STATE OF MICHIGAN

COURT OF APPEALS

GENESIS DEVELOPMENT CORPORATION,

Plaintiff-Appellant,

and

GENESIS REAL ESTATE CORPORATION,

Plaintiff,

v

MICHAEL ILITCH and MARION ILITCH,

Defendants-Appellees.

UNPUBLISHED
August 9, 1996

No. 176210
LC No. 92-215098-CK

GENESIS DEVELOPMENT CORPORATION and
GENESIS REAL ESTATE CORPORATION,

Plaintiffs-Appellees,

v

MICHAEL ILITCH and MARION ILITCH,

Defendants-Appellants.

No. 176212
LC No. 92-215098-CK

Before: Griffin, P.J., and Bandstra and M. Warshawsky,* JJ.

PER CURIAM.

In this breach of contract action, plaintiff, Genesis Development Corporation, appeals as of right in Docket No. 176210 an order denying its motion for a new trial on its claims of fraud, misrepresentation, and promissory estoppel. In Docket No. 176212, defendants, Michael and Marion Ilitch, appeal as or right from two earlier judgments entered pursuant to special jury verdicts awarding damages in favor of Genesis Development and plaintiff Genesis Real Estate Corporation. The appeals were consolidated. We affirm.

I

In 1986, Genesis Development purchased a parcel of property on Orchard Lake from Orchard Gate Properties.[1] Genesis Development then reengineered the property to comprise five separate residential lots, Lots A through E. In 1988, defendants paid Genesis Development $20,000 for a sixty-day option to purchase Lots D and E for $550,000 and $575,000, respectively. These figures represented the price of the land only and, by the terms of the option, defendants agreed that Genesis Development would build any home constructed on either lot and that the option to buy the land is "contingent upon purchasers building a minimum of Sixteen Thousand Square Feet (16,000) home confined to one lot."[2] Further, the option contract contemplated "the construction and sale of a residence and lot together, not separate, and that until the final closing title to both land and building shall remain with Genesis."

In June 1988, defendants paid Genesis Development an additional $60,000 to extend the option for 180 days.[3] Just prior to the expiration of this option extension, Paul Norman, Genesis Development's founder and sole shareholder, sent a proposed building contract to defendants' attorney, Jay Bielfield. Though defendants refused to sign the contract, Norman and Bielfield continued to negotiate. On January 23, 1989, the parties entered into an escrow agreement. According to the agreement, escrow agent Philip R. Seaver Title Company would hold warranty deeds (from Genesis Development to the Ilitches) and quit claim deeds (from the Ilitches to Genesis Development) for Lots D and E. "Addendum A" of the escrow agreement provided in part:

> 1. Mr. and Mrs. Ilitch have six months from December 15, 1988 to enter into a building contract with Genesis Development Corporation.
>
> 2. If Mr. and Mrs. Ilitch do not enter into said building contract, they will list the property with a Realtor of their choice, with the conditions of the original option agreement dated April 15, 1988, (subject to the right of Genesis Development Corporation to construct any residence(s) to be built upon Parcels D & E.) Mr. and Mrs. Ilitch will retain all proceeds from the land sale of said parcels.
>
> 3. If the Realtor of their choice does not sell the property in one year, the listing will then be given to Genesis Real Estate Corporation at the price and terms of the original option. Genesis Real Estate Corporation will be paid a six (6%) percent commission for the sale.

4. When the building contract is signed by Mr. and Mrs. Ilitch, the lots will be quit claim deeded back to Genesis Development Corporation and the monies, $1,125,000.00 shall be part of the down payment of the building contract.

In consideration for the escrow agreement, defendants paid Genesis Development $1,045,000. When combined with the money defendants had already paid for the options, this represented the total purchase price for the lots as set forth in the original option contract. However, according to Norman, this money represented a down payment on the building contract, not consideration for a transfer in ownership of the property.

After the deeds were placed in escrow, Norman signed another set of warranty deeds for Lots D and E. Bielfield testified that the deeds were needed to obtain title insurance and so defendants could convey marketable title if they sold the lots. Norman, on the other hand, testified that he never expected the deeds to be recorded and attempted to nullify the effect of the second set of warranty deeds by including on the deeds the legend: "subject to escrow agreement with Philip R. Seaver Title Company." Nevertheless, the "subject to escrow agreement" warranty deeds were recorded in the Oakland County Register of Deeds on February 1, 1989.

After realizing that the "subject to escrow agreement" deeds had been recorded, Norman filed an "affidavit of restrictive condition" with the Oakland County Register of Deeds on October 9, 1989. This affidavit provides that pursuant to the January 23, 1989, escrow agreement between Genesis Development and defendants, Genesis Development possessed the right to construct any residence on Lots D and E. In October 1990, without reaching an agreement with Genesis Development regarding the construction of a home, defendants sold Lot D by land contract to Jeffrey and Antonia DeClaire. Genesis Real Estate received no commission for the sale. Lot D was deeded to the DeClaires once they completed payments on the land contract.[4] Though the land contract specified that purchaser "acknowledges that any residence to be constructed upon the land must be built by Genesis Development Corporation[,]" the warranty deed defendants issued the DeClaires provides no specific mention of Genesis Development's right to build on the property. Instead, the deed provides that it is "subject to easements and building and use restrictions of record . . . ."

In 1992, plaintiffs filed suit, alleging that defendants breached their contractual obligations by obtaining and selling the property without providing Genesis Real Estate commission for the sale or preserving Genesis Development's right to build on the property. Plaintiffs added counts of fraud, misrepresentation, and promissory estoppel, but such claims were dismissed by a directed verdict entered by the trial court. At trial, the jury answered "yes" to a special verdict question whether defendants breached "any provision of any contract" existing between the parties and thereafter awarded damages of $950,000 to Genesis Development and $56,250 to Genesis Real Estate. The trial court entered judgment in accordance with the jury's verdict and ruled that, in order to prevent double recovery, "if the plaintiffs are unwilling to voluntarily assign their interest in Lots D and E to the defendants, this Court will order such assignment when the jury verdict is paid."

II

Docket No. 176210

A

Genesis Development first contends that the trial court erred in directing a verdict against its claims of fraudulent misrepresentation, innocent misrepresentation, and promissory estoppel. However, we consider this issue unpreserved for appeal because Genesis Development failed to provide this Court with a record of the trial court's reasons for granting the directed verdicts.[5] See *Admiral Ins Co v Columbia Casualty Ins Co*, 194 Mich App 300, 305; 486 NW2d 351 (1992); *Myers v Jarnac*, 189 Mich App 436, 444; 474 NW2d 302 (1991). However, we address the parties' arguments on the existing record to the extent that they can be decided as a matter of law. *Admiral Ins Co, supra* at 305.

Genesis Development bases its first claim of fraud on an allegation that defendants, through Bielfield, misrepresented that they needed the second set of warranty deeds for banking purposes when, in fact, defendants intended to record the deeds to facilitate the sale of the property. Genesis Development premises its second fraud claim on the allegation that defendants caused plaintiffs to consume time and effort on the transaction by misrepresenting their intention to build a "world class" home on the property. However, viewed in a light most favorable to plaintiffs, see *Locke v Patchman*, 446 Mich 216, 223; 521 NW2d 786 (1974); *Garabedian v William Beaumont Hosp*, 208 Mich App 473, 475; 528 NW2d 809 (1995), we find no clear, satisfactory, and convincing evidence that plaintiffs materially relied on defendants' allegedly false representations. See *Hi-Way Motor Co v Int'l Harvester Co*, 398 Mich 330, 336; 247 NW2d 813 (1976); *Temborius v Slatkin*, 157 Mich App 587, 597; 403 NW2d 821 (1986); see generally *Lebeis v Rutzen*, 289 Mich 1, 12; 286 NW 134 (1939); SJI2d 16.01.

Here, Norman testified that he did not know what "banking purposes" meant, and that, regardless, he attempted to thwart defendants' ability to record the deeds by including language subjecting the deeds to the terms of the escrow agreement. Further, instead of relying on defendants' alleged representations regarding their intent to build, Genesis Development protected itself by executing written contracts providing specific remedies in the event the parties failed to enter into a building contract. Indeed, the notion that Genesis Development relied on defendants' alleged building plans is belied by the escrow agreement itself, which does not create an unqualified duty to build but permits defendants to resell the lots in a specified manner if they decide not to build. Moreover, future promises such as promises about an intent to build sometime in the future are contractual in nature and insufficient to constitute fraud. *Hi-Way Motor, supra* at 336, quoting *Boston Piano & Music Co v Pontiac Clothing Co*, 199 Mich 141; 165 NW 856 (1917); compare *Jim-Bob, Inc v Mehling*, 178 Mich App 71, 90; 443 NW2d 451 (1989).

With regard to the misrepresentation claim, we conclude that Genesis Development's failure to establish detrimental reliance in its fraud claim warranted a directed verdict as to the misrepresentation claim as well. See *United States Fidelity & Guaranty Co v Black*, 412 Mich 99, 118; 313 NW2d 77 (1981); *Temborius, supra* at 597; *Dix v American Bankers Life Assurance Co*, 141 Mich App 650, 660; 367 NW2d 896 (1985), modified 429 Mich 410; 415 NW2d 206 (1987). Also, the trial court properly dismissed Genesis Development's promissory estoppel claim because Genesis Development failed to establish, or even argue that it lacks an adequate remedy at law. *Giordano v Markovitz*, 209 Mich App 676, 680; 531 NW2d 815 (1995); *Ecco, Ltd v Balimony Mfg Co, Inc*, 179 Mich App 748, 751; 446 NW2d 546 (1989). Accordingly, we conclude that the trial court correctly directed a verdict against plaintiffs on their claims of fraud, misrepresentation, and promissory estoppel. *Morrow v Boldt*, 203 Mich App 324, 327; 512 NW2d 83 (1994). Based on this holding, we find no abuse of discretion in the trial court's denial of Genesis Development's motion for a new trial. See *Constantineau v DCI Food Equipment, Inc*, 195 Mich App 511, 514; 491 NW2d 262 (1992).

B

Next, plaintiff contends that the trial court abused its discretion in excluding evidence that could have supported its fraud and misrepresentation claims. However, Genesis Development cites no authority in support of its position. Therefore, the issue has been waived. A party may not merely announce a position and leave it to this Court to discover and rationalize the basis for a claim. *Goolsby v Detroit*, 419 Mich 651, 655, n 1; 358 NW2d 856 (1984); *Patterson v Allegan Co Sheriff*, 199 Mich App 638, 640; 502 NW2d 368 (1993); cf. *Froling v Carpenter*, 203 Mich App 368, 373; 512 NW2d 6 (1994).

C

Genesis Development's final argument is that after the close of proofs the trial court abused its discretion in denying Genesis Development leave to amend its complaint to include claims of conversion and breach of implied covenants of good faith and fair dealing. We disagree. MCR 2.118(C)(1) provides:

> When issues not raised by the pleadings are tried by *express or implied consent of the parties*, they are treated as if they had been raised by the pleadings. *In that case*, amendment of the pleadings to confirm to the evidence and to raise those issues may be made on motion of a party at any time, even after judgment. [Emphasis added.]

Here, Genesis Development makes no attempt to show express consent. Instead, Genesis Development seeks to establish implied consent by virtue of defendants' failure to object at trial to evidence which, according to Genesis Development, related to claims of civil conversion and breach of good faith and fair dealing. We reject Genesis Development's unsupported contention that defendants'

failure to object to evidence that arguably supports unavered claims operates as implicit acquiescence to the presentation of such claims. See *Howell v Outer Drive Hosp,* 66 Mich App 142, 146, n 1; 238 NW2d 554 (1975); *Leavenworth v Michigan National Bank,* 59 Mich App 309, 314; 229 NW2d 429 (1975); see generally *In re Toler,* 193 Mich App 474, 477; 484 NW2d 672 (1992). Additionally, the fact that defendants' trial counsel immediately opposed plaintiffs' motion to amend belies Genesis Development's claim that defendants consented to such claims. See *Harvey v Security Services, Inc,* 148 Mich App 260; 384 NW2d 414 (1986); *Tafelski v Pettypool,* 15 Mich App 669; 167 NW2d 349 (1969); *Adair v Thoms,* 5 Mich App 195; 146 NW2d 81 (1966). Accordingly, even assuming arguendo that Genesis Development set forth a prima facie case of conversion or breach of implied covenant of good faith and fair dealing, the trial court did not abuse its discretion in denying plaintiffs' motion to amend. See *Dacon v Transue,* 441 Mich 315, 333-336; 490 NW2d 369 (1992); *Harvey, supra* at 265.

III

Docket No. 176212

A

Defendants Ilitch first contend that the trial court erred reversibly in failing to rule, as a matter of law, that all oral representations and option contracts were superseded by the escrow agreement. We disagree. "A supplemental instruction need not be given if it would add nothing to an otherwise balanced and fair jury charge and would not enhance the ability of the jury to decide the case intelligently, fairly, and impartially." Cf. *Mull v Equitable Life Assurance Society of the United States,* 196 Mich App 411, 422-423; 493 NW2d 447 (1992). Further, it is error to issue an instruction not sustained by the evidence. See *Mills v White Castle System, Inc,* 199 Mich App 588, 591; 502 NW2d 331 (1993). We find that the triable issues were presented fairly and adequately, and that the trial court correctly refused to either limit the jury's consideration to the escrow agreement or issue an instruction on contract integration. *Mull, supra* at 422-423; *Mills, supra* at 591; *Wiegerink v Mitts & Merrill,* 182 Mich App 546, 548; 452 NW2d 872 (1990).

Here, a specific instruction focusing the jury's attention on the escrow agreement was unnecessary and unwarranted. Throughout trial, plaintiffs theorized that the scope of defendants' contractual breach could be gleaned only through reference to the entire series of the parties' agreements. Further, although the escrow agreement provided a focus for debate, defendants never objected to plaintiffs' repeated references to prior agreements. Nor did defendants claim that the escrow agreement was a fully integrated contract. Indeed, such a claim would be untenable because the escrow agreement expressly referenced the option contract and failed to set forth several terms essential to a sales contract. Cf. *NAG Enterprises, Inc v All State Industries, Inc,* 407 Mich 407, 411; 285 NW2d 770 (1980); *Brady v Central Excavators, Inc,* 316 Mich 594, 606; 25 NW2d 630;

Schmude Oil Co v Omar Operating Co, 184 Mich App 574, 580; 458 NW2d 659 (1990); cf. *Ditzik v Schaffer Lumber Co,* 139 Mich App 81, 88; 360 NW2d 876 (1984).

B

Next, defendants claim that because the escrow agreement gives defendants the option whether to build on the property or sell the land, the trial court erred reversibly in allowing the jury to award damages for defendants' failure to build and their refusal to pay commission to Genesis Real Estate. We disagree. Although the escrow agreement gives defendants the option whether to build or conditionally sell, the original option contract (to which the escrow agreement is subject) precludes any sale of the property until the purchaser contracted with Genesis Development to build a house thereon. Because defendants failed to honor Genesis Development's express right to sell the property only after a building contract is reached *and* failed to allow Genesis Real Estate the right to a commission, the trial court did not err in allowing the jury to consider whether defendants' breach of contract damaged both Genesis Development and Genesis Real Estate. See *Lawrence v Will Darrah & Associates, Inc,* 445 Mich 1, 13; 516 NW2d 43 (1994), citing *Hadley v Baxendale,* 9 Exch 341 (156 Eng Repr 145; 23 LJ Exc 179; 18 Jur 358; 5 Eng Rul Cas 502) [1854] ("[t]he damages recoverable are those damages that arise naturally from the breach, . . ."); see also *S C Gray, Inc v Ford Motor Co,* 92 Mich App 789, 810; 286 NW2d 34 (1979).

In a related issue, defendants contend that the trial court abused its discretion in prohibiting Bielfield from testifying regarding his interpretation of the escrow agreement. However, we decline to review this evidentiary issue because it is not identified in defendants' statement of questions presented. MCR 7.212(C)(4); *People v Yarger,* 193 Mich App 532, 540, n 3; 485 NW2d 119 (1992); *People v Wilkins,* 184 Mich App 443, 451, n 4; 459 NW2d 57 (1990). Even if the issue had been identified, the issue is unpreserved because defendants failed to make an offer of proof as to the substance and purpose of Bielfield's proposed testimony. See MRE 103(a)(2); *People v Stacy,* 193 Mich App 19, 31; 484 NW2d 675 (1992).

C

Defendants further contend that the trial court erred reversibly in permitting the jury to consider whether defendants wrongfully recorded the "subject to escrow agreement" warranty deeds. We disagree. First, defendants argue that the parties contemplated recordation of the "subject to escrow agreement" warranty deeds. However, defendants fail to cite where in the record the trial court was presented with this issue. Therefore, we consider the issue waived. *Community Nat'l Bank of Pontiac v Michigan Basic Property Ins Ass'n,* 159 Mich App 510, 520-521; 407 NW2d 31 (1987). Nevertheless, no evidence other than Bielfield's testimony contradicts Norman's testimony that plaintiffs never intended for any deeds to be recorded and that defendants actually assured Norman that the deeds would not be recorded. Viewing this evidence in a light most favorable to plaintiffs, we conclude

that the trial court correctly submitted to the jury the factual question whether the parties contemplated the recording of the "subject to escrow agreement" deeds. See *Morrow, supra* at 327.

Second, defendants claim that there was no evidence that they were responsible for recording the "subject to escrow agreement" warranty deeds. We disagree. While it is possible to conclude that it was a representative of the title company (contracted by defendants) who physically recorded the deeds, reasonable minds could infer that the recordation was attributable to defendants. Indeed, there was testimony that defendants requested the deeds, that defendants intended to record the deeds, and that they were issued at defendants' place of business and in the presence of defendants' attorney.

Third, defendants contend that, even if the deeds were wrongfully recorded, the trial court erred in denying their motion for a directed verdict or judgment notwithstanding the verdict on the ground that the recorded instruments preserved Genesis Development's right to build on the property. We disagree. Initially, we reject plaintiffs' claim that defendants waived this issue by failing to raise it as an affirmative defense. The issue was raised to rebut Genesis Development's alleged damages and it is not likely to have surprised Genesis Development. See *Campbell v St John Hosp,* 434 Mich 608, 616; 455 NW2d 695 (1990).

As to the merits of defendants' argument, we conclude that the trial court's error, if any, in failing to rule on the legal effect of the recorded instruments was harmless. Here, a review of the various documents in the chain of title reveals that defendants left Genesis Development's building rights uncertain and in serious jeopardy. The warranty deed to the DeClaires makes no reference to Genesis Development or its building rights. Neither the deed from Genesis Development to defendants nor the recorded affidavit clearly protects this right because only through reference to two unrecorded agreements (the escrow agreement and then the option contract) could a future purchaser determine any indication of Genesis Development's building rights. Even then, the rights of Genesis Development would be unclear because the agreements setting forth such rights suggest a right to retain ownership of the property until after a building contract was signed. Thus, since Genesis Development no longer owned the property, its rights would be uncertain relating to a future purchaser who knew that Genesis Development had transferred the property without exercising its right to secure a building contract prior to the sale. In sum, defendants failed to answer legitimate questions about whether it actually protected Genesis Development's building rights.

Further, even if Genesis Development's building rights were maintained, Genesis Development's interests were not fully protected. By eliminating Genesis Development's rights to retain the property until a building contract was signed, defendants took control of the issue away from Genesis Development and subjected its interests to the decisions of future landowners. Consequently, instead of being able to hasten the execution of a building contract by retaining title until a building agreement was signed, Genesis Development is now at the mercy of a future purchaser who might decide not to build until sometime in the significant future, if at all. Thus, it would be unreasonable to conclude that Genesis Development's right to build is unaffected and undamaged by defendants' actions.

Therefore, defendants failed to meet its burden of proving that Genesis Development's claimed damages had been mitigated or eradicated. Cf. *Dep't of Civil Rights v Horizon Tube Fabricating, Inc*, 148 Mich App 633, 637; 385 NW2d 685 (1986); *Rieithmiller v Blue Cross & Blue Shield of Michigan*, 151 Mich App 188, 194; 390 NW2d 227 (1986); *Williams v American Title Ins Co*, 83 Mich App 686, 697; 269 NW2d 481 (1978). Accordingly, defendants failed to justify a directed verdict against Genesis Development on the damages issue and, hence, the trial court correctly submitted the damages issue to the jury as a question of fact.

D

Defendants also claim that the jury verdicts are logically and legally inconsistent because Genesis Development cannot sustain lost builders profits if defendants' breach of contract consists of not using Genesis Real Estate to sell Lots D and E. We disagree. If the trial court fails to take action to set aside a self-contradictory jury verdict before the jury is discharged, the court must set aside the inconsistent verdict and order a new trial. *Harrington v Velat*, 395 Mich 359, 360; 235 NW2d 357 (1975); *Courturier v Heidelberger Druckmaschinen, AG*, 129 Mich App 46, 50; 341 NW2d 226 (1983); see *Jackovich v General Adjustment Bureau, Inc*, 119 Mich App 221, 233; 326 NW2d 458 (1982). A jury's verdicts can be set aside only if they are so logically and legally inconsistent that they cannot be reconciled. *Hughes v Park Place Motor Inn, Inc*, 180 Mich App 213, 218; 446 NW2d 885 (1989). In *Granger v Fruehauf Corp*, 429 Mich 1, 9; 412 NW2d 199 (1987), our Supreme Court held that "every attempt must be made to harmonize a jury's verdicts." See also *Beasley v Washington*, 169 Mich App 650, 657; 427 NW2d 177 (1988).

The jury's verdicts are not irreconcilable. There was evidence to establish both that defendants sold the property in violation of Genesis Real Estate's right to receive a commission on the sale and that defendants sold the property without fully preserving Genesis Development's right to secure a building contract before the sale. Thus, because both Genesis Development and Genesis Real Estate are separate entities that are each entitled to be made whole, we find that the verdicts are not necessarily inconsistent.

E

Next, defendants claim that the trial court erred reversibly in failing to limit the jury's consideration to "net profits" and, hence, permitting Genesis Development to recover "consequential damages" that are not permitted by law. Further, defendants argue that there was insufficient evidence of lost net profits to support the jury's damage award. However, these specific issues were not raised below. Therefore, because defendants present no unusual circumstances to warrant review of these unpreserved issues, we consider them waived. *Napier v Jacobs*, 429 Mich 222, 227-228; 414 NW2d 862 (1987); *McKelvie v City of Mt Clemens*, 193 Mich App 81, 86; 483 NW2d 442 (1992). Further, to the extent defendants contest the lack of a jury instruction defining lost profits, defendants waived this issue by failing to request any such instruction. MCR 2.516(C); *Hammack v*

Lutheran Social Services of Michigan, 211 Mich App 1, 10; 535 NW2d 215 (1995); *Mills, supra* at 592. Even if these specific issues had been raised below, however, when the evidence is viewed in a light most favorable to plaintiffs, we find that the jury's verdicts are supported by adequate evidence of lost net profits. *Paulitch v Detroit Edison Co*, 208 Mich App 656, 659; 528 NW2d 200 (1995); *Rice v ISI Mfg, Inc*, 207 Mich App 634, 638; 525 NW2d 533 (1994); see also *Bonelli v Volkswagen of America, Inc*, 166 Mich App 483, 511; 421 NW2d 213 (1988); *Tempo, Inc v Rapid Electric Sales & Services, Inc*, 132 Mich App 93, 103; 347 NW2d 728 (1984). Indeed, representatives of Genesis Development testified that defendants' contractual breach cost Genesis Development over $1 million in lost net profit. Moreover, there was no evidence that Lot E was unmarketable.

F

Finally, defendants argue that the trial court should have ordered a new trial on the basis that plaintiffs' attorney attacked the character of defendants' attorneys and deliberately prejudiced the jury by repeatedly insinuating that defendants are wealthy and callous people. We disagree. After a thorough review, we conclude that the error, if any, is harmless and that defendants were not denied a fair trial. See *Reetz v Kinsman Marine Transit Co*, 416 Mich 97, 102-103; 330 NW2d 638 (1982). Most of the complained of conduct occurred without objection. Other acts inspired objections that were sustained and where no damaging testimony was extracted. Further, it appears that each attorney attempted to show that greed motivated the opposing parties conduct and that some of plaintiffs' attorney's conduct came in response to similar conduct by opposing counsel. Also, any harm caused by plaintiffs' counsel's references to defendants' wealth was cured when the jury was instructed that the arguments, statements, and remarks of the attorneys are not evidence. In any event, our review convinces us that plaintiffs' counsel's relatively innocuous remarks in this lengthy trial had neither the purpose nor the effect of deflecting the jury's attention from the controlling issues in the case. See *Snell v UACC Midwest, Inc*, 194 Mich App 511, 517; 487 NW2d 772 (1992); *Wilson v General Motors Corp*, 183 Mich App 21, 26-28; 454 NW2d 405 (1990); *Guider v Smith*, 157 Mich App 92, 101-103; 403 NW2d 505 (1987) (opinion of Simon, J.).

IV

As a final matter on appeal, each party requests that this Court assess costs against the other on appeal. We conclude that taxable costs should be awarded to the prevailing party on each appeal. MCR 7.219.

Affirmed.

/s/ Richard Allen Griffin
/s/ Richard A. Bandstra
/s/ Meyer Warshawsky

[1] The agreement between Genesis Development and Orchard Gate provided that Genesis Development would pay Orchard Gate a share of the profits it made in developing and reselling the property.

[2] The parties understood that any home built on either lot must be at least 8,000 square feet in size. However, the parties later agreed that defendants could build one house on both lots that was 16,000 square feet in size.

[3] An addendum to this contract provided that "[o]ption monies will be applied towards purchase."

[4] Though defendants listed Lot E for sale with their own realtor, the lot was unsold at the time of trial.

[5] It appears from the record that the trial court took defendants' motion for a directed verdict under advisement and announced its decision to the parties in chambers after the close of proofs.