

STATE OF MICHIGAN
COURT OF APPEALS

INTRA CORPORATION, JOHN A. BATTISTA,
and PATRICIA D. BATTISTA,

UNPUBLISHED
August 16, 2002

Plaintiffs-Appellees,

v

INTERNATIONAL FLOOR COATINGS
CORPORATION,

No. 229635
Wayne Circuit Court
LC No. 99-904789-CK

Defendant-Appellant.

Before: Murray, P.J., and Fitzgerald and O'Connell, JJ.

PER CURIAM.

Defendant appeals as of right a judgment entered in favor of plaintiffs following a jury trial in this action in which plaintiff sought damages for breach of contract. Defendant challenges both the award of damages to plaintiffs for breach of contract and the verdict against defendant on its counterclaim for money owed. We affirm.

Defendant first argues that the trial court erred in denying defendant's motion for a new trial based on the great weight of the evidence. Specifically, defendant argues that the jury's award of damages is not supported by the evidence. We disagree. We review a trial court's decision whether to grant a new trial for an abuse of discretion. *Bean v Directions Unlimited, Inc.*, 462 Mich. 24, 34-35; 609 NW2d 567 (2000). An abuse of discretion occurs when the decision was so violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or an exercise of passion or bias. *Id.*

A new trial may be granted on some or all of the issues if a verdict is against the great weight of the evidence. MCR 2.611(A)(1)(e); *Domako v Rowe*, 184 Mich App 137, 144; 457 NW2d 107 (1990). However, the trial court must not substitute its judgment for that of the factfinder, and thus a jury's verdict should not be set aside if there is competent evidence to support it. *Ellsworth v Hotel Corp of America*, 236 Mich App 185, 194; 600 NW2d 129 (1999). The jury and trial court are accorded substantial deference because both were in a better position to determine credibility and weigh the testimony. *Ellsworth, supra* at 194; *Snell v UACC Midwest, Inc.*, 194 Mich App 511, 517; 487 NW2d 772 (1992).

The goal of a breach of contract remedy is to put the non-breaching party in as good a position as it would have been if the contract had been fully performed. *Corl v Huron Castings*,

Inc, 450 Mich 620, 625; 544 NW2d 278 (1996). A plaintiff can recover damages that either arose naturally from the breach or were in the contemplation of the parties when the contract was made. *Farm Credit Services of Michigan's Heartland, Inc v Weldon*, 232 Mich App 662, 678; 591 NW2d 438 (1998). A plaintiff can recover lost profits if the defendant knew or should have known when the parties entered the contract that the plaintiff would lose profits if the defendant breached. *Lawrence v Will Darrah & Associates, Inc*, 445 Mich 1, 15; 516 NW2d 43 (1994).

Here, plaintiff presented evidence of both lost profits and costs incurred in paying employees to move equipment as a result of defendant's failure to timely fulfill the terms of the contract. Although the testimony regarding damages was unsupported by documentation, plaintiff properly estimated the amount of damages because the amount of damages could not possibly be determined with mathematical precision. *Berrios v Miles, Inc*, 226 Mich App 470, 478; 574 NW2d 677 (1997). The evidence reasonably supported the verdict and, therefore, the circuit court did not err by denying defendant's motion for new trial. *Bouverette v Westinghouse Electric Corp*, 245 Mich App 391, 403-404; 628 NW2d 86 (2001).

Defendant also argues that plaintiffs signed an agreement waiving any right to damages for lost wages or production. We decline to review this issue because defendant failed to explain its argument or cite any supporting authority. *Thomas v McGinnis*, 239 Mich App 636, 649; 609 NW2d 222 (2000). Further, the agreement provision cited by defendant does not clearly apply to situations in which defendant has breached its duty to perform.

Finally, defendant argues that the jury's decision regarding the counterclaim was against the great weight of the evidence. A party must pay the money owed under a contract when the other party has substantially performed. *Gibson v Group Ins Co*, 142 Mich App 271, 275; 369 NW2d 484 (1985). The issue of substantial performance is generally a question for the jury. *Zinhook v Turkewycz*, 128 Mich App 513, 522; 340 NW2d 844 (1983). Because both parties presented evidence to support their respective positions with regard to whether defendant substantially performed under the contract, it was up to the jury to weigh the credibility of the witnesses. *Snell, supra* at 517. Under these circumstances, we cannot conclude that the verdict was against the great weight of the evidence.

Affirmed.

/s/ Christopher M. Murray
/s/ E. Thomas Fitzgerald
/s/ Peter D. O'Connell