STATE OF MICHIGAN

COURT OF APPEALS

WARREN G. SMITH, Plaintiff-Appellant,	UNPUBLISHED August 28, 2001
V	No. 217670 Wayne Circuit Court
CITY OF DETROIT and GLORIA ROBINSON, Defendants-Appellees.	LC No. 96-646984-CK

Before: Jansen, P.J., and Collins and Cooper, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's entry of the jury verdict of no cause of action in this breach of contract action. We affirm.

Plaintiff first argues that the trial court erred in submitting to the jury the issue of whether a contract between the parties existed. Contrary to plaintiff's claim, however, the trial court did not submit this question for the jury to decide. The verdict form asked the jury whether the city of Detroit breached the development agreement that was entered into by the parties, and the jury answered "No." Consequently, the jury was not asked to make a legal ruling and there is no error in this regard.

Plaintiff next argues that the trial court improperly instructed the jury regarding whether defendants had breached the contract. Plaintiff's claim of instructional error, however, is waived for appellate review because plaintiff failed to object to the trial court's instructions and, in fact, submitted and expressly approved them. MCR 2.516(C). Moreover, there is no manifest injustice, *Bouverette v Westinghouse Electric Corp*, 245 Mich App 391, 403; ___ NW2d ___ (2001), because the trial court's instructions to the jury regarding whether defendants had breached the contract were proper. The trial court's instructions giving definitions of the elements of a breach of contract action properly included plaintiff's burden of proof that a contract in fact existed and that a breach occurred. SJI2d 140.01; *American Parts Co, Inc v American Arbitration Ass'n*, 8 Mich App 156; 154 NW2d 5 (1967).

Lastly, plaintiff argues that jury verdict was against the great weight of the evidence. Because plaintiff did not move for a new trial on this basis below, this issue has not been preserved for appellate review. *Hyde v Univ of Michigan Bd of Regents*, 226 Mich App 511, 525; 575 NW2d 36 (1997). In any event, the jury verdict is not against the great weight of the

evidence. A review of the evidence presented to the jury shows that the only written agreement between the parties and entered into evidence was dated 1980, with closing and construction deadlines for plaintiff to meet by 1982 before the deed in question would be his. As a result, plaintiff's 1996 complaint claiming that this action accrued after 1982 is barred by the development agreement itself and the six-year statute of limitations. MCL 600.5807(8). Likewise, any subsequent oral agreement purportedly extending the agreement past 1982 is barred by the statute of frauds, as the trial court noted. MCL 566.106. Consequently, the jury's finding that defendants did not breach the contract is not against the great weight of the evidence.

Affirmed.

/s/ Kathleen Jansen
/s/ Jeffrey G. Collins
/s/ Jessica R. Cooper