

STATE OF MICHIGAN
COURT OF APPEALS

ANGELL & COSTOPOLOUS, P.C.,

Plaintiff-Appellee,

v

SOUTHFIELD DATA PROCESSING, INC.,

Defendant,

and

JIM RICHARDSON,

Defendant-Appellant.

UNPUBLISHED
November 6, 1998

No. 199815
Wayne Circuit Court
LC No. 92-211122 CH

Before: Markman, P.J., and Bandstra and J.F. Kowalski*, JJ.

MEMORANDUM.

Defendant Jim Richardson appeals on leave granted the circuit court order denying his motion to release an appeal bond. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

After a bench trial in this landlord-tenant contract dispute, the circuit court entered judgment for plaintiff. Defendant appealed, and filed a cash appeal bond with the circuit court for \$19,125.00. In an unpublished, per curiam opinion, this Court reversed the judgment of the circuit court in part, and remanded for additional proceedings. (Docket No. 171527, September 20, 1996). The Court observed that under *Zander v Ogihara Corp*, 213 Mich App 438; 540 NW2d 702 (1995), clear and convincing evidence was necessary to prove the existence of a missing signed lease agreement, rather than the preponderance of the evidence standard employed by the circuit court. The Court did not retain jurisdiction.

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

Defendant subsequently moved to release the appeal bond. After hearing argument, the circuit court denied the motion, finding that no final order for payment was entered as required by MCR 8.106(D). This Court granted defendant's application for leave to appeal.

There is no court rule governing the disbursement of an appeal bond when an appellant prevails on appeal. Defendant has fully satisfied all the conditions of the appeal bond. He diligently prosecuted the appeal to decision. This Court did not affirm the circuit court judgment, triggering the obligation to satisfy the judgment. This Court remanded the matter to the trial court, and did not retain jurisdiction. Thus, the original basis for filing the appeal bond, to allow defendant to prosecute the appeal, no longer exists. Under these circumstances, the circuit court is obligated to enter an order under MCR 8.106 disbursing the bond proceeds and any accumulated interest to defendant.

The order of the circuit court is reversed, and the circuit court is to return the appeal bond proceeds to defendant and his attorney. We do not retain jurisdiction.

/s/ Stephen J. Markman

/s/ Richard A. Bandstra

/s/ John F. Kowalski