

STATE OF MICHIGAN
COURT OF APPEALS

ALL AMERICAN FIRE PROTECTION, INC.,

Plaintiff/Counter-Defendant-
Appellee,

v

LOUIS E. LEONOR and EUREKA
PROFESSIONAL PROPERTIES, INC.,

Defendants/Counter-Plaintiffs-
Appellants,

and

MONROE BANK & TRUST,

Defendant.¹

Before: Owens, P.J., and Bandstra and Murray, JJ.

PER CURIAM.

Defendants appeal as of right the trial court's entry of judgment in plaintiff's favor. We affirm.

Defendants first argue that the trial court erred in awarding plaintiff damages under the Construction Lien Act (CLA), MCL 570.1101 *et seq.*, for work done pursuant to an unsigned change order. We disagree. Interpretation of contractual language is a question of law subject to de novo review. *Morley v Automobile Club of Michigan*, 458 Mich 459, 465; 581 NW2d 237 (1998). This Court reviews a trial court's factual findings for clear error. MCR 2.613(C); *Marina Bay Condominiums, Inc v Schlegel*, 167 Mich App 602, 604; 423 NW2d 284 (1988). A trial court's factual findings are clearly erroneous when, although there is evidence supporting the findings, the reviewing court is left with a definite and firm conviction that the trial court made a mistake. *Id.* at 604-605.

¹ Because defendant Monroe Bank & Trust is not a party to this appeal, the term "defendants" refers only to defendants-appellants Louis E. Leonor and Eureka Professional Properties, Inc.

Defendants correctly state that an existing contract may not be modified where the proposed consideration for the modification consists only of the performance or promise to perform to which one party was already obligated under the contract. *Yerkovich v AAA*, 461 Mich 732, 740-741; 610 NW2d 542 (2000). Here, however, sufficient evidence was presented to support plaintiff's claim that the labor and materials reflected on the second change order were not contemplated under the parties' original existing agreement. Therefore, we are not convinced that the trial court clearly erred in awarding plaintiff damages on this basis.

Moreover, contrary to defendants' assertion, MCL 566.1 does not apply in this case because the CLA contains its own definition of "contract." According to MCL 570.1103(4), a "contract" for purposes of the CLA "means a contract, of whatever nature, for the providing of improvements to real property, including any and all additions to, deletions from, and amendments to the contract." See also MCL 570.1102. In *Alan Custom Homes, Inc v Krol*, ___ Mich App ___; ___ NW2d ___ (2003) (Docket No. 237138, issued 5/8/03), slip op at 5, this Court construed the meaning of the term "written contract," as it was used in the CLA, regarding a lien claimant's interest in a residential structure. There, the Court noted that MCL 570.1114's use of the term was contrary to the definition of "contract" found in MCL 570.1103(4), the same definition of "contract" noted above. *Id.* Although the Court concluded it was bound to strictly construe section 114's use of the term and its requirement that any additions to the contract be in writing, the Court agreed with the plaintiff and found that nothing in the statutory language required the signature of the party against whom the lien claimant sought enforcement. *Id.*

In *Alan Custom Homes, supra*, as in this case, the plaintiff gave the defendants written change orders to document the contractual amendments made during the contract's execution. Because the CLA contained no provision requiring that the change orders be signed, the Court concluded that any requirement of "a writing for additions and amendments to a written contract was fulfilled." *Id.*, slip op at 5-6. Here, the language contained in the instant parties' original contract also lacks a signature requirement; accordingly, the trial court's decision should be affirmed.

Defendants next assert that the trial court erred in awarding plaintiff attorney fees under the CLA. We disagree. A trial court's decision to award attorney fees under the CLA is reviewed for an abuse of discretion. *Solution Source, Inc v LPR Associates LP*, 252 Mich App 368, 381; 652 NW2d 474 (2002).

Unless authorized by a statute or court rule, a party cannot ordinarily recover attorney fees. *Solution Source, supra* at 372. The CLA is a remedial statute and should be construed liberally to achieve the beneficial results intended by the act. MCL 570.1302(1); *Solution Source, supra* at 373. The only provision in the CLA regarding the award of attorney fees reads:

In each action in which enforcement of a construction lien through foreclosure is sought, the court shall examine each claim and defense that is presented, and determine the amount, if any, due to each lien claimant or to any mortgagee or holder of an encumbrance, and their respective priorities. *The court may allow reasonable attorneys' fees to a lien claimant who is the prevailing party. . . .* [MCL 570.1118(2) (emphasis added).]

Essentially, defendants' argument is that an award of attorney fees to plaintiff was improper where defendants prevailed on at least two of their counterclaims. However, this Court has held that where one of the plaintiff's claims was dismissed, the amount of attorney fees to which the plaintiff was entitled was not reduced or apportioned according to the number of claims actually won. *Grow v WA Thomas, Co.*, 236 Mich App 696, 714-716; 601 NW2d 426 (1999). We agree with the rationale in *Grow* in that "the pretrial cost and effort put forth by plaintiff's counsel would not have been substantially different" regardless of whether defendants' counterclaims were raised. *Id.* at 715. Indeed, it was not an abuse of discretion for the trial court to conclude that these proceedings were warranted "if for no other reason [than] by defendant's [sic] failure to pay the [undisputed] \$3,000." Accordingly, we are unable to conclude that the trial court abused its discretion in awarding plaintiff attorney fees under the CLA.

Defendants next contend that the trial court erred in awarding them only \$500 in damages for their malicious defamation claim. We disagree. This Court reviews for clear error any challenge to the issue of damages determined by the trial court following a bench trial. *Marshall Lasser, PC v George*, 252 Mich App 104, 110; 651 NW2d 158 (2002). We can find no error in the trial court's reasoning that MCL 600.2911(2)(a) permitted defendants to recover for damaged feelings because plaintiff made the statements with malice. However, the evidence of damages suffered in respect to defendant's feelings was not overwhelming as there was no other evidence of damage to defendant other than his hurt feelings. Therefore, the award of essentially nominal damages was not clearly erroneous.

We also find no merit in defendants' argument that the trial court erred because it failed to recognize that the defamatory statement had been republished in a crowded courtroom. Although the trial court seems to have been mistaken concerning the number of times the statement was made, it is not necessary to alter the trial court's damage award because the repetition of the slander in the course of judicial proceedings was absolutely privileged. See *Couch v Schultz*, 193 Mich App 292, 294-295; 483 NW2d 684 (1992).

Defendants next contend that the trial court erred in failing to award them attorney fees incurred in pursuit of their successful defamation claim. We disagree. One section of the statute governing slander claims by private individuals addresses the recovery of attorney fees: "An action for libel or slander shall not be brought based upon a communication involving a private individual unless the defamatory falsehood concerns the private individual and was published negligently. *Recovery under this provision shall be limited to economic damages including attorney fees.*" MCL 600.2911(7) (emphasis added). However, MCL 600.2911(7) pertains only to claims alleging negligent defamation. In this case, the trial court was presented with a claim of defamation based on actual malice and awarded defendants damages pursuant to MCL 600.2911(2)(a) for a statement made with malice. Although MCL 600.2911(2)(a) permits recovery of damages suffered in respect to feelings, it makes no provision for the recovery of attorney fees as does MCL 600.2911(7). For this reason alone, the trial court did not err. Notwithstanding the differences in these provisions, the award of attorney fees is within the trial court's discretion. *Phinney v Perlmutter*, 222 Mich App 513, 560; 564 NW2d 532 (1997). Under the facts and circumstances of this case, we find nothing to indicate the trial court abused its discretion.

Defendants next assert that the trial court erred in granting plaintiff's motion for mediation sanctions. We disagree. This Court reviews de novo a trial court's decision whether

to grant a motion for mediation sanctions. *Dessart v Burak*, 252 Mich App 490, 494; 652 NW2d 669 (2002). Defendants properly note that their success on this issue depends on this Court's favorable resolution of the four previous issues. Having found no error or discretionary abuses, plaintiff was entitled to receive sanctions for costs and fees necessitated by defendants' rejection of the mediation award.

MCR 2.403 governs the award of mediation sanctions. MCR 2.403(O)(1) provides that a rejecting party *must* pay the opposing party's actual costs when the outcome of trial is less favorable than the mediation's award. Actual costs include costs taxable in any civil action and reasonable attorney fees for services necessitated by the rejection of the mediation award. MCR 2.403(O)(6)(a) and (b). Defendants rejected the mediation award, including the evaluation of their defamation claim, thereby necessitating litigation of that claim. Accordingly, the trial court did not err in awarding plaintiff attorney fees for services rendered in litigating defendants' defamation claim.

Defendants next argue that the trial court erred in awarding prejudgment interest on fees awarded to plaintiff under the CLA and as mediation sanctions. We disagree. This Court reviews de novo a trial court's award of prejudgment interest under MCL 600.6013(1). *Phinney, supra* at 540.

Interest on a money judgment is determined by statute, and any interest awarded on a money judgment must be specifically authorized by statute. *Dep't of Transportation v Schultz*, 201 Mich App 605, 610; 506 NW2d 904 (1993). The purpose of prejudgment interest is to compensate the prevailing party for the expense of bringing suit and for any delay in receiving damages to which the prevailing party is entitled. *Phinney, supra* at 540-541. MCL 600.6013 permits the award of interest on money judgments from the date the complaint was filed until the date the judgment is satisfied. MCL 600.6013(5); *Phinney, supra* at 540. Here, the trial court calculated prejudgment interest on plaintiff's net verdict pursuant to MCL 600.6013(5). The net verdict on the contract, \$15,173.97, included \$9,000 in attorney fees. The attorney fees were properly included in the "money judgment" because attorney fees are "actual costs" as defined by MCR 2.403(O)(6)(b). Further, MCL 600.6013(6) provides that interest "shall be calculated on the entire amount of the money judgment, including attorney fees and other costs." See *Grow, supra* at 719-720. Similarly, the trial court's award of prejudgment interest on the amount of mediation sanctions awarded was also proper. *Pinto v Buckeye Union Ins Co*, 193 Mich App 304, 312; 484 NW2d 9 (1992).

Affirmed.

/s/ Donald S. Owens
/s/ Richard A. Bandstra
/s/ Christopher M. Murray