

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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RAYMOND SUDEIKIS, a/k/a RAYMONE  
SUDEIKIS, and PATRICIA SUDEIKIS,

UNPUBLISHED  
March 11, 2003

Plaintiffs-Appellants,

v

No. 235525  
Van Buren Circuit  
LC No. 96-042149-CK

STANLEY BUZAS and SANDRA BUZAS,

Defendants-Appellees.

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Before: Whitbeck, C.J., and Cavanagh and Bandstra, JJ.

PER CURIAM.

Plaintiffs Raymond Sudeikis and Patricia Sudeikis (the Sudeikises) appeal as of right from the trial court's decision after remand. We affirm.

I. Basic Facts And Procedural History

In 1987, the Sudeikises sold a golf course to defendants Stanley Buzas and Sandra Buzas (the Buzases). The sales agreement stated, in pertinent part:

[i]n consideration for the transfer of assets by Sudeikis-Seller and Operating-Seller, Purchasers herewith covenant and promise that the following listed individuals shall receive a lifetime golf membership entitling them to free greens fees at the golf course purchased pursuant to this Agreement.

The agreement listed nine individuals, including the Sudeikises, their children and their grandchildren. The Buzases honored the agreement for a period of time, but then stopped in May 1995 when they sold the golf course. At trial, the Sudeikises alleged that the agreement constituted a binding contract, of which the Buzases were now in breach. Accordingly, the Sudeikises claimed that they were entitled to \$96,108. That amount was based on the figure of \$300 per year, the Sudeikises' estimated value of an annual golf membership, per person for their life expectancies. In the alternative, the Sudeikises argued that they were entitled to specific performance of the contract. There is evidence on the record indicating that from 1995 through 1997 none of the listed individuals attempted to play golf; indeed, the trial court reiterated that "the plaintiffs themselves gave testimony that some years they did not play golf at all on any course."

The trial court ruled in favor of the Sudeikises, determining that the defendants were in breach of the agreement; however, the trial court found the contractual provision in question to

be ambiguous and the amount of damages requested to be disproportionate to the breach. Specifically, the trial court found the memberships are enforceable by the Sudeikises when the golf course is in operation and when owned by the Buzases, holding that “the court finds no damages but does find that the memberships are valid and enforceable by way of specific performance if the above criteria are met.”

The Sudeikises appealed this decision to this Court and we affirmed in part, reversed in part and remanded to the trial court. This Court agreed with the Sudeikises that “the contractual provision was not ambiguous, and the trial court erred when it determined that the contractual provision was only enforceable when the golf course was in operation and owned by defendants.” This Court also, however, agreed with the trial court that the requested damages in the amount of \$96,108 were inappropriate. Specifically, this Court stated:

[w]e are satisfied that the trial court did not clearly err in its finding that the monetary damages requested were not appropriate for the breach in question.

We do, however, find that because the trial court erred when it granted specific performance only if the two conditions of the golf course being in operation and owned by defendants were met, plaintiffs are entitled to a remand for a determination of an appropriate remedy.

On remand, the trial court allowed closing arguments, but refused to admit additional evidence. Specifically, the Sudeikises had requested an opportunity to admit testimony with respect to how much they would have played golf during the time periods at issue had they had a free membership. Ultimately, the trial court concluded that

the court cannot issue a remedy of specific performance for the golf season for those years, i.e. 1996, 1997, 1998, 1999, 2000 and half of 2001, because the plaintiffs and/or third party beneficiaries have already been denied access.

Consequently, the court must redress the plaintiffs with an award of damages.

On this basis, the trial court awarded the Sudeikises \$3,300, determining

plaintiffs were denied their free greens fees for these years despite their testimony that they played little or no golf during that period of time. Clearly, the denial of access could very well be the reason that plaintiffs did not play much golf those years. The court determined that the yearly membership was \$300 per person for 5 ½ years.

The trial court, however, did not find damages to extend to the third party beneficiaries because “there was no evidence at trial that these third party beneficiaries were denied access or damaged in any way. The plaintiffs testified that they were not sure if they even intended to play golf.”

With regard to the time frame of June 2001 through the lifetime of the Sudeikises and third party beneficiaries, the trial court determined that “specific performance can and should be awarded to the plaintiffs and third party beneficiaries.” Specifically, the trial court stated

To enforce this specific performance, the court orders that defendants supply the plaintiffs with thirty passes for nine holes of golf at the golf course. These are to be paid for by the defendants . . . .

\* \* \*

After the plaintiffs and/or beneficiaries have redeemed one half (15) of the passes, the defendants are to supply an additional fifteen (15) passes to plaintiffs. This process will continue as long as plaintiffs are using the passes. In short, the defendants need not supply or purchase more passes than are necessary beyond the fifteen replaced passes. This process will start up again at the beginning of the golf season in 2002, and each and every year the golf course operates as a golf course.

It is from this decision that plaintiffs now appeal.

## II. Additional Testimony

### A. Standard Of Review

The Sudeikises contend that the trial court erred by refusing to allow additional testimony on remand. Whether to allow additional testimony is within the discretion of the trial court.<sup>1</sup> An abuse of discretion occurs only when the result is so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment or the exercise of passion or bias.<sup>2</sup>

### B. The Sudeikises' Request For Additional Testimony

The Sudeikises requested that additional testimony be allowed on remand with regard to how much they would have played golf throughout the course of the time period at issue. We conclude that the Sudeikises' argument, in which they contend that this Court expressly instructed the trial court to allow additional testimony on remand, to be without merit. This Court expressly upheld the trial court's original findings regarding the inappropriateness of the requested relief, finding "[t]estimony revealed that plaintiffs had played minimal golf in the last few years, and they did not know if their grandchildren would play golf" and that "[w]e are satisfied that the trial court did not clearly err in finding that the monetary damages requested were not appropriate for the breach in question." Nowhere in our opinion did we imply that these findings were inaccurate or insufficient, or that the trial court was to consider additional testimony or evidence.

Further, when an appellate court remands a matter to a trial court, the trial court possesses the authority to take action that is consistent with the opinion of the appellate court.<sup>3</sup> In the first appeal, this Court remanded exclusively for a determination of an appropriate remedy. The

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<sup>1</sup> *Kornicks v Lindy's Supermarket*, 24 Mich App 668, 672; 180 NW2d 847 (1970).

<sup>2</sup> *Dep't of Transportation v Randolph*, 461 Mich 757, 768; 617 NW2d 329 (2000).

<sup>3</sup> *Hadfield v Oakland Co Drain Comm'r*, 218 Mich App 351, 355; 554 NW2d 43 (1996).

Sudeikises' request was an attempt to use the remand to present unnecessary and speculative evidence. This is clearly beyond the scope of the remand. Therefore, and because it did not take action inconsistent with this Court's original opinion, we conclude that the trial court did not abuse its discretion in denying the Sudeikises' motion to allow additional testimony.

### III. Damages

#### A. Standard Of Review

The Sudeikises assert that the trial court erred by determining that their requested award of damages was inappropriate. They argue that the trial court committed error mandating reversal by determining that their request for damages was excessive, and by awarding less than their requested amount. The clearly erroneous standard of review is applicable to a damage award rendered in a bench trial.<sup>4</sup> A trial court's finding is clearly erroneous only when this Court is left with a definite and firm conviction that a mistake has been made.<sup>5</sup> Further, the decision of whether to grant or deny specific performance of a contract lies within the discretion of the trial court.<sup>6</sup>

#### B. The Trial Court's Decision

As noted, the trial court awarded the Sudeikises damages in the amount of \$3,300 as well as specific performance of the contract. The Sudeikises argue that the trial court erred in underassessing the amount of damages, essentially reasserting their argument from the original trial and on their first appeal. Specifically, they argue that "the Court should have found the proposed remedy of awarding Plaintiffs \$48,000 was appropriate and would have made the Plaintiffs/Appellants whole because of the Defendants/Appellees breach of contract." The figure of \$48,000 was based on the Sudeikises' original formula, but reflected what they termed "the \$96,108 figure reduced to its present value." This Court, however, determined on the first appeal that a monetary award based on the Sudeikises' proposed formula was inappropriate. Because the law of the case doctrine holds that a ruling by an appellate court on a particular issue binds the appellate court and all lower tribunals as to that issue,<sup>7</sup> we conclude that the Sudeikises' argument on this basis is without merit.

Affirmed.

/s/ William C. Whitbeck

/s/ Mark J. Cavanagh

/s/ Richard A. Bandstra

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<sup>4</sup> *Scott v Allen Bradley Co*, 139 Mich App 665, 672; 362 NW2d 734 (1984).

<sup>5</sup> *Samuel D Beloga Services, Inc v Wild Brothers*, 210 Mich App 636, 639; 534 NW2d 217 (1995).

<sup>6</sup> *Zurcher v Herveat*, 238 Mich App 267, 300; 605 NW2d 329 (1999), quoting *Foshee v Krum*, 332 Mich 636, 643; 52 NW2d 358 (1952).

<sup>7</sup> *Grievance Administrator v Lopatin*, 462 Mich 235, 260; 612 NW2d 120 (2000).