

STATE OF MICHIGAN  
COURT OF APPEALS

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RENARD SLOMKA,

Plaintiff/Counter-Defendant-  
Appellant/Cross-Appellee,

v

CITY OF HAMTRAMCK HOUSING  
COMMISSION,

Defendant/Counter-Plaintiff-  
Appellee/Cross-Appellant.

UNPUBLISHED

April 21, 2009

No. 279150

Wayne Circuit Court

LC No. 02-219550-CK

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RENARD SLOMKA,

Plaintiff-Appellee,

v

HAMTRAMCK HOUSING COMMISSION,

Defendant-Appellant.

No. 280151

Wayne Circuit Court

LC No. 02-219550-CK

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Before: Markey, P.J., and Fitzgerald and Gleicher, JJ.

PER CURIAM.

In Docket No. 279150, plaintiff appeals as of right, and defendant cross-appeals, the order granting summary disposition in plaintiff's favor and setting forth the amount of damages owed by defendant in this breach of employment contract case. In Docket No. 280151, defendant appeals as of right the order awarding plaintiff case evaluation sanctions. We reverse in both appeals and remand for further proceedings.

In prior consolidated appeals, this Court reversed the trial court's decision that plaintiff's employment contract with defendant was unenforceable because it violated regulations of the United States Department of Housing & Urban Development (HUD). *Slomka v Hamtramck Housing Comm*, unpublished opinion per curiam of the Court of Appeals, issued June 22, 2006 (Docket Nos. 258699; 260015) ("*Slomka I*"), slip op at 2-3. This Court determined that "because no provision in the contract itself violates the regulations, the contract itself is not unenforceable

as being contrary to law.” *Id.* at 3. This Court further determined that “[t]he trial court therefore erred in setting aside the contract based on HUD regulations that were neither part of the contract nor which precluded the contract or its terms.” *Id.* at 4. This Court’s decision regarding the enforceability of the contract was limited to whether it was unenforceable on the ground that it violated HUD regulations. In holding that it was not, this Court did not determine that the contract was enforceable as a matter of law as the trial court opined on remand. Our concluding that the contract is not unenforceable as violative of HUD regulations does not mean that it is enforceable as a matter of law. The trial court apparently misunderstood and therefore erred by so interpreting this Court’s prior decision in *Slomka I*. We therefore reverse the trial court’s order granting summary disposition for plaintiff.

Further, in *Slomka I*, this Court directed the trial court to consider on remand whether defendant breached the contract. See *Slomka I, supra* at 4 n 4. To establish a breach of contract, a plaintiff must establish both the elements of a contract and a breach of the contract. *Pawlak v Redox Corp*, 182 Mich App 758, 765; 453 NW2d 304 (1990). A valid contract requires “(1) parties competent to contract, (2) a proper subject matter, (3) a legal consideration, (4) mutuality of agreement, and (5) mutuality of obligation.” *Thomas v Leja*, 187 Mich App 418, 422; 468 NW2d 58 (1991). The plaintiff must then establish the breach of the contract and damages resulting from the breach. *Alan Custom Homes, Inc v Krol*, 256 Mich App 505, 512; 667 NW2d 379 (2003).

On remand, the trial court made no determination whether defendant breached the contract. Rather, it merely determined that, based on *Slomka I*, the contract is enforceable as a matter of law and awarded damages. We therefore remand this matter to the trial court for a determination of whether there is a genuine issue of a material fact as to the existence of a valid enforceable contract, and, if so, whether the contract was breached.

Given our decision, we also reverse the trial court’s order granting plaintiff case evaluation sanctions. Moreover, considering our conclusions regarding these issues, it is unnecessary to address plaintiff’s arguments pertaining to the trial court’s calculation of damages.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. We award costs to defendant as the prevailing party.

/s/ Jane E. Markey  
/s/ E. Thomas Fitzgerald  
/s/ Elizabeth L. Gleicher