STATE OF MICHIGAN

COURT OF APPEALS

FRANK J. POCKRANDT, d/b/a POCKRANDT PRODUCTS,

Plaintiff-Appellee,

v

GRIP TITE PRODUCTS, INC., a/k/a STICTION, INC., JOHN HARRINGTON, F. DAVID LARSON, and BENJAMIN T. HOFFIZ, JR.,

Defendants-Appellants.

UNPUBLISHED
March 21, 1997

No. 179973
Oakland Circuit Court
LC No. 91-408038-CK

Before: Young, P.J., and Markey and D.A. Teeple,* JJ.

PER CURIAM.

Defendants appeal as of right from a judgment in favor of plaintiff for $1,533,000, plus costs and statutory interest. We affirm.

The parties' dispute is based on upon an exclusive licensing agreement entered into by plaintiff and Stiction, Inc. [now known as and referred to herein as Grip Tite Products, Inc.[1]], to manufacture and distribute a product called Stiction, a patent-pending product that helps remove stripped nuts, bolts and screws by providing additional gripping ability. Plaintiff contends that he revoked the licensing agreement because Grip Tite breached the licensing agreement and, despite this revocation and subsequent injunctions, Grip Tite continued to use and disseminate material bearing the name and mark of Stiction but in an identical package containing a product labeled as "Gription," which omitted any reference to Pockrandt Products, as on the original Stiction product. Plaintiff filed this action against Stiction, Inc. a/k/a Grip Tite Products, Inc, and three individuals (who are also officers of these corporations) to recover damages and obtain injunctive relief under breach of contract and other theories of liability.

---

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

After this action was filed, the trial court issued a "mutual" injunction to prevent the parties from marketing Stiction or a similar product. The trial court also appointed an expert to examine the patent issues and a special master with the power to run Grip Tite's predecessor, if necessary. The trial court later entered a default judgment in favor of plaintiff regarding liability on all counts of plaintiff's verified second amended complaint as a sanction for defendants' failure to comply with its order to provide records to the special master. The trial court then granted plaintiff a permanent injunction against defendants preventing, among other things, any further manufacture, distribution, or marketing of the Stiction product. The question of monetary damages was tried before a jury, however. The jury, by special verdict, found in favor of plaintiff and against all defendants in the amount of $1,500,000 on plaintiff's breach of contract claim. The jury also found that plaintiff was entitled to $104,000 for attorney fees and $33,000 for patent work. The trial court later vacated the award for attorney fees and entered judgment for plaintiff in the amount of $1,533,000, plus costs and interest.

I

We first address defendants' contentions in issues one, two, three, and seven concerning the trial court's appointment of a special master, with receiver and fact-gathering authority and statutory bond requirements. Because defendants give, at best, cursory consideration to these issues, we could decline to review them. See *Froling v Carpenter*, 203 Mich App 368, 373; 512 NW2d 6 (1994); *Community Nat'l Bank v Michigan Basic Property Ins Ass'n*, 159 Mich App 510, 520-521; 407 NW2d 31 (1987). In any event, having considered only those arguments identified in the statement of question presented for each of the four issues, we find no error. See *People v Yarger*, 193 Mich App 532, 540 n 3; 485 NW2d 119 (1992); *Williams v City of Cadillac*, 148 Mich App 786, 790; 384 NW2d 792 (1985).

The Michigan Constitution, Const 1963, art 6, § 5, prohibits only the office of master in chancery. Under Const 1963, art 6, § 13, the circuit court has a broad grant of authority, which includes general equitable jurisdiction. *Universal Am-Can Ltd v Attorney General*, 197 Mich App 34, 37; 494 NW2d 787 (1992). Moreover, the circuit court, rather than a jury, retains the authority to determine facts as they relate to equitable remedies, although the jury may decide factual issues relating to the claim for money damages. *ECCO, Ltd v Balimoy Mfg Co, Inc*, 179 Mich App 748, 751; 446 NW2d 546 (1989).

Plaintiff invoked the trial court's equitable jurisdiction in this case by seeking injunctive relief. *Universal Am-Can Ltd, supra* at 36-37. Accordingly, we hold that the trial court had equitable power to appoint the special master for the purpose of exercising receiver duties to prevent fraud and protect property against imminent danger of loss. See *Rockwell v Crestwood School Dist Bd of Education*, 393 Mich 616, 644-645; 227 NW2d 736 (1975); *Weathervane Window, Inc v White Lake Construction Co*, 192 Mich App 316, 322; 480 NW2d 337 (1991); *Band v Livonia Associates*, 176 Mich App 95, 104-106; 439 NW2d 285 (1989).

Although no bond was posted by the special master, defendants' reliance on MCL 600.3510; MSA 27A.3510 as support for their claim of statutory error is misplaced. The applicable bond statute is MCL 600.2926; MSA 27A.2926. Moreover, the proper remedy for a failure to require bond is a

nunc pro tunc order for bond. *Band, supra* at 107. Because the lack of bond affords defendants no basis for vacating the judgment, this error was harmless. MCR 2.613(A).

We do not agree with defendants' contention that the trial court delegated full judicial power to the special master or that any fact-finding role of the jury was preempted by the special master. With regard to the enforcement of orders, the record reflects that the special master relied upon the trial court to enforce orders. As to factual issues, the record reflects that the special master only had authority to make recommendations to the trial court. We also note that, while the special master was permitted to make preliminary determinations on facts to expedite this case, there is no record evidence that the special master actually made findings of fact on any issues of liability or damages. Instead, the record reflects that, with the exception of the questions on monetary damages decided by the jury, all issues in this case were decided by the trial court. The record also reflects that defendants, through attorney and codefendant Benjamin Hoffiz, Jr., had requested that the special master be allowed to make findings of fact. It was only after defendants had a disagreement with the special master and were ordered by the trial court to turn over information to the special master that defendants challenged the trial court's authority to appoint the special master.

Error requiring reversal must be that of the trial court and not error to which the aggrieved party may have contributed by planned or neglectful omission of action. *Harrigan v Ford Motor Co*, 159 Mich App 776, 786; 406 NW2d 917 (1987). Moreover, where jurisdiction is proper, a court's orders must be obeyed, even if clearly incorrect. *In the Matter of Hague*, 412 Mich 532, 545; 315 NW2d 524 (1982); *State Bar of Michigan v Cramer*, 399 Mich 116, 125; 249 NW2d 1 (1976). Under the circumstances of this case, we hold that the trial court acted within the scope of its equitable powers when it assigned fact-gathering duties to the special master. Even if the assignment were improper, our refusal to grant relief to defendants would not be inconsistent with substantial justice because defendants contributed to this action and suffered no harm until after they failed to comply with the trial court's own order. MCR 2.613(A). We also believe that the appointment of an expert witness was permissible under MRE 706 in this case because the court did not delegate its judicial authority to that witness. Cf. *Carson Fischer Potts & Hyman v Hyman, 220* Mich App 116, 122-124; ___NW2d ___ (1996).

II

We next consider defendants' contention in his fourth issue that the trial court erred in not granting their motion, at the conclusion of plaintiff's proofs at the trial, requesting a finding of no cause of action on the ground that plaintiff did not present any proof as to damages. Because this issue is given only cursory treatment in defendants' brief, we could decline to consider it. *Community Nat'l Bank*, *supra* at 520-521.

In any event, we view the statement of the question presented for this issue as a challenge to the trial court's denial of defendants' motion for directed verdict on damages and, hence, confine our review to the trial court's decision on that motion. *Yarger, supra*; *Williams, supra*. We only review grounds for sustaining a directed verdict that were articulated to the trial court. *Garabedian v William Beaumont Hosp*, 208 Mich App 473, 475; 528 NW2d 809 (1995). Accordingly, the sole issue we must determine is whether plaintiff presented sufficient evidence that he suffered any damages at all. *Id.*

As the party asserting a breach of contract, plaintiff had the burden of proving damages with reasonable certainty. *In the Matter of the Dissolution of F Yeager Bridge & Culvert Co*, 150 Mich App 386, 401; 389 NW2d 99 (1986); *Bonelli v Volkswagon of America, Inc*, 166 Mich App 483, 511; 421 NW2d 213 (1988). The type of uncertainty which bars recovery is uncertainty as to the fact of damages and not as to its amount. See *Bonelli, supra* and cases cited therein. However, the plaintiff must lay a basis for a reasonable estimate of the extent of harm, measured in money. *Fera v Village Plaza, Inc*, 396 Mich 639, 643; 242 NW2d 372 (1976).

Parties may agree to remedies for breach of contract in the contract itself. *Van Valkenburg v Retirement Homes of the Detroit Annual Conference of the Methodist Church*, 7 Mich App 77, 79; 151 NW2d 197 (1967). Where a party elects to disaffirm a contract, the party is still entitled to consequential damages. *Jim-Bob, Inc v Mehling*, 178 Mich App 71, 92-93; 443 NW2d 451 (1989). In the commercial contract context, consequential damages refer to damages, such as lost profits, that arise naturally from the breach, or which can reasonably be said to have been in the contemplation of the parties at the time the contract was made. *Lawrence v Will Darrah & Associates, Inc*, 445 Mich 1, 13; 516 NW2d 43 (1994).

When the evidence is examined in a light most favorable to plaintiff, the jury could find with reasonable certainty that plaintiff incurred monetary loss as a direct and natural result of the breach of the licensing agreement (i.*e.*, the nonpayment of royalties and the failure to abide by plaintiff's election to terminate the licensing agreement). Hence, the trial court did not err in denying a directed verdict on whether plaintiff sustained his burden of establishing any damages. *In the Matter of the Dissolution of F Yeager Bridge & Culvert Co, supra*.

III

In their fifth issue, defendants contend that the trial court erred in failing to instruct the jury to differentiate between each defendant in deliberations and by allegedly giving a tort-based instruction related to damages against all defendants. Having confined our review to the statement of the question presented by defendants, we hold that this issue was not preserved for appeal because defendants did not object to the instructions, stating specifically the objectionable matter and the ground for objection, before the jury retired for deliberations. MCR 2.516(C); *Hammack v Lutheran Social Services of Michigan*, 211 Mich App 1, 10; 535 NW2d 215 (1995). Nevertheless, the jury did not decide any liability issues. Moreover, the record reflects that the individual defendants' liability for breach of contract was premised on the equitable doctrine of piercing the corporate veil. *Om-El Export Co, Inc v Newcor, Inc*, 154 Mich App 471, 479-480; 398 NW2d 440 (1986). Hence, the fact that the jury was allowed to return a verdict of breach of contract against all defendants was, at most, harmless error. MCR 2.613(A). We also note in passing that the instructions, as a whole, properly informed the jury that damages in a contract action must be proven with reasonable certainty. *In the Matter of the Dissolution of F Yeager Bridge & Culvert Co, supra*.

IV

For their sixth and eighth issues, defendants raise questions concerning receiver fees and the patent expert. Because the merits of these issues have not been adequately briefed, we are unable to review them. See *Froling, supra* at 373; *Community Nat'l Bank, supra* at 520-521.

V

As their ninth issue, defendants assert that plaintiff "unilaterally breached" and terminated the contract, and then request that we determine whether plaintiff is entitled to recover damages based on this assertion. A party may not merely announce a position and leave it to this Court to discover and rationalize the basis for the claim. *In re Toler*, 193 Mich App 474, 477; 484 NW2d 672 (1992). Moreover, this Court's jurisdiction is confined to judgments and orders of the trial court. *Law Offices of Lawrence J Stockler, PC v Rose*, 174 Mich App 14, 54; 436 NW2d 70 (1989). Because defendants have failed to identify or brief the particular ruling of the trial court upon which their ninth issue is based, we are unable to review this issue.

VI

As their tenth issue, defendants contend that the trial court erred in refusing to hear and rule on their several motions for summary disposition. Because defendants' argument gives only cursory treatment of this issue and the record on appeal does not include the transcripts for all lower court proceedings, we need not address this issue. *Community Nat'l Bank, supra* at 520-521; cf. *Admiral Ins Co v Columbia Casualty Ins Co*, 194 Mich App 300, 305; 486 NW2d 351 (1992). We note, however, that defendants' argument misconstrues both MCR 2.119(C) and the record. MCR 2.119(C) is a procedural rule that sets forth the time for the service and filing of motions and responses. It imposes no affirmative duty on the trial court to decide the merits of each issue raised in the motion. Also, the available record does not reflect that the trial court refused to hear or rule on defendants' motions. With regard to the hearings from 1991 and 1994 for which transcripts have been provided on appeal, the record reflects that the trial court denied relief based on mootness and other grounds. Although there are exceptions, courts will generally not entertain moot issues or decide moot cases. *Contesti v Attorney General*, 164 Mich App 271, 278; 416 NW2d 410 (1987).

We also point out that this Court reviews a trial court's ruling on a motion for summary disposition de novo, *G&A Inc v Nahra*, 204 Mich App 329, 330; 514 NW2d 255 (1994), but that defendants have not shown any issue upon which they should have been granted judgment as a matter of law. Defendants have also failed to address the issue of mootness and have not established any basis for the "default" remedy sought against plaintiff in this appeal. Hence, defendants have forfeited these claims. *Froling, supra* at 373.

In sum, confining our review to the available record and the statement of the question presented for defendants' tenth issue, we conclude that defendants have demonstrated no basis for the relief. MCR 2.613(A).

VII

As their eleventh issue, defendants raise a claim of attorney misconduct. Having reviewed defendants' claim under the standards in *Reetz v Kinsman Marine Transit Co*, 416 Mich 97, 102-103; 330 NW2d 638 (1982), and *Wilson v General Motors Corp*, 183 Mich App 21, 26-27; 454 NW2d 405 (1990), we find no basis for a new trial on the issue of monetary damages. Defendants were not deprived of a fair and impartial trial.

Affirmed.

Plaintiff being the prevailing party, he may tax costs pursuant to MCR 7.219.

/s/ Robert P. Young, Jr.
/s/ Jane E. Markey
/s/ Donald A. Teeple

[1] Grip Tite Products, Inc, is also known as Grip-Tite Products, Inc.