

STATE OF MICHIGAN
COURT OF APPEALS

PATRICIA SWEDREN,

Plaintiff-Appellee,

v

HELEN G. PIANGA and HELEN SKIBA,

Defendants-Appellants.

UNPUBLISHED
October 31, 2000

No. 214645
Wayne Circuit Court
LC No. 97-737019-CH

Before: Neff, P.J., and Talbot and J.B. Sullivan*, JJ.

PER CURIAM.

Following a bench trial, defendants appeal as of right a circuit court judgment awarding plaintiff damages and mediation sanctions in the amount of \$34,702.50, based on a theory of quantum meruit. We affirm.

Defendants argue that the trial court erred in determining that plaintiff was entitled to damages based on a theory of quantum meruit because an express contract governed the same subject matter. We view this issue as a challenge to the trial court's denial of defendants' motion for a directed verdict, which is reviewed de novo on appeal. *Candelaria v BC General Contractors Inc*, 236 Mich App 67, 71; 600 NW2d 348 (1999).

The trial court's denial of defendants' motion was based on two distinct principles: (1) although a party may not recover on an implied contract if there is an enforceable contract governing the same subject matter, in this case, the implied contract did not cover the same subject matter as the purchase agreement; and (2) despite plaintiff's breach of the purchase agreement, she is entitled to recover for her partial performance under the contract.

We agree with defendants that the existence of the purchase agreement obligating plaintiff to fix the home to a "mortgageable condition" precluded her from recovering on an implied contract basis for repairs made to the home. "An implied contract cannot be enforced where the parties have made an express contract covering the same subject matter." *Scholz v Montgomery Ward & Co, Inc*, 437

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

Mich 83, 93; 468 NW2d 845 (1991). Unlike the situation in *Cascade Electric Co v Rice*, 70 Mich App 420, 426; 245 NW2d 774 (1976), upon which the trial court relied, the present case does not involve extra work not contemplated by the purchase agreement that was performed at the request of defendants. Rather, plaintiff sought damages in connection with the work performed in fulfillment of her obligation under the purchase agreement to fix the home to a “mortgageable condition.”

However, the existence of an express contract does not foreclose plaintiff from recovering for her partial performance under the contract. A plaintiff who has breached an express contract may be entitled to damages as compensation for services rendered based on the acceptance of a benefit by the defendants. See *Moscone v Mitoff*, 33 Mich App 259, 261; 189 NW2d 763 (1971); *Kitchen v Hill*, 215 Mich 668, 672; 184 NW 465 (1921); *Sheldon v Leahy*, 111 Mich 29, 30; 69 NW 76 (1896). In this case, the trial court found that plaintiff had performed partially under the contract by fixing the home to a condition where it could be mortgaged and that there had been a substantial amount of work and materials done on the home which benefited defendants. Under the circumstances, we are not persuaded that the trial court erred in awarding judgment to plaintiff.

Affirmed.

/s/ Janet T. Neff

/s/ Michael J. Talbot

/s/ Joseph B. Sullivan