STATE OF MICHIGAN

COURT OF APPEALS

GREYSTONE INTERNATIONAL, INC., Plaintiff/Counter-Defendant-Appellant/Cross-Appellee,	UNPUBLISHED September 19, 2013
v	No. 302397 Kent Circuit Court
STEELCASE, INC., Defendant/Counter-Plaintiff-Appellee/Cross-Appellant.	LC No. 05-006839-CK

Before: SERVITTO, P.J., and WHITBECK and SHAPIRO, JJ.

PER CURIAM.

Plaintiff, Greystone International, Inc. (Greystone), appeals as of right the trial court's orders granting partial summary disposition in favor of defendant, Steelcase, Inc. (Steelcase) and its judgment following a bench trial. Steelcase cross-appeals the trial court's reversal of an initial ruling on summary disposition and its award of prejudgment interest. We affirm the decisions and verdict of the trial court, but vacate the judgment and remand for the trial court to correct its calculation of prejudgment interest.

I. FACTS

A. BACKGROUND FACTS

In 1992, Greystone began supplying parts to Steelcase. In 1997, the parties executed a "Master Purchasing Agreement" (the contract) that provided mechanisms by which Steelcase could (1) order products from Greystone, (2) purchase products from Greystone, and (3) request that Greystone maintain a certain level of inventory of a product. The contract provides that, before ordering product, Steelcase will provide Greystone with a "schedule of product" that becomes part of the parties' agreement. The contract also provides that "Steelcase shall not be obligated to purchase any inventory maintained in excess of the level agreed to in writing by Steelcase."

In 1998, Steelcase wrote Greystone a letter requesting Greystone to maintain an inventory of segment beams that Steelcase used in a furniture product. The letter provided that

> Steelcase will have responsibility (cost, minus salvage value) for quantities up to the "min qty" listed, by part number on the attached sheet. Or, up to 14 weeks of forecast usage based on Steelcase's PI80 forecast.

The 1998 letter listed quantities of 36 varieties of beam by part number.

In 1999, the parties executed a schedule of product (the 1999 schedule) that also contained a request for Greystone to maintain an inventory of beams. The schedule provided:

> Supplier is authorized to maintain inventory of the items and quantities listed below. Steelcase will have responsibility (cost, minus salvage value) for quantities up to the amount listed below, or, up to 14 weeks of forecast usage based on Steelcase's supplied forecast.

The 1999 schedule listed quantities of 21 varieties of beam by part number. It also requested that Greystone perform some secondary operations on the beams before sale.

In 2001, the parties executed another schedule of product (the 2001 schedule). The 2001 schedule provided that an attached sheet contained "minimum and multiple order quantities . . ." for numerous parts, 40 of which were beams listed by part number. Each beam had a minimum quantity of one. The 2001 schedule provided that Greystone would "adhere to the [contract] and this Schedule of Product. All other contractual needs are to be addressed on an individual basis."

Steelcase's purchases of beams declined after 2001. In 2004, Greystone informed Steelcase that it intended to terminate the schedule of product and to charge Steelcase to store the beams.

B. PROCEDURAL HISTORY

1. THE ORIGINAL COMPLAINT

On May 29, 2005, Greystone filed a complaint against Steelcase, alleging in part that Steelcase breached the contract by refusing to purchase Greystone's remaining inventory of beams and other products, and failing to pay it rent.

Steelcase moved the trial court for summary disposition under MCR 2.116(C)(10). Steelcase asserted that the contract did not authorize Greystone to charge Steelcase rent for storage. Steelcase also asserted that the contract did not require it to purchase inventory from Greystone unless it requested in writing that Greystone maintain a certain level inventory, and then Steelcase subsequently discontinued the product. Steelcase admitted that the 1998 letter requested that Greystone maintain an inventory of beams, but asserted that it had not discontinued the beams and that it continued to sell the beams as replacement parts. Greystone contended that "Schedule A" status was equivalent to discontinuing the beams. Additionally, Greystone asserted that the trial court should consider "parol evidence" to interpret the contract, on the basis that the parties' course of dealing regularly fell outside of its terms, and Steelcase had orally requested that it maintain an inventory of various additional products. Steelcase responded that the contract was fully integrated, and that Greystone could not rely on a course of dealing that did not comply with the contract.

Steelcase further asserted that there were no issues of fact concerning how many beams Steelcase would be liable for under the contract because the 2001 schedule, which provided a minimum quantity of one of each beam, superseded the 1998 letter. Greystone asserted that the 1999 schedule might supersede the 1998 request, but the 2001 schedule did not.

2. THE TRIAL COURT'S 2006 SUMMARY DISPOSITION RULING

On August 3, 2006, the trial court granted Steelcase's motion for summary disposition on the breach of contract claim and dismissed it without prejudice. The trial court determined that the contract was fully integrated, clear, and unambiguous, and declined Greystone's request for it to consider parol evidence. The trial court also dismissed Greystone's claim for rent because the contract prohibited indirect, special, or consequential damages.

Interpreting the contract, the trial court determined that it only required Steelcase to purchase excess inventory from Greystone if (1) Steelcase made a written request for Greystone to maintain the inventory, and (2) Steelcase discontinued the product. It determined that there was no issue of material fact concerning which products Steelcase requested Greystone to maintain—the only written request was for Greystone to maintain an inventory of beams. The trial court opined that the 2001 schedule superseded the 1998 request, reasoning that the 2001 schedule required that Greystone adhere to the contract and "*this* Schedule of Product."

The trial court determined that, under the contractual language, "Status A" was not the equivalent of being discontinued. The trial court opined that, because the beams were not yet discontinued, the contract did not yet require Steelcase to purchase them, and Greystone's breach of contract claim would ripen when Steelcase discontinued the beams.

3. THE 2008 REINSTATEMENT OF GREYSTONE'S BREACH OF CONTRACT CLAIM

On May 29, 2008, Greystone moved the trial court to reinstate its breach of contract claim. Greystone provided the affidavit of Rick Sousley, Greystone's president, who indicated that the beams were no longer in Steelcase's computer system. Jim Alles, a former Steelcase employee, had indicated in 2006 that Steelcase had two levels of "obsolete" parts—Status A, meaning that the parts were only used as replacement parts; and Status B, meaning that the parts were purged from Steelcase's system. Greystone asserted that this meant that the beams had been discontinued. Greystone appears to have abandoned this claim at some point and reverted back to arguing that "Status A" was when the beams were discontinued, particularly during the later motion in limine. There is no indication in the affidavit, or anywhere else, *when* the beams were placed in "Status B" or disappeared from Steelcase's computer system), and requested that the trial court award it "carrying costs" from the point that Steelcase discontinued the beams.

Steelcase responded that, because the trial court dismissed the case over one year before Greystone's motion, it should require Greystone to file a new complaint. The trial court determined that, on the basis of the procedural and factual history of the case and the time and expense already undertaken by the parties, it was in the interests of justice for it to allow Greystone to reopen the case rather than requiring it to file a new complaint.

4. THE TRIAL COURT'S 2008 SUMMARY DISPOSITION RULING

Steelcase moved for summary disposition under MCR 2.116(C)(10). Steelcase asserted that it was only liable to purchase one of each of the listed beams, because the trial court previously ruled that the 2001 schedule superseded the 1998 request. Steelcase additionally asserted that Greystone was not entitled to rent because the trial court had previously dismissed that claim with prejudice.

The trial court granted Steelcase's motion for summary disposition on Greystone's request for "carrying costs," determining that, like rent, the contract barred carrying costs.

The trial court denied Steelcase's motion for summary disposition concerning the quantity of beams for which Steelcase was liable. It determined that its previous ruling that the 2001 schedule superseded the 1998 request was erroneous. It noted that the contract contemplated three distinct types of requests between the parties—purchases, orders, and requests to maintain inventory—and opined that it had failed to distinguish between the three types of requests. It opined that the 2001 schedule was only a request to order product, and did not address the parties' future needs. Thus, the trial court reasoned that the 2001 schedule did not contradict either the 1998 request or the 1999 schedule's request for Greystone to maintain an inventory. However, the trial court determined that 1999 schedule did supersede the 1998 request in part, because it contained conflicting requests concerning the quantities of some of the beams.

The 1998 letter and 1999 schedule provided that Steelcase was liable for either the amounts specified in the documents, or 14 weeks' projected requirements of beams, whichever was greater. Because of the "or" clause, the trial court concluded that the quantity of beams Steelcase was liable for remained a question of fact.

5. PRETRIAL

In March 2010, Steelcase moved the trial court to prohibit Greystone from admitting evidence that the beams were discontinued before January 2010. Steelcase relied on a discontinuation notice and the affidavit of Donna Roscoe, a Steelcase employee, who stated that Steelcase officially discontinued the beams at that point. Greystone responded that Steelcase's obligation to purchase the beams arose in 2006, when the beams became "obsolete" and Steelcase moved them to "Status A."

The trial court granted Steelcase's motion. It noted that it had previously rejected Greystone's argument in its initial ruling on Steelcase's motion for summary disposition. The trial court reasoned that the purchasing agreement provided that Steelcase's obligation arose when Steelcase discontinued the item, not when it was "obsolete." On that basis, the trial court accepted that Steelcase discontinued the beams in January 2010.

6. TRIAL AND DIRECTED VERDICT

At trial, Alles testified that Steelcase had previously utilized a 14-week projection, known as a PI-80 forecast, which Steelcase sent to its suppliers on a weekly basis. The first two

columns of the PI-80 contained Steelcase's actual orders or a product, and the remaining columns contained Steelcase's projection of its future needs.

Rick Sousley, Greystone's president, testified that Greystone no longer possessed the PI-80 documents, but it received PI-80 forecasts until 1998 or 1999. Sousley testified that Steelcase only issued purchase orders between 1999 and 2006, but during that period, Greystone received oral 14-week forecasts from Steelcase, to "double or triple" Greystone's inventory. On cross-examination, Sousley testified as follows:

> *Q.* You were told generally, ramp up two or three times, 30 percent, double, whatever it was; correct?
>
> *A.* Correct.
>
> *Q.* Now, help me out, help the Court out here.
>
> *A.* Sure.
>
> *Q.* How are we going to know what that number is?
>
> *A.* And exactly what my point was. How did I know at the time? I was asking for forecasts.
>
> *Q.* Okay. Then you didn't build the inventory on a 14-week forecast, did you.
>
> *A.* We built it based on their verbal comments of what was happening.

After Greystone rested its case, Steelcase moved the trial court for a directed verdict, contending that Sousley's testimony did not establish any quantity of beams for which Steelcase would be liable based on the 14-week forecasts. Therefore, Steelcase contended, the 1999 schedule and the 1998 request definitively established the quantities of beams that Steelcase was liable to purchase.

The trial court agreed, ruling that "[t]he testimony and evidence presented at trial was insufficient to support a finding that any additional or alternative quantit(ies) were authorized in connection with a 14-week forecast" because "Sousley could not testify to any baseline number which was to be doubled or tripled, nor was he able to connect the instructions to any 14-week forecast." Thus, it concluded that the quantities listed in the 1998 request and the 1999 schedule were the quantities of inventory for which Steelcase was liable.

The trial continued on damages. The trial court determined that the contract held Steelcase liable to Greystone for its "costs, minus salvage[,]" but what the parties meant by "costs" was unclear. It found that Greystone's costs included the raw costs of the beams governed by the 1998 letter, and the beams and secondary operations that Greystone performed on them under the 1999 schedule, but not storage costs.

In December 2010, Greystone moved the trial court to enter a judgment. Greystone asserted that it was entitled to prejudgment interest from August 3, 2006, when it filed the complaint. Steelcase asserted that Greystone was only entitled to prejudgment interest from when Steelcase discontinued the beams. The trial court opined that MCL 600.3016 required it to award prejudgment interest from the date that Greystone filed the complaint, and awarded prejudgment interest from August 3, 2006.

II. CONTRACTUAL INTERPRETATION

A. STANDARD OF REVIEW

This Court reviews de novo the trial court's determination on a motion for summary disposition.[1] A party is entitled to summary disposition under MCR 2.116(C)(10) if "there is no genuine issue as to any material fact, and the moving party is entitled to judgment . . . as a matter of law."[2] This Court also reviews de novo the proper interpretation of a contract, the legal effect of a contractual clause, and whether a contract's language is ambiguous.[3]

B. PAROL EVIDENCE, WAIVER, AND MODIFICATION CONCERNING THE PRODUCTS THAT WERE NOT BEAMS

1. LEGAL STANDARDS

If a contract's language is unambiguous, courts will enforce the contract as written.[4] A contract's language is ambiguous when two of its provisions irreconcilably conflict, or when a term is equally susceptible to more than a single meaning.[5]

"[P]arol evidence of contract negotiations or of prior or contemporaneous agreements that would contradict or vary the terms of a written contract are not admissible to vary a contract that is clear and unambiguous."[6] If the contract contains an integration clause, parol evidence is only admissible (1) to prove that the clause was fraudulent, (2) to invalidate the entire contract, or (3) if the contract is obviously incomplete on its face.[7]

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[1] *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

[2] MCR 2.116(C)(10); *Maiden*, 461 Mich at 120.

[3] *Quality Products & Concepts Co v Nagel Precision, Inc*, 469 Mich 362, 369; 666 NW2d 251 (2003); *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 463; 663 NW2d 447 (2003).

[4] *Quality Products & Concepts Co*, 469 Mich at 375.

[5] *Coates v Bastian Bros, Inc*, 276 Mich App 498, 503; 741 NW2d 539 (2007).

[6] *UAW-GM Human Resource Ctr v KSL Recreation Corp*, 228 Mich App 486, 492; 579 NW2d 411 (1998), quoting *Schmude Oil Co v Omar Operating Co*, 184 Mich App 574, 580; 458 NW2d 659 (1990).

[7] *UAW-GM Human Resource Ctr*, 228 Mich App at 494-495.

2. APPLYING THE STANDARDS

Greystone contends that the trial court should have admitted parol evidence to fill in the gaps between the contractual language and the parties' actual practices concerning the various other products that were not beams. According to Greystone, the trial court should have considered parol evidence of the parties' course of dealing to determine what practices they followed when there was no schedule of product, such as for leaps, bases, pulls, and other products. We note that Greystone's argument confuses the parol evidence rule with waiver and modification principles.

As noted above, the parol evidence rule applies to evidence of "contract negotiations or *of prior or contemporaneous* agreements . . . ."[8] In comparison, a party may establish that the parties have waived or modified a contract by establishing "clear and convincing evidence of a written agreement, oral agreement, or affirmative conduct establishing mutual agreement to modify or waive the particular original contract[,]" including evidence of the parties' subsequent course of conduct.[9] Here, Greystone contends that the parties' course of dealings *subsequent to* the contract contradicted its written terms.

The parol evidence rule simply does not apply in the manner that Greystone attempts to apply it. Greystone's asserted error is not a parol evidence problem. It is a waiver or modification problem. Greystone has neither properly preserved a waiver or modification issue by raising it before the trial court,[10] nor properly presented it by adequately briefing it.[11] However, we will nonetheless briefly explain why waiver and modification principles do not apply in this case.

We conclude that the parties meant to treat orders and inventory requests differently under the contract. Courts give terms in contracts their ordinary and plain meanings.[12] If the parties' contract does not define a term, a court may consult a dictionary to determine the term's meaning.[13] In this context, order is commonly defined as "a quantity of goods or items purchased or sold" and inventory is defined as "to keep an available supply of (merchandise); stock."[14] The act of ordering is clearly distinct from the act of maintaining an inventory. Further, the provisions concerning orders are in a different location in the contract from those provisions concerning inventory. § 3.1 *et seq* concerns orders, while § 7.1 *et seq* concerns

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[8] *Id*. at 492, quoting *Schmude Oil Co*, 184 Mich App at 580.

[9] *Quality Products & Concepts Co*, 469 Mich at 364-365.

[10] See *Polkton Charter Twp v Pelegrom*, 265 Mich App 88, 95; 693 NW2d 170 (2005).

[11] See *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002).

[12] *Liparoto Constr, Inc v Gen Shale Brick, Inc*, 284 Mich App 25, 35; 772 NW2d 801 (2009).

[13] *Citizens Ins Co v Pro-Seal Serv Group, Inc*, 477 Mich 75, 84; 730 NW2d 682 (2007).

[14] *Random House Webster's College Dictionary* (1997).

inventory. We conclude that the trial court correctly determined from the language of the contract that the parties meant to treat orders and inventory differently.

Thus, the course of conduct that Greystone urged the trial court to consider did not apply to the contractual section under which Greystone was arguing that the parties modified by their actions. Whether Steelcase adhered to those contractual sections requiring it to provide a schedule of product before *ordering* product has little bearing on whether Steelcase is liable for Greystone's excess *inventory* under those separate provisions. Under the section of the contract governing inventory, the clear expression of the parties' agreement is that "Steelcase shall not be obligated to purchase any inventory maintained in excess of the level agreed to in writing by Steelcase." Greystone presented no evidence that Steelcase, by conduct or otherwise, intended to waive the writing requirement of the contractual provision concerning *inventory requests*. And Steelcase only requested, in a schedule of product, that Greystone maintain an inventory of beams—not any of the other miscellaneous products.

We conclude that the trial court did not err when it determined that the contract was unambiguous concerning inventory and applied its language as written. Any gaps created by the parties' subsequent failure to follow their contract concerning orders of other products would not necessarily waive or modify those provisions concerning inventory requests related to those products.

C. THE EFFECT OF THE 2001 SCHEDULE OF PRODUCT CONCERNING THE BEAMS

1. LEGAL STANDARDS

If parties enter into a contract after their original contract, and the second contract contains an integration clause, the terms of the second contract control the parties' agreement.[15] Even if the second contract does not contain an integration clause, if its terms are inconsistent with the terms of the original contract, the second contract may supersede the original.[16]

2. APPLYING THE STANDARDS

Steelcase asserts that the trial court erred when it reversed its decision that the 2001 schedule superseded the 1998 request. We disagree.

We conclude that the 2001 schedule is not integrated. It does not contain a declaration that it is the complete agreement between the parties, but instead provides that "[a]ll other contractual needs are to be addressed on an individual basis." Thus, the 2001 schedule's clear language indicates that it is not integrated.

We also conclude that the terms of the 2001 schedule are not inconsistent with the terms of the 1999 schedule or the 1998 request. As we have previously explained, the contract treats

[15] *Archambo v Lawyers Title Ins Corp*, 466 Mich 402, 414; 646 NW2d 170 (2002).

[16] *Id*. at 414 n 16; *Joseph v Rottschafer*, 248 Mich 606, 610-611; 227 NW 784 (1929).

orders and inventory differently. Here, the 2001 schedule does not contain any inventory requests. And it does not authorize Greystone to maintain an inventory, or include language similar to Steelcase's other inventory requests. In comparison, the 1998 request is a written request to maintain inventory, and the 1999 schedule of product contains both an order and an inventory request. Because the 2001 schedule does not contain any inventory requests, it is not inconsistent with the 1999 schedule or the 1998 request.

III. DISCONTINUANCE OF THE BEAMS

A. STANDARD OF REVIEW

As previously stated, this Court reviews de novo the trial court's determination on a motion for summary disposition.[17] A party is entitled to summary disposition under MCR 2.116(C)(10) if "there is no genuine issue as to any material fact, and the moving party is entitled to judgment . . . as a matter of law."[18]

Generally, this Court reviews for an abuse of discretion preserved challenges to the trial court's evidentiary rulings.[19] The trial court abuses its discretion when its outcome falls outside the range of principled outcomes.[20]

B. LEGAL STANDARDS AND APPLICATION

Greystone primarily contends that Steelcase "functionally" discontinued the beams (1) in 2004 on the basis that an employee stated that the beams were "obsolete," or (2) in 2006 on the basis that Steelcase placed them in "Status A" in their internal computer system. Thus, according to Greystone, the trial court incorrectly determined that there was no question of fact whether the beams were discontinued in 2004 or 2006, and that the trial court erroneously accepted Steelcase's January 2010 date as the date that Steelcase discontinued the beams. We disagree.

At both the original motion for summary disposition in 2006 and the hearing on the motion in limine, Greystone asserted that Steelcase "functionally" discontinued the beams. The contract provides the manner in which Steelcase's obligation to purchase Greystone's remaining inventory of a product arises:

> Steelcase shall provide Supplier with written notice of Steelcase's intention to discontinue any Product for which an inventory is maintained. Steelcase shall advise Supplier to either maintain the materials or parts in inventory for Steelcase or use its best efforts to sell the materials or parts to other customers in a

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[17] *Maiden*, 461 Mich at 118.

[18] MCR 2.116(C)(10); *Maiden*, 461 Mich at 120.

[19] *Barnett v Hidalgo*, 478 Mich 151, 158-159; 732 NW2d 472 (2007).

[20] *Id*. at 158.

> commercially reasonable manner. At the end of the period specified in the notice of discontinuance, Steelcase shall purchase from Supplier any remaining of the materials or parts at a price equal to Supplier's actual costs or such other price as may be agreed upon in writing by the parties.

Under the clear language of the contract, Steelcase's obligation to purchase Greystone's excess inventory does not arise until after Steelcase provides Greystone with written notice that it intends to discontinue a product. Had the parties wished to trigger Steelcase's obligation to purchase the beams at a point at which the beams were "functionally discontinued," they could have done so. Further, the undisputed evidence was that, despite Steelcase's placing the parts in "Status A," it continued to sell them and Steelcase did not provide any notice that it intended to discontinue them. Thus, Greystone did not show that there was a question of material fact whether, under the contractual language, Steelcase discontinued the parts within the meaning of § 7.2.2 in 2004 or 2006, and the trial court properly granted summary disposition.

Greystone asserts that when it terminated the schedules of product related to the beams in 2004, it triggered Steelcase's obligations to purchase the beams. We reject Greystone's argument. As previously stated, the contract explicitly states that Steelcase's obligation to purchase inventory is triggered when Steelcase discontinues the product. As Greystone recognizes in its brief, the section of the contract that governs terminating schedules of product does not state anything about how inventory requests are treated when a schedule of product is terminated. The contract's terms do not conflict concerning when Steelcase's obligation to purchase inventory arises, and thus the contract is not ambiguous.

We also conclude that the trial court did not err when it granted Steelcase's motion in limine and precluded Greystone from arguing the point at which Steelcase discontinued the beams at trial. The trial court may answer preliminary questions concerning the admissibility of evidence.[21] "An order in limine is an instruction not to mention certain facts unless the court's permission is first obtained."[22]

Despite the trial court's previous ruling on the motion for summary disposition, its denial of Greystone's motion for reconsideration, and this Court's denial of leave to appeal, Greystone persisted in arguing that the beams were "functionally" discontinued in 2004 or 2006. Greystone was attempting to re-argue a point that was already decided. Under these circumstances, we do not think the trial court abused its discretion when it precluded Greystone from introducing this evidence at trial.

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[21] MRE 104(A).

[22] *Zantop Int'l Airlines, Inc v Eastern Airlines*, 200 Mich App 344, 360; 503 NW2d 915 (1993).

IV. THE DIRECTED VERDICT

A. STANDARD OF REVIEW

This Court reviews de novo a trial court's decision on a motion for directed verdict.[23] A motion for a directed verdict is properly granted if, viewing the evidence and all reasonable inferences in the light most favorable to the nonmoving party, there is no factual dispute on which reasonable minds could differ.[24]

B. LEGAL STANDARDS AND APPLICATION

Greystone asserts that the trial court inappropriately granted a directed verdict because it presented sufficient evidence of the 14-week forecasts to create a question of fact on which reasonable minds could differ. We disagree.

We reject Greystone's argument that the trial court did not allow it to present evidence concerning the 14-week forecasts after it determined that the written PI-80 14-week forecasts were destroyed. The record does not support its assertion. The trial court clearly *did* allow Greystone to present evidence about the 14-week forecasts. Sousley testified that after it stopped sending Greystone PI-80 forecasts, Steelcase orally urged Greystone to "double or triple" its inventory of beams.

The trial court granted Steelcase a directed verdict because Sousley's testimony did not establish any *quantity* of beams for which Steelcase could be held liable. On direct examination, Sousley did not state that the PI-80 forecasts contained any quantity of beams, and on cross-examination, Sousley could not testify what the number was, and tacitly admitted the forecasts did not include any numbers. Reviewing the record, we conclude that the trial court's determination that Greystone had not established a question of fact concerning the quantity of beams that Steelcase was liable for was not erroneous.

V. DAMAGES AND INTEREST

A. STANDARD OF REVIEW

This Court reviews a trial court's findings of fact in a bench trial for clear error.[25] A finding is clearly erroneous if we are definitely and firmly convinced that the trial court made a

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[23] *Sniecinski v Blue Cross & Blue Shield of Michigan*, 469 Mich 124, 131; 666 NW2d 186 (2003).

[24] *Thomas v McGinnis*, 239 Mich App 636, 643-644; 609 NW2d 222 (2000).

[25] *Chelsea Investment Group LLC v City of Chelsea*, 288 Mich App 239, 250; 792 NW2d 781 (2010).

mistake.[26] As stated above, this Court reviews de novo the trial court's interpretation of a contract.[27] We review de novo an award of prejudgment interest under MCL 600.6013.[28]

B. GREYSTONE'S CARRYING COSTS

1. LEGAL STANDARDS

Damages are an element of any breach of contract action.[29] Damages are recoverable when they "arise naturally from the breach or those that were in the contemplation of the parties at the time the contract was made."[30]

2. APPLYING THE STANDARDS

Greystone argues that the trial court erred when denying it carrying costs because the contract allows Greystone to recover its costs and carrying costs are "costs" within some meanings of costs. We disagree.

We conclude that the trial court's determination that Greystone's carrying costs were not "costs" as defined in the contract was not erroneous. The contract provided that "Steelcase shall purchase from Supplier any remaining inventory of the materials or parts at a price equal to Supplier's actual costs or such other price as may be agreed upon in writing by the parties." In the 1998 request and the 1999 schedule of product, the parties agreed that Steelcase would pay Greystone "cost, minus salvage value[.]"

However, none of the documents defined "cost." The trial court consulted a dictionary and determined that cost typically means "an amount paid or to be paid for a purchase." After consulting Greystone's itemized list of the components of the price that Greystone normally charged Steelcase for the beams, the trial court found that Steelcase did not normally charge Greystone a storage fee. It thus determined that Greystone's carrying costs were not "costs" under the contract. We are not convinced that the trial court made a mistake when it found that Steelcase did not normally pay Greystone storage costs, and thus Greystone's carrying costs were not "costs" within the contemplation of the parties.

Greystone additionally argues that the trial court clearly erred in excluding a quantity of beams with a specific part number from its damages calculation. We disagree. Here, Steelcase's

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[26] *Id*. at 251.

[27] *Quality Products & Concepts Co*, 469 Mich at 369.

[28] *Shivers v Schmiege*, 285 Mich App 636, 653; 776 NW2d 669 (2009).

[29] *New Freedom Mortgage Corp v Globe Mortgage Corp*, 281 Mich App 63, 69; 761 NW2d 832 (2008).

[30] *Farm Credit Servs of Michigan's Heartland, PCA v Weldon*, 232 Mich App 662, 678-679; 591 NW2d 438 (1998).

obligation to purchase the beams arose only from a written request that Greystone maintain an inventory. Both the 1998 request and the 1999 schedule listed beams and quantities by part number; neither document included the specific beam part number Greystone argues that the trial court erred by excluding. We conclude that the trial court did not clearly err when it excluded these beams from its calculation of damages.

We also conclude that the trial court did not clearly err when it excluded the costs of "secondary operations" related to those beams for which Steelcase was liable under the 1998 request. The 1999 schedule provided that Greystone would perform secondary operations on the beams before selling them to Steelcase. However, the 1998 request did *not* provide that Greystone would perform secondary operations on the beams. Thus, we are not firmly convinced that the trial court made a mistake when it excluded the costs of secondary operations for those beams for which Steelcase was liable under the 1998 letter.

C. PREJUDGMENT INTEREST

1. LEGAL STANDARDS

Prejudgment interest compensates the prevailing party for its delay in receiving its damages during the pendency of the proceedings, and serves to encourage the parties to settle their dispute.[31] Normally, a party's interest on a money judgment in a civil action is "calculated at 6-month intervals from the date of the filing of the complaint . . . ."[32]

But the Michigan Supreme Court has indicated that prejudgment interest need not be awarded during periods when, though a complaint has been filed, the parties have no dispute:

> That the Legislature intended plaintiffs to be compensated for periods during which no disputed claim even existed against the judgment debtor strains credulity. Likewise, the laudable purpose of encouraging settlements is not applicable to periods during which no claim existed against the defendant.[33]

But "[a] court may disallow prejudgment interest for periods of delay where the delay was not the fault of, or caused by, the debtor."[34]

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[31] *Phinney v Perlmutter*, 222 Mich App 513, 540-541; 564 NW2d 532 (1997); *Shivers*, 285 Mich App at 652.

[32] MCL 600.6013(8).

[33] *Rittenhouse v Erhart*, 424 Mich 166, 218; 380 NW2d 440 (1985) (Opinion by Riley, J.).

[34] *Phinney*, 222 Mich App at 541.

2. APPLYING THE STANDARDS

Steelcase argues that the trial court erred when it awarded Greystone prejudgment interest from the June 2005 date that Greystone's original complaint was filed. Given the unique procedural history of this case, we agree.

Here, the trial court dismissed Greystone's complaint without prejudice on August 3, 2006. When a complaint is dismissed, the action is terminated, but a party whose claim is dismissed without prejudice may file a new claim.[35] Here, the trial court allowed Greystone to re-open the case, rather than requiring it to file a new claim. But between August 3, 2006, and May 29, 2008, there was no controversy between the parties. We agree with the Michigan Supreme Court that it would strain credulity to conclude that the Legislature, under MCL 600.6013(8), intended Greystone to be compensated for this period during which the parties had no existing claims. Additionally, this period of delay was not Steelcase's fault. We conclude that the trial court should have awarded Greystone prejudgment interest from May 29, 2008, the date that the trial court set aside its dismissal of the complaint rather than requiring Greystone to file a new complaint.

We affirm the trial court's decisions and rulings on the motions for summary disposition and pertaining to the trial, but vacate the trial court's judgment and remand for the trial court to enter a judgment awarding Greystone prejudgment interest from May 29, 2008, the point at which Greystone normally would have been required to file its complaint. Steelcase, being the prevailing party, may tax costs.[36] We do not retain jurisdiction.

/s/ Deborah A. Servitto
/s/ William C. Whitbeck
/s/ Douglas B. Shapiro

[35] *ABB Paint Finishing, Inc v Nat'l Union Fire Ins Co of Pittsburgh, PA*, 223 Mich App 559, 562-563; 567 NW2d 456 (1997).

[36] MCR 7.219.