

STATE OF MICHIGAN  
COURT OF APPEALS

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PATRICK J. GIANNETTI and ANNE T.  
GIANNETTI,

UNPUBLISHED  
October 7, 1997

Plaintiffs-Appellants,

v

No. 189809  
Macomb Circuit Court  
LC No. 97-002047 CH

CHARLES J. CORNILLIE JR., MICHAEL S.  
CORNILLIE, and HENRY L. CORNILLIE,  
Individually and as Trustees Under the Trust Agreement  
of ALICE CORNILLIE,

Defendants-Appellees.

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Before: Markey, P.J., and Jansen and White, JJ.

PER CURIAM.

This is the second appeal in this case. Previously, defendants appealed from the trial court's judgment following a bench trial granting plaintiffs specific performance of an agreement to sell real estate ("the Koerber property"). Plaintiffs cross-appealed the trial court's determination of damages. On the first appeal, this Court reversed the trial court's grant of specific performance in plaintiffs' favor, and did not reach plaintiffs' cross-appeal regarding damages. *Giannetti v Cornillie*, 204 Mich App 234; 514 NW2d 221, rev'd 447 Mich 998; 525 NW2d 459 (1994). Plaintiffs sought leave to appeal to the Supreme Court, which, in lieu of granting leave, reinstated the trial court's judgment for the reasons stated in Judge Taylor's dissent, and remanded the case to this Court for consideration of the issue of damages raised by plaintiffs' cross-appeal. 447 Mich 998; 525 NW2d 459 (1994).

On remand, this Court affirmed in part and remanded in part, holding that the trial court erred in refusing plaintiffs' request for damages in the form of rental value, and by awarding defendants twelve percent interest under MCL 600.6013(5); MSA 27A.6013(5) on the \$32,000 down payment. *Giannetti v Cornillie (On Remand)*, 209 Mich App 96, 100-102; 530 NW2d 121 (1995). This Court found that that statute was inapplicable to and did not comport with the equitable objective of interest in specific performance cases, and ordered that the trial court on remand recalculate interest on

plaintiffs' down payment "at the rate of 6.35 percent advocated by plaintiffs in the trial court and for a determination of plaintiffs' damages." *Id.* at 103.

Following an evidentiary hearing on remand, the trial court awarded defendants 6.35 percent interest compounded annually on the full purchase price of the property. The trial court also found that because the cost of improvements, insurance, and taxes paid by defendants, as well as interest that plaintiffs would have paid under their mortgage, exceeded reasonable rental value, plaintiffs were not entitled to recover any lost rent. Plaintiffs appeal by right from that order. We affirm in part, reverse in part, and remand.

We first observe that we do not write on a clean slate. This Court's prior decision limits the trial court's and this Court's authority to assess the equities. Further, the prior decision was shaped by the issues raised by the parties on appeal and cross-appeal.<sup>1</sup> Additionally, the parties stipulated on remand that the fair market rental was \$114,181 for the time period October, 1986 through June, 1995. This amount is less than the taxes and interest on the value of the property. In any event, we address the issues raised in this appeal within this framework.

We first address plaintiffs' claim that the trial court violated the law of the case doctrine in utilizing a net rents and profits method of determining plaintiffs' damages and by considering anything other than the \$1,800 in improvements awarded in the trial court's original order. We find plaintiffs' claim unpersuasive. A trial court can take any action on remand which is not inconsistent with the instructions of the remanding court where the action is otherwise proper. *People v Fisher*, 449 Mich 441, 447; 537 NW2d 577 (1995); *Meyering v Russell*, 85 Mich App 547, 552; 272 NW2d 131 (1978). Under the law of the case doctrine, an appellate court's decision concerning a particular issue binds courts of equal or subordinate jurisdiction during subsequent proceedings in the same case. *McNees v Cedar Springs Stamping*, 219 Mich App 217, 221-222; 555 NW2d 481 (1996). The doctrine applies only to those questions specifically determined in the prior decision and to questions necessarily determined in arriving at that decision. *Id.* at 222. A trial court can take any action on remand that is not inconsistent with the instructions of the remanding court where the action is otherwise proper. *Meyering, supra* at 552. Where a case is remanded without specific directions, the doctrine has no application. See *People v Fisher, supra* at 447.

This Court concluded in the prior appeal that "the most equitable course is to remand this matter for a determination of plaintiffs' [lost rent] damages, including consideration of the improvements made." *Giannetti, supra* at 100. We cannot agree with plaintiffs' argument that this instruction limited the trial court's authority to consider improvements only, given the inclusion of the phrase "including consideration of improvements made." The instruction did not limit the trial court's authority to make additional adjustments as long as they were otherwise proper. We also disagree with plaintiffs' contention that the trial court was prohibited from charging plaintiffs with costs of repairs, improvements, and insurance on the Koerber property because it had originally disallowed them. Since the trial court did not address those costs in the context of a rental value calculation, it was entitled to consider them anew on remand in order to properly sort out the equities among the parties. Taxes, insurance and repairs are proper matters for consideration. *Brotman v Roelofs*, 70 Mich App 719, 730; 246 NW2d

368 (1976). Based on this reasoning, we also reject plaintiffs' argument that the trial court was without authority to charge plaintiffs with real estate taxes paid by defendants after the date of the original judgment.

Although plaintiffs attempt to distinguish their claim for "fair rental value" from an award of "net rents and profits," both terms refer to the equitable concept of charging a defendant-vendor with the rental value of the property less sums paid for taxes, repairs, and insurance. See *Brotman, supra* at 730 (holding that a defendant-vendor is chargeable with "rents and profits"), citing *Glanbin v Kousin*, 249 Mich 603, 608-609; 229 NW 417 (1930) (holding that a defendant-vendor is chargeable with the "fair rental value").

Further, we conclude the trial court did not err in concluding that, based on the figures stipulated to by the parties, plaintiffs suffered no damages under the lost rents and profits or fair rental value analysis. Plaintiffs object to the trial court's consideration of approximately \$96,000 in mortgage interest expense on the balance of the purchase price that was not paid. However, we conclude that consideration of this expense, which plaintiffs would have incurred if the property had been purchased in accordance with the contract, is proper where plaintiffs are not otherwise being charged with interest on the mortgage balance. We conclude that the court did not err in its determination that plaintiffs' lost rental value damages were offset by the expense of the property.

The question remains whether defendants are entitled to an affirmative award of interest. We conclude that they are not. Given the determination that plaintiffs suffered no net loss of rents or rental value, defendants are not entitled to an affirmative award of interest. The interest would have been available as an offset against rents, but because defendants committed the breach, they are not properly entitled to an award of interest above the amount of rental. 71 Am Jur 2d, Specific Performance, § 217, § 219, pp 278-280, 282-283.<sup>2</sup>

We remand for entry of judgment providing for no monetary award to either party. Closing shall take place as soon as possible in accordance with the terms of the contract. We do not retain jurisdiction. No taxable costs pursuant to MCR 7.219, neither party having prevailed in full.

/s/ Jane E. Markey

/s/ Kathleen Jansen

/s/ Helene N. White

<sup>1</sup> For example, defendants appealed only the award of specific performance, and did not assert that interest should have been awarded on the entire purchase price, not just the down payment.

<sup>2</sup> Given this conclusion, it is unnecessary to reach plaintiffs' claim that the circuit court violated the law of the case doctrine in awarding compound interest, rather than simple interest, and in awarding interest on the entire purchase price, rather than just the down payment