

STATE OF MICHIGAN
COURT OF APPEALS

HOLLAND CONSTRUCTION COMPANY, a
Michigan corporation, CNA INSURANCE
COMPANIES, and AMERICAN CASUALTY
COMPANY OF READING, PENNSYLVANIA, a
foreign corporation,

UNPUBLISHED
May 6, 1997

Plaintiffs/Counterdefendants/Third-party
Defendants-Appellants,

v

No. 186628
Berrien Circuit Court
LC No. 92-004663-CZ

TRANSAMERICA PREMIER INSURANCE
COMPANY, a foreign corporation,

Defendant/Cross-Plaintiff/Third-party
Plaintiff-Appellee,

and

GENERAL CONSTRUCTION INTERIOR, INC.,
a Michigan corporation,

Defendant/Cross-Defendant/Third-party Plaintiff,

and

DEWAYNE C. LARAWAY and FAYE R. LARAWAY,

Third-Party Defendants.

Before: Sawyer, P.J., and Markman and H.A. Koselka,* JJ.

PER CURIAM.

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

Plaintiffs appeal from a judgment of the circuit court entered following a jury trial on plaintiffs' claims for breach of contract under construction performance bonds. We affirm.

Plaintiff Holland Construction entered into a contract for restoration and expansion work at Lake Michigan College in Berrien County. Defendant General Construction Interior (GCI) was subcontracted by Holland Construction for the drywall work. Both contractors had to provide performance and payment bonds, Holland Construction obtaining theirs from American and CNA and GCI receiving bonds from Transamerica.

GCI did not complete its subcontract by the deadline. Holland Construction claimed that GCI had an inadequate work force, while GCI claimed that Holland Construction's failure to make full and timely payments caused the delay. In any event, the project was delayed and Holland Construction turned to Transamerica for recovery under the performance bond. Transamerica became involved in attempts to complete the project and limit the damages. Ultimately, Holland Construction sought the payment of damages under the bond from Transamerica, but the parties could not agree on the amount of the damages. Following trial, plaintiffs were awarded \$200,384 in damages from Transamerica and GCI was awarded \$51,035.81 from plaintiffs. GCI was also required to indemnify Transamerica.

First, plaintiffs argue that the trial court improperly dismissed Count III of their complaint on the ground that the parol evidence rule barred the introduction of evidence pertaining to a subsequent agreement between Holland Construction and Transamerica. However, any error is harmless because plaintiffs were able to proceed on Counts I and II. That is, by recovering under Counts I and II, plaintiffs were fully recompensed and would not be entitled to any further damages even if they were able to proceed on Count III.

Next, plaintiffs argue that the trial court improperly dismissed Count IV. We disagree. Count IV is, as the trial court surmised, merely a redundant breach of contract claim. That is, plaintiffs attempt to elevate Transamerica's breach of a promise to proceed under a particular paragraph of the performance bond into a fraudulent misrepresentation. It is not. Rather, it is, if anything at all, a breach of contract. In other words, the remaining counts of the complaint were adequate to fully compensate plaintiffs for their damages.

Plaintiffs next argue that the trial court erred when it denied plaintiffs an opportunity to prove consequential damages. We disagree. Consequential damages are allowed for breach of contract only where such damages were within the contemplation of the parties at the time the contract was formed. *Lawrence v Will Darrah & Assoc, Inc*, 445 Mich 1, 13; 516 NW2d 43 (1994). In the case at bar, plaintiffs' offer of proof on this issue was that it had disclosed to Transamerica during the course of work that it would suffer consequential damages (i.e., Holland Construction's insolvency) if the contract was breached. Therefore, by plaintiffs' own offer of proof, the consequential damages was not contemplated by the parties at the time the contract was formed. Furthermore, there is no evidence or offer of proof that Transamerica should have known that a failure to perform would have resulted in

Holland Construction's insolvency. In sum, plaintiffs have not demonstrated that they could have presented evidence sufficient to establish a right to consequential damages.

Finally, plaintiffs argue that the trial court erred in limiting plaintiffs' recovery to the penal sum of the bonds. However, plaintiffs provide no authority for their position. This Court will not search for authority to support a party's position, *Speaker-Hines & Thomas, Inc v Dep't of Treasury*, 207 Mich App 84, 90-91; 523 NW2d 826 (1994), nor may a party merely state a position and leave it to this Court to discover and provide the analysis, *Sargent v Browning-Ferris Industries*, 167 Mich App 29, 32-33; 421 NW2d 563 (1988). In short, plaintiffs have not properly presented this issue for our review and we decline to consider it.

Affirmed. Defendants may tax costs.

/s/ David H. Sawyer

/s/ Stephen J. Markman

/s/ Harvey A. Koselka