STATE OF MICHIGAN

COURT OF APPEALS

BURTON BROTHERS,

Plaintiff-Appellee,

v

JOHN LAKE and DIANE LAKE,

Defendants-Appellants.

UNPUBLISHED
May 2, 1997

No. 179701
Oakland Circuit Court
LC No. 94-DA5970-AV

Before: MacKenzie, P.J., and Jansen and T.R. Thomas*, JJ.

PER CURIAM.

Following a bench trial in this breach of contract action, the district court determined that plaintiff, a general contracting business, was entitled to $7,383 from defendants for home repairs provided pursuant to a "cost-plus" contract. The circuit court affirmed. Defendants appeal by leave granted. We affirm.

A broken water pipe did extensive damage to defendants' home while they were out of the country in December 1988. Defendants hired plaintiff to repair the house damage. The repair contract called for payment based on costs, plus 10 percent overhead and 10 percent profit. Plaintiff began the repair work in January 1989 and finished in July or August 1989. After a bill of $60,000 had been paid, plaintiff billed defendants for the balance due, $46,526. Defendants claimed they had been overcharged on certain items and paid $31,135. This action to recover the $15,391 difference followed. Defendants counterclaimed, contending that in addition to the money they withheld, they incurred additional overcharges.

The district court decided in favor of plaintiff on both plaintiff's suit and defendants' countersuit and ordered defendants to pay $7,383 plus interest. This amount was calculated by taking plaintiff's requested sum of $15,391 and subtracting $5,200 for defendants' hotel bill (which plaintiff had agreed to pay at a mid-May 1989 meeting), $798 for a double-charged chimney repair, and $2,000 in penalties for failing to meet deadlines for kitchen cabinet installation. In reaching its decision, the court

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* Circuit judge, sitting on the Court of Appeals by assignment.

rejected defendants' claims that they were entitled to further relief. The court reasoned that because defendants had been paid the total amount billed, $106,526, by their homeowners insurer, they were not damaged. The circuit court affirmed.

On appeal, defendants first argue that the trial court improperly took their insurance proceeds into consideration in deciding that defendants had not been damaged. Specifically, they contend that the judge erred when he refused to apply the collateral source rule. We disagree. The common-law collateral source rule provides that the recovery of damages from a tortfeasor is not reduced by the receipt of compensation from other sources such as insurers. *Tebo v Havlik*, 418 Mich 350, 366; 343 NW2d 181 (1984). Our Supreme Court, however, has recently held that the collateral source rule does not apply in contract cases. *Corl v Huron Castings, Inc*, 450 Mich 620, 639; 544 NW2d 278 (1996). This is because the goal in contract law is not to punish the breaching party, but to make the nonbreaching party whole. *Id.*, pp 625-626. Thus, in a contract action such as this, any damage award should be reduced by insurance proceeds received. *Id.*, p 639. Accordingly, the trial court did not err in refusing to apply the collateral source rule in this contract case.

Moreover, in light of *Corl*, it may not be said that the insurer's payment of the full amount plaintiff billed to defendants was irrelevant. If, as noted in *Corl*, the goal in a contract dispute is to make the parties whole, then information concerning the receipt of insurance proceeds was essential to fashion an award that accomplished that goal. We therefore find no error in the court's determination that, because defendants' insurer paid them the $106,526.38 billed by plaintiff, defendants were not damaged and, because they had been made whole by their insurer, they were not entitled to relief.

Because the collateral source rule does not apply in contract cases, *Corl, supra*, defendants' remaining claims concerning various alleged overcharges need not be decided. Even if there had been an overcharge, defendants suffered no damages because their insurer paid for the repairs. As the district court noted, if anyone has been damaged, it is defendants' insurer, not defendants; it is solely that entity that overpaid, if anyone has.

Affirmed.

/s/ Barbara B. MacKenzie
/s/ Kathleen Jansen
/s/ Terrence R. Thomas