

STATE OF MICHIGAN
COURT OF APPEALS

GREGORY BROWN and DENA BROWN,

Plaintiffs-Cross-Appellants,

v

JAMES PATTON and JULIA PATTON,

Defendants-Cross-Appellees.

UNPUBLISHED

August 22, 1997

No. 187693

Wayne Circuit Court

LC No. 94-402827-CH

Before: Sawyer, P.J., and Bandstra and E. A. Quinnell*, JJ.

MEMORANDUM.

Plaintiffs cross appeal by right the decision of the Wayne Circuit Court which, in relevant part, refused to award them damages as a result of an adverse interest rate differential attributable to defendants' refusal to fulfill their land contract obligation so as to allow plaintiffs, on demand, to pay off the land contract balance. We reverse.

Here, defendants are clearly wrongdoers, and might reasonably have anticipated that their refusal to honor their land contract obligations would result in plaintiffs suffering delay in closing on their mortgage and that interest rates might move adversely during the interim. Such interest differential damages are therefore not remote, contingent, or speculative and are recoverable. *Van Keulen & Winchester Lumber Co v Manistee & N R Co*, 222 Mich 682; 193 NW 289 (1923); *Woodyard v Barnett*, 335 Mich 352; 56 NW2d 214 (1953). As there is no uncertainty but that plaintiffs have suffered damages in this respect, the testimony of the lending company's executive vice-president being clear on this point, any uncertainty as to the amount of damages properly inures to the detriment of the defendants, who have the burden of adducing evidence that establishes plaintiffs have suffered damage in a lesser amount than claimed. *Wolverine Upholstery Co v Ammerman*, 1 Mich App 235; 135 NW2d 572 (1965); *Purcell v Keegan*, 359 Mich 571; 103 NW2d 494 (1960).

Here, there being a complete absence of proof that plaintiffs' damages will not extend over the entire course of the approved mortgage loan, plaintiffs' damages are most readily calculated by determining what reduction in principal would be necessary to reduce their monthly payments to what

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

they would have been had defendants honored their land contract obligations. The testimony indicates that plaintiffs would have borrowed \$64,000 at 7% interest and had monthly principal and interest payments of \$425.80. Instead, plaintiffs obtained a \$64,000 loan at 8.625% interest with a monthly principal and interest payment of \$497.79. Reducing the \$64,000 loan by a fraction consisting of a numerator of \$425.80 and a denominator of \$497.79 yields a pro-rated loan principal of \$54,744.36. Damages of \$9,255.64 payable from defendants to plaintiffs would therefore allow plaintiffs to reduce the amount of money borrowed and have the benefit of loan equivalent to the original loan at the lower interest rate. Those damages are then subject to statutory interest from the date the complaint was filed.

Reversed and remanded for modification of judgment in a manner consistent with the foregoing opinion. We do not retain jurisdiction.

/s/ David H. Sawyer

/s/ Richard A. Bandstra

/s/ Edward A. Quinnell