STATE OF MICHIGAN

COURT OF APPEALS

NABIL MATAR and MUSIC LOUNGE, LLC.,

Plaintiffs-Appellees/Cross-
Defendants-Appellants,

UNPUBLISHED
February 21, 2008

v

No. 274669
LC No. 2004-062286-CZ

ORANG JOOBEEN a/k/a RON JOOBEEN,
GLOBAL EQUITIES & LOANS, INC., and
TELCOM HOTEL HOLDINGS, LLC.,

Defendants-Appellants/Cross-
Plaintiffs-Appellees.

Before: Bandstra, P.J., and Donofrio and Servitto, JJ.

PER CURIAM.

Defendants/cross-plaintiffs, Orang Joobeen, Global Equities & Loans, Inc. (Global), and Telcom Hotel Holdings, LLC, (Telcom) appeal as of right a jury verdict and opinion and order on bench tried issues in a bifurcated trial in this landlord-tenant action. Plaintiffs/cross-defendants, Nabil Matar and Music Lounge, LLC, cross-appeal. Because the trial court did not err when it: entered a verdict of no cause of action regarding defendants' claim for unjust enrichment, denied plaintiffs' motion for JNOV, and granted defendants specific performance on an option agreement to purchase a liquor license, we affirm.

I

This case arises from a landlord-tenant dispute. Defendant Joobeen is an hotelier who owned and ran companies including defendant Global and defendant Telcom,[1] and Ambassador Hospitality Group (Ambassador). Joobeen became aware that a hotel known as the old Michigan Inn a/k/a Ambassador Inn and later known as the Howard Johnson's Plaza Hotel ("the hotel") located at 16400 J.L. Hudson Drive, in Southfield, MI was in foreclosure and bank-owned. The lender hired Global as the hotel's asset manager and Ambassador as the property manager until the time the property could be sold. Joobeen testified that Global managed the asset and

[1] Defendant Joobeen is a 99% member of defendant Telcom.

Ambassador managed the property through December 31, 2003. Joobeen testified that initially he commissioned the Golden Mushroom restaurant to handle banquets and catering at the hotel and that there was also a vacant restaurant and bar at the hotel. Soon after, the Golden Mushroom became unavailable to handle the banquets and catering at the hotel and Joobeen sought a replacement to run the restaurant, bar, and banquets at the hotel.

In February 2003, a broker friend of Joobeen introduced him to plaintiff Matar, a restauratneur who owned two Big Boy restaurants. The broker had already approached Matar and informed Joobeen that Matar might be interested in operating the restaurant, bar, and catering at the hotel. In March 2003, Joobeen and Matar entered into a consulting agreement wherein Joobeen hired Matar as a consultant to handle the food and beverage operation of the hotel from March 1, 2003 through December 1, 2003. In Fall 2003, Joobeen and Matar began negotiations regarding Matar leasing the restaurant and bar in the hotel from Joobeen who was in separate negotiations to purchase the bank-owned hotel. At the same time, both Joobeen and Matar were interested in obtaining a liquor license for the restaurant and bar in the hotel.

Subsequently, Joobeen, as "Landlord" and signatory for Southfield Hotel Holdings, LLC, and Matar, as "Tenant" and signatory for plaintiff Music Lounge, LLC, executed a lease dated December 1, 2003. The lease was for a term of three years and provided that Matar would lease a portion of the hotel premises from Joobeen, the owner of the hotel. The parties also signed an "Addendum to Lease" also dated December 1, 2003 that provided that the lease between the parties was "terminable upon request of the Landlord or the Landlord's lender." The addendum also stated that it was the "understanding of the parties that a new and/or amended Lease will be entered into upon that review and/or request." Matar stated that he signed the addendum because Joobeen told him it was necessary in order for the lender to approve Joobeen's loan to purchase the hotel. Shortly thereafter, Joobeen presented Matar with another lease dated December 22, 2003 for signature with a term of only one year. Matar admitted signing the lease but testified that he did so only because Joobeen explained that he needed Matar to sign the December 22, 2003 lease due to lender restrictions. Matar stated that the December 22, 2003 lease contained several blanks when he signed it.

Which lease controlled, either the three-year lease dated December 1, 2003 lease, as argued by plaintiffs, or the one-year lease, dated December 23, 2003, as argued by defendants, was a question of fact for the jury in the first phase of the bifurcated trial. In the first phase of the jury trial, the jury heard testimony regarding the details of the execution of both documents. The jury deliberated and determined that the three-year lease controlled. Pursuant to the lease, Matar agreed to "engage[] in the management and operation of the food and beverage operations of the Hotel premises, including the bar, restaurant, kitchen, room service, all banquet facilities and outdoor service area." Matar agreed to pay rent to Joobeen starting April 1, 2004 in the amount of $30,000 a month and 10% of gross sales as defined in the contract. Matar and Music Lounge LLC began operations under the three-year lease agreement in December 2003 with Matar running the restaurant, bar, and banquet operations at the hotel.

In September 2004, Matar received a letter from the State of Michigan Department of Treasury stating that Music Lounge LLC had not timely filed its sales taxes. Matar testified that he checked with Michael Noune who was employed by Joobeen to handle accounting for the hotel. Noune informed Matar that the hotel had not filed sales taxes on behalf of Music Lounge and that the hotel had not transferred sufficient funds into Music Lounge's bank account to pay the sales tax due from the restaurant, bar, and banquet operations. Matar then asked Joobeen to transfer money into Music Lounge's bank account and pay the sales tax. Joobeen agreed, and ultimately the sales taxes were paid. Matar testified that he was concerned about accounting practices at the hotel after learning that the taxes were not timely filed. For this reason, Matar approached Joobeen about allowing him to begin accounting for and controlling the revenue generated by the restaurant, bar, and banquet operations through his own accountant, Dick Chalk. Joobeen allowed Matar and his accountant to take over accounting for the restaurant and bar, but retained control over the financial affairs related to banquet operations. This accounting arrangement continued until the parties eventually parted ways.

On October 20, 2004, Matar read an article in *Crain's Detroit Business* reporting that Joobeen was selling the hotel. Matar testified that he had no knowledge of a pending sale involving the hotel and immediately tried to contact Joobeen about the sale. Pursuant to the lease between the parties, it was incumbent on Joobeen to inform Matar about a pending sale of the hotel in writing within ten days of consummation of a sales agreement. Matar testified that he attempted to contact Joobeen for a period of two weeks but could not reach Joobeen. Matar believed in addition to not providing the proper notice required under the lease, that Joobeen had not properly accounted for and credited revenues generated by his own operations at the hotel.

Plaintiffs filed their complaint in this action on November 10, 2004 alleging conversion, usurpation of interest in hotel property, seeking an accounting, and requesting appointment of a receiver. Matar testified that after filing the complaint Joobeen wanted Matar out of the hotel and repeatedly threatened to "close me down" and "shut the business somehow." Matar stated that he called the police after Joobeen threatened his personal safety as well as his business. Matar testified that Joobeen engaged in a course of conduct calculated to get Matar to vacate the hotel and shut down the bar, restaurant, and banquet operations. According to Matar, the conduct included verbal threats, turning off the heat in the winter resulting in temperatures cold enough to cause a pipe to freeze and burst, disconnecting the phone lines, turning off the electricity during events, and telling a promoter to plan on not returning to the hotel for any further events.

Samuel Abbasi, a technology consultant, who worked for the previous owner of the hotel, testified that he worked extensively for Joobeen after Joobeen acquired the hotel. Abbasi stated that while employed by Joobeen, initially he did mostly computer work and then additional labor such as HVAC and plumbing at the hotel. He testified that after Matar filed the lawsuit, Joobeen told him "do whatever you can do" to "make . . . Matar's life miserable" and his work responsibility turned to spending "95%" of his time concentrating on making Matar's life "miserable."

Abbasi admitted to following Joobeen's specific orders to secretly turn the heat off before events "innumerable" times and to cut off the power during busy events through the circuit breaker and then locking the breaker so it could not be accessed easily. Abbasi also stated that Joobeen "put a lot of pressure" on him to disable the computerized point of sale (POS) system so it could not be fixed. Abbasi removed the hard drive from the computerized POS system and it never worked again. Also at Joobeen's direction, Abbasi disabled the phone lines that allowed Matar to accept credit card transactions and also removed essential electrical components from the bar. Abbasi testified that he liked Matar as well as Matar's employees and did not want to follow Joobeen's instructions, but if he did not, Joobeen withheld his pay. Matar testified that these actions significantly affected his ability to run all of his operations in the hotel.

On December 17, 2004, defendants answered plaintiffs' complaint denying the allegations in the complaint and listing several affirmative defenses including: failure to state a claim upon which relief may be granted, laches, estoppel, unclean hands, waiver, statute of frauds, lack of consideration, lack of damages, and claims barred by contract. At the same time, Joobeen filed a counter-claim against Matar seeking damages and equitable relief for breach of lease for non-payment of rent, breach of lease for failure to maintain sufficient funds for operation, conversion, and unjust enrichment. On January 20, 2005, Joobeen sent Matar a letter stating that rent was due and owing in the amount of $60,000 for December 2004 and January 2005. On February 28, 2005, Matar ultimately shut down his businesses and vacated the hotel.

The matter proceeded to a bifurcated combined jury and bench trial in May 2006. Again, in the first phase of the trial, a jury determined that the three-year lease dated December 1, 2003 bound the parties. In the second phase of trial, the same jury determined that: 1) defendant Telcom Hotel Holdings or its agents did not breach the lease between plaintiff Music Lounge and defendant Telcom Hotel Holdings; 2) when plaintiff Music Lounge left the hotel on February 28, 2005, that Telcom Hotel Holdings deprived plaintiff Music Lounge of banquet and restaurant equipment, such as serving equipment, table settings, trays, etc., owned by plaintiff Music Lounge and awarded damages in favor of plaintiff Music Lounge in the amount of $5,000 for deprivation of equipment; 3) defendant Joobeen tortiously interfered with the lease between plaintiff Music Lounge and defendant Telcom Hotel Holdings, and that plaintiff Music Lounge suffered damages as a result of defendant Joobeen's interference in the amount of $129,846; and, 4) plaintiff Music Lounge breached the lease between plaintiff Music Lounge and defendant Telcom Hotel Holdings by failing to pay rent, and that defendant Telcom Hotel Holdings was damaged by plaintiff Music Lounges' breach of the lease in the amount of $90,000.

After the first two phases of trial, two issues remained for the trial court to decide: defendants' equitable claims for unjust enrichment and for specific performance of an agreement to transfer a liquor license. First, the trial court found no cause of action on defendants' unjust enrichment claim. In sum, the trial court concluded that neither side provided "strong evidence" of an accurate accounting and therefore it was not persuaded that equity should intervene regarding defendants' counter-claim for unjust enrichment. Secondly, the trial court found that a written option agreement entered into later in time superseded the language in the previous three-year lease and therefore granted defendants relief in the form of ordering plaintiff to transfer the liquor license to defendants in return for defendants' tender of $55,000. In its opinion and order on the bench-tried issues, the trial court also addressed plaintiffs' motion for partial JNOV. Plaintiffs argued that since the jury found that defendant Joobeen had interfered with plaintiffs' quiet enjoyment of the hotel premises, the award of unpaid rent was improper. The trial court declined to grant plaintiffs' motion concluding that the jury verdicts were reconcilable for the reason that the jury must have concluded that Joobeen was not acting on behalf of the corporations or in furtherance of the corporations' interests when he engaged in the tortious conduct. Defendants appealed the final order in the matter, and plaintiffs cross-appealed.

II

Defendants' sole argument on direct appeal is that the trial court committed reversible error in entering a verdict of no cause of action regarding defendants' claim for unjust enrichment. Specifically, defendants claim that the trial court erred when it determined that defendants had not suffered a loss and that equity should not intervene between the parties because neither side provided an accurate accounting of their dealings. Plaintiffs respond arguing that the trial court carefully considered the evidence and properly found no cause of action on defendants' unjust enrichment claim because defendants failed to provide the trial court with evidence establishing that defendants suffered a loss.

Whether a claim for unjust enrichment can be maintained is a question of law, which we review de novo. *Liggett Restaurant Group, Inc v Pontiac*, 260 Mich App 127, 137; 676 NW2d 633 (2003). However, whether a specific party has been unjustly enriched is generally a question of fact. See *Dumas v Auto Club Ins Ass'n*, 168 Mich App 619, 637; 425 NW2d 480 (1988), rev'd on other grounds 437 Mich 521 (1991); see also *Hayes-Albion Corp v Kuberski*, 421 Mich 170, 186; 364 NW2d 609 (1984). Following a bench trial, we review the trial court's findings of fact for clear error, but conclusions of law are 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, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made. *Id*.

The essential elements of an unjust enrichment claim are: "(1) receipt of a benefit by the defendant from the plaintiff and (2) an inequity resulting to [the] plaintiff because of the retention of the benefit by defendant." *Barber v SMH (US), Inc*, 202 Mich App 366, 375; 509 NW2d 791 (1993). "In such instances, the law operates to imply a contract in order to prevent unjust enrichment." *Id*. "However, a contract will be implied only if there is no express contract covering the same subject matter." *Id*.

Here, the trial court found that defendants had spent their own money on expenses related to plaintiffs' operations in the hotel. The trial court also found that the express agreement between the parties did not contemplate these expenditures and no other written agreement existed between the parties regarding these expenditures. We do not find a written agreement contemplating these expenditures on de novo review of the record. Because the subject matter of defendants' unjust enrichment claim was outside the scope of the express agreements between the parties, we agree with the trial court and conclude that defendants could maintain a claim for unjust enrichment as a matter of law. *Barber, supra* at 375.

The record does not contain a clear accounting of the monies defendants claimed they bestowed on plaintiffs for which they did not receive any benefit in return. In fact, the record belies defendants' unjust enrichment assertion. The parties stipulated that defendants received $885,883 from plaintiffs' food and beverage services at the hotel. The parties also stipulated that defendants only accounted for and transferred into plaintiffs' account the amount of $607,000. This is a discrepancy of $278,833 in defendants' favor. There is evidence in the record that defendants indeed paid for items and services related to plaintiffs' food operations at the hotel. But without a clear accounting, based on the parties' stipulations alone, defendant has not illustrated an inequity.

Further supporting our conclusion is the testimony of defendants' own accountant, Noune. Noune testified that defendants' accounting was a "mess," "needed to be cleaned up," and “[a] lot of adjustments needed to be made.” Noune also explained that a great deal of the accounting and reports related to expenditures defendants made on behalf of Music Lounge were not timely created and were in fact prepared after litigation commenced in the instant case. Noune’s testimony, as defendants’ accountant, reveals at best, defendants had poor accounting procedures in place to account for both income and expenditures related to hotel operations. Noune’s testimony, at worst, indicates a sinister motive in accounting for the income and expenditures.

In their brief on appeal, defendants claim that the trial court did not understand the summary reports or that the trial court must not have reviewed the supporting documentation defendants submitted. We have reviewed defendants’ purported documentation of its expenditures, and the documentation consists of a muddled assortment of various spreadsheets, hand written notes, credit card statements, and many other documents. The documents are not organized in any manner, seem to represent a mix of corporate and personal expenditures, and do not support any conclusion. It is not this Court’s duty to search the record for factual support for a party’s claim. *Derderian v Genesys Health Care Systems*, 263 Mich App 364, 388; 689 NW2d 145 (2004).

Finally, in support of their unjust enrichment claim, defendants argue on appeal that an issue of unpaid rent remains. We first point out that this argument was not raised and addressed by the trial court and therefore it is not preserved for our review on appeal. Therefore, this Court need not review the issue. *Vander Bossche v Valley Pub*, 203 Mich App 632, 641; 513 NW2d 225 (1994). We may, however, review an unpreserved issue if it is one of law and the facts necessary for the issue’s resolution have been presented. *Adam v Sylvan Glynn Golf Course*, 197 Mich App 95, 98-99; 494 NW2d 791 (1992). Since it is a matter of law we will address it. Rent is specifically covered under the lease agreement between the parties and therefore recovery of unpaid rents under an express agreement is not sustainable as a claim for unjust enrichment. *Barber, supra* at 375. And, in any event, the record reveals that the jury found plaintiffs breached the lease agreement and awarded damages to defendants in the amount of $90,000 in unpaid rents. Therefore, this argument has no merit.

After reviewing the record, we conclude that defendants have not established the elements of an unjust enrichment claim. See *Dumas, supra* at 637. We further conclude that the trial court did not clearly err when it determined that equity should not intervene between the parties due to the absence of accurate accounting records. As such, the trial court did not err when it entered a verdict of no cause of action regarding defendants’ claim for unjust enrichment.

III

On cross-appeal, plaintiffs assert that the jury’s determination that Telcom or its agents did not breach the lease agreement must be set aside, a liability only verdict be entered in favor of plaintiffs, and the case remanded to the trial court for a damages only trial. In support of this contention, plaintiffs essentially assert that there was sufficient evidence presented at trial to impute the actions of Joobeen to Telcom and reverse the jury’s finding that Telcom did not breach the lease agreement. Plaintiff filed a motion for partial JNOV in the trial court advancing the same argument. The trial court denied plaintiffs’ motion holding that the jury’s determination that Joobeen interfered with the contract, but Telcom did not, despite the fact that

Joobeen is a 99% member of Telcom, was not in conflict but rather was reconcilable. The trial court specifically held that "the jury must have concluded that Joobeen's actions were motivated by personal issues and that Joobeen was not acting on behalf of the corporation or in furtherance of the corporation's interests when he engaged in tortious conduct."

This court reviews the trial court's decision on the motion for JNOV de novo. *Sniecinski v BCBSM*, 469 Mich. 124, 131; 666 NW2d 186 (2003). In reviewing the decision, this Court views the evidence in the light most favorable to the nonmoving party to determine if the evidence failed to establish a claim as a matter of law. *Id*. In other words, "[a] motion for JNOV should be granted only when there was insufficient evidence presented to create an issue for the jury." *Pontiac School Dist v Miller Canfield Paddock & Stone*, 221 Mich App 602, 612; 563 NW2d 693 (1997). If reasonable jurors could have honestly reached different conclusions, the jury verdict must stand. *Central Cartage Co v Fewless*, 232 Mich App 517, 524; 591 NW2d 422 (1998).

"The elements of tortious interference with a contract are: '(1) a contract, (2) a breach, and (3) an unjustified instigation of the breach by the defendant.'" *Derderian v Genesys Health Care Systems*, 263 Mich App 364, 382; 689 NW2d 145 (2004), quoting *Mahrle v Danke*, 216 Mich App 343, 350; 549 NW2d 56 (1996). The third element requires a plaintiff to show "'the intentional doing of a per se wrongful act or the doing of a lawful act with malice and unjustified in law for the purpose of invading the contractual rights . . . of another.'" *CMI Int'l Inc v Intermet Int'l Corp*, 251 Mich App 125, 131; 649 NW2d 808 (2002), quoting *Feldman v Green*, 138 Mich App 360, 378; 360 NW2d 881 (1984). "If the defendant's conduct was not wrongful per se, the plaintiff must demonstrate specific, affirmative acts that corroborate the unlawful purpose of the interference." *CMI Int'l, supra* at 131.

Evidence at trial established that Joobeen engaged in a course of conduct calculated "make . . . Matar's life miserable." The conduct was also focused on getting Matar to vacate the hotel and shut down the bar, restaurant, and banquet operations. The course of conduct included threats and shutting off essential utilities such as electricity, phone lines, and heat. The jury found that Joobeen, in his individual capacity, tortiously interfered with the lease between plaintiff Music Lounge and defendant Telcom and awarded damages in the amount of $129,846. But the verdict form also reveals that despite the fact that it was well known that Joobeen was a 99% member of Telcom, the jury determined that Telcom or its agents did not breach the lease.

Hence, as the trial court found when ruling on plaintiffs' motion for JNOV, the jury must have determined that Joobeen was not acting on behalf of Telcom and instead was motivated by personal animus toward Matar when he engaged in the tortious conduct. In other words, Joobeen's personal actions, and those actions he directed Abbassi to complete, were not on behalf of Telcom and rather were only on behalf of Joobeen as an individual. Further support for this conclusion is the fact that Joobeen's behavior was not for any fathomable business purpose because they could not have benefited hotel profits in any way. Thus, because reasonable jurors could conclude that Joobeen was not acting on behalf of Telcom when he engaged in the tortious conduct, the trial court correctly denied plaintiffs' motion for JNOV. *Central Cartage Co, supra* at 524; *Pontiac School Dist, supra* at 612.

IV

Plaintiffs also assert on cross-appeal that the trial court erred when it granted defendants specific performance on an option agreement to purchase the liquor license where defendants had unclean hands. We review de novo a trial court's ultimate decision in a suit for specific performance, but the trial court's underlying factual findings are reviewed for clear error. *Samuel D Begola Services, Inc v Wild Bros*, 210 Mich App 636, 639; 534 NW2d 217 (1995). We also review de novo as a question of law the proper interpretation of a contract. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 463; 663 NW2d 447 (2003).

The goal of contract interpretation is to first determine, and then enforce, the intent of the parties based on the plain language of the agreement. *St Clair Medical, PC v Borgiel*, 270 Mich App 260, 264; 715 NW2d 914 (2006). If no reasonable person could dispute the meaning of ordinary and plain contract language, the Court must accept and enforce the language as written, unless the contract is contrary to law or public policy. *Rory v Continental Ins Co*, 473 Mich 457, 468; 703 NW2d 23 (2005). The Court "under the guise of interpretation cannot rewrite plain and unambiguous contract language" because the parties must live by the words of their agreement. *Upjohn Co v New Hampshire Ins Co*, 438 Mich 197, 207; 476 NW2d 392 (1991). The meaning of clear and unambiguous contract language is a question of law. *Laurel Woods Apts v Roumayah*, 274 Mich App 631, 638; 734 NW2d 217 (2007).

The record reflects that Joobeen, as "Landlord" and signatory for Telcom, and Matar, as "Tenant" and signatory for Music Lounge, LLC, executed a contract entitled "Option to Purchase Liquor License Agreement" dated December 22, 2003. The contract stated that Music Lounge had applied for a liquor license from the Michigan Liquor Control Commission (MLCC) to be used at the hotel for operation of a bar facility. It also stated that Music Lounge granted Telcom an option to purchase the liquor license subject to approval of the MLCC on expiration of the lease between the parties, or if Telcom exercised its right under the lease to sell, refinance, recapitalize, or release the hotel premises. The contract also stated that the purchase price would not exceed $55,000.

In the trial court, defendants filed a counter-claim for specific performance of the agreement to transfer the liquor license. After bench trial on the issue, the trial court granted defendants' request for specific performance, and ordered the transfer of the liquor license in exchange for the amount of $55,000. In deciding to grant defendants' request for specific performance, the trial court rejected plaintiffs' assertions that defendants had waived their claims to the liquor license, that defendant Joobeen had intentionally abandoned any right to the liquor license by virtue of certain testimony at trial, and that the liquor license was not transferable because defendant no longer owned the hotel. On appeal, the sole argument plaintiffs raise is that the trial court erred when it awarded defendants the remedy of specific performance when there is no indication that defendant Telcom had clean hands.

A party seeking the aid of equity must come in with clean hands. *Rose v Nat'l Auction Group, Inc*, 466 Mich 453, 462-463; 646 NW2d 455 (2002). The clean hands maxim is a self-imposed ordinance that closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of the defendant. *Id.*; *Stachnik v Winkel*, 394 Mich 375, 382; 230 NW2d 529 (1975). In determining whether a plaintiff comes before the court with clean hands, a primary factor to consider is whether the plaintiff sought to mislead or deceive the other party. *Isbell v Brighton*

Area Schools, 199 Mich App 188, 190; 500 NW2d 748 (1993). If there are any indications of overreaching or unfairness on the plaintiff's part, equitable relief will not be granted. *Id*.

Plaintiffs argue that the trial court erred in awarding specific performance of the agreement to transfer the liquor license because there was evidence that defendants had unclean hands and essentially forced plaintiffs out of the hotel. But we conclude after reviewing the record that the trial court listened to the trial testimony regarding Joobeen's conduct and despite that testimony, the court determined that the agreement to transfer the liquor license should be enforced as written. Plaintiffs' unclean hands argument raises an issue of credibility assessment. When the trial court's findings are based on the credibility of the witnesses, special deference will be given to the findings of the trier of fact given its superior ability to judge the credibility of the witnesses. MCR 2.613(C); *Sparling Plastic Industries, Inc v Sparling*, 229 Mich App 704, 716; 583 NW2d 232 (1998). As such, we decline to disturb the trial court's determination that specific performance was the appropriate remedy. We find no error on this issue.[2]

Affirmed.

/s/ Richard A. Bandstra
/s/ Pat M. Donofrio
/s/ Deborah A. Servitto

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[2] Plaintiffs also assert that defendants have lost their right to specific performance on the option agreement to purchase the liquor license by failing to comply with the trial court's order mandating tender of funds into escrow by January 1, 2007. In support of this argument, plaintiffs claim that defendants did not tender $55,000 into escrow before January 1, 2007 as required by the trial court's order. Because it is well established that a party may not enlarge the record on appeal, we have not considered this purported evidence in our decision on this issue. *Kent Co Aeronautic Bd v Dep't of State Police*, 239 Mich App 563, 579-580; 609 NW2d 593 (2000). This issue is not properly before us, although we note that the trial court may take it up post-appeal and at that time independently decide whether to enforce or revoke its own order.