

STATE OF MICHIGAN
COURT OF APPEALS

DANNY H. O'BRYAN,

Plaintiff-Appellant,

v

MELVIN C. MAXWELL,

Defendant-Appellee.

UNPUBLISHED

October 5, 1999

No. 205201

Wayne Circuit Court

LC No. 95-528055 CK

Before: White, P.J., and Markey, and Wilder, JJ.

PER CURIAM.

Plaintiff appeals as of right from the judgment entered after a bench trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff leased property from defendant. The lease contained an option to purchase the property. In May, 1995 a storm damaged the property. Plaintiff placed a tarp over a hole in the roof, and continued to reside on the property. In August, 1995 plaintiff notified defendant of his intention to exercise the option. When defendant refused to convey the property, plaintiff filed suit seeking specific performance and damages resulting from defendant's breach of contract.

At trial, the evidence showed that after the lease expired in November, 1995, plaintiff continued to pay rent and to reside on the property. In April, 1996 defendant commenced repairs to the property. A large portion of the roof was removed. Tar used in the roofing process dripped onto plaintiff's personal property. Defendant objected to testimony regarding abatement of rent, failure to allow plaintiff to make repairs and collect insurance proceeds, or damage to plaintiff's personal property, on the ground that no such claims were stated in the complaint. The trial court denied plaintiff's motion to amend his pleadings to conform to the evidence.

The trial court found that the contract between the parties was valid, and that the option to purchase was enforceable. The trial court also found that plaintiff executed the option in October, 1995 when he tendered the required down payment. The trial court ordered that rent paid by plaintiff from December, 1995 through April, 1996 was to be applied to the purchase of the property, and found that

the property became uninhabitable in April, 1996. The trial court awarded no damages for loss of personal property.

We will not reverse a trial court's findings of fact unless those findings are clearly erroneous. MCR 2.613(C). We review a question of law de novo. *Duggan v Clare Co Bd of Comm'rs*, 203 Mich App 573, 575; 513 NW2d 192 (1994).

Plaintiff argues that the trial court erred by failing to award damages in addition to those awarded in the judgment. Plaintiff contends that he was entitled to specific sums, including \$3,450, representing one hundred percent abatement of the rent paid during the months of May-July, 1995, when the property was uninhabitable, \$9,200, representing rent paid during the months of August, 1995 through March, 1996, after he attempted to exercise the option, \$14,205.34, representing the amount disbursed by the insurance company for repair of the storm damage, \$9,000, representing the amount of damage to his personal property, and \$758, representing the amount he expended for building permits.

We disagree and affirm. Plaintiff's complaint did not state claims for abatement of rent, damages based on defendant's failure to repair the property, or for compensation for damage to personal property. If evidence is objected to at trial for the reason that it does not pertain to the issues raised by the pleadings, a motion to amend the pleadings to conform to the evidence shall not be granted unless to do so would not prejudice the opposing party. MCR 2.118(C)(2). Plaintiff makes no reference to his motion to amend or to the trial court's denial of same. Plaintiff has not established that the trial court's denial of the motion constituted an abuse of discretion. *Phillips v Deihm*, 213 Mich App 389, 393; 541 NW2d 566 (1995).

The evidence that plaintiff continued to reside on the property after the storm supported the finding that the property did not become uninhabitable until April, 1996, when a large portion of the roof was removed. The evidence supported the finding that plaintiff did not exercise the option until October, 1995, when he tendered the required down payment. An option contract is strictly construed, *Brauer v Hobbs*, 151 Mich App 769, 777; 391 NW2d 482 (1986), and acceptance of an option must be in accordance with its terms. *LeBaron Homes, Inc v Pontiac Housing Fund, Inc*, 319 Mich 310, 315; 29 NW2d 704 (1947). The evidence supported the finding that plaintiff was not entitled to compensation for damage to his personal property. His testimony that he sustained \$9,000 in losses was completely unsubstantiated. Finally, the evidence supported the finding that plaintiff was not entitled to collect the insurance proceeds or to be reimbursed for permit expenses. The lease obligated defendant, not plaintiff, to make repairs to the property. The trial court's findings of fact regarding the damages to which plaintiff was entitled were not clearly erroneous. MCR 2.613(C).

Affirmed.

/s/ Helene N. White

/s/ Jane E. Markey

/s/ Kurtis T. Wilder