STATE OF MICHIGAN

COURT OF APPEALS

DAVID M. LINDEMAN,

Plaintiff-Appellee,

v

DOUGLAS J. JOHNS and ELIZABETH S. JOHNS,

Defendants-Appellants.

UNPUBLISHED
September 14, 2001

No. 223582
Jackson Circuit Court
LC No. 98-086154-CK

Before: K. F. Kelly, P.J., and White and Talbot, JJ.

PER CURIAM.

Defendants appeal as of right from a judgment for plaintiff entered on a jury verdict in the amount of $24,721.99, including costs and judgment interest, in this action for breach of a farm lease. We affirm.

In their first claim of error, defendants assert that the evidence was insufficient to support the jury's finding that the lease agreement was evidenced by a writing satisfying the requirement of the statute of frauds, MCL 566.132(a), that contracts that by their terms cannot be performed within one year must be evidenced by a writing containing a signature made or authorized by the party against whom recovery is sought. We disagree. Evidence presented to the jury indicated that plaintiff was seeking damages for loss of a hay crop planted in 1996, and that a lease for the land in 1996 was evidenced by a writing signed by defendant Elizabeth Johns on behalf of both defendants, in the form of an endorsed check for a "land lease," for the year 1996. In *Adell Broadcasting Corp v Cablevision Industries,* 854 F Supp 1280, 1291 (ED Mich, 1994), the court applied Michigan law and determined that a check endorsed by the opposing party constituted sufficient evidence to satisfy the statute of frauds. In the case at bar, where the check indicated that it was given for a "land lease," the contract logically implied the ability to harvest the crops planted on the leased land, including crops that could by their nature only be harvested profitably in years after they were planted. Evidence adduced at trial indicated that the cost of the hay crop plaintiff planted in 1996 could only be recouped in future years, that defendants knew plaintiff had planted the crop, that plaintiff could have expected profits from the hay field had he been permitted to harvest it in 1997, 1998, and 1999, and that plaintiff was denied these profits. The check for the land lease signed on behalf of defendants adequately evidenced this contract for plaintiff's ability to harvest his crop on a multiyear basis. See *Opdyke Inv Co v Norris Grain Co,*

413 Mich 354, 367-368; 320 NW2d 836 (1982). We conclude there was sufficient evidence to support the jury's finding. *Pontiac School Dist v Miller Canfield Paddock & Stone,* 221 Mich App 602, 612; 563 NW2d 693 (1997).

Plaintiff argues that the trial court abused its discretion by submitting the statute of frauds issue to the jury. Our decision that the statute of frauds was satisfied renders this claim moot; however, we note that the trial court actually allowed defendants to go forward with their statute of frauds defense at the express suggestion and stipulation of plaintiff's counsel, so that plaintiff is in any event barred from raising this issue. *Weiss v Hodge (After Remand),* 223 Mich App 620, 636; 567 NW2d 468 (1997).

Next, defendants contend that the trial court erred in submitting the equitable claim of unjust enrichment to the jury. Defendants also maintain that the trial court erred in entering judgment on the verdict without making express findings that the court was accepting an advisory verdict by the jury, and giving its reasons for doing so. Because defendants did not object to the submission of this claim to the jury, and indeed approved the jury instructions, they have waived review of this issue absent manifest injustice. *Farm Credit Services of Michigan's Heartland, PCA v Weldon*, 232 Mich App 662, 683-684; 591 NW2d 438 (1998); *Phinney v Perlmutter*, 222 Mich App 513, 537; 564 NW2d 532 (1997). Moreover, defendants clearly suffered no prejudice as a result of the alleged error because the trial court entered judgment on the breach of contract claim only.

Finally, defendants argue that the jury's award of damages in the amount of $21,440 on the breach of contract claim was excessive and contrary to law. Based upon our review of the record, the jury could have found that plaintiff lost profits of well over $40,000 from his inability to harvest the hay crop in successive years. Plaintiff was entitled to compensation for his foreseeable lost profits. *Lawrence v Will Darrah & Associates, Inc,* 445 Mich 1, 15-16; 516 NW2d 43 (1994). Because there was sufficient evidence to support the jury's award, we will not disturb it. *Pontiac School Dist, supra* at 612.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Helene N. White
/s/ Michael J. Talbot