

STATE OF MICHIGAN
COURT OF APPEALS

BROWN CITY CONCRETE, INC.,

Plaintiff-Appellee,

v

DANIEL G. SEVERN and TRI COUNTY
CONCRETE POURED WALLS, INC.,

Defendants-Appellants.

UNPUBLISHED

August 18, 2011

No. 295451

Lapeer Circuit Court

LC No. 08-040552-CZ

Before: SAAD, P.J., and JANSEN and K. F. KELLY, JJ.

JANSEN, J. (*concurring in part and dissenting in part*).

I concur with the majority's conclusions that Daniel Severn's final payment did not constitute an accord and satisfaction, that plaintiff did not violate MCR 2.113(F) by failing to attach a written instrument to its complaint, and that the circuit court did not improperly calculate the amount of interest due and owing in this case. However, I respectfully dissent from the majority's determination that the circuit court erred by holding Severn personally liable for the judgment.

Findings of fact by a circuit court sitting without a jury are reviewed under the clearly erroneous standard. *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000). "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." *Id.*

Following a bench trial, the circuit court held Severn personally liable for the \$15,000 judgment, finding that he had implicitly agreed to personally pay the debt, including all interest. I cannot conclude that the circuit court's findings in this regard were clearly erroneous. Indeed, it appears to me that the majority has merely substituted its own findings for those of the circuit court on this issue. The record evidence established that Severn was fully aware of the amount of interest charged by plaintiff, posted certain items of his own property as collateral, continued making payments to plaintiff personally even after his former corporation was dissolved, and ultimately paid the principal amount due to plaintiff through another of his companies, which had no liability for the debt whatsoever. I perceive no clear error in the circuit court's determination that, on the basis of Severn's conduct and the course of dealings between the parties, there was "an implied contract of guarantee by Daniel Severn[.]" After having reviewed

the record, I am not left with a definite and firm conviction that a mistake was committed. *Id.* Accordingly, I would affirm the circuit court's decision to hold Severn personally liable for the \$15,000 judgment in this case.

/s/ Kathleen Jansen