, “neither the merit of the defense nor the certainty of the amount of the loss affects the award of prejudgment interest.” *May Plumbing Co.*, 474 So.2d at 215; see also *Reimbursement Recovery, Inc. v. Indian River Mem’l Hosp., Inc.*, 22 So.3d 679, 682 (Fla. 4th DCA 2009); *Berloni S.p.A. v. Della Casa, LLC*, 972 So.2d 1007, 1012 (Fla. 4th DCA 2008). Instead, the theory presumes that **“the loss itself is a wrongful deprivation by the defendant of the plaintiff’s property [and thus the] [p]laintiff is to be made whole from the date of the loss once a [court] has determined the amount of damages and [the] defendant’s liability therefor.”** *May Plumbing Co.*, 474 So.2d at 215; see also *Beach Terrace Ass’n, Inc. v. Wanda DiPaola Stephen Rinko Gen. P’ship*, 27 So.3d 147, 148 (Fla. 2d DCA 2010); *Fid. & Guar. Ins. Underwriters, Inc. v. Federated Dep’t Stores, Inc.*, 845 So.2d 896, 903 (Fla. 3d DCA 2003). Once liquidated damages have been determined, a trial court must award prejudgment interest. *May Plumbing Co.*, 474 So.2d at 215; see also *Summerton v. Mamele*, 711 So.2d 131, 133 (Fla. 5th DCA 1998) (“[I]f a plaintiff establishes that [it] sustained out-of-pocket loss, prejudgment interest must be awarded from the date of the loss. The trial court has no discretion with regard to awarding prejudgment interest and must do so applying the statutory rate of interest in effect at the time the interest accrues.” (citing *May Plumbing Co.*, 474 So.2d at 215)). [emphasis added]

3. Counsel for Mr. Goldsmith contemplated allowing a thirty (30) day grace period for payment of Invoice #13643 (received by this Court as Plaintiff's Exhibit "3"). Mr. Goldsmith submitted the invoice to the Walczaks on March 13, 2018. The Court finds a thirty day grace period is reasonable and appropriate to the interest calculation. Accordingly, the Court will calculate pre-judgment interest from April 12, 2018 through October 7, 2019 (the date of the oral pronouncement).

4. The parties' supplementary submissions include an Affidavit as to Costs with supporting documentation. The Walczaks dispute Mr. Goldsmith's entitlement to recover costs, but offer no factual challenge to the individual items listed as Taxable Costs. The Court finds the Affidavit to be sufficient reliable evidence supporting those amounts.

Based on the foregoing, and in accordance with the prior findings of fact announced on October 7, 2019, it is hereby

**ORDERED and ADJUDGED** as follows:

A. Judgment is entered against Defendants Marian Walczak and Bozena Walczak, a/k/a Barbara Walczak, jointly and severally, and in favor of the Plaintiff, Stanley A. Goldsmith, 2937 Bee Ridge Road, Suite 9, Sarasota, FL 34239, in the following amounts:

Principal balance owed as of April 12, 2018 (Per Statement for Legal Services dated 3/1/318)	\$18,080.00
Prejudgment interest at the statutory rate in effect at the time of default (\$18,080 / 365 x 5.72% = \$2.83 per diem for 544 days from April 12, 2018 through the Court's ruling on October 7, 2019)	\$ 1,539.82
Unpaid billed Costs	\$ 205.50

(per Statement for Legal Services dated 3/13/18)

Expert Witness Fees (Stephen Ellis, Esq, \$250.00 per hour x 6 hours)	\$ 1,500.00
Costs for bringing this action as follows:	
Clerk of Court (filing fee and issuance of summons)	\$ 425.00
Service of Process	60.00
Mediation Fee (Dickinson & Gibbons, P.A.)	750.00
Deposition Attendance (Marian and Bozena Walczak)	520.00
Deposition Transcripts (Marian and Bozena Walczak)	2,817.00
Copies of Trial exhibits (1,922 pages @ \$0.25 per page)	480.50
Transcript excerpt 9/19/19 (\$8.31 per page 10 pages)	83.10
	<u>\$ 26,459.92</u>

for a total amount due and owing of TWENTY SIX THOUSAND FOUR HUNDRED FIFTY-NINE DOLLARS AND NINETY-TWO CENTS (\$26,459.92), plus post-judgment interest on the unpaid balance at the statutory rate, until paid in full, for which amount let execution issue.

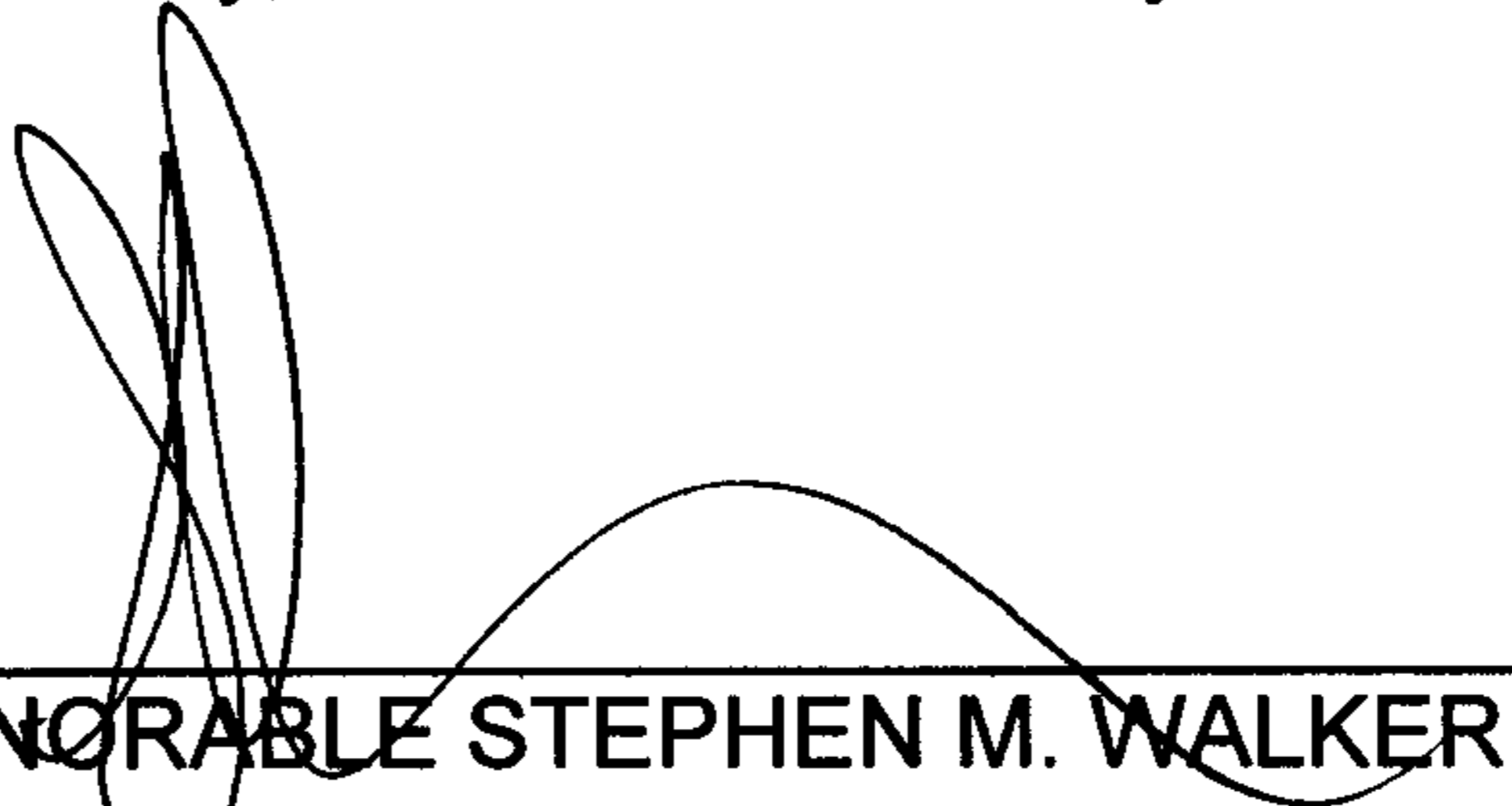
B. Goldsmith is authorized to release the sum of \$3,500.00 held in his trust account to partially satisfy this Judgment.

C. It is further ordered and adjudged that the Walczaks shall complete under oath Florida Rule of Civil Procedure Form 1.977, which is the Fact Information Sheet ("Form 1.977"), including all required attachments, and serve it on counsel for Goldsmith within 45 days from the date of this Final Judgment, unless the final judgment is satisfied or a motion for new trial or notice of appeal is filed.

D. Jurisdiction of this case is retained to enter further orders that are proper to compel the Walczaks to complete Form 1.977, including all required attachments, and serve it on counsel for the Goldsmith, and to enter such other or further orders regarding discovery and execution on the Judgment as may be appropriate, and such orders on proposals for settlement and entry of attorney fee orders as may be appropriate.

E. Pursuant to this Court's Order Granting Motion for Involuntary Dismissal of Counterclaim, the Walczaks shall recover no damages by this action and shall go hence without day.

**DONE and ORDERED** in Sarasota County, Florida this 25th day of October, 2019  
*NUNC PRO TUNC* October 7, 2019.



HONORABLE STEPHEN M. WALKER  
Circuit Court Judge

cc: James L. Essenson, Esq., 2071 Main Street, Sarasota, FL 34237  
Marian Walczak and Bozena Walczak, pro se, 135 Tina Island Drive, Osprey, FL 34229

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT  
IN AND FOR SARASOTA COUNTY, FLORIDA  
CIVIL DIVISION

CASE NO.: 2018 CA 002189 SC

STANLEY A. GOLDSMITH,

Plaintiff,

vs.

MARIAN WALCZAK and  
BOZENA WALCZAK,

Defendants.

TRANSCRIPT OF PROCEEDINGS  
ORAL PRONOUNCEMENT OF RULING

BEFORE: THE HONORABLE STEPHEN M. WALKER  
DATE: Monday, October 7, 2019  
PLACE: Robert L. Anderson Administration  
Building, Courtroom J  
4000 South Tamiami Trail  
Venice, Florida 34293

This cause came on to be heard at the time and  
place aforesaid when and where the following proceedings  
were reported by:

LAURA S. EDER, RMR, FPR  
Vincent M. Lucente & Associates, Inc.  
1800 Second Street, Suite 903  
Sarasota, Florida 34236  
(800) 282-8275

1 A P P E A R A N C E S:

2 Appeared on behalf of the Plaintiff:  
3 JAMES L. ESSENSON, ESQ.  
4 Law Firm of James L. Essenson  
2071 Main Street  
5 Sarasota, Florida 34237  
6 essenson@essensonlaw.com  
7 bwelch@essensonlaw.com

8 The Defendants Appeared Pro Se

9 Also Present:  
10 Stanley A. Goldsmith

11  
12 \* \* \* \* \*

1 P R O C E E D I N G S:

2 THE COURT: Good afternoon. Good to see you  
3 both. I'm digitally recording these proceedings,  
4 as I do whenever I bring parties back for me to  
5 announce findings of fact and ruling.

6 This is Case Number 2018-CA-2189. The  
7 Plaintiff is Stanley Goldsmith, and he is present.  
8 He's represented today -- or present with him for  
9 these proceedings is Attorney Essenson. The  
10 Defendants in this case are Marian Walczak and  
11 Bonzena Walczak. Both are present.

12 We are here for me to announce my findings of  
13 fact and my ruling from the trial on this cause  
14 from September 19th, 2019. Specifically, I'll be  
15 making my determination with regard to the counts  
16 in the complaint: Count I, breach of contract;  
17 Count II, quantum meruit; Count III, unjust  
18 enrichment; and Count IV, the issue of the  
19 declaratory judgment.

20 In some ways, this is a rather elementary or  
21 legally simple analysis, because it is -- it  
22 involves a breach of contract. So while there is,  
23 in some ways, a basic legal analysis, the Court  
24 feels that it's necessary to address the factual  
25 context from which -- excuse me -- this controversy

1 developed.

2 First of all, with regard to the issues of the  
3 attorney's fees:

4 On September -- on September 19th, this Court  
5 received the testimony of several witnesses and  
6 also several exhibits. I have reviewed those in  
7 accordance with the relevant case authority and the  
8 law as it relates to the rules regulating  
9 professional conduct and otherwise.

10 Stephen Ellis testified as to the  
11 reasonableness of the attorney's fees in this case.  
12 He testified, and the evidence established, he's  
13 been a lawyer for 41 years. He practices both  
14 transactional and litigation. He practices in the  
15 areas of commercial real estate, estate planning,  
16 and also boundary disputes.

17 He is familiar with the legal rates charged in  
18 those areas. He has been qualified and been able  
19 to offer and testify, in his opinion, with regard  
20 to rates in those areas on more than a dozen times.

21 In preparing for his work in this case, he met  
22 with the Petitioner. He had initially a two-hour  
23 conference. He was provided with binders, which he  
24 reviewed, from Mr. Goldsmith. He reviewed the  
25 pleadings in both the state court, what I'll refer

1 to as the Serino litigation, and also the federal  
2 Lynch forfeiture proceeding.

3 As part of his analysis, he looked at those  
4 factors set forth in the rules regulating the  
5 Florida Bar, specifically, Chapter 4, Rules of  
6 Professional Conduct, Rule 4-1.5, and the factors  
7 set forth in that, what were characterized in these  
8 proceedings as the Rowe factors, and he considered  
9 all of those factors.

10 Reading from 4-1.5, in relevant part:

11 "A fee or cost is clearly excessive when: (1)  
12 after a review of the facts, a lawyer of ordinary  
13 prudence" -- and it was established in these  
14 proceedings that Mr. Ellis is not just a lawyer of  
15 ordinary prudence; he's qualified to render an  
16 opinion based on his experience -- "would be left  
17 with a definite and firm conviction that the fee or  
18 cost exceeds a reasonable fee or cost for services  
19 provided to such a degree as to constitute clear  
20 overreaching or an unconscionable demand by an  
21 attorney."

22 Subsection 2(b) sets forth -- I'm sorry.

23 Subsection (b) of the rule sets forth the factors  
24 to be considered in determining reasonable fees and  
25 costs, and those are set forth in subparts (a)

1 importance given the value of the easement to the  
2 Defendants' property.

3 Factor (e), the time limitations imposed by  
4 the client or by the circumstances and, as between  
5 the attorney and client, any additional or other  
6 special time demands or requests of the attorney by  
7 the client.

8 In this situation, it was Attorney Heller who  
9 had her pleadings subjected to, I guess, the second  
10 motion to dismiss with a hearing that was coming  
11 up.

12 Mr. Goldsmith testified, and it was not  
13 challenged, that he had urged the Walczaks to have  
14 Attorney Heller secure the continuance before he  
15 came on board. Instead, rather than following his  
16 advice on that, they terminated Ms. Heller and put  
17 Mr. Goldsmith in a precarious situation where he,  
18 as a new lawyer coming on in a case, has to make an  
19 appearance at a time where he understands that  
20 there is an impending motion and with no certainty  
21 that the case would be continued. He was able to  
22 work with Attorney Bartlett and navigate that time  
23 frame.

24 Finally, factor (g), the experience,  
25 reputation, diligence, and ability of the lawyer or

1 through (h). This Court considered all of those  
2 factors.

3 As part of his analysis, however, Mr. Ellis  
4 relied most heavily on four factors.

5 First was (a), the time and labor required,  
6 the novelty, complexity, difficulty of the  
7 questions involved, and the skill requisite to  
8 perform the legal service properly. He testified  
9 to the exigency of the Serino litigation because of  
10 the pending motion to dismiss, and this Court is  
11 aware that the parties met for the first time on a  
12 lengthy, four-hour conference on a Saturday.

13 Also, this Court is aware and there was  
14 testimony regarding the very talented opposing  
15 counsel who was representing the opposing party in  
16 that case. It was established that while these  
17 matters were pending, that Mr. Goldsmith was going  
18 to be the fourth lawyer brought on in these  
19 proceedings.

20 Factor (d) was also something that Mr. Ellis  
21 pointed to: the significance of or amount involved  
22 in the subject matter of the representation, the  
23 responsibility involved in the representation, and  
24 the results obtained.

25 Obviously, this was a case of paramount

1 lawyers performing the services and the skill,  
2 expertise, or efficiency of effort reflected in the  
3 actual providing of such services.

4 With regard to this factor, Mr. Ellis  
5 testified that he knows Mr. Goldsmith. He  
6 described him based on his credentials, and this  
7 Court heard his academic and professional  
8 credentials. And this Court noted that Mr. Ellis  
9 stated, "Mr. Goldsmith is someone that I would use  
10 myself," meaning he would hire Mr. Goldsmith in  
11 this type of complex litigation.

12 Also, he indicated that, in addition to the  
13 research that he's done here, he presently has a  
14 case where he's litigating against Mr. Goldsmith,  
15 and he's familiar with his legal skills.

16 Finally, with regard to subsection (d), the  
17 enforceability of fee contracts:

18 "Contracts or agreements for attorney's fees  
19 between attorney and client will ordinarily be  
20 enforceable according to the terms of such  
21 contracts or agreements, unless found to be  
22 illegal, obtained through advertising or  
23 solicitation not in compliance with the Rules  
24 Regulating the Florida Bar, prohibited by this  
25 rule, or clearly excessive as defined by this

1 rule."

2 In this matter, Mr. Goldsmith testified that  
3 the Walczaks filed a Bar complaint against him  
4 related to this fee in this matter. This Court  
5 notes that the probable cause standard at the  
6 Committee Level with the Florida Bar is a lower  
7 legal standard than the preponderance of the  
8 evidence that is offered in a civil -- or is  
9 necessary in a civil proceeding.

10 With regard to the testimony of Mr. Ellis, he  
11 identified what was received by this Court as  
12 Exhibit -- Plaintiff's Exhibit 1, which was the  
13 engagement letter. He reviewed it, and his opinion  
14 that he offered to this Court was that there was  
15 nothing in that that struck him, as a lawyer of  
16 ordinary prudence, as being either overreaching or  
17 unconscionable, and this Court finds that  
18 Mr. Ellis' opinion in this regard is persuasive.

19 There were two statements, fee statements,  
20 that were admitted and received as Exhibits 2 and  
21 3. Exhibit 2 is the February 26, 2017 statement  
22 for professional services. The date on that  
23 statement was September 26, 2017 -- I misspoke --  
24 and that was in the amount of \$25,138.25.

25 In that, Mr. Ellis testified, or his opinion

1 was, that 67.1 hours and the rate of \$400 were both  
2 reasonable. He testified further that it was  
3 necessary for Mr. Goldsmith to use that time to  
4 perform the services to effectively represent the  
5 Defendants.

6 This Court notes, and it is significant to  
7 this analysis, that the \$25,138.25, that that  
8 invoice was -- was not challenged by the  
9 Defendants, that they paid that. That is  
10 significant, because if we go through and look at  
11 the engagement letter, it does discuss the need to  
12 keep a \$3,500 balance in trust, and there were  
13 issues about replenishing that, and there were  
14 issues that were raised with regard to fees that  
15 would go beyond that.

16 And the Court does take into consideration  
17 that what was established by the September 26, 2017  
18 statement is that the Walczaks were aware of the  
19 volume of work that was being done on their behalf,  
20 and they authorized it, and, as I will touch on  
21 later, they directed additional work.

22 Exhibit 3 is the March 13th, 2018 statement  
23 the subject of this case. It reflects an  
24 outstanding balance of 18,285 -- I'm sorry --  
25 \$285.50. Also, it reflects the \$3,500 that is

1 presently held in trust.

2 The testimony established that it was that  
3 \$3,500 in trust that really was the deciding factor  
4 that prompted Mr. Goldsmith to initiate the  
5 litigation because of the controversy with regard  
6 to that and the fact that the Walczaks demanded  
7 that back.

8 He testified, and I accept his testimony as  
9 credible, that he did not wish to do this, but he  
10 was put into a situation where he had to incur the  
11 time and expense to do this, so that he made sure  
12 that his conduct with regard to that \$3,500, among  
13 other things, was done in accordance with the law.

14 With regard to Mr. Ellis on Exhibit 3, the  
15 March 13th, 2018 statement, he testified that the  
16 46.5 hours and the hourly rate of \$400 per hour  
17 were both reasonable.

18 He offered that his opinion as a lawyer of  
19 ordinary prudence were that the services reflected  
20 in the Exhibits 2 and 3 were actually performed.  
21 He went on to say that he thought that there would  
22 have been more entries listed on the statements  
23 because there was additional work that  
24 Mr. Goldsmith did that he did not charge for.

25 On cross-examination, there -- there were some

1 points that were raised, and Mr. Ellis did indicate  
2 that in this case, he was aware that there was  
3 already one statement, one invoice, that was billed  
4 and paid that was in excess of the funds that were  
5 held in trust, and Mr. Ellis did allow, on  
6 cross-examination, that perhaps what he might have  
7 done is he would have billed on a more immediate  
8 basis.

9 He also allowed, on cross-examination, that a  
10 client has a right to know how expensive the  
11 litigation is, and while this Court agrees with  
12 that, and that's a valid point, on Exhibit 13,  
13 which I will touch on later, specifically, two  
14 emails, one from March 8th, 2018, at 3:04 p.m., and  
15 then a follow-up of March 8 at 4:01 p.m., those  
16 emails reveal that the Walczaks understood their  
17 litigation expenses, and they directed  
18 Mr. Goldsmith to take further action, still being  
19 aware of what their litigation expenses were.  
20 Rather than tell him to retreat on things, they  
21 were directing him to go forward.

22 This Court notes that there was no requirement  
23 for notices of fees in excess of the money that was  
24 held in trust, and subsequent to the first invoice  
25 that was submitted in September of 2017, as we get



1 into October of 2017, there is a new, critical  
2 matter that requires urgent legal attention, and  
3 the Walczaks were aware of that as they signed the  
4 verified petition in that proceeding.

5 In order to put this controversy in its proper  
6 context, it's important to address the operative  
7 time frame that offers illuminating context into  
8 this matter, and that would be March of 2018 and  
9 the issues regarding what I refer to as the federal  
10 Lynch forfeiture matter.

11 This was an unanticipated and very serious  
12 forfeiture matter that erupted in October of 2017  
13 and required expedited attention. During these  
14 proceedings -- or during the federal proceedings,  
15 the evidence revealed that Mr. Goldsmith was  
16 contemplating and anticipating issues that might  
17 arise in the context of the federal forfeiture and  
18 anticipating how to gain potential leverage in the  
19 federal case that might be beneficial to his  
20 clients in the ongoing state court Serino  
21 litigation.

22 Some of the issues that came up and the  
23 evidence that was explained to me had to do with  
24 the 10-foot easement, and among the various  
25 locations that were describing where this easement

1 this very valuable asset to the Walczaks. That  
2 was -- that put Mr. Goldsmith in a situation where  
3 he could take tactical advantage of that and  
4 potentially work and negotiate over time an  
5 agreement in the federal case that would be very  
6 advantageous to the Walczaks and then ultimately  
7 could be used as leverage to obtain again a  
8 valuable or beneficial result in the state court  
9 litigation.

10 That difference in focus, the difference in  
11 priority, where the AUSA saw his -- he was governed  
12 by a timeline that was coming up, something that  
13 was very important, and his focus was getting the  
14 forfeiture done in accordance with Virginia  
15 Covington's timeline, during this time there was  
16 confusion, and I will touch on that in a moment.

17 But in addition to other leverage or  
18 advantages that Mr. Goldsmith was attempting to  
19 negotiate in that proceeding was the possibility of  
20 not limiting the easement to pedestrian traffic.  
21 By not limiting it to pedestrian traffic, to maybe  
22 opening the easement up to vehicular traffic, while  
23 that may not be something that the Walczaks  
24 necessarily intended to use by not limiting or  
25 restricting the use of the easement, then that

1 would ultimately be determined by a court in the  
2 Serino litigation was an issue with regard to  
3 obstruction by vegetation and the thought that  
4 there could be an unnecessary -- or a way to avoid  
5 an expense of clearing that if there were -- if  
6 there was a way to gain advantage in the federal  
7 case.

8 Also, the Serino litigation raised a valid  
9 concern that the boundary between the properties  
10 could move, and that would impact the access that  
11 the parties had to -- or that the Walczaks had to  
12 the easement. And it was clear that this easement,  
13 the Walczaks valued this easement at between  
14 100,000 and \$200,000. It was an instrumental  
15 component to the value of their property.

16 Also, Judge Virginia Covington in the federal  
17 case imposed some very serious deadlines. The  
18 interest of Mr. Goldsmith and the interest of the  
19 Assistant United States Attorney Muench were  
20 different. Attorney Muench was most interested in  
21 a waterfront piece of property with a residence on  
22 it.

23 The evidence established in these proceedings  
24 that far secondary to AUSA Muench was the actual  
25 legal description and actual finalized position of

1 easement could potentially become far more valuable  
2 to them if there was a time down the road that they  
3 elected to sell the property.

4 During what I will characterize accurately as  
5 a critical time in the litigation, when an attorney  
6 relies on vital, open communication with his  
7 clients, the Walczaks during this time chose not to  
8 speak with their attorney. Their decision was  
9 deliberate. It was careless and it was  
10 unjustified.

11 Judge Covington had imposed a date of  
12 March 9th for a status report, and during that time  
13 the Walczaks were not communicating with their  
14 lawyer. This Court received as evidence in this  
15 proceeding what was marked as Plaintiff's  
16 Exhibit 13.

17 13 is significant to this Court's analysis in  
18 two ways: First, it reveals the Walczaks'  
19 reluctance to make any really efforts to cooperate  
20 with their lawyer, and, also, it does reveal, as  
21 stated, that during this time they were aware of  
22 the costs of litigation, and they were directing  
23 further work.

24 Exhibit 13 is a series of nine emails that  
25 take place over approximately 25 hours. The first

1 email is from March 7th, 2018, and it's at  
 2 4:58 p.m. Reading from relevant portion:  
 3 "Dear Mr. and Mrs. Walczak, I received your  
 4 email of March 6th and called to discuss it with  
 5 you. Your mailbox was full and would not accept  
 6 any messages."  
 7 In the last paragraph, he says, "I would like  
 8 to speak with you tomorrow, preferably mid to late  
 9 afternoon, as I have no time left on my calendar  
 10 today or tomorrow morning, and I feel it is  
 11 important that we speak again before I contact the  
 12 U.S. Attorney. Please let me know your  
 13 availability for tomorrow afternoon. If you are  
 14 not available tomorrow afternoon, then perhaps we  
 15 can arrange to speak by telephone before 9:00 a.m.  
 16 tomorrow."  
 17 That was sent at 4:58. The response didn't  
 18 come until 15 and a half hours later, at 8:35 a.m.  
 19 The response to Ms. Walczak was at 9:43 a.m., where  
 20 Mr. Goldsmith is again asking for an alternate  
 21 phone number, a way to communicate or a way to  
 22 meet.  
 23 That communication goes back and forth  
 24 throughout the day, and there was no willingness of  
 25 the Walczaks to contact and speak with their

1 lawyer, with this deadline looming.  
 2 The Walczaks deliberately chose an  
 3 unreasonable, inefficient, and clumsy means of  
 4 communication, and I say that because of email. At  
 5 a time when they -- when it is necessary for an  
 6 attorney to speak with their client, brief, cryptic  
 7 emails, rather than allowing the parties to engage  
 8 in the type of communication that is necessary with  
 9 the myriad issues that we're confronting, is  
 10 inefficient. This was at a critical time in the  
 11 litigation.  
 12 The Walczaks' behavior was unpredictable and  
 13 careless, and it compromised Mr. Goldsmith's  
 14 effective reputation and ultimately compromised  
 15 their legal result in the federal case.  
 16 As part of Exhibit 13, during the exchange,  
 17 the Walczaks sent an email informing Mr. Goldsmith  
 18 for the first time that they would not sign the  
 19 stipulation without a legal description of the  
 20 easement. That was done after 5:00 p.m.  
 21 He characterized that as a 180-degree change  
 22 in their position. He testified that they were  
 23 retreating from prior oral commitment. An email of  
 24 March 4th where they agreed, they wouldn't speak  
 25 with him in person or in any way about their change

1 of position.  
 2 What is revealed in Exhibit 13 is consistent  
 3 with the Walczaks' pattern of not cooperating with  
 4 their attorneys or with Attorneys' Title Insurance  
 5 Fund. The evidence revealed their failure to  
 6 cooperate in that proceeding led to ATIF  
 7 terminating their coverage.  
 8 This was compounded by their unreasonable  
 9 refusal to communicate, as necessary, at a time  
 10 where they were in critical need of legal advice.  
 11 And I do -- I do note that throughout this, it does  
 12 appear that there was some confusion in their  
 13 understanding of exactly what was going on.  
 14 When this matter was -- or when Mr. Goldsmith  
 15 was testifying in these proceedings and explaining  
 16 the circumstances and explaining why he did what he  
 17 did, and explaining the benefit to his client --  
 18 Counsel, Mr. Richardson, if you could please be  
 19 very quiet. If you need to speak with your client,  
 20 if you could go out in the hallway, that would be  
 21 great.  
 22 During this critical time when Mr. Goldsmith  
 23 was testifying, I was able to understand that, but  
 24 it does appear that throughout these proceedings  
 25 there was perhaps a misunderstanding by the

1 Walczaks of what Mr. Goldsmith was going to do.  
 2 The way that that is remedied is not by cutting  
 3 communication but by engaging in communication, by  
 4 accepting the several offers, the pleas of their  
 5 attorney to make time to speak either on the  
 6 telephone or in person on this.  
 7 Despite this change in position, despite their  
 8 reluctance, their refusal to communicate with him,  
 9 Mr. Goldsmith continues the representation. He  
 10 continued to request a conversation. And it is in  
 11 this context, where they have changed their  
 12 position and where they're not communicating with  
 13 him, that the Walczaks make their allegations of  
 14 fraud, and those allegations are simply  
 15 allegations. They are unsupported by any  
 16 competent, substantial evidence.  
 17 The Court also received what was marked for  
 18 identification purposes as Plaintiff's Exhibit 4,  
 19 and this is telling in several respects. This is  
 20 the detailed letter that was put together on  
 21 March 13th, and it was a report of the history of  
 22 the circumstances leading up to the conflicts and  
 23 what would ultimately be the termination.  
 24 I find that what is reflected in Plaintiff's  
 25 Exhibit 4 is reliable and it is unchallenged

1 evidence. I will read portions from that that are  
 2 relevant to my analysis:  
 3 "Although we've exchanged emails in the past  
 4 few days, I have not had the opportunity, which I  
 5 feel is essential, to speak in order to answer any  
 6 questions you may have and determine a strategy for  
 7 how to proceed in the state and federal court  
 8 actions."  
 9 This is on top of the several emails where  
 10 he's requesting the same.  
 11 When Mr. Walczak testified in these  
 12 proceedings, he gave some testimony, and then he  
 13 retreated on it, with regard to Exhibit 4. He  
 14 testified that there was a phone call that was  
 15 made; he then retreated from that. He testified  
 16 that there were some phone calls beforehand; then  
 17 he testified that, no, the Walczaks were not  
 18 speaking with Mr. Goldsmith because they wanted  
 19 written verification of everything. He later  
 20 retreated from that position and said, no, they  
 21 were communicating or having conversations  
 22 throughout the day. I found Mr. Walczak's  
 23 testimony on that point to be unreliable.  
 24 In Exhibit 4, Mr. Goldsmith goes on to state:  
 25 "I am puzzled and concerned about your actions

1 since we spoke on March 1st."  
 2 Later:  
 3 "We agreed during our March 1st telephone  
 4 conversation that getting an order from the federal  
 5 court based upon a settlement agreement which  
 6 memorialized your 10-foot easement across the Lynch  
 7 property would be an outstanding success and might  
 8 give us an opportunity to build upon it in the  
 9 context of the state court action."  
 10 Later in that same paragraph:  
 11 "Because the 1997 Strayer survey of the Lynch  
 12 property appeared to locate your easement across  
 13 the easternmost 10 feet of the Lynch property, we  
 14 discussed the fact that should the Serinos  
 15 successfully challenge their property line with the  
 16 Lynches, they would potentially impinge upon 4 feet  
 17 of your easement."  
 18 Later in that paragraph:  
 19 "We, therefore, discussed, and on March 1st  
 20 you agreed upon, seeking to have the easement  
 21 across the Lynch property commence at the Britt  
 22 Survey property line."  
 23 This Court received Exhibit 6, which was an  
 24 email from Barbara Walczak on March 4th, 2018,  
 25 where, in fact, they, meaning the Walczaks, are

1 agreeing to the Britt line.  
 2 Going back to Exhibit 4:  
 3 "This would assure that your easement could  
 4 not be compromised if the Serinos later convinced a  
 5 court that the Britt line was the proper boundary  
 6 line between the Serino property and either the  
 7 Lynch property or your property."  
 8 Later on that same page, page 2:  
 9 "We discussed that while this is by no means a  
 10 certainty, full and favorable resolution of the  
 11 easement issue in the federal court might be  
 12 helpful not only in how we proceed with your state  
 13 court action but also in how we try to resolve  
 14 matters with Attorneys' Title Insurance Fund."  
 15 Page 4:  
 16 "As I also indicated to you in your recent  
 17 email exchange, your lack of communication with me  
 18 has made it extremely difficult to represent you.  
 19 I feel that some of your actions have sabotaged  
 20 your case and have put me in a position of great  
 21 difficulty in structuring the status report  
 22 required by the U.S. District Judge."  
 23 Page 5:  
 24 "We have come a long way together in my  
 25 representation of you. Although you have engaged

1 many prior attorneys, I am the first one to file  
 2 suit against the Lynches seeking to establish your  
 3 easement. I have also vigorously defended the  
 4 Serinos' claim and asserted the appropriate  
 5 counterclaims, which I was able to get pending in  
 6 the state court action even though that had been  
 7 vigorously opposed by the Serinos' counsel.  
 8 Moreover, even though the prospect of federal court  
 9 representation was not known to us at the time I  
 10 commenced representation of you, I have vigorously  
 11 advanced your interests in the federal court and  
 12 have put the case in a posture where we are on the  
 13 verge of getting the AUSA to acknowledge your  
 14 easement rights in the settlement agreement and  
 15 submit the same to the U.S. District Court for  
 16 confirmation. While the U.S. District Judge has  
 17 been patient with us to date, it is abundantly  
 18 clear that she wants this case resolved and the  
 19 issue of your easement rights off her calendar. I  
 20 therefore urge you to schedule an appointment to  
 21 come meet with me in the next few days so that I  
 22 may answer any further questions that you may  
 23 have."  
 24 Despite everything up through this portion of  
 25 the letter, Mr. Goldsmith is still asking for the

1 opportunity to continue to represent you in an  
 2 appropriate and advantageous way.  
 3 Later in that same letter, he continues:  
 4 "Since dictating this letter, I have received  
 5 Mrs. Walczak's emailed letter of today's date that  
 6 makes clear that during a critical time in my  
 7 representation of you, you chose to intentionally  
 8 avoid verbal communication with me and you want to  
 9 communicate exclusively in writing. Your  
 10 inaccessibility undermines my ability to represent  
 11 you and my ability to communicate your position to  
 12 the Federal District Court as described above."  
 13 This Court finds that Exhibit 4, this letter,  
 14 is consistent with other competent, substantial  
 15 evidence and accurately describes the conduct of  
 16 the parties and in conjunction with the other  
 17 reliable evidence effectively defeats the claims  
 18 raised by the Defendants.  
 19 With regard to Count I, breach of contract,  
 20 the Court finds that the engagement letter,  
 21 Exhibit 1, is a valid and enforceable contract for  
 22 legal services in the state court proceedings, the  
 23 Serino litigation, and also in the federal Lynch  
 24 forfeiture; that the Walczaks breached that valid  
 25 contract by failing to timely pay Mr. Goldsmith for

1 the legal services that he rendered, and not just  
 2 rendered but taken at their direction after  
 3 verifying all the pleadings and attachments in both  
 4 the Serino action and the federal action.  
 5 The Court finds that the Walczaks' breach of  
 6 that valid contract caused Mr. Goldsmith damage,  
 7 and that Mr. Goldsmith has been damaged as a result  
 8 of the Walczaks' breach in the amount of  
 9 \$18,285.50.  
 10 I want to circle back to the issue of fees,  
 11 expert witness fees and prejudgment interest.  
 12 With regard to the Count II, quantum meruit,  
 13 which I announce in conjunction with Count III,  
 14 unjust enrichment, the Court finds that  
 15 Mr. Goldsmith did confer benefit upon the Walczaks  
 16 through the legal services rendered in conjunction  
 17 with the state court Serino litigation and also the  
 18 federal Lynch forfeiture matter; that the Walczaks  
 19 knew or certainly should have known of the benefit  
 20 conferred upon them by Mr. Goldsmith, and that was  
 21 established through competent, substantial evidence  
 22 in these proceedings; that the Walczaks accepted  
 23 the benefit of Mr. Goldsmith's services without  
 24 paying adequate consideration for that.  
 25 The Court finds it would be inequitable for

1 the Walczaks to retain the benefit of  
 2 Mr. Goldsmith's legal services without paying the  
 3 fair value thereof.  
 4 The unchallenged evidence established the  
 5 unpaid balance set forth in Exhibit 3 was both fair  
 6 and reasonable and necessary under the  
 7 circumstances. I'm going to find that the Walczaks  
 8 are liable to Mr. Goldsmith for the reasonable  
 9 value of those services pursuant to quantum  
 10 theories -- equitable theories of quantum meruit  
 11 and unjust enrichment.  
 12 And, finally, with regard to Count IV,  
 13 declaratory judgment, the Court grants declaratory  
 14 judgment that the \$3,500 fee deposit currently held  
 15 in Mr. Goldsmith's trust account may be disbursed  
 16 to Mr. Goldsmith's operating account and applied  
 17 toward the judgment awarded in the other counts in  
 18 this proceeding.  
 19 I would say that it does appear to this Court  
 20 that the Walczaks did not necessarily seek  
 21 competent, sound legal counsel for legal advice;  
 22 rather, it appears from the evidence in these  
 23 proceedings that they wanted someone -- and they  
 24 went through several lawyers -- but they wanted  
 25 someone to carry out their directives irrespective

1 of the legal merit.  
 2 The arguments put forth in this proceeding,  
 3 specifically, in the closing, Mrs. Walczak said  
 4 Mr. Goldsmith had an obligation to hold their  
 5 interests above his own interest, and while in some  
 6 instances that can be true, that argument in this  
 7 proceeding reveals that they lack a fundamental  
 8 understanding of a lawyer's responsibility to the  
 9 rule of law and to the rules of professional  
 10 conduct, and those obligations exceed any  
 11 obligation to pursue unnecessarily things on behalf  
 12 of a client if those interests are outside of a  
 13 lawyer's obligation.  
 14 I would say that this is an unfortunate  
 15 situation. Looking at it from where we are now,  
 16 with the advantage of hindsight, it does appear to  
 17 me that a couple of things could be done  
 18 differently that may have avoided the unnecessary  
 19 litigation in these proceedings. It does appear  
 20 that the Walczaks did have -- or demonstrated  
 21 throughout some very important portions of this a  
 22 lack of understanding as to the work that their  
 23 lawyer was doing in a very capable way on their  
 24 behalf, and it could be that their lack of  
 25 understanding put them in a position where they

1           were defensive and felt that somehow Mr. Goldsmith  
2           was taking advantage of them.  There are no facts  
3           and there is no law to support that.

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CERTIFICATE OF COURT REPORTER

STATE OF FLORIDA )  
COUNTY OF SARASOTA )

I, LAURA S. EDER, Registered Merit Reporter, do hereby certify that I was authorized to and did stenographically report the foregoing proceedings; and that the transcript is a true and complete record of my stenographic notes.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties; nor am I a relative or employee of any of the parties' attorney or counsel connected with the action; nor am I financially interested in the action.

DATED this 13th day of October, 2019.

*Laura S. Eder*

LAURA S. EDER, RMR

