STATE OF MICHIGAN

COURT OF APPEALS

BRUURSEMA BUILDERS, INC.,

Plaintiff-Counterdefendant-Appellee,

and

JAMES BRUURSEMA and PAUL BRUURSEMA,

Third-Party Defendants-Appellees,

v

HENDRIK JAN DeHAAN and MAGDA SCHOONDERBEEK,

Defendants-Counterplaintiffs-Appellants,

and

ROGER BUSSCHER, d/b/a STAR EXCAVATING, INC.,

Third-Party Defendant.

UNPUBLISHED
December 30, 1997

No. 194269
Ottawa Circuit Court
LC No. 93-018535-CK

Before: Markey, P.J. and Michael J. Kelly and Whitbeck, JJ.

PER CURIAM.

This case arises out of a contract in which plaintiff Bruursema Builders, Inc., agreed to build a home in Holland for defendants Hendrick Jan DeHaan and Magda Schoonderbeek. During construction of the home, disputes arose. Defendants refused to make payments as required by the contract. Plaintiff did not complete construction of the home. Eventually, defendants, acting through an attorney, sent a letter to plaintiff stating that plaintiff would not be allowed on the property and that all locks to the house had been changed. Plaintiff filed a suit alleging breach of contract and unjust

enrichment. Defendants filed a counterclaim for breach of contract, negligence and violation of the Consumer Protection Act, MCL 445.901 *et seq.*; MSA 19.418 *et seq.*, (the "Michigan Consumer Protection Act") against plaintiff company as well as against the company's principals, James Bruursema and Paul Bruursema. Following a bench trial, the trial court entered judgment for plaintiff on its breach of contract claim, judgment for defendants on their breach of contract counterclaim and dismissed all other claims. Defendants appeal as of right.

I

Defendants first argue that the trial court erred by failing to make appropriate findings regarding who was at fault for breach of contract. Defendants contend that the trial court simply assumed that defendants were in breach of contract. In actions tried without a jury, the trial court must find the facts and state separately its conclusions of law as to contested matters. MCR 2.517(A)(1), MCR 6.403, *Fletcher v Fletcher,* 447 Mich 871, 883; 526 NW2d 889 (1994). Findings regarding contested matters are sufficient if brief, definite and pertinent and if it appears that the trial court was aware of the issues in the case and correctly applied the law. *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 176; 530 NW2d 772 (1995). Our review of the trial court's opinion shows that it was aware of the issues in this case and found that defendants had breached the contract by refusing to make payments as required under the contract and by preventing plaintiff from completing the contract. Indeed, as the trial court found, defendant's attorney sent a letter to plaintiff precluding the company from completing construction of the house and notifying plaintiff that the locks to the house had been changed.

The substance of the trial court's factual findings is subject to review for clear error, which is found where this Court is left with a firm and definite conviction that a mistake was made. *Ghidotti v Barber (On Remand),* 222 Mich App 373, 377; 564 NW2d 141 (1997). Defendants rely on *In re Fordson Engineering Corp*, 25 BR 506 (ED Mich, 1982), in support of their position that the trial court erred by holding that defendants breached the construction contract. In *Fordson*, the subcontractor admitted that it terminated the contract before completion because of a dispute over funds owed to it by the general contractor. *Id.* at 508. The bankruptcy court stated that delay in making payment where the amount of work done is disputed or is being negotiated is not, on that basis alone, a breach of contract. *Id.* at 510. The bankruptcy court did not, however, cite any authority for this proposition. *Id.* The bankruptcy court then held that the subcontractor had breached the contract by unilaterally leaving the job site without completing its contractual duties. *Id.*

Assuming arguendo that the decision in *Fordson* was correct and should be followed as a matter of Michigan law,[1] this case is not analogous to *Fordson*. Although there was a dispute over funds due as in *Fordson*, the trial court in this case did not find that plaintiff unilaterally left the job site. Rather, the trial court found that defendants prevented plaintiff from completing construction on the home. It is undisputed that defendants had a letter sent to plaintiff in April 1993 precluding them from performing further work at the job site and that, either contemporaneously or thereafter, defendants changed the locks at the house.[2] Thus, defendants made it practically impossible for plaintiff to

complete the construction contract. Therefore, defendants have not established that the trial court's finding that defendants breached the contract was clearly erroneous.

II

Next, defendants argue that the trial court erred in finding that they did not suffer any damages for the short roof overhang, the leaking air conditioning system, the lack of trim around the box windows, the use of 2 x 4 studs in the wall between the attached garage and the house, the cracks in the basement floor and the allegedly contaminated soil. We review a trial court's findings of fact to determine if such findings are clearly erroneous. *Ghidotti, supra* at 377.

First, defendants contend that the trial court erred in failing to award damages to them for the roof overhang, which did not measure the length called for by the plans. Defendants argue that the trial court applied the wrong standard in determining damages because damages may be awarded even if they cannot be calculated with absolute certainty. *McCullagh v Goodyear Tire & Rubber Co*, 342 Mich 244, 254-255; 69 NW2d 731 (1955); *Hofmann v Auto Club Ins Ass'n*, 211 Mich App 55, 108; 535 NW2d 529 (1995). Defendants' argument is based on the assumption that the trial court simply thought it could not determine a specific dollar amount and, consequently, chose not to award any damages.

In its written opinion, the trial court noted that there was conflicting testimony on whether the difference in roof overhang resulted in any damage to defendants. The trial court then concluded that although the plans called for a longer overhang than that which ultimately was constructed, defendants failed to meet their burden of showing that damage resulted from that difference. An architect who examined the house at defendants' request testified that there was no structural defect because of the length of the roof overhang, but rather that the only defect was aesthetic and would not result in a difference in the home's market value. Further, a designer and builder of custom homes testified that if the roof overhang were longer, it would in fact be aesthetically unpleasing because of the location of the tops of the windows. Given the testimony that the only possible harm was aesthetic and that this would not affect the home's market value, the trial court's finding that defendants did not suffer any damages because of the shorter roof overhang was not clearly erroneous.

Second, defendants contend that the trial court erred in failing to award damages to defendants for the leaking air conditioning system. The trial court noted that there was conflicting testimony about the reason for the air conditioning system leaks and that some testimony attributed the fault to defendants' operation of the system. The trial court concluded that defendants were not entitled to damages. The contractor who installed the heating and air conditioning systems testified that the water condensation occurred because defendants ran both the heating and air conditioning systems at the same time. Another heating and air conditioning contractor consulted by defendants testified that the condensation occurred from lack of insulation. The chief inspector of the Mechanical Division of the Michigan Department of Labor testified that he inspected the air conditioning duct and that it was properly insulated. Based on this testimony, the trial court's finding that defendants were not entitled to damages for the leaking air system was not clearly erroneous.

Third, defendants contend that the trial court should have awarded them damages for the lack of trim around the box windows. The trial court found that plaintiff followed the construction plans, but that defendants had ordered windows that were too large for the window frames and then told plaintiff not to perform additional work to correct the problem. The trial court concluded that defendants could not now claim that plaintiff breached the contract as to this alleged defect. James Bruursema testified that defendants ordered the windows and that they were too large for the frames. He testified that he told defendant DeHaan that they could install the windows but that there would be no room for trim and that DeHaan told him that would not be a problem because of the window treatments they planned to use. Based on this testimony, we conclude that the trial court did not clearly err in concluding that defendants were not entitled to damages for the box windows.

Fourth, defendants contend that the trial court should have awarded them damages for plaintiff's failure to use 2 x 6 studs in the wall between the attached garage and the house. The trial court found that the plans were silent as to what size studs were called for in that wall and that the building industry standard in Holland was to use 2 x 4 studs in interior walls. The trial court concluded that defendants were not entitled to damages on this claimed defect. Defendant Schoonderbeek testified that the contract only explicitly called for 2 x 6 studs in exterior walls of the house. Further, there was testimony that the building industry standard in Holland is to use 2 x 4 studs in the wall between an attached garage and the house. Based on this testimony, the trial court's finding that defendants were not entitled to damages on this claim was not clearly erroneous.

Fifth, defendants contend that the trial court should have awarded them damages for cracks in the concrete in the basement floor. The trial court concluded that defendants were not entitled to damages for the cracks in the concrete. The trial court found that the experts agreed that concrete normally cracks when it dries. The city building inspector who inspected the house testified that concrete normally cracks when it dries. He testified that the cracks were small and typical of the cracks which develop when concrete dries. Based on this testimony, the trial court's decision that defendants were not entitled to damages based on cracks in the concrete basement floor was not clearly erroneous.

Sixth, defendants argue that the trial court should have awarded them damages for the cost of testing the allegedly contaminated soil. The trial court found that defendants claimed that the fill dirt was contaminated and had it tested, but that no contamination was found. The excavator testified that the soil did not at any time appear contaminated to him and that it came from an approved fill dirt site. Defendant DeHaan admitted that he had hired Dell Engineering to test the soil on his own and that the soil was not contaminated. Based on this testimony, the trial court did not clearly err by failing to award damages for the cost of testing the allegedly contaminated soil.

III

Defendants argue that the trial court erred by failing to find that plaintiff violated the Michigan Consumer Protection Act. Defendants have failed to properly present this issue for review. Indeed, defendants do not even state in their brief the provision of the Michigan Consumer Protection Act that they claim plaintiff has violated. An appellant may not merely announce an argument and leave it to this

Court to discover and rationalize the basis for the party's claims. *Sargent v Browning-Ferris Industries*, 167 Mich App 29, 32-33; 421 NW2d 563 (1988). Thus, defendants have not established error requiring reversal based on this issue.

Affirmed.

/s/ Jane E. Markey
/s/ Michael J. Kelly
/s/ William C. Whitbeck

[1] Obviously, conclusions of the federal bankruptcy court in *Fordson* regarding Michigan law are not binding on this Court.

[2] Defendants argue that plaintiff unilaterally left the job site in November of 1992 and that their actions in April of 1993 are essentially irrelevant under a *Fordson* analysis. In making this argument, defendants ignore the fact that Paul Bruursema, in March of 1993, met with defendants to devise a plan for correcting the perceived problems at the job site and that some work was done thereafter by plaintiff in furtherance of this plan. This course of conduct by plaintiff belies the contention that plaintiff unilaterally and irrevocably left the job site in November of 1992.