

STATE OF MICHIGAN
COURT OF APPEALS

GEO. C. WETHERBEE & CO.,

Plaintiff-Appellee,

v

BLACK & DECKER (U.S.) INC.,

Defendant-Appellant.

UNPUBLISHED
September 9, 2003

No. 239383
Wayne Circuit Court
LC No. 00-038242-CK

Before: Bandstra, P.J., and White and Donofrio, JJ.

PER CURIAM.

Defendant, Black & Decker (U.S.) Inc., appeals as of right a judgment in favor of plaintiff, Geo. C. Wetherbee & Co., on plaintiff's claims for breach of contract and unjust enrichment following a bench trial. Contrary to defendant's arguments plaintiff provided sufficient evidence of the existence of an express contract between the parties, illustrated defendant's breach of the contract, and proved damages in the amount of \$18,754 to a reasonable certainty. For these reasons we affirm the trial court's ruling for plaintiff on the breach of contract claim. Because of the existence of an express contract between the parties we reverse the trial court's finding for plaintiff on the unjust enrichment claim. We affirm in part and reverse in part.

Defendant first argues that the trial court erred in finding that a contract existed between plaintiff and defendant, that defendant breached the contract, and that the damages to plaintiff amounted to \$18,754. We disagree.

The trial court found by a preponderance of the evidence that defendant owed plaintiff \$18,754 as proceeds from a profit incentive program defendant instituted. The court further stated that "the elements of both contract and unjust enrichment have been made out as to the \$18,000 amount" finding for plaintiff on both counts.

When reviewing a sufficiency of the evidence claim in a civil case, we examine the evidence in the light most favorable to the plaintiff and give the plaintiff the benefit of every reasonable inference that can be drawn from the evidence. If reasonable jurors could differ, the question is one for the trier of fact. *Price v Long Realty, Inc*, 199 Mich App 461, 472; 502 NW2d 337 (1993).

The essential elements of a contract are (1) parties competent to contract, (2) a proper subject matter, (3) legal consideration, (4) mutuality of agreement, and (5) mutuality of obligation. *Thomas v Leja*, 187 Mich App 418, 422; 468 NW2d 58 (1991). It is necessary that there be a meeting of the minds on all essential terms to form a binding contract. *Universal Leaseway System, Inc v Herrud & Co*, 366 Mich 473, 478; 115 NW2d 294 (1962); *Kalmanath v Mercy Hosp*, 194 Mich App 543, 548-549; 487 NW2d 499 (1992). Mutuality of assent means that there must be mutual assent on all essential terms of a contract, and that the parties' assent is manifested in some objective form. *Reed v Citizens Ins Co*, 198 Mich App 443, 449; 499 NW2d 22 (1993).

Our review of the record indicates there was sufficient evidence to support the trial court's determination in favor of plaintiff on the breach of contract claim. Albert Zimmerman, plaintiff's president, testified that defendant instituted a profit incentive program where defendant paid rebates to plaintiff based on defendant's product sales growth. The incentive plan enabled plaintiff and other distributors to continue to buy products from defendant and maintain business in the face of larger retail competition. Zimmerman stated that plaintiff and defendant negotiated the profit incentive program. A series of checks defendant issued to plaintiff under the incentive program, two reports generated by defendant calculating the amount due under the program showing plaintiff as unpaid, and a letter dated November, 30, 1999 indicating that unless plaintiff had information otherwise defendant owed plaintiff \$18,754, evidenced the existence of a contract between the parties. Zimmerman testified that his review of plaintiff's files revealed that plaintiff never received an original 1996 check for \$18,754, and thus defendant's obligation under the profit incentive program was still due and owing.

Defendant claims plaintiff provided no consideration to defendant. Consideration is a bargained for exchange. *General Motors Corp v Dep't of Treasury*, 466 Mich 231, 238; 644 NW2d 734 (2002). There must be a benefit on one side and a detriment suffered, or a service performed on the other. *Id.*, 238-239. The profit incentive program funds defendant paid plaintiff benefited plaintiff by improving plaintiff's profit margin and assisting plaintiff's competition against the larger retailers. In turn, by the terms of the program, plaintiff was obligated to continue to distribute defendant's products at retail. If sales increased, then and only then did plaintiff earn the incentive payment. By paying the funds to plaintiff, defendant suffered a detriment based upon plaintiff's concomitant obligation to distribute defendant's products and increase sales. There was a bargained for exchange in this case.

Defendant also argues that plaintiff did not prove the amount of damages with reasonable certainty, and thus, should not be able to recover on the breach of contract claim. *Alan Custom Homes, Inc, v Krol*, 256 Mich App 505, 512; ___ NW2d ___ (2003). We disagree. Contrary to defendant's arguments, our review of the record reveals that plaintiff provided adequate documentation of the damage calculation at trial. Specifically, a document provided by plaintiff, but generated by defendant, lists plaintiff's total purchases of defendant's product in 1995 as \$625,125. The document then lists a "3% payout" as equaling \$18,754. We find this documentation sufficient to support the trial court's damage determination and find no error.

Defendant also argues, and we agree that the trial court erred in finding in favor of plaintiff on both the breach of contract claim and the claim for unjust enrichment. A judgment containing inconsistent verdicts is an issue of law that this Court reviews de novo. See *Lagalo v Allied Corp*, 457 Mich 278; 577 NW2d 462 (1998). A trial court, sitting as the trier of fact, may

not render inconsistent verdicts. See *People v Walker*, 461 Mich 908; 603 NW2d 784 (1999). A breach of contract claim and a claim for unjust enrichment are inconsistent claims as a contract will be implied under a theory of unjust enrichment only if there is no express contract covering the same subject matter. *Keywell & Rosenfeld v Bithell*, 254 Mich App 300, 328; 657 NW2d 759 (2002). The trial court erred in finding in favor of plaintiff on both the breach of contract and unjust enrichment claims. However, because the trial court did not assess any specific damages on the unjust enrichment claim, the issue is moot.

Next, defendant argues that the trial court's factual findings regarding the breach of contract claim were insufficient under MCR 2.517. We disagree. In actions tried without a jury, the trial court must find the facts and state separately its conclusions of law regarding contested matters. MCR 2.517(A)(1). The findings and conclusions regarding contested matters are sufficient if brief, definite and pertinent, without over-elaboration of detail or particularization of facts. MCR 2.517(A)(2); *Fletcher v Fletcher*, 447 Mich 871, 883 (Brickley, J); 526 NW2d 889 (1994), after remand 229 Mich App 19 (1998). Findings are sufficient 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).

After reviewing the record, we find that the trial court's findings of fact with regard to plaintiff's breach of contract claim, while brief, were sufficiently specific. The court made clear that the profit incentive program constituted a contract between defendant and plaintiff. By stating that payment under the program was not discretionary on defendant's part, it found a mutuality of obligation. Further, the court's finding that the damages amounted to \$18,754 plus post-complaint interest was an explicit and definite statement that defendant was obligated to pay that amount to plaintiff under the contract. The trial court was aware of the legal issues in the case and correctly applied the law.

As we have determined that the trial court erred in finding for plaintiff on the unjust enrichment claim, we need not reach the issue of the specificity of the factual findings with regard to the unjust enrichment claim.

We affirm the trial court's judgment for plaintiff. We reverse the trial court's ruling for plaintiff as to the inconsistent unjust enrichment claim.

/s/ Richard A. Bandstra

/s/ Helene N. White

/s/ Pat M. Donofrio