

STATE OF MICHIGAN
COURT OF APPEALS

CLIFF MCNALLY, d/b/a MCNALLY HOME
IMPROVEMENT,

UNPUBLISHED
December 1, 2005

Plaintiff/Counterdefendant-
Appellee,

v

CURTIS A. SMITH,

No. 254970
Wayne Circuit Court
LC No. 02-240828-CZ

Defendant/Counterplaintiff-
Appellant.

Before: Jansen, P.J., and Cavanagh and Fort Hood, JJ.

PER CURIAM.

Defendant¹ appeals as of right following a judgment in favor of plaintiff. We affirm.

Plaintiff knew defendant for an extended period of time before hiring him as an employee. Plaintiff advised defendant that he had to obtain a license to continue employment. It was alleged that defendant knew the criteria for obtaining a license because he had been licensed in the past. After defendant failed to receive his license and failed to correctly bid work projects, the employment relationship ended. It was alleged that defendant was provided funds to obtain a computer software program, but a functioning original program was never provided to plaintiff. Plaintiff also sought to remove liens placed on his customers' properties by defendant and to recover damages to his reputation based on defendant's allegedly improper acts. Defendant filed a countercomplaint seeking to recover commissions. The trial court granted plaintiff's motion for summary disposition of the countercomplaint and, following a bench trial, entered a judgment in favor of plaintiff for the conversion of the computer software with an award of costs and attorney fees. Defendant appeals as of right, and we affirm.

Defendant first alleges that the trial court erred in granting plaintiff's motion for summary disposition of the countercomplaint. We disagree. Appellate review of a summary

¹ For ease of reference, we will utilize the terms "plaintiff" and "defendant" to refer to the parties.

disposition decision is de novo. *In re Capuzzi Estate*, 470 Mich 399, 402; 684 NW2d 677 (2004). “A salesperson shall be licensed in the employ of only 1 residential builder or maintenance and alteration contractor.” MCL 339.2407. An unlicensed person is barred from seeking monetary compensation or equitable relief. See MCL 339.2412; *Stokes v Millen Roofing Co*, 466 Mich 660, 664, 673; 649 NW2d 371 (2002). In the present case, it was undisputed that defendant was not licensed during the time of his employment with plaintiff. Accordingly, the trial court properly granted plaintiff’s motion for summary disposition of the counterclaim.

Defendant next alleges that the trial court erred in awarding plaintiff damages in the amount of \$2,450 for the computer software program that plaintiff never received. We disagree. Following a bench trial, the trial court’s factual findings are reviewed for clear error with conclusions of law reviewed de novo. *Glen Lake-Crystal River Watershed Riparians v Glen Lake Ass’n*, 264 Mich App 523, 531; 695 NW2d 508 (2004). A finding is clearly erroneous when, after reviewing the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made. *Alan Custom Homes, Inc v Krol*, 256 Mich App 505, 512; 667 NW2d 379 (2003). The trial court’s determination of damages following a bench trial is also reviewed for clear error. *Id.* at 513. When reviewing a challenge to the verdict following a bench trial, this Court gives deference to the trier of fact’s superior ability to judge the credibility of the witnesses who appeared before it. *Watershed Riparians, supra*. When sitting without a jury, the trial court must make specific findings of fact, state its conclusions of law separately, and enter a judgment accordingly. MCR 2.517(A)(1). To meet the requirements of MCR 2.517(A)(1), the findings need only be brief, definite, and pertinent, and the trial court must be aware of the issues and correctly apply the law. *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 176; 530 NW2d 772 (1995).

Civil conversion is any distinct act or domain wrongfully exerted over another’s person property in denial of or inconsistent with the owner’s rights. *Foremost Insurance Co v Allstate Ins Co*, 439 Mich 378, 391; 486 NW2d 600 (1992). “In general, [conversion] is viewed as an intentional tort in the sense that the convert’s actions are willful, although the tort can be committed unwittingly if unaware of the plaintiff’s outstanding property interests.” *Id.* Generally, the measure of damages for conversion is the value of the converted property at the time of the conversion. *Ehman v Libralter Plastics, Inc*, 207 Mich App 43, 45; 523 NW2d 639 (1994). In the present case, plaintiff testified that he did not receive a functioning software program. Rather, he testified that he received a burnt copy of the program and did not receive all of the components necessary to make the program function. Defendant testified that the program was functioning and that he utilized it in his work. The trial court rejected the testimony of defendant and found in favor of plaintiff. We defer to the trial court’s assessment of credibility, *Watershed Riparians, supra*, and therefore, the trial court did not err in its award of damages to plaintiff for the computer software program.

Lastly, defendant alleges that the trial court erred in awarding attorney fees. Although the interpretation of a statute is at issue, defendant failed to cite any authority to support his interpretation that an assessment of attorney fees is limited to recovery for the filing of the counterclaim. A party may not assert error and require the appellate court to search for authority to sustain or reject his position. *City of Mt Pleasant v State Tax Commission*, 267 Mich App 1, 6; 703 NW2d 227 (2005). Accordingly, we do not address this issue.

Affirmed.

/s/ Kathleen Jansen

/s/ Mark J. Cavanagh

/s/ Karen M. Fort Hood