

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ROLL-ICE INTERNATIONAL, LLC, ROBERT  
J. BORDEAUX, VICTOR S. POSA, and PAUL  
M. STEINHAUSER, JR.,

UNPUBLISHED  
December 19, 2006

Plaintiffs-Appellants,

v

V-FORMATION, INC.,

No. 264806  
Saginaw Circuit Court  
LC No. 04-052945-CB

Defendant-Appellee.

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Before: Murphy, P.J., and Smolenski and Kelly, JJ.

PER CURIAM.

Plaintiffs appeal as of right the judgment relative to the amount of damages awarded to them by the trial court following defendant's default. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs and defendant entered into a licensing agreement for several of plaintiffs' patents. The contract provided that defendant would make minimum quarterly royalty payments of \$15,000 per quarter to plaintiffs for the life of the patents. In July 2003, defendant failed to make a quarterly payment. Plaintiffs sent a letter to defendant on September 25, 2003, advising defendant that, pursuant to the contract, plaintiffs were giving formal notice of their intent to terminate the contract unless defendant cured the defect within 90 days. Defendant did not cure the defect by making the quarterly payment, and the contract was terminated.

Plaintiffs filed an action for breach of contract. Defendant failed to plead or otherwise defend the lawsuit, and the trial court entered a default against defendant. Defendant's trial counsel then filed an appearance and a motion to set aside the default. The trial court denied defendant's motion to set aside the default, and ordered a hearing on damages.

At the damages hearing, plaintiffs argued they were entitled to \$639,195 - the minimum amount of royalties due until the last patent expired. Defendant argued that plaintiffs were entitled only to \$30,000—the outstanding quarterly payments due at the time of the breach and subsequent termination of the contract by plaintiffs.

The trial court concluded that plaintiffs were entitled to \$45,000 plus interests and costs because defendant failed to make payments during the second and third quarters of 2003, and the contract terminated only six days before the end of the fourth quarter.

This Court reviews a trial court's award of damages after a bench trial for clear error. *Scott v Allen Bradley Co*, 139 Mich App 665, 672; 362 NW2d 734 (1984). "A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire record is left with the definite and firm conviction that a mistake has been committed." *Gumma v D & T Constr Co*, 235 Mich App 210, 221; 597 NW2d 207 (1999).

The trial court did not clearly err in finding that plaintiffs were only entitled to damages in the amount of the outstanding royalties payments due at the time of the termination of the contract.

The rights and duties of parties to a contract are derived from the terms of the agreement, and unambiguous contracts must be enforced as written. *Rory v Continental Ins Co*, 473 Mich 457, 468; 703 NW2d 23 (2005). The general rule of contract law is that competent persons shall have the utmost liberty of contracting and that their agreements voluntarily and fairly made shall be held valid and enforced in the courts. *Id.* Under this legal principle, the parties are generally free to agree to whatever they like, and, in most circumstances, it is beyond the authority of the courts to interfere with the parties' agreement. *St. Clair Intermediate School Dist v Intermediate Ed Ass'n/Michigan Ed Ass'n*, 458 Mich 540, 570-572; 581 NW2d 707 (1998). Here, the parties had a valid contract, but plaintiffs chose to terminate it. Thus, at the time of the termination, plaintiffs' damages ceased to accrue. Once the contract was no longer in force, the parties no longer owed one another the rights and duties outlined in the contract.

Further, claims on an installment contract do not ordinarily accrue until the installment becomes due in the absence of an acceleration clause in the contract. *Petovello v Murray*, 139 Mich App 639, 645; 362 NW2d 857 (1984), citing MCL 600.5836 of the RJA ("The claims on an installment contract accrue as each installment falls due."). The contract in this case did not contain an acceleration clause. An unambiguous contract must be enforced according to its terms. *Hamade v Sunoco, Inc (R&M)*, 271 Mich App 145, 166; 721 NW2d 233 (2006).

Plaintiffs also contend that defendant anticipatorily breached its obligation to make future payments under the contract. Ordinarily, the courts lack authority "to decree the entire amount due in the absence of an acceleration clause in the contract." *Lutz v Dutmer*, 286 Mich 467, 488; 282 NW 431 (1938); *Benincasa v Mihailovich*, 31 Mich App 473, 478; 188 NW2d 136 (1971). However, under the doctrine of anticipatory breach, if, prior to the time of performance, a party to a contract unequivocally declares the intent not to perform, the innocent party has the option to either sue immediately for breach of the contract or wait until performance is due under the contract. *Stoddard v Manufacturers Nat'l Bank of Grand Rapids*, 234 Mich App 140, 163; 593 NW2d 630 (1999). A party's intention, as manifested by acts and words, controls whether an anticipatory breach has occurred. *Paul v Bogle*, 193 Mich App 479, 493-494; 484 NW2d 728 (1992).

Here, defendant performed under the contract for three years until the breach, when it failed to make two royalties payments. Plaintiff Victor Posa testified at the damages hearing that

when he inquired about defendant's failure to make payment, defendant told him that the payment was forthcoming. Defendant did not otherwise communicate with plaintiffs about whether it intended to breach the contract before plaintiffs sent defendant the letter advising that they were terminating the contract. Thus, the trial court did not clearly err in concluding that there is no factual support for plaintiffs' assertion of anticipatory breach.

In sum, the trial court did not err in awarding plaintiffs the amount of the outstanding royalties payments due at the time of the termination of the contract and in declining to award plaintiffs the minimum amount of royalties due until the last patent expired.

Affirmed.

/s/ William B. Murphy  
/s/ Michael R. Smolenski  
/s/ Kirsten Frank Kelly