

STATE OF MICHIGAN
COURT OF APPEALS

KEUSCH & SONS,

Plaintiff/Counterdefendant-Appellant,

v

DOUGLAS KYES and BRIGITTE KYES,

Defendants/Counterplaintiffs/Third
Party Plaintiffs-Appellees,

and

JULIUS KEUSCH, KENNETH KEUSCH and
KEITH KEUSCH,

Third-Party Defendants.

UNPUBLISHED

August 6, 1999

No. 203787

Clinton Circuit Court

LC No. 96-007892 CH

AFTER REMAND

Before: Smolenski, P.J., and Saad and Gage, JJ.

MEMORANDUM.

On March 2, 1999, we remanded this case to the trial court so that the court could clarify an ambiguity in its factual findings. Specifically, we remanded for a finding with respect to whether the parties in August, 1995 mutually terminated their construction contract, or whether defendants indicated their intent to unilaterally rescind the contract based on plaintiff's breach. This determination affected the propriety of the damages awarded by the trial court.

On remand, the trial court found as follows:

The Court finds that the defendants in August 1995 unilaterally terminated the construction contract because of plaintiff's breach. Mr. Kyes [sic] testimony was unequivocal on that point, as was the testimony of Ms. Kyes. Mr. Keusch's contrary testimony concerning mutual rescission was uncertain and unconvincing. It is clear to the

Court that as of August 1995 the Kyes had determined that Mr. Keusch would not be completing the project.

The Kyes terminated the contract in August; there was no mutual rescission.

We defer to the trial court's credibility determinations and findings, MCR 2.613(C), and we therefore conclude that the court properly awarded defendants damages based on plaintiff's breach.

Affirmed.

/s/ Michael R. Smolenski

/s/ Henry William Saad

/s/ Hilda R. Gage