

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 21, 1998

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Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

Nos. 96-0424 & 97-0205

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

**NORTHERN INDIANA METAL FABRICATORS, INC.
AND GLEN-HO, INC.,**

PLAINTIFFS-RESPONDENTS,

V.

SEVILLE FLEXPACK CORPORATION,

**DEFENDANT-APPELLANT-
THIRD-PARTY PLAINTIFF,**

**MERIDIAN MUTUAL INSURANCE COMPANY
AND FEDERAL INSURANCE COMPANY,**

THIRD-PARTY DEFENDANTS.

APPEAL from a judgment and amended judgment of the circuit court for Milwaukee County: MICHAEL J. SKWIERAWSKI, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Schudson, JJ.

PER CURIAM. Seville Flexpack Corporation appeals the trial court's judgment in favor of Northern Indiana Metal Fabricators, Inc., and Glen-Ho, Inc., awarding payment for work Northern performed on Seville's factory.¹ Seville argues that the trial court erred in determining the amount of damages that Northern was entitled to recover because: (1) the damages allegedly should have been reduced by subtracting the costs that Seville incurred to complete the work after Northern breached the contract, insofar as those costs exceeded the contract price; and (2) Northern allegedly "grossly overstated" its damages and thus was not entitled to pre-judgment interest on its recovery. We affirm.

I. BACKGROUND

Seville and Northern entered a contract under which Northern was to supply the materials and labor necessary to install a fume collection system at Seville's printing factory. While installing the system, Northern dropped a sheet-metal screw into one of Seville's printing presses, damaging the printing drum and disabling the press. Seville recovered from its insurer the costs of repairing the press and the profits lost due to lost production time.²

Due to Northern's negligence in damaging the press, Seville fired Northern from the installation job and hired a replacement contractor to finish the job. At the time Seville fired Northern, Seville had not fully paid Northern for the

¹ Northern began bankruptcy proceedings while trial was pending and Glen-Ho purchased Northern's assets, including the account receivable from Seville; therefore, Glen-Ho was added as a plaintiff in this action. Throughout this opinion we will refer to the plaintiffs as "Northern."

² By stipulation of the parties, the trial court dismissed all claims against Seville's insurer, Federal Insurance Company, and Northern's insurer, Meridian Mutual Insurance Company.

work that Northern had already performed under the contract. Northern, therefore, filed this action against Seville for both the value of the work it had already completed under the contract and for the profits it lost because of Seville's allegedly wrongful termination of the contract. At trial, Seville argued that Northern breached the contract, requiring Seville to hire a replacement to complete the job, and that Seville was, therefore, entitled to a recoupment of damages because Northern was liable for the cost of completing the job insofar as it exceeded the cost that Seville would have incurred under the contract with Northern.

The trial court found that Seville was justified in terminating Northern for damaging the press, but that Northern was entitled to payment for the work it had already completed, along with pre-judgment interest. The trial court denied Northern the profits it would have received if it had completed the contract. The trial court further found that Seville was not entitled to recover any part of the cost of completing the job after Northern was terminated.

II. DISCUSSION

Seville argues that the trial court erred in not reducing Northern's recovery by the amount that Seville paid for substitute performance of the remainder of the installation job after Seville terminated Northern, insofar as the cost of substitute performance exceeded the contract price. Seville argues that Northern breached the contract, causing Seville to obtain substitute performance, and that Seville is entitled to the benefit of the bargain that it allegedly lost as a consequence of Northern's breach.

Northern responds that Seville rescinded the contract by preventing Northern from completing performance under the contract, and that Seville is not

entitled to the benefit of the bargain because of that rescission. Northern argues that the parties are only to be returned to the positions that they held prior to entering into the contract. Seville concedes that it would not be entitled to damages based on the cost of substitute performance if it rescinded the contract; Seville asserts, however, that because Northern was the breaching party, Seville had the option to seek the benefit of the bargain or rescission, and that Seville did not seek rescission of the contract, but instead has sued Northern for the benefit of the bargain.

Regardless of whether Seville sought to rescind the contract or to recover the benefit of the bargain, Seville is not entitled to recover damages based on the cost of substitute performance. Damages for breach of contract compensate the wronged party for damages that arise naturally from the wrong. *See Reiman Assocs., Inc. v. R/A Advertising, Inc.*, 102 Wis.2d 305, 320, 306 N.W.2d 292, 300 (Ct. App. 1981). An award of damages for breach of contract compensates the injured party for losses directly and necessarily flowing from the breach, but not for losses that did not result from the breach. *See Repinski v. Clintonville Fed. Sav. & Loan Ass'n*, 49 Wis.2d 53, 58, 181 N.W.2d 351, 354 (1970). Northern's negligence in damaging Seville's printing press did not increase the cost to complete the installation job; Seville could have obtained complete performance of the installation job from Northern at the contract price. Seville, however, chose to terminate Northern from the job and obtain substitute performance, the cost of which exceeded the contract price. It was Seville's termination of Northern, and not Northern's breach, that caused Seville to incur costs in excess of the contract price. *See* RESTATEMENT (SECOND) OF CONTRACTS § 237 cmt. c, illus. 8 (1981) (when an employer discharges an employee for a material breach of his duty to give efficient service, the employer does not have a claim for damages based on

the loss of the employee's services after the discharge "because that loss was caused by [the employer's] discharge of [the employee] and not by [the employee's] failure to give efficient service"). The trial court properly determined that Seville was not entitled to a recoupment of damages based on the cost of substitute performance.

Seville also claims that the trial court erred in awarding Northern pre-judgment interest on its recovery. Seville argues that Northern is not entitled to pre-judgment interest because Northern recovered substantially less than the total damages it claimed in its complaint.

Whether a party is entitled to pre-judgment interest is a question of law, which we review *de novo*. See **Beacon Bowl, Inc. v. Wisconsin Elec. Power Co.**, 176 Wis.2d 740, 776, 501 N.W.2d 788, 802 (1993). A party may recover pre-judgment interest on damages that are either liquidated or determinable by a reasonably certain standard of measurement. See *id.*, 176 Wis.2d at 776–777, 501 N.W.2d at 802.

The trial court determined that Northern was entitled to pre-judgment interest on the \$45,884 payment due Northern for work that Northern had completed under the contract prior to Seville's termination of the contract. Seville had issued a check for this amount prior to the termination, but had refused to deliver it to Northern. There was no question as to the amount due Northern under the contract, and thus the trial court properly awarded Northern pre-judgment interest on that amount.

The trial court also awarded Northern pre-judgment interest on its recovery for items outside the contract that Northern provided to Seville with Seville's approval, and on its recovery for the value of materials that Northern had

fabricated for use on the installation job. Seville did not dispute the amounts due for those items, but rather argued that it was not liable for those costs. Because the amounts of those damages were not in dispute, the trial court properly awarded Northern pre-judgment interest on those amounts. *See Murray v. Holiday Rambler, Inc.*, 83 Wis.2d 406, 434, 438, 265 N.W.2d 513, 527, 529 (1978) (buyers who revoked acceptance of a defective motor-home failed to prove damages claimed for the loss of use of the motor-home, but were entitled to pre-judgment interest on their recovery of the full contract price that they had paid, on their recovery of inspection fees, and on their recovery of repair costs because those claims “were fixed items of damages and their amounts were not in dispute”). Thus, regardless of the total amount Northern sought in its complaint, the trial court properly granted Northern pre-judgment interest on the undisputed amounts of Northern’s fixed items of damages.

By the Court.—Judgment and amended judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

