STATE OF MICHIGAN

COURT OF APPEALS

MADISON NATIONAL BANK, a/k/a PEOPLES STATE BANK,[1]

Plaintiff-Appellee,

v

HARVEY GOLDMAN, INC., d/b/a WORLDWIDE EQUIPMENT COMPANY,

Defendant-Appellant.

UNPUBLISHED
November 21, 2006

No. 262886
Wayne Circuit Court
LC No. 98-830197-CZ

Before: Cooper, P.J., and Hoekstra and Smolenski, JJ.

PER CURIAM.

Defendant appeals as of right the judgment in favor of plaintiff. Plaintiff filed a conversion claim for equipment that defendant repossessed from GMR Plastics and sold. The trial court initially concluded that the relevant transaction was a loan, not a sale, and that, as a result, defendant was not required to file a financing statement with the state. This Court vacated the judgment and remanded for clarification and reconsideration of the priority issue.[2] On remand, the trial court found that the transaction between defendant and GMR was a sale and that defendant's attempt to perfect its security interest was untimely. Therefore, the trial court concluded, plaintiff had priority as a secured creditor with a first perfected security interest in the equipment. Accordingly, the trial court reversed its earlier decision and entered judgment in favor of plaintiff. We affirm.

Defendant argues on appeal that the lower court failed to follow the instructions of this Court. We disagree. The issue whether the trial court erred in failing to follow this Court's prior ruling on remand is a question of law that is reviewed de novo. *Kalamazoo v Dep't of Corrections (After Remand)*, 229 Mich App 132, 134-135; 580 NW2d 475 (1998).

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[1] Peoples State Bank is the successor in interest to Madison National Bank.

[2] See *Madison National Bank v Harvey Goldman, Inc*, unpublished opinion per curiam of the Court of Appeals issued, March 13, 2003 (Docket No. 235087).

Defendant argues that the circuit court erred by not clarifying the factual issues pertaining to the nature of the loan as instructed by this Court. Defendant asserts that this Court mandated that the lower court clarify its contrary findings regarding whether the loan was for money or equipment. "It is the duty of the lower court or tribunal, on remand, to comply strictly with the mandate of the appellate court." *Rodriguez v General Motors Corp*, 204 Mich App 509, 514; 516 NW2d 105 (1994). In this case, this Court remanded the case so the trial court could determine whether defendant retained a lessor's ownership right to retrieve the machines, where defendant would prevail, or whether the parties intended the machines to secure GMR's payment, where plaintiff would prevail. This Court found that the trial court's findings were contradictory. The trial court found that defendant loaned GMR the money to buy the machines, but it also found the loan did not create a purchase money security interest in defendant, and these two findings cannot be squared with each other. Defendant would prevail over plaintiff's security interest only if it loaned the machines to GMR through an informal lease, but the trial court's factual findings did not seem to correspond with this result, so the case was remanded for clarification of these issues.

Contrary to defendant's argument, the lower court followed this Court's instructions on remand and clarified its factual findings for reconsideration of the priority issue. On remand, the trial court found that this was:

> a commercial transaction, where property was repossessed, sold and re-sold. The last seller, Worldwide, failed to perfect a security interest in GMR's assets. The transaction was an interest-bearing loan of the purchase price or a money purchase transaction. Madison Bank, has, therefore, priority as a secured creditor with a first perfected security interest in the equipment.

This explanation complies with this Court's mandate that the lower court determine whether defendant had a lessor's interest in the equipment or an unperfected security interest. The court found that defendant had a security interest in the equipment, so plaintiff's prior, perfected security interest prevailed.

Defendant's next argument is that the lower court erred by straying from the law of the case when it found on remand that the letter from defendant to GMR constituted a sales contract rather than a loan, as it had originally determined. Defendant's argument is without merit.

The law of the case doctrine holds that, "as a general rule, an appellate court's determination of an issue in a case binds lower tribunals on remand and the appellate court in subsequent appeals." *Grievance Administrator v Lopatin*, 462 Mich 235, 260; 612 NW2d 120 (2000). This principle "applies only to questions actually decided in the prior decision and to those questions necessary to the court's prior determination." *Kalamazoo*, *supra* at 135. This doctrine maintains consistency and prevents reconsideration of matters already concluded. *Id*.

This Court specifically stated in its ruling that the characterization of the letter as a sales contract or a loan is irrelevant to the issue, and the trial judge recognized this when she wrote that it was either one or the other. The law of the case doctrine does not apply to an order vacating and remanding a case for reconsideration or to a case which is remanded for factual determinations. *Brown v Drake-Willock International, Ltd*, 209 Mich App 136, 144; 530 NW2d

510 (1995); *Hill v Ford Motor Co*, 183 Mich App 208, 212; 454 NW2d 125 (1989). Therefore, defendant's argument is without merit.

Defendant's next argument on appeal is that the lower court abused its discretion in awarding case evaluation sanctions and prejudgment interest to plaintiff. We disagree. This Court reviews de novo a trial court's decision to grant case evaluation sanctions. *Ayre v Outlaw Decoys, Inc*, 256 Mich App 517, 520; 664 NW2d 263 (2003). An award of interest on a judgment is also reviewed de novo, as are questions of statutory interpretation. *Angott v Chubb Group Ins*, 270 Mich App 465, 487; 717 NW2d 341 (2006).

"If a party has rejected an evaluation and the action proceeds to verdict, that party must pay the opposing party's actual costs unless the verdict is more favorable to the rejecting party than the case evaluation." MCR 2.403(O)(1). This means that a rejecting party must obtain a more favorable verdict to avoid sanctions. *Keiser v Allstate Insurance Co*, 195 Mich App 369, 372; 491 NW2d 581 (1992). "The purpose of mediation sanctions is to impose the burden of litigation costs upon the party who insists upon trial by rejecting a mediation award." *Id*. In this case, plaintiff accepted the unanimous mediation evaluation awarding it $75,000, but defendant rejected the evaluation. Therefore, the trial court properly awarded plaintiff case evaluation sanctions.

Defendant argues that, under *Keiser*, case evaluation sanctions cannot be awarded until after final appellate review of the case. However, defendant misinterprets the issue in *Keiser*, a case with a similar procedural history to this case:

> The only issue on appeal is whether, after a party rejects a mediation evaluation and, following a trial, a verdict more favorable to the rejecting party is returned, MCR 2.403(O) allows the imposition of sanctions on the rejecting party following appellate reversal of the verdict where the final result is no longer favorable to that party. We hold that it does. [*Keiser, supra* at 371.]

In fact, this Court has specifically rejected the argument that a winning party must wait to seek sanctions until after the losing party has had the opportunity to seek post-judgment relief. See *Mahrle v Danke*, 216 Mich App 343, 349; 549 NW2d 56 (1996). Therefore, defendant's argument is without merit.

Finally, defendant argues that the trial court erred in awarding plaintiff prejudgment interest. In a civil case, interest is allowed on a money judgment and is accrued from the date of the filing of the complaint. *Matich v Modern Research Corp*, 146 Mich App 813, 820; 381 NW2d 834 (1985); MCL 600.6013. Defendant's argument that the issue of prejudgment interest is an element of damages that had to be submitted to the trier of fact is unpersuasive. There is nothing in the statute referencing such a requirement, and the trial court properly concluded that

defendant only cited to outdated and irrelevant case law. Therefore, the trial court did not err when it awarded plaintiff prejudgment interest.

Affirmed.

/s/ Jessica R. Cooper
/s/ Joel P. Hoekstra
/s/ Michael R. Smolenski