

STATE OF MICHIGAN
COURT OF APPEALS

ERB LUMBER, INC.,

Plaintiff,

v

FRANK S. MIKICIUK and FRANK S. MIKICIUK
CUSTOM HOMES, INC.,

Defendants/Cross-Defendants-
Appellants,

and

DAVID A. STOVER and CLAUDIA M. STOVER,

Defendants/Cross-Plaintiffs-
Appellees,

and

STANDARD FEDERAL BANK and STATE OF
MICHIGAN, DEPARTMENT OF CONSUMER
AND INDUSTRY SERVICES, HOMEOWNER
CONSTRUCTION LIEN RECOVERY FUND,

Defendants.

Before: Gage, P.J., and Gribbs and Sawyer, JJ.

PER CURIAM.

Defendants-appellants Frank S. Mikiciuk and Frank S. Mikiciuk Custom Homes, Inc., appeal as of right from a judgment, entered after a jury trial, awarding defendants-appellees David A. Stover and Claudia M. Stover damages in the amount of \$33,100 on their cross complaint, due to defects in a house that appellants constructed for them, and awarding appellants \$10,000 on their claim against appellees. Although this action was initiated by plaintiff Erb Lumber, Inc. for payment allegedly due for

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building supplies, Erb Lumber was dismissed after resolving its claim, and this appeal involves only appellees' cross-claim against appellants for indemnification and breach of contract, and appellants' cross-claim against appellees for breach of contract and foreclosure of a construction lien on the subject property. We affirm.

Appellants first argue that the trial court erred by granting appellees' motion in limine, limiting appellants' claim of damages for extras, upgrades and changes to \$12,993.54. There is no merit to this claim. Because the damages in this case could "by computation be made certain," MCR 2.111(B)(2), appellants sought damages in their cross-claim of \$32,993.54, a sum which included the \$20,000 payment that appellees admitted withholding. Appellants contend that they became aware of additional costs after the complaint was filed, but they did not file a motion to amend their complaint to reflect a different specific sum, even though they knew of the additional costs several months prior to trial. The trial court did not abuse its discretion in limiting appellants' potential recovery to the specific sum they requested.

Next, appellants contend that the trial court did not give them enough time to adequately present their counterclaim to the jury. The trial court has wide discretion and power in the matter of trial conduct. *People v Paquette*, 214 Mich App 336, 340; 543 NW2d 342 (1995). The trial court is entitled to control the proceedings in its courtroom. *People v Arquette*, 202 Mich App 227, 232; 507 NW2d 824 (1993). We have reviewed the record in this case, conclude that both parties had ample time to present their case during the two and a half day trial, and find not abuse of discretion.

Appellants also challenge the trial court's denial of their requests to recall one witness and to further examine another. The trial court has broad control of the manner in which witnesses are examined. *Phillips v Deihm*, 213 Mich App 389, 402; 541 NW2d 566 (1995). We note that appellants failed to object to the trial court's denial of these requests and in any case find no abuse of discretion.

Appellants also argue that the trial court improperly precluded them from introducing impeachment evidence during cross-examination. This issue is without merit. The trial court did not abuse its discretion in preventing, as "a collateral matter," the cross examination of a witness about a 1992 incident involving unemployment benefits. Nor, on the record before us, do we find an abuse of discretion in its refusal to allow appellants to ask, on redirect, whether a witness had ever "been convicted."¹ MCR 2.613(A).

Finally, there is no merit to appellants' claim that the trial court erred in denying appellants' motion for additur. We note that appellants failed to move for additur below, or to file a motion for new trial on the basis of damages. Further, the jury was not instructed on how to calculate damages or asked to itemize their award. The total verdict was within the proofs

¹ Appellants' question was cut off by an objection as soon as counsel asked, "were you ever convicted-?"

presented at trial. *Joerger v Gordon Food Service, Inc*, 224 Mich App 167, 172; 568 NW2d 365 (1997). We find no abuse of discretion.

Affirmed.

/s/ Hilda R. Gage
/s/ Roman S. Gibbs
/s/ David H. Sawyer