

STATE OF MICHIGAN
COURT OF APPEALS

CHUCK'S PLUMBING AND HEATING, INC.,

Plaintiff/Counter Defendant-Appellee,

v

SHERR DEVELOPMENT CORPORATION and
ANDREW D. SHAW, individually and as co-partners
d/b/a/ Hunter's Square Company II and d/b/a/
Hunter's Square Company,

Defendants/Counter Plaintiffs-Appellants.

UNPUBLISHED
October 31, 1997

No. 198328
Oakland Circuit Court
LC No. 95-0493286-CH

Before: Saad, P.J., and O'Connell and M.J. Matuzak*, JJ.

PER CURIAM.

Defendants appeal as of right from a judgment entered against them in this breach of contract matter. Following a bench trial, the trial court entered judgment for plaintiff and awarded it \$45,000 in damages, plus interest. The court denied defendants any relief on their counterclaim. We affirm.

Plaintiff is a commercial plumbing, heating, and cooling contractor. Defendants are partners in the ownership and management of the real property in question. After accepting plaintiff's bid on a construction project, defendants instructed plaintiff to begin working and promised that a written contract would ensue. After about a month of work, and no written contract, problems arose regarding scheduling and deadlines. A written contract was later signed by the parties but attempts to resolve the disputes amicably were unsuccessful and plaintiff was removed from the job and replaced by substitute contractors. Plaintiff claims that they mutually agreed to terminate the contract. Defendants, however, maintain that they fired plaintiff when it could not meet its deadlines.

Plaintiff filed this case seeking compensation for work it performed and materials it provided to defendants prior to departure. Plaintiff sought damages of \$147,000, claiming that it had performed between eighty-five and ninety percent of the required work. Defendants denied that plaintiff completed any more than fifty-percent of its duties, and filed a counterclaim seeking damages for the amount they

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

were required to pay to substitute contractors in excess of the contract price. The trial court awarded damages to plaintiff in the amount of \$45,000, and denied any additional relief to defendants on their counterclaim.

I

Defendants first argue that in light of the factual findings by the trial court, plaintiff was not entitled to damages from defendants. Defendants contend that because the court determined that plaintiff had only completed fifty-percent of the work, and that defendants mitigated their damages by seeking substitute contractors, there is no basis for awarding damages to plaintiff. We disagree.

We review a trial court's findings of facts for clear error. MCR 2.613(C); *Triple E Produce Corp v Mastronardi Produce, LTD*, 209 Mich App 165, 171; 530 NW2d 772 (1995). Where the court sits as trier of fact without a jury, we are not permitted to substitute our own judgment for that of the trial court unless the facts "clearly preponderate in the opposite direction." *Arco Ind Corp v American Motorists Inc Comp*, 448 Mich 395, 410; 531 NW2d 168 (1995). Moreover, "appellate courts should give special deference to the trial court's findings when they are based upon its assessment of the witnesses' credibility." *Id.* (quoting *Schultes Real Estate Co v Curis*, 169 Mich App 378, 385-386; 425 NW2d 559 (1988)).

We are persuaded that the trial court adequately evaluated the evidence and made specific findings as to the credibility of the witnesses that should not be disturbed by this Court. The trial court determined that plaintiff "took a chance" when it began performing without a written contract. The court also found that defendants' agents were credible witnesses that accurately and precisely explained that defendants were forced to take the action that they did because plaintiff was not measuring up to its responsibilities and not meeting deadlines. The court ultimately determined that plaintiff was not prepared to complete the job as scheduled. Nevertheless, the court awarded plaintiff damages because it found that plaintiff had still completed approximately fifty-percent of the work and was entitled to be compensated for its labor and materials. We do not see any clear error in the court's findings, compensating plaintiff for the portion it contributed to the project.

II

Defendants additionally contend that the trial court erred in dismissing their counterclaim because they were entitled to the amount they paid in excess of the contract price entered into with plaintiff. Again, we disagree. In effect, the trial court considered plaintiff's claim and defendants' counterclaim and delivered a "net" judgment. The trial court's comments in its oral ruling make clear that the court was aware that defendants were required to expend substantial sums to other parties in order to complete the work. It is also clear that the trial judge considered defendants' counterclaim in rendering judgment for plaintiff in the amount of \$45,000.¹ We see no clear error.

Affirmed.

/s/ Henry William Saad

/s/ Peter D. O'Connell

/s/ Michael J. Matuzak

¹ The trial court stated, “[b]ut then weighing that against what the defendant[s] had to spend . . . to complete the job, I am going to find for the plaintiff in the amount of \$45,000.”