

STATE OF MICHIGAN  
COURT OF APPEALS

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BANCORP GROUP, INC.,

Plaintiff- Appellant/Cross- Appellee,

v

KURT J. MEISTER and CLARK, KLEIN &  
BEAUMONT,

Defendants- Appellees/Cross-  
Appellants.

UNPUBLISHED

April 23, 1999

No. 174566

Wayne Circuit Court

LC No. 91-129474 NM

ON REMAND

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Before: Griffin, P.J., and Sawyer and O’Connell, JJ.

PER CURIAM.

Pursuant to the February 2, 1999, order of the Supreme Court, we now consider three issues raised on cross appeal that were not addressed in our previous opinion, *Bancorp Group Inc v Meister & Clark Klein & Beaumont*, unpublished opinion per curiam of the Court of Appeals, issued 1/20/98 (Docket No. 174566). After doing so, we find the issues to be without merit. Accordingly, we again remand for a new trial and further proceedings consistent with our decision.

I

First, defendants argue that the trial court erred in denying their motion for summary disposition “because plaintiff’s [pretrial] causation proofs were defective as a matter of law.” We hold that genuine issues of material fact precluded the granting of full summary disposition in favor of defendants. *Bullock v Automobile Club of Michigan*, 432 Mich 472, 474-475; 444 NW2d 114 (1989).

Defendants’ argument on cross appeal does not take into account plaintiff’s complete theory of liability. Plaintiff’s theory of malpractice was not only that the lease extension should or could have been written to bind both Walter Buhl Ford, II, and Peter W. Stroh under their original guarantees, but also that defendants “failed to advise the plaintiff of the potential liability in the event new guaranty agreements were not secured from Walter B. Ford, II, and Peter W. Stroh.” At trial, plaintiff offered insufficient proofs to establish that the guarantees of Stroh or Ford could have been extended thereby negating plaintiff’s claim for benefit of the bargain damages. However, in this action other damages are

also claimed by plaintiff. In granting partial JNOV and new trial, the trial court concluded that its error in failing to grant partial summary disposition regarding benefit of the bargain damages affected plaintiff's proofs at trial:

Had the Court directed a partial verdict for Defendants on the benefit of the bargain damages (which the Court, in retrospect, should have done), Plaintiff, no doubt, would have cross-examined Mr. Correlle differently and may very well have introduced different rebuttal testimony.

At the pretrial stage, the evidence was conflicting on whether plaintiff would succeed at trial in proving damages (other than benefit of the bargain) proximately caused by defendants' alleged legal malpractice. However, in deciding on a motion for summary disposition brought pursuant to MCR 2.116(C)(10), "[t]he Court may not make factual findings or weigh credibility." *Manning v Hazel Park*, 202 Mich App 685, 689; 509 NW2d 874 (1993).

Finally, for the reasons stated by the trial court in its ruling, we agree that plaintiff's settlement with Straight Creek was irrelevant to plaintiff's malpractice claim.

In summary, with the exception of benefit of the bargain damages, genuine issues of material fact existed thus making summary disposition inappropriate.

## II

Next, defendants argue that as a matter of law, plaintiff's proofs at trial were defective because plaintiff failed to offer evidence regarding the collectability of guarantors Stroh and Ford. Defendants' position on this issue was previously rejected by our Court in *Teodorescu v Bushnell Gage Reizen & Byington (On Remand)*, 201 Mich App 260; 506 NW2d 275 (1993). *Bushnell* is precedentially binding on this Court, MCR 7.215(H)(1), and we decline defendants' invitation to urge a special panel of this Court to reconsider its holding.

## III

Finally, defendants argue that the trial court committed error requiring reversal by allegedly permitting plaintiff's liability expert to testify beyond the scope of his expertise. We disagree. The trial court did not abuse its discretion by finding plaintiff's expert to be qualified to so testify. MRE 702. *Phillips v Deihm*, 213 Mich App 389, 401; 541 NW2d 566 (1995).

Remanded for a new trial and further proceedings consistent with our decisions. We do not retain jurisdiction. Plaintiff, being the prevailing party on cross appeal, may tax costs pursuant to MCR 7.219.

/s/ Richard Allen Griffin  
/s/ David H. Sawyer  
/s/ Peter D. O'Connell