

STATE OF MICHIGAN
COURT OF APPEALS

VOJNO DIMOVSKI and LAZAR DIMOVSKI,

Plaintiffs-Appellees,

v

ZIVORAD DESPIC, LJUBOMIR MILOSEVSKI,
BLAGOJA MILOSEVSKI, BOGOJA
MILOSEVSKI, and SREBRENKA MILOSEVSKI,

Defendants-Appellants.

UNPUBLISHED

July 1, 1997

No. 192226

Wayne Circuit Court

LC No. 91-102654-CK

Before: Taylor, P.J., and Griffin and Saad, JJ.

PER CURIAM.

Defendants appeal as of right from the trial court's order determining the conditions of sale in this specific performance action for the sale of defendants' bakery and land. We affirm.

This litigation began when defendants refused to comply with the option agreement they entered into with plaintiffs for the sale of their bakery and corresponding land. Plaintiffs filed a lawsuit against defendants seeking specific performance of the option agreement. The trial court granted plaintiffs' request for specific performance. Defendants appealed, and this Court affirmed in an unpublished per curiam opinion. See *Dimovski v Despic*, unpublished opinion of the Court of Appeals, issued August 15, 1994 (Docket Nos. 154078; 155304). Upon plaintiffs' subsequent motion to complete the sale of the property, the trial court ordered the conditions of sale. It is from that order that defendants now appeal.

Defendants argue that the trial court abused its discretion in determining the conditions for sale for two reasons. First, defendants argue that the trial court exceeded its scope of authority upon remand from this Court's decision affirming the trial court's order granting plaintiffs specific performance of the option agreement. Second, defendants argue that the trial court reached an inequitable result in doing so. Specifically, defendants claim that they were entitled to interest on the purchase price from the date plaintiffs attempted to purchase the property (December 1, 1990), until the time of closing (January 19, 1996); that they were entitled to interest on the lease payment money held in escrow; and

that they were entitled to lease payments from December 1990, January 1991, and February 1991. Defendants' arguments are unpersuasive.

It has long been held that "[t]he power of the lower court on remand is to take such action as law and justice may require so long as it is not inconsistent with the judgment of the appellate court." *Sokel v Nickoli*, 356 Mich 460, 464; 97 NW2d 1 (1959). Therefore, where the trial court was in the position of enforcing specific performance, it was well within its province to fashion whatever form of relief necessary to "adequately sort out the equities of the parties." *Sokel, supra*; *Godwin v Lindbert*, 101 Mich App 754, 757-758; 300 NW2d 514 (1980). We are satisfied that the trial court's setting of conditions for the sale was not inconsistent with our prior opinion and that the trial court did not exceed its authority.

Further, we find that the trial court did not abuse its discretion in setting the terms of the conditions for sale. It was through defendants' breach that the sale did not take place at the time it was originally agreed. Accordingly, the trial court properly determined that defendants should not prosper from their wrongdoing. *Godwin, supra*. Under such conditions, any error in overcompensation, though we find none here, should be in favor of plaintiffs. See *Giannetti v Cornillie (On Remand)*, 209 Mich App 96, 99; 530 NW2d 121 (1995).

Affirmed.

/s/ Clifford W. Taylor
/s/ Richard Allen Griffin
/s/ Henry William Saad