

**IN THE SUPREME COURT OF FLORIDA
TALLAHASSEE, FLORIDA**

Case No. SC17-2058

L.T. Case No. 2D13-6051 Consolidated With L.T. Case No. 2D14-86

L.T. Case No. 06-CA-5366 Consolidated With L.T. Case No. 13-CA-5139

TRIAL PRACTICES, INC.	vs.	HAHN LOESER & PARKS LLP, as Substitute Party for Jack J. Antaramian
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Petitioner

Respondent

RESPONDENT'S MOTION FOR APPELLATE ATTORNEYS' FEES

RESPONDENT, HAHN LOESER & PARKS LLP ("Hahn Loeser"), pursuant to Rule 9.400, Florida Rules of Appellate Procedure, respectfully requests this Court to award Hahn Loeser its attorneys' fees incurred in this appeal from Petitioner, Trial Practices, Inc. ("TPI"), and shows:

I. BACKGROUND

1. In addition to Second District Case Nos. 2D13-6051 and 2D14-86, this Case arises from the same underlying facts as Second District Case No. 2D11-5673: *Trial Practices, Inc. v. Antaramian*, 97 So. 3d 228 (Fla. 2nd DCA 2012) (table decision).

2. On or about September 20, 2005, Theodore L. Tripp, Esq., on behalf of Jack J. Antaramian ("Antaramian"), signed a letter agreement drafted by TPI

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and returned it to TPI along with a cover letter (“Consulting Agreement”). The Consulting Agreement was for TPI to perform trial and jury consulting services for Antaramian in a case Antaramian had against The Estate of David Nassif. (*See* R5909-5914¹).

3. TPI sued Antaramian for breach of the Consulting Agreement, alleging that Antaramian received a gross recovery of millions of dollars from the settlement of the case he had with The Estate of David Nassif, and seeking a five percent contingent fee (lower tribunal trial court Case No. 06-CA-5366). (*See* TPI’s Complaint at R57 – 63). During opening statements at the jury trial, TPI’s counsel stated, in part, as follows: “That through Trial Practices' efforts, Mr. Antaramian prevailed and made a huge recovery in a settlement of the lawsuit, as much as \$120-million” (R7070, Trial Tr., pg. 49, lines 1 - 4).

4. Early on in the trial court case, on October 11, 2006, Antaramian served his Proposal for Settlement Directed to TPI in the amount of \$125,000, pursuant to Section 768.79, Florida Statutes, and Rule 1.442, Florida Rules of Civil Procedure. (*See* R9549 - 9551). TPI did not accept the Proposal for Settlement.

¹ The trial court transmitted a portion of its case file for L.T. Case Number 06-CA-5366 to the Second District on June 18, 2014, as the Original Record on appeal in Case Nos. 2D13-6051 and 2D14-86, which consists of 13,473 numbered pages. The Original Record transmitted by the trial court to the Second District will be cited to with the abbreviation “R” followed by the Original Record page number (*e.g.*, R4080).

5. On March 21, 2011, a jury trial in the lower tribunal commenced, and a jury verdict was rendered on April 1, 2011 (R4080). As set forth in the jury verdict, the jury found that a binding contract existed between TPI and Antaramian, and that Antaramian did not breach the Consulting Agreement. The jury verdict amounted to a recovery by TPI of nothing from Antaramian.

6. Pursuant to the jury verdict rendered by the jury, the trial court entered a Final Judgment in Favor of Defendant (Antaramian) on October 13, 2011 (R4510).

7. TPI took an appeal of the jury verdict Final Judgment in Favor of Antaramian (*see* R7018 - 7020) to the Second District through Case No. 2D11-5673. The appeal was fully briefed and oral argument was held. On September 12, 2012, the Second District issued a Per Curiam affirmance of the trial court's Final Judgment in Favor of Defendant. *See* R9554; Mandate at R9535 – 9536; and *see also Trial Practices, Inc. v. Antaramian*, 97 So. 3d 228 (Fla. 2nd DCA 2012) (table decision). The Second District also entered an order on September 12, 2012, awarding Antaramian his appellate attorneys' fees in Case No. 2D11-5673 (R9555), relevant portions of which are set forth below:

. . . Because appellee has prevailed both in the underlying litigation and on appeal, he is entitled to prevailing party appellate attorneys' fees. . . .

* * *

. . . Appellee's motion is granted in an amount to be determined by the trial court. . . .

(R9555, ¶2).

8. In May and July of 2013, the trial court held a two-day evidentiary hearing on Antaramian's request for prevailing party attorneys' fees and costs. (Transcripts of the hearing on Antaramian's request for attorneys' fees and costs are located in the Record at R9762 – 9856 and R9867 – 9968 respectively). On November 20, 2013, the trial court entered an Order Awarding Attorneys' Fees and Costs in Favor of Antaramain (R13276 - 13289). On December 19, 2013, the trial court entered a Judgment Awarding Attorneys' Fees, Costs and Pre-Judgment Interest to Antaramian ("Attorneys' Fees Judgment") (R13312 – 13313). The Attorneys' Fees Judgment awarded attorneys' fees and costs to Antaramian through June, 2013.

9. TPI appealed the Order Awarding Attorneys' Fees and Costs and the Attorneys' Fees Judgment (*see* R13296 – 13311 and R13344 - 13347), which is the subject of lower tribunal Second District Case Nos. 2D13-6051 and 2D14-0086. The appeal was fully briefed, and an oral argument was held.

10. Antaramian assigned all of his rights and interest under the Attorneys' Fees Judgment and the Consulting Agreement, together with any related debt,

claim, or lien, to Hahn Loeser. (*See* Agreement and Absolute Assignment of Judgment from Antaramian to Hahn Loeser at DCA R651 - 668²).

11. On April 21, 2016, the trial court, in the lower tribunal consolidated cases, entered an order substituting Hahn Loeser for Antaramian as the real party in interest in the trial court case (DCA R1127 - 1129). On July 7, 2016, the Second District entered an order substituting Hahn Loeser for Antaramian as the party in interest in lower tribunal Case Nos. 2D13-6051 and 2D14-86 (DCA R1184).

12. On April 12, 2017, the Second District issued an order in lower tribunal Case Nos. 2D13-6051 and 2D14-86 granting appellate attorneys' fees to the prevailing party on the significant issues in the underlying litigation (*see* DCA R1541 - 1542).

13. On October 25, 2017, the Second District issued a substitute written Opinion in Case Nos. 2D13-6051 and 2D14-86 (DCA R1569 - 1587). *See also Trial Practices, Inc., v. Hahn Loeser & Parks, LLP*, 228 So. 3d 1184 (Fla. 2nd DCA 2017).

² Citations to the Record of the Second District shall to be to the Record in the main Second District case, Case No. 2D13-6051, which consists of 1,657 PDF pages. The Second District's Record for Case No. 2D13-6051 will be cited to with the abbreviation "DCA R" followed by the Second District's PDF Record page number (*e.g.*, DCA R1581).

14. Hahn Loeser is the prevailing party in the underlying lower tribunal trial court case and the Second District cases. Regardless of whether this Court answers the Second District's certified question (*see* Opinion at DCA R1581, ¶3) in the affirmative or in the negative, Hahn Loeser remains the prevailing party.

II. HAHN LOESER IS ENTITLED TO THE RECOVERY OF ITS APPELLATE ATTORNEYS' FEES FROM TPI

15. Hahn Loeser is entitled to recover its appellate attorneys' fees from TPI pursuant to the Consulting Agreement (R62, ¶4), the jury's verdict in favor of Antaramian (R4080), the Attorneys' Fees Judgment (R13312 – 13313), the Assignment from Antaramian to Hahn Loeser (DCA R651 - 668), the lower tribunal's findings in the trial court case, the Second District's rulings in Case No. 2D11-5673 and lower tribunal Case Nos. 2D13-6051 and 2D14-86, Sections 768.79 and 57.115, Florida Statutes, and Rule 1.442, Florida Rules of Civil Procedure.

16. The trial court has already determined that Hahn Loeser (as substitute party for Antaramian) is entitled to the recovery of attorneys' fees and costs as the prevailing party by way of its Order Awarding Attorneys' Fees and Costs in Favor of Antaramain (R13276 - 13289) and the Attorneys' Fees Judgment (R13312 – 13313).

17. The Second District found that Antaramian was entitled to the recovery of his appellate attorneys' fees from TPI in Case No. 2D11-5673 (*see*

order at R9555), and later stated, through its Opinion in lower tribunal Case Nos. 2D13-6051 and 2D14-86, with respect to Case No. 2D11-5673 that “Antaramian was also successful on appeal and was awarded appellate attorneys’ fees by this court due to his status as the prevailing party. See Trial Practices, Inc. v. Antaramian, 97 So. 3d 228 (Fla. 2nd DCA 2012) (table decision).” Opinion at DCA R1571 ¶1 and footnote 1; *and see also Trial Practices, Inc., v. Hahn Loeser & Parks, LLP*, 228 So. 3d 1184 (Fla. 2nd DCA 2017) at 1186, footnote 1.

18. The Second District also issued an order in lower tribunal Case Nos. 2D13-6051 and 2D14-86 granting appellate attorneys’ fees to the prevailing party on the significant issues in the underlying litigation (DCA R1541 - 1542). The Second District left intact a substantial portion of the Attorneys’ Fees Judgment. Through the Opinion, the Second District reversed and remanded only with respect to itemization of a portion of the cost award (the portion of the awarded amount being \$317,873.64) and for re-calculated prejudgment interest (the awarded amount being \$462,709.81). (*See* Opinion at DCA R1586, ¶2; Order Awarding Attorneys’ Fees and Costs at R13288, ¶43(vii) and ¶44 – 45; and Attorneys’ Fees Judgment at R13312 – 13313, ¶4 – 5). The Second District specifically held: “In all other respects, we affirm.” Opinion at DCA R1586, ¶2; *and see also Trial Practices, Inc.*, at 1194.

19. Page 3 of the Consulting Agreement, which was drafted by TPI, provides, in relevant part, as follows:

The prevailing party in any action arising from or relating to this agreement will be entitled to recover all expenses of any nature incurred in any way in connection with the matter, whether incurred before litigation, during litigation, in an appeal, in a bankruptcy proceeding, or in connection with enforcement of a judgment, including, but not limited to, attorneys' and experts' fees.

(R62, ¶4)

20. With respect to the Consulting Agreement, which all of the lower tribunal cases stem from, the Second District, through its Opinion, stated in relevant part, as follows: “. . . the Consulting Agreement includes a very broad fee-shifting provision which permits an award of fees that were incurred by the prevailing party in any matter that is connected with the Consulting Agreement.” Opinion at DCA R1575, ¶2; and *see also Trial Practices, Inc., v. Hahn Loeser & Parks, LLP*, 228 So. 3d 1184, 1188 (Fla. 2nd DCA 2017). The Second District further ruled that **“the fee-shifting provision was drafted in such a way that it broadly encompasses all claims that were connected in any way to the Consulting Agreement. Further, the fee-shifting provision permits recovery of ‘all expenses of any nature incurred in any way’ including attorneys’ fees.”** (emphasis supplied). Opinion at DCA R1576, ¶3; and *see also Trial Practices, Inc.*, at 1189.

21. Page 1, Paragraph B, of the Assignment from Antaramian to Hahn

Loeser provides as follows:

(B) Assignor desires to transfer by way of an absolute and irrevocable assignment to Assignee, and Assignee desires to receive an absolute and irrevocable assignment of the Judgment, the Judgment Lien and the corresponding Debt, including without limitation any other rights and remedies against any and all of Trial Practices, Inc., Trial Simulations, Inc., Trial Visualization, Inc., Harvey Moore and Associates, Inc. and Harvey Moore (together with their heirs, personal representatives, successors and assigns, the “Liable Parties”) arising from or related to the Case, the Judgment, Judgement Lien and the corresponding Debt

(DCA R651)

22. Section 768.79(6)(a), Florida Statutes, provides, in relevant part, as follows:

If a defendant serves an offer which is not accepted by the plaintiff, and if the judgment obtained by the plaintiff is at least 25 percent less than the amount of the offer, the defendant shall be awarded reasonable costs, including investigative expenses, and attorney’s fees . . .

23. Rule 1.442(g), Florida Rules of Civil Procedure provides as follows:

(g) Sanctions. Any party seeking sanctions pursuant to applicable Florida law, based on the failure of the proposal’s recipient to accept a proposal, shall do so by serving a motion in accordance with rule 1.525.

24. Section 57.115, Florida Statutes, provides, in relevant part, as follows:

“(1) The court may award against a judgment debtor reasonable costs and

attorney's fees incurred thereafter by a judgment creditor in connection with execution on a judgment."

WHEREFORE, RESPONDENT, HAHN LOESER & PARKS LLP, respectfully requests this Court to award Hahn Loeser its attorneys' fees incurred in connection with this appeal from TPI, and to award Hahn Loeser any further relief the Court deems just and appropriate.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19TH day of June, 2018, I transmitted a true and correct copy of the foregoing document by electronic mail, through the Florida Courts E-Filing Portal, to:

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