

STATE OF MICHIGAN
COURT OF APPEALS

CASONDA SARGENT,

Plaintiff-Appellee/
Cross-Appellant,

v

CITY OF MUSKEGON HEIGHTS,

Defendant-Appellant/
Cross-Appellee.

UNPUBLISHED
December 6, 1996

No. 175145
LC No. 92-29650 CK

Before: Fitzgerald, P.J., and O'Connell and T.L. Ludington,* JJ.

PER CURIAM.

In this breach of contract action tried before the bench, defendant appeals as of right the judgment of the circuit court awarding plaintiff approximately \$15,400 in damages. We affirm.

The instant dispute concerns plaintiff's participation in defendant's house rehabilitation program. Plaintiff purchased a house in poor condition for a nominal sum and a lot onto which she had the house moved. The rehabilitation of the house was never completed because defendant refused to provide interim financing as required by the contract between the parties, allegedly because plaintiff had failed to satisfy certain conditions precedent to defendant's performance. After the house-mover sued plaintiff for failing to pay its fee, forcing plaintiff to declare bankruptcy, plaintiff brought suit against defendant, alleging breach of contract. The matter proceeded to a bench trial. The circuit court found that the contract did contain certain conditions precedent, but also found that defendant had prevented plaintiff's satisfaction of those conditions and then had anticipatorily breached the contract. Accordingly, it entered judgment in favor of plaintiff in the amount of \$15,406.55. Defendant now appeals as of right, and plaintiff cross-appeals, contending that the damages awarded were inadequate.

* Circuit judge, sitting on the Court of Appeals by assignment.

Defendant first argues that plaintiff failed to satisfy the contractual conditions precedent to defendant's performance, and that the court erred in concluding otherwise.¹ We review the court's factual findings for clear error. *SSC Associates Limited Partnership v Retirement System of Detroit*, 210 Mich App 449, 452; 534 NW2d 160 (1995).

The contract between the parties provided that defendant "shall provide \$10,000 of its . . . funds. [Plaintiff] shall provide the difference between \$10,000 and the actual cost of the improvements. [Plaintiff's] funds shall be expended before any of [defendant's] are expended." The court recognized the condition precedent that plaintiff expend all but \$10,000 of the required rehabilitation costs prior to defendant becoming obligated to release its \$10,000, and expressly held that plaintiff had expended \$515.57 less than that. Nevertheless, the court concluded that because defendant had prevented plaintiff's satisfaction of the condition precedent, defendant was obligated to perform despite the fact that plaintiff had not completely satisfied the condition precedent.

We find no clear error with respect to the court's factual findings and hold its interpretation of the relevant law to be correct. Defendant refused to inform plaintiff that she was obligated to expend only an additional \$500 prior to defendant becoming obligated to release its \$10,000, instead stating to her that she was required to obtain a firm commitment for end-financing before the funds would be advanced. This latter requirement was not a contractual requirement, and plaintiff was under no obligation to obtain such end-financing at that time. Where a party to a contract hinders another party's ability to comply with a condition precedent, thereby making it difficult if not impossible for that party to satisfy its obligations under the contract, the obstructing party may not rely on the condition precedent to defeat its liability. See *Stanton v Dachille*, 186 Mich App 247, 257; 463 NW2d 479 (1990). We agree with the circuit court that defendant's actions rendered plaintiff's compliance with the contract difficult, if not impossible. Therefore, we affirm the court's holding that defendant may not justify its breach of contract on plaintiff's failure to comply fully with her contractual obligations where defendant itself caused plaintiff to be unable to perform.

Defendant next argues that the court erred in concluding that defendant anticipatorily breached the contract. An anticipatory breach occurs when a contracting party declares, at a time prior to performance through its words or actions, that it will not perform. *Paul v Bogle*, 193 Mich App 479, 493; 484 NW2d 728 (1992). Here, an agent of defendant testified that he informed plaintiff that defendant would not release its funds until plaintiff had obtained a firm commitment for end-financing. In short, defendant told plaintiff that it would not perform until plaintiff performed certain actions that were not required of her by the contract in force between the parties. We consider this, under the facts of the present case, to be an anticipatory breach.

Finally, both parties challenge the court's award of damages. This is an unusual case in that the contract in issue provides for the lending of money for the specific purpose of rehabilitating a home, the value of which would increase more than the amount expended on it. We have reviewed case law addressing the measure of damages for a contract to loan money, see, e.g., *Alderton v Williams*, 139

Mich 296, 300; 102 NW 753 (1905), and that addressing the measure of damages for the anticipatory breach of a contract, see, e.g., *Stanton, supra*, p 252, and find neither measure to be particularly helpful in the present case. Therefore, we believe it appropriate to fall back on the more general rule, that the purpose of awarding damages is to provide the non-breaching party with a sum equivalent to what the party would have acquired had the contract not been breached. *Gongola v Yaksich*, 3 Mich App 676, 680-681; 143 NW2d 601 (1966). This is precisely the approach taken by the trial court, and we hereby incorporate that portion of the court's opinion by reference.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Peter D. O'Connell

/s/ Thomas L. Ludington

¹ We address in the body of our opinion only defendant's contention that plaintiff's failure to expend the necessary amount of funds justified defendant's refusal to perform its contractual obligations. Defendant's other arguments in this context are unsupported by the record, and we decline to address them.