

STATE OF MICHIGAN
COURT OF APPEALS

JIMMIE LEWIS /d/b/a J.L. LEWIS &
ASSOCIATES,

UNPUBLISHED
December 10, 1996

Plaintiff-Appellee/
Cross-Appellant,

v

No. 162962
LC No. 89-365466-CK
ON REMAND

GRAND RAPIDS PLASTICS, INC., a Michigan
Corporation,

Defendant-Appellant/
Cross-Appellee.

JIMMIE LEWIS, d/b/a J.L. LEWIS & ASSOCIATES,

Plaintiff-Appellee/
Cross-Appellant,

v

No. 162963
LC No. 90-391930
ON REMAND

ARTHUR J. BOTT,

Defendant-Appellant/
Cross-Appellee.

Before: Bandstra, P.J., and Murphy and Jansen, JJ.

PER CURIAM.

By order dated September 27, 1996, the Supreme Court remanded this matter “for plenary consideration of the issue of whether the Court of Appeals properly denied defendant-appellant’s motion to tax costs on appeal for the premium paid on the appellant’s letter of credit.” Upon plenary consideration, we conclude that the motion was improperly denied.

Plaintiff acknowledges that he agreed to permit the defendant to provide a letter of credit but argues that he did not agree that any fees incurred by defendant in doing so would be taxable as costs. Plaintiff further asserts that he agreed to this approach based on his understanding that the cost of appeal bond premiums are recoverable as taxable costs under the court rules, but that there is no comparable provision allowing for costs associated with the posting of a letter of credit.

Defendant argues that the letter of credit it procured for the benefit of plaintiff and with plaintiff's acquiescence served the exact same purpose and provided plaintiff the exact same security as would have been available if a surety bond had been purchased instead. Plaintiff does not contest that argument but, instead, relies on a formalistic approach, arguing that the letter of credit is simply not an "appeal bond" as required by MCR 3.604 and that the bank, not being a "surety company authorized to do business in Michigan" had failed to "execute an affidavit that [it] has pecuniary responsibility" for the letter of credit as required by MCR 3.604(D)(1). Plaintiff does not suggest that its security or position was in any way compromised by the fact that a letter of credit instead of a bond was issued or because a bank instead of a surety company was used.

MCR 3.604(e) provides that a party who fails to file a notice objecting "to the sufficiency of the surety" provided "waives all objections to the surety." Plaintiff not only failed to file any objection, he acquiesced to use of the letter of credit. We conclude that the resulting waiver of objections applies to plaintiff's objections to the taxation of costs otherwise available to defendant as the prevailing party under MCR 7.219(F)(2).

Further authority for imposition of costs against plaintiff for the premium paid by defendant for the letter of credit is found in MCR 7.216(a)(7):

The Court of Appeals may, at any time, in addition to its general powers, in its discretion, and on the terms it deems just ... enter any judgment or order or grant further or different relief as the case may require.

Plaintiff acquiesced to the use of the letter of credit. Plaintiff suffered no prejudice as a result of that approach. In light of the facts and circumstances surrounding this case, defendant is entitled to an order imposing costs against plaintiff for the premium paid on the letter of credit.

Defendant's motion to tax costs on appeal for the premiums paid on the letter of credit is GRANTED.

/s/ Richard A. Bandstra

/s/ William B. Murphy

/s/ Kathleen Jansen