

STATE OF MICHIGAN
COURT OF APPEALS

ABLAHAD BAHOURA, ARMOUR BAHOURA,
and ROUGE PUBLIC MARKET, INC.,

UNPUBLISHED
January 30, 1998

Plaintiffs-Appellants,

v

No. 188235
Wayne Circuit Court
LC No. 90-002250-CK

RIVER ROUGE SAVINGS BANK, and OMNI
BANK,

Defendants-Appellees.

Before: Kelly, P.J., and Hood and Gribbs, JJ.

MEMORANDUM.

Judgment was entered in favor of plaintiffs for \$22,467 following a bench trial on claims arising out of the alleged improper debiting of plaintiffs' bank accounts. Plaintiffs thereafter moved the trial court to amend the judgment or grant a new trial. The trial court denied plaintiffs' motion in part and granted it in part. The judgment was amended to encompass the finding that plaintiffs had not only prevailed on their breach of contract claim, but also on their conversion and Michigan Consumer Protection Act claims, MCL 445.901 *et seq.*; MSA 19.418(1) *et seq.* Plaintiffs request for additur, however, was denied, and they appeal as of right. We affirm.

On appeal, plaintiffs contend that the trial court erred in failing to amend the judgment to add additional damages pursuant to a stipulation between the parties. We disagree.

The record reveals that there was an agreement between the parties that an accounting firm would analyze a representative sample of the entire population of debit memos issued by defendant in order to determine whether the debit memos were properly issued. Plaintiffs argue that the agreement constituted a stipulation, which required the trial court to calculate damages based on the representative sample. In ruling on the motion to amend the judgment, the trial court expressly acknowledged that there was a stipulation between the parties. Nevertheless, the court determined that additur was inappropriate.

Despite such a stipulation between the parties, 20% of the representative sample was not tested and both parties have been unable to produce the Kal's Contracting checks in their entirety. As support for the representative sample remains incomplete, this Court will not apply this partial error ratio to the whole.

Plaintiff's argument on appeal centers solely upon whether there was a stipulation that required the trial court to calculate damages based on a ratio derived from the representative sample. Plaintiffs' argument ignores that the trial court recognized the existence of the stipulation, but decided that *despite* the stipulation, damages should not be increased because the sample was not properly supported. Part of the sample was not tested and all of the necessary documentation was not produced. Plaintiffs completely fail to address the trial court's determination in that regard. See *Joerger v Gordon Food, Inc*, 224 Mich App 167, 175; 568 NW2d 365 (1997). Moreover, we find no error in the trial court's determination.

Affirmed.

/s/ Michael J. Kelly
/s/ Harold Hood
/s/ Roman S. Gibbs