

STATE OF MICHIGAN
COURT OF APPEALS

FAIRMONT SIGN COMPANY,

Plaintiff/Counter-Defendant-
Appellant,

v

CITIZENS BANK f/k/a NATIONAL BANK OF
ROYAL OAK,

Defendant/Counter-Plaintiff-
Appellee,

and

FRANK TOTH, EMMA TOTH, GORDON
DOYON and DELORES DOYON,

Defendants.

UNPUBLISHED

July 3, 2008

No. 275718

Oakland Circuit Court

LC No. 2005-067661-CK

Before: Owens, P.J., and Meter and Schuette, JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment awarding it \$182,149, following a bench trial. We affirm.

I. FACTS

Plaintiff entered into various contracts with defendant Citizens Bank whereby plaintiff agreed to furnish materials and perform certain work in connection with the design, fabrication, and installation of numerous signs at Citizens's bank branches throughout Michigan. Although plaintiff was paid over \$3 million for its work and materials, it brought this action alleging that it was not fully paid for all signs it produced and provided. Citizens filed a counter-complaint, alleging that it overpaid plaintiff for its work and seeking recovery of the overpayment amount. Following a bench trial, the trial court awarded plaintiff a judgment of \$182,149 with respect to its complaint and dismissed all of Citizens's counterclaims.

II. NOT-TO-EXCEED PRICE

Plaintiff first argues that a June 2004 purchase order containing a not-to-exceed sum of \$2.625 million was not enforceable under the Uniform Commercial Code's statute of frauds, MCL 440.2201(1).

A. Standard of Review

Whether enforcement of a purported contract is barred by the statute of frauds is a question of law, which is reviewed de novo. *Zander v Ogihara Corp*, 213 Mich App 438, 441; 540 NW2d 702 (1995).

B. Analysis

Contrary to what plaintiff argues, the trial court did not decide this issue adversely to plaintiff. Indeed, the parties agree that the trial court never directly addressed the enforceability of the not-to-exceed provision in the June 2004 purchase order. Further, it is apparent from the trial court's decision that the court did not rely on the not-to-exceed language in the purchase order as limiting plaintiff's right of recovery.

The significance of this issue at trial related to Citizens's defense that plaintiff was not entitled to recovery of its requested damages because the June 2004 purchase order specified a price of \$2.625 million for the signs, which was a "not to exceed" amount. Although the trial court referred to this purchase order in its decision, and stated that the parties "knew they had a contract here or at least were dealing with a purchase order with a not to exceed price," the court ultimately concluded that the parties later created a September 29, 2004, spreadsheet, which the court found "was going to govern all further installation of signs and production of signs." Thus, the court determined that the "not-to-exceed" \$2.625 million purchase order was not controlling, because any agreement with respect to price was subsequently modified by the September 29, 2004, spreadsheet. Furthermore, it was undisputed that plaintiff had already been paid more than \$3 million for its work, yet the trial court determined that plaintiff was entitled to damages for additional amounts owed, and it also dismissed Citizens's overpayment claim, thereby indicating that the court did not treat the not-to-exceed term in the June 2004 purchase order as a limitation on plaintiff's right of recovery.

In sum, although the trial court never specifically addressed the enforceability of the not-to-exceed contract term under the statute of frauds, its decision indicates that it implicitly rejected Citizens's defense based on this language. Additionally, Citizens has not challenged the trial court's failure to enforce the not-to-exceed term in a cross appeal. Under the circumstances, we agree that further consideration of this issue is not necessary to achieve substantial justice. MCR 2.613(A).

III. DAMAGES

Plaintiff next argues that the trial court erred in failing to award the full amount of requested damages for installed signs and signs in storage. We disagree.

A. Standard of Review

The trial court's factual findings at a bench trial are reviewed for clear error. *Villadsen v Mason Co Rd Comm*, 268 Mich App 287, 291-292; 706 NW2d 897 (2005), aff'd 475 Mich 857 (2006). "A finding is clearly erroneous if the reviewing court is left with the definite and firm conviction that a mistake has been made." *Id.*

B. Analysis

The trial court determined that the September 29, 2004, spreadsheet reflected the parties' final agreement regarding production and installation of all signs, except for ATM signs, at a price of \$2,828,209. Therefore, the court awarded plaintiff its requested amount of \$82,000 for ATM signs, but it determined that plaintiff was not entitled to any additional recovery for installed signs because it had already been paid more than the \$2.828 million price. The trial court's finding that the September 29, 2004, spreadsheet reflected the parties' final agreement on price is supported by the testimony of Jonathan Lakin and Dave Clary, and accordingly, is not clearly erroneous. Although plaintiff's witnesses testified to a contrary understanding of the September 29, 2004, spreadsheet, we defer to the trial court's determination regarding questions of witness credibility. *Sparling Plastic Industries, Inc v Sparling*, 229 Mich App 704, 716; 583 NW2d 232 (1998).

Contrary to what plaintiff argues, the trial court's decision did not conflict with the parties' stipulation. The parties merely stipulated on what signs were installed, not to any agreement regarding price for those signs.

We also reject plaintiff's argument that it is entitled to recover additional amounts under an unjust enrichment theory. The trial court determined that there was an express agreement between the parties that governed all further production and installation of signs, and that recovery of additional amounts under a theory of unjust enrichment was not warranted. *Morris Pumps v Centerline Piping, Inc*, 273 Mich App 187, 194; 729 NW2d 898 (2006).

The basis for the trial court's award of \$60,000 for signs in storage is not clear. As previously indicated, the trial court found that the September 29, 2004, spreadsheet governed "all further installation of signs and production of signs," except for the ATM signs, for a price of \$2.828 million. Accepting this finding, which we have determined is not clearly erroneous, it logically follows that plaintiff was not entitled to an additional \$60,000 for stored signs, or any other amount, considering that plaintiff had already been paid more than the \$2.828 million amount. Thus, to the extent the trial court erred, it did so by awarding plaintiff \$60,000 for this claim, rather than by failing to award an additional amount. Any error inured to plaintiff's benefit. And because Citizens has not challenged the \$60,000 award in a cross appeal, we decline to disturb this award.

IV. STORAGE FEES

Plaintiff also argues that it is entitled to interest on unpaid sums and to storage fees. We decline to consider this issue because it is insufficiently briefed. Plaintiff merely states its position without citing any authority or providing any supporting rationale for its argument. "A party may not merely announce a position and leave it to this Court to discover and rationalize the basis for its claim." *Nat'l Waterworks, Inc v Int'l Fidelity & Surety, Ltd*, 275 Mich App 256,

265; 739 NW2d 121 (2007). When a party merely announces a position and provides no authority to support it, the issue may be considered waived. *Id.*¹

Affirmed.

/s/ Donald S. Owens

/s/ Patrick M. Meter

/s/ Bill Schuette

¹ We note that plaintiff lists two additional issues in the body of its brief that are not listed in the statement of questions presented. Issues not listed in the statement of questions presented are not properly before this Court. *Marx v Dep't of Commerce*, 220 Mich App 66, 81; 558 NW2d 460 (1996). In any event, plaintiff's Issue V merely restates its arguments concerning the not-to-exceed contract term and the trial evidence, which we have already addressed. Plaintiff's Issue VI does not raise any independent substantive issue, but merely requests that this Court correct the trial court's judgment in the manner requested by plaintiff, rather than remand for further proceedings. Having rejected plaintiff's arguments, however, correction of the judgment is not warranted.