STATE OF MICHIGAN

COURT OF APPEALS

LEVANDOWSKI DEVELOPMENT COMPANY,

Plaintiff-Appellee,

v

INTERNATIONAL EPDM RUBBER ROOFING SYSTEMS, INCORPORATED,

Defendant-Appellant.

UNPUBLISHED
September 19, 1997

Nos. 186195; 188679
Ingham Circuit Court
LC No. 93-074493-CK

Before: Corrigan, C.J., and Markey and Markman, JJ.

PER CURIAM.

In this case involving the Michigan Consumer Protection Act, MCL 445.901 *et seq.*; MSA 19.418(1) *et seq.*, defendant appeals by right the jury verdict and the award of attorney fees. We affirm.

Plaintiff sought damages under a contractual warranty theory and the Consumer Protection Act when defendant refused to repair a rolled rubber roof that defendant had made. Two different installers, one authorized by defendant, installed the roof on plaintiff's grocery store. Leaks in the roof occurred within one year. Defendant repaired the roof several times. Defendant later ceased repairs, asserting that high winds, not covered under warranty, caused the leaks. The jury awarded plaintiff $53,750. The circuit court awarded attorney fees of $35,385.75 to plaintiff under the Consumer Protection Act and $26,484.17 under MCR 2.403(O) as sanctions for defendant's rejection of the mediation award.

Defendant first claims that the evidence was insufficient to support a finding of liability under the contractual warranty. Defendant waived this issue because it did not move for a directed verdict on this basis before the trial court. *Napier v Jacobs*, 429 Mich 222, 237-238; 414 NW2d 862 (1987). In any event, an issue of fact existed for the jury to decide regarding whether the roof leak arose from the defective workmanship of defendant's authorized applicator or from gale force winds. *Kokkonen v Wausau Homes, Inc*, 94 Mich App 603, 607; 289 NW2d 382 (1980). Defendant also argues that no evidence demonstrated that its authorized applicator, Diversified, worked on the portion of the roof that was leaking. We disagree. Evidence showed that Diversified had worked on that portion of the roof.

The cases raised by defendant in support of its argument that it cannot be held liable under the "Spearin Rule" are readily distinguishable and do not apply in this case. See e.g., *Valentini v City of Adrian*, 347 Mich 530; 79 NW2d 885 (1956).

Defendant further argues that the jury verdict form was erroneous. This issue is not preserved for review because defendant did not object below, did not include this argument in the statement of issues presented and did not cite authority in support of its position. *Clark v Shefferly*, 346 Mich 332, 337-338; 78 NW2d 155 (1956); *Marx v Dep't of Commerce*, 220 Mich App 66, 81; 558 NW2d 460 (1996); *Mitchell v Dahlberg*, 215 Mich App 718, 728; 547 NW2d 74 (1996). In any event, a review of the entire jury verdict form demonstrates that it fairly and adequately set forth the theories of both parties. *Beach v State Farm Mutual Automobile Ins Co*, 216 Mich App 612, 618; 550 NW2d 580 (1996).

Defendant next argues that plaintiff did not have standing to sue under the Consumer Protection Act because both parties are corporations. The circuit court properly denied defendant's motion for directed verdict on this ground. As the court noted, corporations are "persons" under the Consumer Protection Act and have standing to sue under it. See *Catallo Associates, Inc v McDonald & Goren, PC*, 186 Mich App 571; 465 NW2d 28 (1990).

Defendant claims that the circuit court erred in refusing to allow it to raise certain affirmative defenses. The trial court correctly found that defendant had not preserved the affirmative defenses because they were not raised with particularity in defendant's responsive pleadings. MCR 2.111(F)(3); *Great Lakes Gas Transmission Co v MacDonald*, 193 Mich App 571, 576; 485 NW2d 129 (1992). Moreover, the record does not support defendant's arguments that it was not allowed to limit the warranty to defects in workmanship, was not allowed to limit the warranty to defects in the installation specifications and was not allowed to raise the defense of gale force winds. Each of those issues was contested at trial. Also, defendant did not properly raise its affirmative defense that it did not receive proper notice. Further, considering the communication between the parties regarding the roof leaks, defendant cannot claim that it was without notice, even if the technical aspects of notice were not followed.

Defendant challenges the admission of a letter sent by its attorney to plaintiff's architect on the ground that it was privileged work product. We disagree. Because the letter was sent to a nonprivileged party, it is not protected work product. *Haberkorn v Chrysler Corp*, 210 Mich App 354, 365-366; 533 NW2d 373 (1995). The court correctly allowed the letter as an admission against interest. MRE 801(d)(2).

Defendant argues that two portions of the charge to the jury were incorrect. This issue is not preserved because defendant did not object at trial and did not cite authority for its position on appeal. *Thorin v Bloomfield Hills Bd of Ed*, 203 Mich App 692, 698; 513 NW2d 230 (1994); *Mitchell*, *supra*. Manifest injustice will not result from this Court's failure to review this issue because the instructions in their entirety clearly state the claims of the parties and the applicable law. *Moghis v Citizens Ins Co of America*, 187 Mich App 245, 251; 466 NW2d 290 (1990).

Defendant argues that the Consumer Protection Act count of plaintiff's complaint should have been tried separately from the warranty count. This issue is not preserved because the trial court did not address it. *Bowers v Bowers*, 216 Mich App 491, 495; 549 NW2d 592 (1996).[1]

Defendant raises several issues regarding the trial court's award of attorney fees. The trial court did not abuse its discretion in awarding attorney fees. *Morris v Detroit*, 189 Mich App 271, 279; 472 NW2d 43 (1991). Because a corporation is a person under the Consumer Protection Act, defendant's argument that fees cannot be awarded under MCL 445.911(2); MSA 19.418(11)(2) is misplaced. Defendant also argues that the trial court could not award attorney fees under both the Consumer Protection Act and the mediation court rule. This issue is not preserved because defendant has cited no authority in support of its argument. *Mitchell, supra*. Defendant's entire argument on this issue is that the attorney fees are "improper." Defendant next contends that the mediation court rule does not authorize the award but failed to explain its position. As a result, we decline to review the argument. Finally, defendant argues the court should not have relied on plaintiff's expert witness' opinion as to attorney fees because the expert based his opinion on facts and data not in evidence. Although MRE 703 allows the trial court to require that the facts or data be placed in evidence, the rule does not, on its face, mandate that such information be placed in evidence.

Affirmed.

/s/ Maura D. Corrigan
/s/ Jane E. Markey
/s/ Stephen J. Markman

[1] Nor has defendant raised any arguments on appeal concerning the sufficiency of the evidence to support a finding of liability under the Consumer Protection Act.