

STATE OF MICHIGAN
COURT OF APPEALS

DIMER-ISG, INC.,

Plaintiff-Appellant/Cross-Appellee,

v

DAIMLERCHRYSLER,

Defendant-Appellee/Cross-
Appellant.

UNPUBLISHED

March 25, 2004

No. 243671

Macomb Circuit Court

LC No. 99-004975-CK

Before: Cooper, P.J., and O'Connell and Fort Hood, JJ.

PER CURIAM.

Plaintiff Dimer-ISG, Inc. appeals as of right from the trial court's order granting plaintiff partial relief from defendant DaimlerChrysler's breach of the settlement agreement, and the trial court's order partially granting plaintiff's motion for reconsideration. Defendant cross-appeals from the same order. We affirm.

At issue in this case is whether the trial court erroneously calculated plaintiff's award for damages, improperly denied defendant's motion for involuntary dismissal under MCR 2.504(B) and abused its discretion in failing to enforce court ordered discovery. Because the record supports the rulings on this matter, we find the trial court properly granted partial relief in favor of plaintiff and properly denied plaintiff's request for discovery sanctions.

A. Facts and Procedural History

Defendant initially contracted with plaintiff to manufacture a component part (Part 032) for defendant's heavy duty rear wheel drive transmissions in May of 1998. Defendant twice breached the agreement resulting in plaintiff's loss of equipment purchased to manufacture Part 032. Plaintiff filed suit on November 23, 1999, alleging breach of contract, misrepresentation, promissory estoppel, reformation, rescission, and unjust enrichment. Plaintiff sought damages for lost profits and the value of the lost equipment.

On June 23, 2000, the parties entered into a settlement agreement. Defendant promised to purchase Part 032 from plaintiff at a rate of 200 parts per day for \$10.23 per unit until a total of 125,000 parts had been purchased. The contract term was two years, but could be extended if the total 125,000 parts were not purchased by that time. Defendant further agreed to make a good faith effort to extend the agreement for a longer period of time and provide other

opportunities to plaintiff. In return, plaintiff was to provide sample parts to defendant within thirty days for defendant's PPAP approval process. The trial court entered a stipulated order of dismissal without prejudice. The parties agreed to stipulate to dismissal with prejudice upon the completion of the settlement agreement.

Plaintiff provided the sample parts, but defendant did not immediately grant approval. In December of 2000, defendant informed plaintiff that its need to outsource Part 032 had disappeared due to a downturn in the national economy and would not return in the foreseeable future. Plaintiff filed a motion to enforce the settlement agreement or, alternatively, to reinstate the original lawsuit. On July 6, 2001, the trial court entered an opinion and order declining to reinstate the original lawsuit. An evidentiary hearing was set to determine plaintiff's damages under the settlement agreement and discovery was ordered.

Plaintiff sought discovery regarding defendant's breach of its good faith covenant to extend the agreement and offer other opportunities to plaintiff. Defendant refused to provide documentation regarding the in-house production and outsourcing of Part 032 and other substantially similar parts on the ground of relevance. Defendant was ordered to comply with discovery requests in November of 2001, and again in February and May of 2002. Throughout the discovery process, defendant contended that it did not keep records regarding the volume of component parts produced in-house. At the evidentiary hearing on May 29, 2002, plaintiff moved for discovery sanctions for defendant's failure to produce these records and records regarding equipment purchased in June of 2000 to manufacture those parts. The trial court determined to postpone its ruling to allow the parties to present evidence.

The trial court ruled in favor of plaintiff on July 25, 2002. Plaintiff was awarded \$347,433.20 in lost profits under the settlement agreement and \$72,996.90 in consequential damages incurred in the PPAP approval process. Both parties moved for reconsideration and the trial court increased plaintiff's award for lost profits to \$387,444.30 to remedy an error in calculation.

B. Award of Damages

Plaintiff alleges that the trial court improperly determined that its lost profits were offset by fixed equipment costs, the loss of equipment was not a natural and contemplated result of defendant's breach, and defendant acted in good faith. Defendant alleges that the trial court improperly relied on speculative evidence in determining plaintiff's labor costs and improperly denied its motion for involuntary dismissal, as plaintiff was unable to perform under the settlement agreement. We disagree.

Pursuant to MCR 2.613(C), we review findings of fact in a bench trial for clear error and conclusions of law de novo.¹ We also review an award of damages for clear error.² A factual

¹ MCR 2.613(C); *Alan Custom Homes, Inc v Krol*, 256 Mich App 505, 512; 667 NW2d 379 (2003).

² *Id.* at 513.

finding is clearly erroneous if a review of the entire record leaves this Court with a definite and firm conviction that a mistake was made.³

Damages in a breach of contract action are limited to those naturally arising from the breach or those contemplated by the parties upon entering into the contract.⁴ The aggrieved party must submit sufficient evidence of the foreseeability of its loss.⁵ The aggrieved party must also prove its damages with reasonable certainty.⁶ However, where an injury is found, recovery is not precluded because the aggrieved party cannot precisely prove damages.⁷ In a commercial transaction, damages are limited to profit, or the monetary value of the contract if the breaching party had performed.⁸ Therefore, “damages for lost profits are based on the loss of net rather than gross profits,”⁹ or the profits a party would earn after the deduction of all expenses.¹⁰

Plaintiff presented evidence regarding the amount of monthly equipment payments to be made during the term of the settlement agreement. Plaintiff also presented evidence of its cost of labor to perform under the settlement agreement. Plaintiff’s evidence was sufficient to prove its damages with reasonable certainty. Although Kevin Madajczyk and Philip Simon presented conflicting testimony regarding plaintiff’s cost of labor, the trial court had the opportunity to evaluate the evidence and is in the best position to make a determination regarding witness credibility.¹¹ If performed, the monetary value of the contract would have been reduced by these expenses. As such, we find that the trial court properly calculated plaintiff’s damages for lost profits.

Furthermore, the trial court properly increased plaintiff’s damages for lost profits on reconsideration. The trial court reduced plaintiff’s consequential damages by claimed, but unproven, labor costs during the PPAP approval process. However, the trial court initially failed to increase the award of lost profits by that amount. On reconsideration, the trial court properly

³ *Id.*, *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000).

⁴ *Lawrence v Will Darrah & Assocs, Inc*, 445 Mich 1, 6; 516 NW2d 43 (1994), quoting *Hadley v Baxendale*, 9 Exch 341; 156 Eng Rep 145 (1854).

⁵ *Id.* at 13.

⁶ *Alan Custom Homes, Inc, supra* at 512.

⁷ *Fera v Village Plaza, Inc*, 396 Mich 639, 643; 242 NW2d 372 (1976), quoting *Godwin v Ace Iron & Metal Co*, 376 Mich 360, 368; 137 NW2d 151 (1965); *Berrios v Miles, Inc*, 226 Mich App 470, 478; 574 NW2d 677 (1997), quoting *Hoffman v Auto Club Ins Ass’n*, 211 Mich App 55, 108; 535 NW2d 529 (1995).

⁸ *Lawrence, supra* at 6.

⁹ *Lawton v Gorman Furniture Corp*, 90 Mich App 258, 267; 282 NW2d 797 (1979), citing *The Vogue v Shopping Centers, Inc*, 402 Mich 546; 266 NW2d 148 (1978), *Benfield v HK Porter Co*, 1 Mich App 543; 137 NW2d 273 (1965).

¹⁰ Black’s Law Dictionary (6th ed).

¹¹ MCR 2.613(C).

calculated plaintiff's lost profits without including the unproven labor costs involved in the initial PPAP process.

The trial court also properly determined plaintiff's consequential damages, as plaintiff was not entitled to recover the value of its lost equipment. Plaintiff failed to prove that defendant contemplated the loss of the equipment upon entering into the settlement agreement. Undisputed evidence shows that plaintiff purchased the equipment to perform under the original contract and lost the equipment as a result of that breach. Both agreements cover the same subject matter—defendant's purchase of Part 032 from plaintiff. The agreements contain inconsistent terms regarding the length of the term and the amount to be produced. Therefore, the settlement agreement supersedes the parties' original contract.¹² Plaintiff alleges that it intended to make payments on the equipment from the profit generated by the settlement agreement. Even so, plaintiff's loss of the equipment was not a natural result of defendant's breach of the settlement agreement. Defendant did not reasonably contemplate that the equipment would be lost as a result of its breach. Therefore, the trial court's denial of consequential damages for plaintiff's lost equipment was proper.

We find that defendant acted in good faith, and therefore, plaintiff is not entitled to damages for defendant's failure to increase the term of the settlement agreement or provide other opportunities. In Michigan, good faith in a commercial transaction is defined as "honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade."¹³ Defendant began a project in 1999, in the normal course of business, to replace its aging equipment used to manufacture Part 032. Defendant's need to outsource Part 032 and other substantially similar parts was not eliminated by this purchase of equipment, but by a downturn in the national economy. Defendant's production of heavy-duty rear wheel drive transmissions has been reduced by fifty percent since November of 2000. Defendant also timely informed plaintiff that its need to outsource Part 032 would not return within the contract term.

Since the breach of the settlement agreement, defendant has purchased only 2,348 substantially similar component parts from outside vendors. Defendant did not consider plaintiff for these opportunities as plaintiff had yet to prove its manufacturing capabilities to defendant. Plaintiff had subcontracted both the original contract and the PPAP approval process to other vendors and no longer had the ability to perform. Defendant was honest in its represented reasons for breaching the settlement agreement and observed reasonable commercial standards in declining to extend the term of the agreement and provide other opportunities to plaintiff. The trial court properly denied plaintiff's claimed damages from defendant's alleged lack of good faith.

¹² See *CMI Internat'l, Inc v Internet Internat'l Corp*, 251 Mich App 125, 130; 649 NW2d 808 (2002); *Mikonczyk v Detroit Newspapers*, 238 Mich App 347, 349; 605 NW2d 360 (1999); *Omnicon of Michigan v Giannetti Investment Co*, 221 Mich App 341, 346-347; 561 NW2d 138 (1997).

¹³ MCL 440.2103(1)(b).

Defendant's contention that it was entitled to involuntary dismissal of plaintiff's claims lacks merit. Pursuant to MCR 2.504(B), involuntary dismissal in a bench trial is only appropriate where the court is satisfied at the close of the plaintiff's evidence that the plaintiff has no right to relief based on fact or law.¹⁴ As we find that plaintiff was entitled to relief and has proven damages with reasonable certainty, defendant's motion for involuntary dismissal was properly denied.

C. Discovery Sanctions

Plaintiff contends that its ability to prove damages was prejudiced by the trial court's failure to compel defendant to produce documentation regarding the in-house production of Part 032 and other substantially similar parts and defendant's purchase of equipment to manufacture those parts. We disagree.

We review a trial court's decisions regarding discovery matters for an abuse of discretion.¹⁵ An abuse of discretion occurs when the result is "so palpably and grossly violative of fact and logic that it evidences [sic] not the exercise of will but perversity of will, not the exercise of judgment but the defiance thereof, not the exercise of reason but rather of passion and bias."¹⁶

Several of defendant's agents were deposed regarding records of defendant's volume of in-house production of component parts. One agent testified that such records do not exist. Others, lacking personal knowledge regarding the production of such records, speculated as to defendant's method of keeping such records. The trial court could logically determine from the evidence presented that defendant's failure to produce the documents did not amount to an abuse of discovery. Defendant also presented evidence that the equipment purchased in June of 2000 replaced aging equipment. Based on the evidence provided, the trial court could calculate plaintiff's damages. As such, further documentation would not have affected the trial court's ruling. Therefore, we find that the trial court did not abuse its discretion in failing to sanction defendant for alleged discovery abuses.

Affirmed.

/s/ Jessica R. Cooper
/s/ Peter D. O'Connell
/s/ Karen M. Fort Hood

¹⁴ MCR 2.504(B); *Samuel D Begola Services, Inc v Wild Bros*, 210 Mich App 636, 639; 534 NW2d 217 (1995).

¹⁵ *Westlake Transp, Inc v Public Service Comm*, 255 Mich App 589, 609; 662 NW2d 784 (2003).

¹⁶ *Spalding v Spalding*, 355 Mich 382, 384-385; 94 NW2d 810 (1959), quoted in *Dep't of Transp v Randolph*, 461 Mich 757, 768; 610 NW2d 893 (2000).