

STATE OF MICHIGAN
COURT OF APPEALS

THE BEHLER-YOUNG COMPANY,

Plaintiff-Appellee,

v

A.C. BEAUDRY, INC., DONALD A.
BEAUDRY, and KATHLEEN BEAUDRY,

Defendants,

and

ROBERT L. POMEROY and PEGGY POMEROY,

Defendants-Appellants.

UNPUBLISHED
September 25, 2008

No. 277775
Genesee Circuit Court
LC No. 04-080526-CZ

Before: Cavanagh, P.J., and Jansen and Kelly, JJ.

JANSEN, J. (*concurring*).

I fully concur in the majority's opinion. I write separately to point out that, contrary to plaintiff's argumentative assertions before this Court during oral argument, the Pomeroy's execution of the consent judgment did not constitute an admission that they had violated the terms of the Michigan Builders Trust Fund Act (MBTFA), MCL 570.151 *et seq.* I fully acknowledge that, by entering into the consent judgment, the Pomeroy's agreed to pay the sums due to plaintiff. I further acknowledge that paragraphs 2 and 3 of the consent judgment refer to the MBTFA for attorney fees and costs. However, the consent judgment simply does not contain an admission of liability under the MBTFA. It merely states that the Pomeroy's agreed to pay the money, but makes no mention of the Pomeroy's precise motivation for doing so.

Plaintiff certainly could have attempted to incorporate into the consent judgment an admission of the Pomeroy's liability under the MBTFA. However, it does not appear that plaintiff attempted to incorporate any such provision. Plaintiff's counsel exceeded the scope of good-faith argument when he asserted that the Pomeroy's had admitted to liability for violating the MBTFA. I cannot condone the arguments of plaintiff's counsel, which appear to have been designed to obscure the actual issues pending before the Court.

/s/ Kathleen Jansen