

STATE OF MICHIGAN
COURT OF APPEALS

NOVI HOSPITALITY, LLC,

Plaintiff-Appellant/Cross-Appellee,

v

CENTRAL CEILING & PARTITION, INC.,

Defendant-Appellee/Cross-
Appellant,

and

GAMAN GROUP, INC.,

Defendant-Appellee.

UNPUBLISHED
September 19, 2017

No. 333086
Oakland Circuit Court
LC No. 2013-133660-CK

Before: GADOLA, P.J., and CAVANAGH and SWARTZLE, JJ.

PER CURIAM.

In this breach of contract action involving the construction of a Holiday Inn Express Hotel and Suites (HIE) in Novi, Michigan, plaintiff, Novi Hospitality, LLC (Novi Hospitality), appeals as of right a judgment of no cause of action, which the trial court entered following a nine-day jury trial in which the jury returned a verdict finding that defendants, Central Ceiling & Partition, Inc. (CCP) and Gaman Group, Inc. (Gaman) did not breach their respective construction contracts with Novi Hospitality. We affirm in part, reverse in part, and remand for further proceedings consistent with this opinion.

I. BACKGROUND FACTS

In 2004, Novi Hospitality entered a licensing agreement with International Continental Hotels Group (IHG), authorizing Novi Hospitality to build a HIE in Novi, Michigan. The licensing agreement states that the hotel will be “subject to the manual as it may from time to time be modified by [the] licensor” Manhal Shammami, a member of Novi Hospitality, explained that the “manual” referenced in the licensing agreement is the Holiday Inn Express Brand Standards Manual (Brand Standards Manual). A provision of the Brand Standards

Manual under the heading “Guest Rooms” and subheading “Acoustics” states that “[p]artitions must provide an STC [sound transmission class] [of] 50 (48 dB [decibels]) or better between guest rooms and adjacent spaces.”¹

On July 11, 2006, Novi Hospitality entered a contract with Gaman Group, Inc., of which James Rohlfing is vice president and his daughter, Heather Deller, is president, for management services regarding the construction of the HIE (the Gaman Contract). The Gaman Contract states that Gaman will “provide Construction Management Services for the completion of the project,” which would include “[o]n-site supervision” during construction.

Novi Hospitality obtained financing for the project through Zions Bank out of Salt Lake City, Utah. As a condition of financing, however, Zions Bank required Gaman and Novi Hospitality to execute a different contract produced by the American Institute of Architects (AIA Contract), which the parties signed on September 29, 2006. In addition to specifying the obligations of Gaman, the AIA Contract includes an arbitration clause, an integration clause, and a provision stating that Novi Hospitality “shall retain an architect” for the project. Novi Hospitality retained H & H Design Consultants (H & H Design), owned by Hatem Hannawa, to prepare the drawings for the HIE. However, Hannawa explained that he is not an architect and that he advised Novi Hospitality that an architect was not needed on the project.

Construction was delayed because the city of Novi required multiple resubmissions of the project plans, but the city finally approved the drawings in 2006 or 2007, and construction began in late 2007 or early 2008. The wall assembly drawings approved by the city include a note stating, “STC = 48 – 52.”

On May 28, 2008, Novi Hospitality entered a contract with CCP to install resilient channel (RC)² and drywall for the HIE (the CCP Contract). Among other duties, the CCP Contract specifies the following responsibility of CCP:

Trade Contractor to supply all labor, equipment, hoisting, materials and tools necessary for a complete Drywall Work according to drawings by H&H Design Consultants: A-0, S1-S7, A1-A16, E1-E12, M1-M11, PLANS DATED 9/5/07 and AR Decker & Associates, Inc.: CE1-CE6 and all governing codes and *Holiday Inn Express standards for a complete job[.]* [Emphasis added.]

The CCP Contract also states that “[t]he Contract Documents consist of construction drawings and Specifications prepared for the construction of the Project by H&H Design, AR Decker &

¹ STC is a recognized rating in the construction industry that describes the amount of sound capable of passing through various materials.

² RC is a thin metal channel that is fastened in perpendicular strips directly to the framing studwork of an interior wall. Drywall is then attached to the RC, instead of to the studs, which gives the drywall some flexibility that in turn acts to dampen soundwaves in a greater measure than would drywall that is rigidly attached to the studs themselves.

HIE Standards, General Conditions for Trade Contractors Under Construction Management Agreements and this Trade Contract Agreement.” (Emphasis added).

Construction ceased and the hotel opened for business in June 2009. According to Shammami, that same year Novi Hospitality entered a commercial lease agreement with 3MR, Inc. (3MR) to operate the hotel.³ Shammami testified that Novi Hospitality and 3MR did not memorialize their agreement in writing until January 13, 2014. The lease specifies the rent payments due over a 20-year period and states that the “Landlord represents the building . . . has been constructed to the appropriate specifications for the operation of a hotel, *including . . . construction and design specifications provided in the Holiday Inn Express Standards Manual* effective at the time for which the construction of the building begins.”

Shammami testified that shortly after the hotel opened, customers began complaining about the noise levels in guest rooms. In 2012, Novi Hospitality hired Richard Kolano of Kolano & Saha Engineers (K & S) to perform a field sound isolation test to determine the source of the noise problem. Kolano summarized the results of the test as follows:

The general finding of this work is that guest room separation walls perform significantly lower than both the laboratory performance of assemblies on which the design is based, and the 2010 sound isolation requirements of the Holiday Inn Express (HIE). The primary reason for this underperformance is the presence of several types of compromising of the resilient channels used to attach drywall on one side of each guest room separation wall. These compromises result in considerably greater transfer of sound energy between opposing sides of the wall. Unfortunately, the only known way to correct this problem is to remove the affected drywall and replace it using an improved resilient attachment system.

* * *

Large (approximately 2’ by 2’) access holes were cut in one side of the demising walls between four different pairs of rooms to allow visibility of the installed construction elements. . . .

The compromised sound isolation performance measured between Guest Rooms (FSTC [Field Sound Transmission Class] 35 to 41dB) is caused primarily by non-ideal construction techniques and also (to some extent) by the general wall composition. The *laboratory* performance rating of the currently installed wall assembly is approximately STC 49. It is typical for field tests to result in ratings that are approximately 5 dB lower than laboratory ratings, due to flanking limitations. Accordingly, a wall that is tested at an STC 49 in the laboratory would normally be expected to test at approximately an FSTC 44 in the field.

³ The four members of Novi Hospitality—Manhal Shammami, Mazin Shammami, Mouyad Shammami, and Raad Ayar—are also officers of 3MR.

Kolano attributed the lack of sound isolation between guest rooms to several factors, including the use of inferior RC installation techniques, the use of an inferior brand of RC, the lack of acoustical seals between the walls and the floor, and the lack of acoustical seals on entry and interior doors. Members of Novi Hospitality notified Gaman and CCP of Kolano's findings, but neither took any action to correct the alleged wall deficiencies.

II. PROCEDURAL HISTORY

On April 25, 2013, Novi Hospitality filed a complaint against Gaman and CCP raising breach of contract claims and asserting the following:

24. Based upon acoustical tests, Novi Hospitality determined that the reason that the noise levels in the guest rooms was unacceptable was due to the use of inadequate and substandard resilient channels to attach drywall on one side of each guest room separation wall which results in considerabl[y] greater transfer of sound energy between opposing sides of the wall than if the drywall had been attached using proper materials.

25. In short, the guest room separation walls supplied and installed by CCP, under the construction management of Gaman, performed significantly lower than both the laboratory performance of the assemblies upon which the installed designs were based, and significantly lower than the *2010 sound isolation requirements of the HIE*. [Emphasis added.]

Novi Hospitality claimed that CCP breached its contract because it “fail[ed] to properly install all drywall in the Hotel in accord with the drawings for the Hotel and in accord with all governing codes and HIE standards for a complete job” and Gaman breached its contract because it “fail[ed] to ensure that the scope of work to be performed by CCP was performed in accord with the drawings for the Hotel and in accord with HIE standards”

A. DECLARATORY JUDGMENT

In May 2014, Novi Hospitality filed a motion for summary disposition, arguing that the CCP Contract incorporated HIE standards that required guest room walls to achieve an STC of 50 and an FSTC of 48 or higher, while the K & S report definitively showed that the walls fell well below this standard. Defendants argued in response that Novi Hospitality never provided any HIE standards during construction and that the only HIE standards referenced by the complaint and the K & S report were “2010 sound isolation requirements,” which did not exist at the time of construction. The trial court denied Novi Hospitality's motion, stating the following:

[I]t is unknown what standards, if any, actually existed at the time of the construction. At least in this motion, none were provided and Plaintiff's counsel stated on the record [that] Plaintiff is looking for the standards from 2008. In any event, Plaintiff's expert [K & S] and their report relied on standards not in existence at the time of the construction. The Court finds this evidence to be insufficient to establish judgment as a matter of law in Plaintiff's favor.

Thereafter, Novi Hospitality filed a renewed motion for summary disposition or for a declaratory judgment, explaining that it had obtained a copy of the Brand Standards Manual in effect beginning September 1, 2007, and that the sound isolation requirements for guest room walls were identical—“STC 50 (48 dB) or better”—to the 2010 manual. On March 11, 2015, Judge Rudy J. Nichols, who was then presiding over the case, issued an order denying Novi Hospitality’s motion for summary disposition. However, Judge Nichols granted Novi Hospitality’s request for a declaratory judgment, declaring the following:

- a. Defendant, Central Ceiling and Partition, Inc. (“CCP”) was contractually obligated to “supply all labor, equipment, hoisting, materials and tools necessary for a complete Drywall Work according to drawings by H&H Design Consultants: A-0, S1-S7, A1-A16, E1-E12, Mi-M11, PLANS DATED 9/5/07 and AR Decker & Associates, Inc.: CE1-CE6 and all governing codes and Holiday Inn Express standards for a complete job”;
- b. The Holiday Inn Express standards referenced in the 5/28/08 CCP Contract means the 2007 Holiday Inn Express Standards; and
- c. The sound transmission requirement in the 2007 Holiday Inn Express Standards is STC 50.

Before trial, Novi Hospitality submitted a proposed jury instruction, “M Civ JI 3.13—Fact Judicially Noticed,” that would have required the court to instruct the jury to accept as fact the points declared by Judge Nichols. Defendants opposed the use of this jury instruction. The case was reassigned to Judge Hala Y. Jarbou following Judge Nichols’ retirement in July 2015.

B. PLAINTIFF’S MOTION IN LIMINE

On May 27, 2015, Novi Hospitality filed a motion in limine seeking to exclude the AIA Contract and evidence that it misrepresented Hannawa’s status as an architect. Novi Hospitality argued, in relevant part, that the AIA Contract did not apply because both Rohlfing and Deller testified during their depositions that they executed the contract solely for the benefit of the lending institution. Novi Hospitality contended that, because the AIA Contract did not apply, defendants should be precluded from arguing that a licensed architect was required on the project because neither the CCP Contract nor the Gaman Contract required Novi Hospitality to retain a licensed architect. Without oral argument or any accompanying opinion, on November 25, 2015, the trial court denied Novi Hospitality’s motion.

C. JURY TRIAL

A jury trial was held over nine days between February 8, 2016, and February 19, 2016. In addition to testimony establishing the background facts of the case, other pertinent testimony was also presented. Tina Mari Holmes, the general manager of the HIE in Novi, testified that she is an employee of 3MR and that the hotel receives noise complaints “[t]wo, three times a week” over all shifts.

Kolano was qualified as an expert in acoustical engineering and testified that the STC requirements were identical between the 2007 and 2010 HIE standards. Kolano agreed that it

would be possible for the wall assembly depicted in Hannawa's drawing to achieve an STC of only 49, even if the wall was assembled and tested in a laboratory setting using ideal construction. He explained that the guest room walls at the HIE achieved an FSTC of only 35 to 41, attributing much of the sound isolation failure to improper RC installation techniques.⁴ To resolve the sound problem, Kolano recommended that Novi Hospitality remove the existing drywall and RC and then install Dietrich Metal Framing brand RC, resilient clips, acoustical seals on interior and entry doors, and resilient acoustical sealant between the walls and the floor. He agreed, however, that the drawings did not incorporate these recommendations.

Alan Reinstein was qualified as an expert in accounting for the purpose of computing damages. By comparing the average occupancy rate of the HIE to other hotels in its competitive set, Reinstein calculated the HIE's lost profits between 2009 and 2012. He agreed that the HIE did not have any lost profits in 2013 or 2014 because it consistently outperformed the other hotels in its competitive set. He also agreed that he could not say what caused the HIE's lost profits, only how the hotel performed compared to its competitors. Reinstein agreed that Novi Hospitality's financial records showed that it received all the payments due under the commercial lease agreement with 3MR.

Over Novi Hospitality's objection, the trial court qualified Rohlfling as an expert in construction. Novi Hospitality argued that defendants never identified Rohlfling as an expert witness on any of their witness lists. Rohlfling testified that a project of this magnitude required an architect and that he, a city inspector, and an inspector commissioned by the lending institution all regularly inspected CCP's work during construction and found that the work was "consistent with trade practices and in accordance with the prints[.]" According to Rohlfling, the only HIE standards Novi Hospitality provided during construction were "[s]tandards that would tell us where to locate a headboard, where to locate plugs for lamps, what areas get tile, what areas get carpet, things like that, nothing to do with the construction detailing." He agreed that the parties only executed the AIA Contract so Novi Hospitality could obtain financing.

Stuart Pettit was qualified as an expert in architectural design and building plans and specifications. He testified that Hannawa's drawings lacked specifications that "would be absolutely necessary to . . . put together a successful project acoustically." He testified that the information provided by the drawings alone "would be inadequate to achieve a fully satisfactory result," that the wall assemblies specified by the drawings were not thoroughly designed, and that simply reciting an STC rating on the drawings without including details would be insufficient to achieve a desired STC rating.

Dr. Jeffrey Beck was qualified, over Novi Hospitality's objection, as an expert in the hospitality business. Beck testified that he and his wife visited the HIE in November of 2015, at which time he spoke with a desk clerk who informed him, after inquiry, that the hotel was quiet.

⁴ Kolano testified that the improper installation techniques he observed included (1) using screws that were too long, (2) spacing RC less than 24 inches apart, (3) improperly joining spliced pieces of RC, (4) using three different brands of RC, (5) installing RC upside-down, and (6) using drywall starter strips instead of RC.

He explained that he walked around the entire hotel and found that the noise level was “consistent” with his experience at other hotels. Novi Hospitality objected to Beck’s testimony, arguing that defendants failed to supplement their discovery responses to disclose that Beck would base his expert opinion on an unannounced visit to the HIE. The trial court agreed that defendants were obligated to supplement their discovery responses, but concluded that it could not “unring the bell in terms of what [Beck’s] already testified to,” explaining that it would instead give Novi Hospitality wide latitude during cross-examination.⁵ Beck testified that two or three noise complaints each week was an abnormally low number for a hotel like the HIE and that the HIE consistently outperformed the other hotels in its competitive set. Looking at the financial records, Beck testified that there was no evidence that Novi Hospitality expended any money to compensate 3MR for a noise problem.

Daniel Gay, president of CCP, and Glen Barber, a field supervisor for CCP, both testified that many of the alleged wall assembly deficiencies identified by the K & S report were actually construction techniques that were consistent with industry standards. They both testified that CCP’s work was regularly inspected and approved throughout construction.

Rodger Cannon was qualified as an expert in construction. While defense counsel was laying the foundation for Cannon’s qualifications, he asked Cannon, “[A]re you an expert in construction?” to which Cannon responded, “I do not consider [myself] an expert. I consider myself a person with . . . thirty years of experience and a lot of knowledge.” Novi hospitality objected to Cannon’s testimony on the basis that he “testified he’s not an expert,” but the trial court overruled the objection. Cannon testified that an architect was an essential part of constructing a hotel and that Hannawa’s drawings lacked detail and were “a little vague.” Cannon testified that he visited the HIE twice before trial and, over Novi Hospitality’s objection, explained that “it all looked like it was definitely a good . . . well done job according to the photos and everything that I looked at.” In Cannon’s opinion, CCP performed its work according to the drawings. Cannon explained that during one of his visits to the HIE, he removed a phone jack cover, revealing a 2” by 4” hole through the drywall. He then used a flashlight to view the RC, which he said “looked fine.” In Cannon’s opinion, all of the alleged deficiencies noted in the K & S report were “very minor.”

After the close of proofs, Judge Jarbou concluded that Novi Hospitality’s proposed jury instruction of M Civ JI 3.13 was inappropriate because the judicially noticed facts in the declaratory judgment were disputed issues and thus presented questions of fact for the jury. Following deliberations, the jury concluded that neither Gaman nor CCP breached their respective contracts with Novi Hospitality.

⁵ Beck also explained that he wrote a one-page report following his visit to the HIE, and, over defense counsel’s objection, the court ordered defendants to turn over the report to Novi Hospitality so counsel could examine it and cross-examine Beck about the report if desired.

D. MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT (JNOV)

Novi Hospitality filed a motion for JNOV or, in the alternative, for a new trial, arguing that the jury's verdict was not supported by sufficient evidence because the CCP Contract incorporated HIE standards that required guest room walls to achieve an STC of 50 or better, but the K & S report definitively showed that the guest room walls failed to meet this standard. Alternatively, Novi Hospitality argued that it was entitled to a new trial because (1) the trial court refused to instruct the jury regarding Judge Nichols' declaratory judgment, (2) the trial court improperly allowed defendants to offer irrelevant testimony that CCP constructed the walls in accordance with industry standards, (3) the trial court improperly allowed Beck and Cannon to testify about their undisclosed inspections of the HIE, and (4) the trial court improperly qualified Cannon as an expert because he admitted that he was not an expert. On May 5, 2015, the trial court issued an opinion and order denying Novi Hospitality's motion.

E. MOTION FOR CASE EVALUATION SANCTIONS

Also following trial, defendants filed a motion for costs, fees, and/or case evaluation sanctions, explaining that Novi Hospitality rejected a case evaluation award of \$30,000 in 2014, which defendants accepted. Defendants sought attorney fees on behalf of several attorneys who worked at Mellon Pries, P.C. (Mellon Pries) (primarily attorneys James T. Mellon and David A. Kowalski), and claimed that these attorneys operated under a bifurcated fee agreement in which they charged a higher rate for trial as opposed to pre- and post-trial services. Defendants also requested attorney fees on behalf of SHS Group (attorney Nicholas J. LeFevre), which had charged a flat-rate monthly fee of \$3,500 for its services throughout the case. In addition to attorney fees of \$136,727 for Mellon Pries and \$79,197.85 for SHS Group, defendants requested statutory interest of \$20,934.91, statutory costs of \$170, non-expert litigation costs of \$18,528.16, and expert costs of \$42,139.37.

The trial court denied defendants' request for attorney fees as to SHS Group because LeFevre failed to supply detailed billing records. Regarding Mellon Pries, the court agreed that the lower rates charged were well "below the rate of an attorney with comparable experience and years in practice" and that no factors justified an upward or downward departure. However, the court concluded that bifurcated fees were inappropriate and therefore granted Mellon and Kowalski attorney fees only at the lower hourly rates. The trial court denied attorney fees attributable to the work performed by legal assistants or other associate attorneys at Mellon Pries because it found that "no evidentiary support has been presented as to their entitlement to any fees." The trial court also denied defendants' request for non-expert litigation expenses, concluding that defendants failed to sufficiently delineate these costs and failed to present statutory authority that would allow such expenses. Finally, the trial court awarded a reduced amount for expert fees, explaining that it reviewed defendants' list of expert costs and compared the list to invoices from the experts and allowed only costs that were attributable to time spent in court, time spent preparing for trial testimony, and travel time and expenses.

III. JNOV

On appeal, Novi Hospitality first argues that the trial court erred by denying its motion for JNOV. We review de novo a trial court's ruling on a motion for JNOV. *Sniecinski v Blue*

Cross & Blue Shield of Mich, 469 Mich 124, 131; 666 NW2d 186 (2003). When reviewing such a motion, we must view the evidence and all legitimate inferences in a light most favorable to the nonmoving party. *Id.* “A motion for directed verdict or JNOV should be granted only if the evidence viewed in this light fails to establish a claim as a matter of law.” *Id.* “When the evidence presented could lead reasonable jurors to disagree, the trial court may not substitute its judgment for that of the jury.” *Foreman v Foreman*, 266 Mich App 132, 136; 701 NW2d 167 (2005). This issue also raises questions of contract interpretation, which we review de novo. *Coates v Bastian Bros, Inc*, 276 Mich App 498, 503; 741 NW2d 539 (2007).

When examining the language of a contract, we must interpret the words used according to their plain and ordinary meaning. *Id.* at 503. Courts must give effect to every word, phrase, and clause in a contract and avoid an interpretation that would render any part of the contract surplusage or nugatory. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 468; 663 NW2d 447 (2003). An unambiguous contract reflects the parties’ intent and its construction is a matter of law for the court. *Wells Fargo Bank, NA v Cherryland Mall Ltd Patnership*, 295 Mich App 99, 111; 812 NW2d 799 (2011). The meaning of an ambiguous contract, however, is a question of fact that must be decided by the jury. *Id.* A contract is ambiguous when its provisions irreconcilably conflict or are equally susceptible to multiple meanings. *Coates*, 276 Mich App at 503. “If the contract, although inartfully worded or clumsily arranged, fairly admits of but one interpretation, it is not ambiguous.” *Wells Fargo*, 295 Mich App at 111 (quotation marks and citation omitted).

The CCP Contract at issue in this case states, in pertinent part, the following:

Trade Contractor to supply all labor, equipment, hoisting, materials and tools necessary for a complete Drywall Work according to drawings by H&H Design Consultants: A-0, S1-S7, A1-A16, E1-E12, M1-M11, PLANS DATED 9/5/07 and AR Decker & Associates, Inc.: CE1-CE6 and all governing codes and *Holiday Inn Express standards for a complete job*[,] [Emphasis added.]

The CCP Contract also states that the “Contract Documents” consist of the “construction drawings and Specifications prepared for the construction of the Project by H&H Design, AR Decker & *HIE Standards*, General Conditions for Trade Contractors Under Construction Management Agreements and this Trade Contract Agreement.” (Emphasis added.)

Novi Hospitality argues that the CCP Contract required CCP to ensure that the guest room walls achieved an STC of 50 or better. The contract defines neither the phrase “Holiday Inn Express standards for a complete job” nor “HIE Standards.” The mere fact that a contract does not define a contractual term does not necessarily render the contract ambiguous, but this is only the case if the term has a “commonly used meaning” or has a “natural and ordinary meaning” in the particular trade or business involved. *Wells Fargo*, 295 Mich App at 115. Novi Hospitality presents no evidence that the phrases “Holiday Inn Express standards for a complete job” or “HIE Standards” have a common meaning or a natural and ordinary meaning within the construction industry. Novi Hospitality argues that these phrases necessarily refer to the 2007 “Holiday Inn Express Brand Standards Manual,” but this title is not used anywhere in the CCP Contract and there is no evidence that this would be generally known within the construction industry. Nothing in the plain language of the contract suggests that CCP is responsible to

ensure that the guest room walls specified by Hannawa's drawings achieved any particular STC rating.⁶ Accordingly, defining the scope of CCP's obligations under the contract was properly left to the province of the jury. See *Klapp*, 468 Mich at 469 ("It is well settled that the meaning of an ambiguous contract is a question of fact that must be decided by the jury.").

The CCP Contract also incorporates the drawings provided by H & H Design, and the wall assembly drawings include a note stating, "STC = 48 – 52." Again, however, nothing about this phrase necessarily indicates that CCP, as opposed to some other person or entity, bears the contractual responsibility to ensure that the constructed walls achieved a particular STC rating. The scope of CCP's responsibilities under this provision is therefore also ambiguous and created a question of fact for the jury.

Regarding Gaman's contractual responsibilities, the Gaman Contract states only that Gaman will provide "Construction Management Services for the completion of the project—Holiday Inn Express Novi" and lists its "Project Management" services to include "[o]n-site supervision."⁷ The scope of Gaman's contractual responsibility is not clear from the overly-broad language used in the Gaman Contract, so the meaning of the contractual terms was an issue properly left to the jury. See *Klapp*, 468 Mich at 469.

Assuming instead that the AIA Contract controls, the contract makes clear that Gaman is not responsible for "construction means, methods, techniques, sequences or procedures . . . in connection with the Work of each of the Contractors" and that Gaman is "not . . . responsible for a Contractor's failure to carry out the Work in accordance with the respective Contract Documents." Under the clear language of the AIA Contract, Gaman was not contractually responsible for any failure by CCP.

Novi Hospitality argues that the AIA Contract does not apply and that the trial court should have excluded the contract at trial, citing *Archambo v Lawyers Title Ins Corp*, 466 Mich 402, 414 n 16; 646 NW2d 170 (2002) and the testimony of Rohlfing and Deller that the parties only executed the contract for the benefit of the lending institution. However, *Archambo* states that when two contracts govern the same subject matter, "the existence of an integration clause in

⁶ Even assuming the CCP Contract incorporates the Brand Standards Manual, which states under the heading "Guest Rooms" and subheading "Acoustics" that "[p]artitions must provide an STC 50 (48 dB) or better between guest rooms and adjacent spaces," nothing about this language indicates that a contractor responsible for installing drywall and RC would bear the burden to ensure that the walls achieved this acoustic rating, as opposed to the project designer or architect, particularly when the walls include other elements, such as studs and insulation, for which CCP was clearly not responsible. The Brand Standards Manual also includes other references to drywall work, so it is not clear that the only reason to reference the manual would be to specify that CCP was responsible to ensure that guest room walls achieved an STC of 50 or better.

⁷ The Gaman Contract also includes a provision stating that Gaman will be responsible to provide "[p]lan and specification review," but Novi Hospitality did not allege in its complaint that Gaman breached the contract in this regard.

the later contract necessarily indicates that the parties intended the later contract to supersede the earlier contract, and thus provides dispositive evidence with regard to which contract is controlling.” *Id.* The parties executed the AIA Contract later in time than the Gaman Contract, and the AIA Contract contains an integration clause. The AIA Contract therefore controls as a matter of law and the trial court was not required to exclude the contract.⁸ In sum, Novi Hospitality was not entitled to JNOV with respect to any of the contracts at issue and the trial court did not err by denying its motion.

IV. NEW TRIAL

Novi Hospitality next argues that the trial court should have granted its request for a new trial for various reasons. We review for an abuse of discretion a trial court’s ruling on a motion for a new trial. *Zaremba Equip, Inc v Harco Nat’l Ins Co*, 302 Mich App 7, 21; 837 NW2d 686 (2013). “An abuse of discretion occurs when the decision results in an outcome falling outside the range of principled outcomes.” *Id.*

A. GREAT WEIGHT OF THE EVIDENCE

Novi Hospitality first argues that the jury’s verdict was against the great weight of the evidence because the CCP Contract incorporated HIE standards that required guest room walls to achieve an STC of 50 or better, but the K & S report clearly demonstrated that the walls failed to meet this standard. As explained earlier in this opinion, the jury was free to decide whether the CCP Contract incorporated the Brand Standards Manual and whether the drawings, the CCP contract itself, and the Brand Standards Manual, if applicable, contractually obligated CCP to ensure that the guest room walls achieved a certain STC rating. The jury could reasonably conclude that neither the contract itself nor any of the incorporated documents imposed this responsibility on CCP. Therefore, the mere fact that the K & S report showed that the walls failed to achieve a certain STC rating does not demonstrate that the jury’s verdict was against the great weight of the evidence.

⁸ Novi Hospitality’s claim against Gaman could have been dismissed as a matter of law before trial because the AIA Contract controls, the contract clearly absolved Gaman from responsibility for CCP’s actions, and the contract contains an arbitration clause. The AIA Contract also required Novi Hospitality to “retain an architect” for the project, which it failed to do, so Gaman could have prevailed as a matter of law on the basis that “a party who first breaches a contract cannot sue the other party for breach of contract.” *Doe v Henry Ford Health Sys*, 308 Mich App 592, 601-602; 865 NW2d 915 (2014). Defendants filed a motion for summary disposition on May 7, 2015, arguing, in part, that the AIA Contract controlled as a matter of law because it contained an integration clause. On November 19, 2015, the trial court denied defendants’ motion on other grounds without directly addressing this issue. We will not further address the issue, however, because the parties do not raise it on appeal.

B. JURY INSTRUCTION ON DECLARATORY JUDGMENT

Novi Hospitality next argues that Judge Jarbou improperly refused to instruct the jury to accept as fact the points previously declared by Judge Nichols. We conclude that the trial court did not abuse its discretion by denying Novi Hospitality's motion for a new trial on this basis.

As a preliminary matter, and as Novi Hospitality implicitly concedes on appeal, Judge Nichols' order is more properly framed as an order containing judicially noticed facts than a declaratory judgment. The purpose of a declaratory judgment is to "enable parties, in appropriate circumstances of actual controversy, to obtain an adjudication of their rights before actual injury occurs [and] to settle matters before they ripen into a violation of law or a breach of contractual duty" *Skiera v Nat'l Indemnity Co*, 165 Mich App 184, 189; 418 NW2d 424 (1987) (quotation marks and citation omitted).⁹ An actual controversy exists for purposes of the declaratory judgment rule, MCR 2.605, when a "declaratory judgment is necessary to guide a plaintiff's future conduct in order to preserve legal rights." *UAW v Central Mich Univ Trustees*, 295 Mich App 486, 495; 815 NW2d 132 (2012).

Judge Nichols' order was inconsistent with the general purpose of declaratory judgments because the order was not necessary to preserve Novi Hospitality's legal rights; Novi Hospitality was already alleging that its legal rights had been injured as a result of CCP's and Gaman's breaches of contract. Instead, it appears that Judge Nichols was attempting to resolve a dispute between the parties regarding whether any HIE standards existed at the time of construction, since both the K & S report and Novi Hospitality's complaint only reference "2010 sound isolation requirements" of the HIE. After Novi Hospitality produced a copy of the 2007 Holiday Inn Express Brand Standards Manual, Judge Nichols "declared" the following:

- a. Defendant, Central Ceiling and Partition, Inc. ("CCP") was contractually obligated to "supply all labor, equipment, hoisting, materials and tools necessary for a complete Drywall Work according to drawings by H&H Design Consultants: A-0, S1-S7, A1-A16, E1-E12, Mi-M11, PLANS DATED 9/5/07 and AR Decker & Associates, Inc.: CE1-CE6 and all governing codes and Holiday Inn Express standards for a complete job";
- b. The Holiday Inn Express standards referenced in the 5/28/08 CCP Contract means the 2007 Holiday Inn Express Standards; and
- c. The sound transmission requirement in the 2007 Holiday Inn Express Standards is STC 50.

Despite Judge Nichols' statement that he was granting Novi Hospitality's request for a declaratory judgment, we construe the order as one containing judicially noticed facts. The

⁹ Cases decided before November 1, 1990, are not binding pursuant to MCR 7.215(J)(1), but they may be considered persuasive authority. *In re Stillwell Trust*, 299 Mich App 289, 299 n 1; 829 NW2d 353 (2012).

question, then, is whether Judge Nichols could permissibly take judicial notice of the above-noted facts under MRE 201. MRE 201 states that a “judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” A court in a civil proceeding must instruct the jury to accept as true any judicially noticed facts. MRE 201(f). In this case, the meaning of the phrase “Holiday Inn Express standards for a complete job” was the subject of reasonable dispute and therefore was not an appropriate subject of judicial notice. Judge Jarbou did not err by refusing to instruct the jury to accept the points declared by Judge Nichols and did not abuse her discretion by denying Novi Hospitality’s motion for a new trial on this basis.¹⁰

C. STANDARD OF CARE EVIDENCE

Novi Hospitality next argues that the trial court improperly allowed defendants to introduce standard of care testimony at trial. Specifically, Novi Hospitality argues that the trial court erred by allowing Rohlring and Cannon to testify that CCP performed in a workmanlike manner that was consistent with industry standards. Defendants respond by arguing that “evidence of custom and usage of a trade is admissible to explain ambiguous language in a contract.” *Durant Constr, Inc v Gourley*, 125 Mich App 695, 701; 336 NW2d 856 (1983).

Although defendants are correct that evidence regarding custom and usage of trade may be introduced to interpret ambiguous contractual terms, the testimony of Cannon and Rohlring regarding the quality of CCP’s work would not have aided in the interpretation of any of the disputed contractual terms in this case. Instead, the testimony was appropriate to demonstrate that CCP complied with the implied duty to perform its work in a skillful and workmanlike manner. In *Nash v Sears, Roebuck & Co*, 383 Mich 136, 142-143; 174 NW2d 818 (1970), our Supreme Court explained the following:

[T]here is implied in every contract for work or services a duty to perform it skillfully, carefully, diligently, and in a workmanlike manner. . . . With respect to the skill required of a person who is to render services, it is a well-settled rule that

¹⁰ To the extent it could be argued that Judge Jarbou set aside or vacated Judge Nichols’ order, she had authority to do so. MCR 2.613(B) sets out the limitations on error-correction by one judge of the order of another judge and states that “[i]f the judge who entered the judgment or order is absent or unable to act, an order vacating or setting aside the judgment or order . . . may be entered by a judge otherwise empowered to rule in the matter.” In persuasive authority, see MCR 7.215(J)(I), this Court has upheld a successor judge’s order setting aside the order of a previous judge, who had since retired, when the previous order did not dispose of all of the claims of the parties. See *Mikedis v Perfection Heat Treating Co*, 180 Mich App 189, 195, 203-204, 204 n 4; 446 NW2d 648 (1989) (also noting in dicta that under MCR 2.604, an order adjudicating fewer than all of the parties’ claims is freely modifiable before entry of a final judgment that adjudicates all the claims, rights, and liabilities of the parties). The order of retired Judge Nichols did not dispose of all of the parties’ claims, so Judge Jarbou was free to modify or dispose of the order as she saw fit.

the standard of comparison or test of efficiency is that degree of skill, efficiency, and knowledge which is possessed by those of ordinary skill, competency, and standing in the particular trade or business for which he is employed. Where the contract does not provide for a degree of skill higher than this, none can be required. Where skill as well as care is required in performing the undertaking, and where the party purports to have skill in the business and he undertakes for hire, he is bound to exercise due and ordinary skill or, in other words, to perform in a workmanlike manner. In cases of this sort he must be understood to have engaged to use a degree of diligence and attention and skill adequate to the performance of his undertaking. It seems, however, that he is not liable for an error due to an honest mistake of judgment, and not to gross ignorance. Nor, in the absence of an express provision to that effect, does he become a guarantor of the results.

This case involves a contract for work or services to be performed by CCP, so evidence that CCP installed the RC and drywall in a workmanlike manner consistent with industry standards was appropriate to show that CCP complied with its contractual obligations, absent a provision in the contract requiring a higher degree of performance or skill. The jury was tasked with determining whether the ambiguous provisions of the CCP Contract imposed a higher standard on CCP's work or whether these provisions guaranteed specific results, i.e., requiring guest room walls to achieve an STC of 50 or better. If the jury concluded that no such higher standard or guarantee could be drawn from the ambiguous provisions of the contract, the only question was then whether CCP performed its work with the degree of skill, care, diligence, and workmanship possessed by others of ordinary skill, competency, and standing in its particular trade or business. Introduction of Cannon's and Rohlfig's testimony on this point did not, therefore, inject an improper issue before the jury.

D. DISCOVERY VIOLATIONS

Novi Hospitality argues that the trial court abused its discretion by allowing Beck and Cannon to testify regarding their undisclosed inspections of the hotel.¹¹ In particular, Novi Hospitality argues that defendants violated MRPC 4.2 and 5.3 when Beck spoke with the desk clerk at the hotel and that the trial court should have excluded the testimony because defendants failed to supplement their discovery responses to disclose the bases of their experts' opinions.

We first conclude that Beck's conversation with the desk clerk did not violate the Michigan Rules of Professional Conduct. MRPC 4.2 states that "a lawyer shall not communicate about the subject of the representation with a party whom the lawyer knows to be represented in the matter by another lawyer, unless the lawyer has the consent of the other lawyer or is authorized by law to do so." The comment to the rule states that, "[i]n the case of an organization, this rule prohibits communications by a lawyer for one party concerning the matter

¹¹ We review for an abuse of discretion a trial court's decision regarding sanctions for a discovery violation. *Jilek v Stockson*, 297 Mich App 663, 665; 825 NW2d 358 (2012).

in representation with persons having managerial responsibility on behalf of the organization” MRPC 5.3 states the following regarding the conduct of non-lawyers:

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the rules of professional conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with knowledge of the relevant facts and the specific conduct, ratifies the conduct involved; or

(2) the lawyer . . . has direct supervisory authority over the person and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

The desk clerk was not an employee of Novi Hospitality, but rather of 3MR, a non-party that was operating the hotel at all times relevant to this lawsuit. Moreover, even if the clerk was employed by Novi Hospitality, there is no evidence that the clerk had “managerial responsibility on behalf of” Novi Hospitality. Accordingly, Novi Hospitality has not shown that defendants violated MRPC 4.2 or 5.3.

Novi Hospitality cites no authority suggesting that Beck and Cannon were not permitted to visit the hotel, a place of public accommodation run by a non-party, without the knowledge or consent of Novi Hospitality. Defendants were, however, obligated to supplement their discovery responses to inform Novi Hospitality that Beck and Cannon would base portions of their opinion testimony on information gleaned during the visits. MCR 2.302(E)(1)(a)(ii) states that a party is under a duty to seasonably supplement a response to a question directly addressing “the subject matter on which [an] expert is expected to testify, and the substance of the expert’s testimony.” During discovery, Novi Hospitality sent defendants an interrogatory asking them to disclose the factual information relied on by any experts, the specific opinions the experts were expected to render, and the grounds for such opinions. If a trial court discovers that a party has failed to properly supplement its discovery responses, the court may “enter an order as is just,” including an order prohibiting the offending party from introducing the designated matter into evidence. See MCR 2.302(E)(2); MCR 2.313(B)(2)(B).

Although the trial court certainly could have prohibited Beck’s and Cannon’s testimony pursuant to MCR 2.313(B)(2)(b), this was a matter within the trial court’s sound discretion. Instead of excluding the testimony, the court gave Novi Hospitality broad leeway during cross-examination and required defendants to turn over the one-page report Beck wrote about his visit. Novi Hospitality knew that both Beck and Cannon would be testifying and that their testimony would be favorable to the defense; the only thing Novi Hospitality did not know was that the experts went to the hotel before trial. We are not convinced that the trial court abused its

discretion by taking the course of action that it did. Likewise, the trial court did not abuse its discretion by denying Novi Hospitality's motion for a new trial on this basis.¹²

E. TESTIMONY OF RODGER CANNON

Novi Hospitality next argues that the trial court abused its discretion by qualifying Cannon as an expert witness because he testified that he was not an expert.¹³ Novi Hospitality also argues that Cannon's testimony failed to meet the requirements of MRE 702 because his opinion was not based on sufficient facts or on sound methods or principles. We disagree.

MRE 702 governs the qualifications a person must possess before he or she may testify as an expert witness and states the following:

If the court determines that scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise if (1) the testimony is based on sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

A witness need not have a formal education if he or she can demonstrate specialized knowledge resulting from on-the-job training and experience. *Zeeland Farm Servs, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 197-200; 555 NW2d 733 (1996).

Cannon testified at trial that he had worked as a construction superintendent, a construction manager, and a project manager for the construction of over 15 hotels. He testified that he had "thirty years of experience and a lot of knowledge" in the construction industry. Although Cannon stated that he did not think of himself as an "expert," this self-deprecating statement does not disqualify him as an expert in light of his relevant background and experience. In any event, it is for the trial court, not the witness, to determine whether a witness is qualified to offer expert testimony. The trial court did not abuse its discretion by qualifying Cannon as such.

¹² Even assuming the trial court should have excluded Beck's and Cannon's testimony, any error was harmless. Beck's testimony only pertained to damages, an issue that the jury did not reach. And Cannon's testimony was largely duplicative of Rohlfing's testimony. Novi Hospitality argues that it "would have been able to be present during the inspections and had its own expert respond to [d]efendants' experts' observations and opinions" if the visits were disclosed. But Novi Hospitality cites no authority indicating that it would have had a right to be present, and it already presented expert testimony from Kolano suggesting that the construction of the guest room walls was deficient.

¹³ We review for an abuse of discretion a trial court's ruling regarding the qualification of an expert witness. *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006).

Novi Hospitality contends that Cannon's testimony was not based on reliable principles or sufficient data for purposes of MRE 702 because he merely looked around the hotel on two occasions, did not perform any accepted sound tests, and looked through a 2" by 4" hole in the drywall to reach the conclusion that CCP properly installed the drywall and RC. Cannon was not offered, however, as an expert in acoustics and he was not asked to provide an opinion regarding the acoustical performance of the walls. Further, although looking through a 2" by 4" hole to produce an opinion regarding the general construction of the hotel walls may have been insufficient standing alone, Cannon also testified that he reviewed the drawings and the K & S report, which contained numerous photographs and descriptions of the internal wall components. Novi Hospitality has not shown that the trial court abused its discretion by qualifying Cannon as an expert in construction or by allowing his testimony at trial.

F. TESTIMONY OF JAMES ROHLFING

Novi Hospitality asserts that the trial court abused its discretion by allowing Rohlfling to testify as an expert in construction at trial because defendants failed to disclose that they would be offering Rohlfling as an expert on any witness list filed before trial. Witness lists are an element of discovery. *Grubor Enterprises, Inc v Kortidis*, 201 Mich App 625, 628; 506 NW2d 614 (1993). Under MCR 2.302(E)(1)(a)(ii), a party has a duty to supplement discovery responses to disclose "the identity of each person expected to be called as an expert witness at trial" See also MCR 2.401(I)(1) (stating that a party must file and serve a list containing the "name of each witness" and "whether the witness is an expert, and the field of expertise"). MCR 2.401(I)(2) states that "[t]he court may order that any witness not listed in accordance with this rule will be prohibited from testifying at trial except upon good cause shown."

This Court has previously held that a trial court has discretion to allow a party to call a witness who was not properly identified on a witness list. See *Jamison v Lloyd*, 51 Mich App 570, 574-575; 215 NW2d 763 (1974); *Grubor*, 201 Mich App at 629. "Before imposing a sanction, such as barring a witness, several factors should be considered, including whether the violation was willful or accidental; the party's history of refusing to comply with discovery requests or disclosures of witnesses; the prejudice to the party; the actual notice to the opposite party of the witness; and the attempt to make a timely cure." *Colovos v Dep't of Transp*, 205 Mich App 524, 528; 517 NW2d 803 (1994) (citation omitted).

In this case, it does not appear that defendants intentionally hid that they would offer Rohlfling as an expert at trial. In fact, defendants did not offer Rohlfling as an expert at the outset of his testimony, but rather only after the trial court suggested that his answers were getting beyond issues of fact and that he was presenting opinion testimony. Although there is some history of defendants failing to fully comply with discovery, Novi Hospitality was not significantly prejudiced by the introduction of Rohlfling's expert testimony, considering that they were aware of his experience in the construction industry, defendants identified him as a witness on every witness list, and defendants identified that Rohlfling could be called as an expert on one witness list filed before trial. Defendants were generally compliant with the trial court's orders, and although Rohlfling offered limited opinions throughout his testimony, such as his opinion that CCP's work was consistent with trade practices and the drawings, much of his testimony continued to address basic matters of fact in the case. Under the circumstances, Novi Hospitality

has not shown that it was prejudiced or that the trial court abused its discretion by refusing to exclude Rohlfling's expert testimony as a discovery sanction.¹⁴

V. CASE EVALUATION SANCTIONS

On cross-appeal, defendants argue that the trial court improperly awarded only the lower hourly rates charged by Mellon Pries for the work performed by its attorneys and failed to award attorney fees for the work of other associate attorneys and legal assistants at Mellon Pries. Defendants further argue that the trial court improperly refused to award attorney fees to LeFevre, failed to award costs despite the production of detailed billing records, and erroneously reduced the expert fees without explanation. "A trial court's decision whether to grant case-evaluation sanctions under MCR 2.403(O) presents a question of law, which this Court reviews de novo." *Smith v Khouri*, 481 Mich 519, 526; 751 NW2d 472 (2008). Appellate courts review for an abuse of discretion a trial court's award of attorney fees and costs. *Id.*

MCR 2.403 governs case evaluation sanctions. Under the court rule, "if one party accepts [a case evaluation] award and one rejects it . . . and the case proceeds to a verdict, the rejecting party must pay the opposing party's actual costs . . ." *Smith*, 481 Mich at 527. Actual costs are defined by MCR 2.403(O)(6) as "those costs taxable in any civil action, and . . . a reasonable attorney fee based on a reasonable hourly or daily rate as determined by the trial judge for services necessitated by the rejection of the case evaluation . . ." The burden of proving the reasonableness of requested fees is on the requesting party. *Smith*, 481 Mich at 528.

To determine whether a requested attorney fee is reasonable, the trial court must first "determin[e] the fee customarily charged in the locality for similar legal services" using "reliable surveys or other credible evidence of the legal market." *Id.* at 530-531. The trial court must then multiply this number by the reasonable number of hours expended in the case, after which the trial court must consider the factors listed in MRPC 1.5(a) and *Wood v Detroit Automobile Inter-Ins Exch*, 413 Mich 573; 321 NW2d 653 (1982) to determine whether an upward or downward adjustment is necessary. *Smith*, 481 Mich at 531.

Defendants first argue that the trial court abused its discretion by refusing to allow the bifurcated rates charged by Mellon Pries and by instead adopting the lower \$140 hourly rate as applicable to all of the time Mellon and Kowalski expended in the case. We agree.¹⁵ The trial

¹⁴ To the extent Novi Hospitality suggests in its statement of the issue presented that Rohlfling also lacked the experience necessary to qualify as an expert witness under MRE 702, it offers no authority or argument in support of this proposition in the discussion section of its brief, thereby abandoning the issue on appeal. See *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999) ("[W]here a party fails to brief the merits of an allegation of error, the issue is deemed abandoned by this Court."). In any event, we would conclude that Rohlfling possessed the necessary qualifications based on his previous work managing numerous hotel construction projects and his experience supervising construction projects for over 25 years.

¹⁵ Defendants seem to suggest in some instances throughout their brief on cross-appeal that the trial court should have awarded a greater hourly rate than what they requested, but they provide

court did not reject the attorney fees requested by defendants on behalf of Mellon and Kowalski on the basis that the fees were exorbitant, but rather because “[n]o authority has been provided to the Court that would provide for differing rates for pretrial and trial work.” The trial court concluded that bifurcated rates were improper and therefore only accepted the lower \$140 rate charged, noting that this rate was well below the median rates listed for similarly situated attorneys in the 2014 Economics of Law Practice Attorney Income and Billing Rate Summary Report produced by the State Bar of Michigan.

The trial court and Novi Hospitality did not cite any law or standard that would prohibit bifurcated attorney fees in Michigan, and we are not aware of any. MRPC 1.5(a) states that a lawyer shall not charge an “illegal or excessive fee” and states that a “fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee.” But this says nothing about charging a different fee for pretrial versus trial services and would not, on its face, disallow bifurcated fees so long as both rates charged are not clearly excessive. The trial court seemingly accepted defendants’ evidence regarding the average rate charged for an attorney practicing in the locality of Mellon Pries and only disallowed the higher trial rates on the basis that the bifurcated fees were not allowed. Because there is no authority that would require a trial court to reject a party’s requested attorney fees on this basis, the trial court abused its discretion in this regard. The evidence produced by defendants showed that the average fee charged for an attorney in the locality of Mellon Pries was \$278.67, well above even the highest trial rates charged by Mellon and Kowalski. The trial court should have allowed these higher fees.¹⁶

Defendants next argue that the trial court abused its discretion by refusing to award LeFevre attorney fees because he charged a flat-rate monthly fee of \$3,500. The trial court rejected LeFevre’s request for attorney fees, however, not on the basis that he charged a flat-rate monthly fee, but rather because he failed to submit detailed billing records. In *Smith*, 481 Mich at 532, our Supreme Court held that, to determine whether the hours expended by an attorney are reasonable, “[t]he fee applicant must submit detailed billing records, which the court must examine and opposing parties may contest for reasonableness. The fee applicant bears the burden of supporting its claimed hours with evidentiary support.” The trial court did not abuse its discretion by denying LeFevre’s request for attorney fees because the lack of detailed billing records left the court with insufficient proof that the hours he expended were reasonable.

no law in support of this contention. A trial court is only required to assess “the reasonableness of the *requested* fees” *Smith*, 481 Mich at 528 (emphasis added).

¹⁶ Defendants also argue that the trial court should have allowed an upward adjustment of the baseline fee for the *Wood*/MRPC 1.5(a) factor of “results achieved,” but this issue becomes moot once we accept that the appropriate baseline fee was already higher than the highest rate charged by the attorneys at Mellon Pries for trial services. The trial court did not find that any of the *Wood*/MRPC 1.5(a) factors allowed a downward adjustment, and none of the parties argue for a downward adjustment on appeal. Accordingly, because there is no reason to reduce the reasonable baseline fee and the baseline fee is higher than the fees requested by the attorneys at Mellon Pries, these fees were necessarily reasonable.

Defendants argue that the trial court abused its discretion by refusing to award attorney fees on the basis of work performed by other associate attorneys and legal assistants at Mellon Pries. The trial court concluded that defendants presented “no evidentiary support . . . as to their entitlement to any fees.” In a footnote, the court cited MCR 2.626, which states that “[a]n award of attorney fees may include an award for the time and labor of any legal assistant who contributed nonclerical, legal support under the supervision of an attorney, provided the legal assistant meets the criteria set forth in Article 1, § 6 of the Bylaws of the State Bar of Michigan.” Defendants did not offer any evidence that the legal assistants at Mellon Pries satisfied these standards. However, the trial court abused its discretion by failing to award attorney fees for the work performed by the other identified associate attorneys at Mellon Pries. The State Bar of Michigan Directory shows that both Elyse Heid and Felicity Solman are licensed attorneys in the state of Michigan, and defendants submitted detailed billing records showing that both women worked on the case after they were admitted to the state bar. The trial court should have awarded attorney fees on the basis of the work performed by these attorneys.

Defendants also argue that the trial court abused its discretion by denying their request for non-expert litigation costs. The trial court denied defendants’ request for costs because defendants did not offer statutory authority in support of their claim and failed to delineate the expenses sought. “The power to tax costs is purely statutory, and the prevailing party cannot recover such expenses absent statutory authority.” *Guerrero v Smith*, 280 Mich App 647, 670; 761 NW2d 723 (2008). Under MCR 2.403(O)(6)(a), “actual costs” that are allowable as a case evaluation sanction include only “those costs taxable in any civil action[.]”

On appeal, defendants claim that they provided a summary of their costs and supplied the trial court with detailed billing records, which itemized the costs by month. They also argue that “[m]andated filing fees are separately taxable” by MCL 600.2529 and that, “[o]f the costs of \$5,797.55, \$969.26 are for mandatory court filing fees.” Defendants’ summary, however, is merely the total amount charged for costs each month since June 2014, without any explanation or itemization. Defendants provided all of their billing records and expected the trial court to sift through the records to determine which costs would constitute “taxable” costs. Defendants ask this Court to do the same. Failure to sufficiently brief an issue renders it abandoned on appeal, and an appellant may not merely announce its position and leave it to this Court to discover and rationalize the basis for its claims, unravel its arguments, or search for support of its position. *Greater Bethesda Healing Springs Ministry v Evangel Builders & Constr Managers, LLC*, 282 Mich App 410, 413; 766 NW2d 874 (2009). Defendants therefore have not demonstrated entitlement to relief on this issue.

Finally, defendants argue that the trial court improperly reduced the expert costs they claimed and offered “no indication as to why [it] reduced the fees, other than [that] it arbitrarily determined what it considered ‘trial preparation.’ ” In its opinion, citing *Van Elslander v Thomas Sebold & Assoc, Inc*, 297 Mich App 204, 218; 823 NW2d 843 (2012), the trial court noted that taxable costs relating to an expert witness include travel time and expenses, time spent in court, and time used to prepare for trial testimony. The trial court explained that it examined the invoices of the experts and other evidence that was presented in support of the expert costs and allowed costs for any travel time, trial preparation, or court time that was supported by the evidence. Defendants do not themselves break down the invoices and other evidence to show that the trial court’s calculations were erroneous. Under the circumstances, they have failed to

demonstrate that the trial court abused its discretion and have abandoned this issue on appeal. See *Greater Bethesda*, 282 Mich App at 413.

VI. CONCLUSION

In summary, we affirm the trial court's order denying Novi Hospitality's motion for JNOV or, in the alternative, for a new trial, and we affirm the jury's verdict. We also affirm the trial court's order regarding case evaluation sanctions on the issues of attorney fees awardable to LeFevre, non-expert litigation costs, and expert costs. We reverse, however, the trial court's order regarding case evaluation sanctions on the issue of attorney fees awardable to Mellon and Kowalski and remand for entry of an order awarding the bifurcated rates charged by Mellon Pries and awarding attorney fees for the work performed by Heid and Solman.¹⁷ We do not retain jurisdiction. As the prevailing parties, defendants may tax costs pursuant to MCR 7.219.

/s/ Michael F. Gadola

/s/ Mark J. Cavanagh

/s/ Brock A. Swartzle

¹⁷ In light of our conclusion that Novi Hospitality is not entitled to a new trial or JNOV, we need not address defendants' claim on cross-appeal that the trial court abused its discretion by denying defendants' motion in limine to exclude the expert testimony of Alan Reinstein and evidence of damages attributable only to non-party 3MR.