

STATE OF MICHIGAN
COURT OF APPEALS

GREAT LAKES BANCORP,

Plaintiff-Appellee,

v

CHARLES G. CRUMP and JANE M. CRUMP,

Defendants-Appellants.

UNPUBLISHED

December 30, 1996

No. 176585

LC No. 93-451661

Before: Wahls, P.J., and Young and H.A. Beach,* JJ.

PER CURIAM.

Defendants appeal as of right from the lower court's order entering judgment in the amount of \$40,243.04 in plaintiff's favor. We affirm.

Defendants purchased a 1988 Tollycraft from Harbor Yacht Sales for \$149,496. Defendants financed the purchase by executing a retail sales installment agreement, providing the yacht as security for the loan. Plaintiff purchased the agreement from Harbor Yacht Sales in 1989, and defendant defaulted on the loan in 1992. Plaintiff then repossessed the yacht in September 1992, and enlisted the services of Brennan Marine to sell the collateral. Brennan Marine advertised the yacht for \$95,000, and later sold it in November 1992 for \$85,400. Plaintiff then instituted this action to recover the deficiency owing on the debt. Defendants denied liability for the deficiency, arguing that plaintiff failed to sell the yacht in a commercially reasonable manner as required under Michigan's Uniform Commercial Code. MCL 440.9504(3); MSA 19.9504(3). After a trial, the lower court issued a written opinion holding that plaintiff failed to sell the yacht in a commercially reasonable manner and that the fair market value of the collateral was \$90,000. The court then ordered judgment in favor of plaintiff, offset by \$4,600, the difference between the court's valuation of the collateral and the amount of the deficiency being sought by plaintiff.

Defendants first argue that they were entitled to special damages based on the court's finding that plaintiff's sale was commercially unreasonable. Section 9-507(1) provides that a debtor is entitled to recover for loss caused by a creditor's failure to comply with the remedy provisions in Article 9 of

* Circuit judge, sitting on the Court of Appeals by assignment.

Michigan's Uniform Commercial Code. MCL 440.9507(1); MSA 19.9507(1). If the collateral is consumer goods, the statute provides that the debtor is entitled to a minimum damages award and includes a special method of calculating such an award. *Id.* This special award does not have to be awarded as damages, but rather, the amount of the calculation may be used to calculate a setoff against the deficiency, which the creditor is seeking to collect. *Jones v Morgan*, 58 Mich App 455, 460; 228 NW2d 419 (1975). On appeal, defendants argue that because the yacht is a consumer good, they were entitled to an award of special damages, calculated as provided in the statute. Yet, our review of the record discloses that defendants failed to raise to the lower court's attention the code's distinct method of calculating damages for cases involving consumer goods. Their pleadings, trial evidence and argument are devoid of any such request. Further, defendants did not raise this issue by way of a post-judgment motion. Hence, defendants have waived this issue on appeal. See MCR 2.112(I)(claim for items of special damage must be specifically stated); *Van Pembroke v Zero Mfg Co*, 146 Mich App 87, 107; 380 NW2d 60 (1985).

Defendants next argue that the court's finding that the collateral was only worth \$90,000 was clearly erroneous and against the great weight of the evidence. We disagree. Findings of fact in a bench trial will not be set aside by an appellate court unless they are clearly erroneous, and appellate courts must give regard to trial court's superior ability to judge credibility of witnesses who appeared before it. MCR 2.613(C); *Hawkins v Smithson*, 181 Mich App 649, 651-652; 449 NW2d 676 (1989). Overall, the court's findings and evaluation of the collateral were supported by the evidence, even though the court's opinion contains minor misstatements of fact which were not dispositive. The court considered testimony from both parties experts, and gave greater weight to plaintiffs' expert's testimony. The weight and credence to be given to the testimony of the experts was for the trial judge to determine, and a review of the record does not persuade us that his conclusions were clearly erroneous or against the great weight of the evidence. *Gilroy v Conway*, 151 Mich App 628, 633; 391 NW2d 419 (1986).

Finally, defendants argue that the trial court's findings were insufficient regarding its valuation of the collateral. After reviewing the lower court's findings, we find that it appears that the trial court was aware of the issues in the case and correctly applied the law. As such, appellate review would not be facilitated by remanding for further explanation. MCR 2.517(A)(2); *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165; 530 NW2d 772 (1995).

Affirmed.

/s/ Myron H. Wahls

/s/ Robert P. Young, Jr.

/s/ Harry A. Beach