

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

MICHAEL LANGENFELD

Plaintiff-Appellee

-VS-

HARD WORKING YOUNG MEN, LLC,
ET AL.,

Defendants-Appellants

JUDGES:

Hon. William B. Hoffman, P.J

Hon. Craig R. Baldwin, J.

Hon. Earle E. Wise, Jr., J.

Case No. 2019CA00030

O P I N I O N

CHARACTER OF PROCEEDINGS:

Appeal from the Stark County Court of
Common Pleas, Case No. 2017 CV
01953

JUDGMENT:

Affirmed in part, Reversed in part, and
Final Judgment Entered

DATE OF JUDGMENT ENTRY:

October 31, 2019

APPEARANCES:

For Plaintiff-Appellee

For Defendants-Appellants

LAURA MILLS
PIERCE C. WALKER
Mills, Mills, Fiely & Lucas, LLC
101 Central Plaza, South – Suite #1200
Canton, Ohio 44702

RONALD T. GATTS
137 King James Way – Suite #201
Akron, Ohio 44308

Hoffman, P.J.

{¶1} Appellants Hard Working Young Men, LLC and Sean Fancher appeal the judgment entered by the Stark County Common Pleas Court awarding appellee Michael Langenfeld damages in the amount of \$23,000.00 on his complaint for breach of contract, unjust enrichment, and negligent representation.

STATEMENT OF THE FACTS AND CASE

{¶2} Appellee and Appellants entered into a contract whereby Appellants would perform residential construction work and renovations to two properties owned by Appellee: 1290 Marcy Street in Akron, and 4344 Swallen Avenue in Louisville, with the work to be completed in October of 2016.

{¶3} Appellee paid Appellants \$10,000 in cash for the work on the Marcy Street property. Appellants requested an additional \$1,000 for higher end carpet in the home, which Appellee paid. Appellee emailed Appellants on November 14, 2016, to express displeasure with the quality of work done on the home. Appellant Fancher responded he was working to fix the problems with the work. On November 30, 2016, Appellee terminated Appellants' services on the project. Appellee paid a person named Brian, who he hired from Craig's list, \$3,000 to fix the work done by Appellants on the Marcy Street home.

{¶4} Appellee paid Appellants \$12,000 in cash as a retainer for the total cost of the Swallen Avenue project, which was quoted by Appellants as \$60,000. Appellee was unhappy with the quality of the work on this project as well, and terminated Appellants' services on November 30, 2016. At the point of termination, Appellant Fancher had itemized work done for \$6,000 of the \$12,000 retainer, but had not yet performed work

for the remaining \$6,000. Appellee paid Dun Rite, Inc., \$6,000 to repair the work performed by Appellants.

{¶5} Appellee filed the instant action seeking damages for breach of contract, unjust enrichment, and negligent representation in the Stark County Common Pleas Court on September 26, 2017. Appellants failed to file an answer, and the trial court entered default judgment against Appellants on November 16, 2017. The case proceeded to a hearing before a magistrate on the issue of damages. Following the hearing, the magistrate recommended Appellee be awarded damages in the amount of \$11,000 on the Marcy Street project and \$12,000 on the Swallen Avenue project, for a total award of \$23,000.

{¶6} Appellants filed objections to the magistrate's report on November 2, 2018, arguing the testimony established Appellee paid \$9,000 to cover completion of the work allegedly not performed by Appellants, which should have been the total damage award. In their objections, appellants requested an additional 14 days to supplement their objections. Without leave of court, Appellants filed supplemental objections on December 19, 2018, arguing for the first time Appellee was not entitled to damages on the Swallen Avenue project because he failed to prove damages.

{¶7} The trial court entered judgment in accordance with the magistrate's decision. It is from the January 23, 2019 judgment of the trial court Appellants prosecute their appeal, assigning as error:

THE COURT ERRED IN AWARDING PLAINTIFF JUDGMENT AGAINST DEFENDANTS AS THE PLAINTIFF FAILED TO PRESENT COMPETENT, CREDIBLE EVIDENCE OF ITS DAMAGES WITHIN A REASONABLE CERTAINTY RESULTING FROM THE DEFENDANTS' ALLEGED BREACH OF CONTRACT AND THE COURT FAILED TO APPLY THE PROPER MEASURE OF DAMAGES FOR CONSTRUCTION DEFECTS.

{¶18} Appellant argues the evidence does not support the award of \$23,000 in damages to Appellee.

{¶19} The appropriate standard of review when reviewing a determination of damages is manifest weight of the evidence. *See, e.g., Oldendick v. Crocker*, 8th Dist. Cuyahoga No. 103384, 2016-Ohio-5621, 70 N.E.3d 1033, ¶ 56. A judgment supported by competent, credible evidence will not be reversed by a reviewing court as against the manifest weight of the evidence. *Seasons Coal Co. v. Cleveland*, 10 Ohio St.3d 77, 80, 461 N.E.2d 1273 (1984); *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279, 376 N.E.2d 578 (1978), syllabus.

{¶10} The trial court entered default judgment against Appellants for breach of contract, unjust enrichment, and negligent representation. The proper measure of damages for construction defects is the cost of repairs. *Van Beusecum v. Continental Builders, Inc.*, 5th Dist. Delaware No. 06CAE12-0095, 2008-Ohio-2141, ¶62, *citing Barton v. Ellis*, 34 Ohio App.3d 251, 253, 518 N.E.2d 18 (1986). Stated differently, the proper measure of damages is the reasonable cost of placing the building in the condition

contemplated by the parties at the time they entered into the contract. *Sites v. Moore*, 79 Ohio App.3d 694, 607 N.E.2d 1114 (1992).

{¶11} As to the Marcy Street project, the trial court awarded damages in the amount of \$11,000, the total amount paid by Appellee. However, the undisputed evidence presented at trial was after Appellants were terminated from the job, Appellee paid someone named Brian from Craig's List \$3,000 to fix the work done by Appellants. Therefore, we find the trial court's award of \$11,000 in damages was against the manifest weight of the evidence, as the cost to repair the construction defects was \$3,000.

{¶12} The trial court awarded damages of \$12,000 for the Swallen Avenue project. The undisputed evidence at trial came from the testimony of Appellee, who testified Appellant Fancher itemized \$6,000 of work he had done for the \$12,000 Appellee had paid him, but no work was done for the remaining \$6,000. He further testified he paid Dun Rite \$80,000 to complete the project, \$6,000 of which was to repair the work done by Appellants. We find the trial court's judgment of \$12,000 is not against the manifest weight of the evidence, as the testimony of Appellee demonstrated Appellants had not done any work for \$6,000 of the \$12,000 draw Appellee had paid prior to their termination, and Appellee paid \$6,000 to repair the work Appellants had completed on the Swallen Avenue house prior to their termination.

{¶13} In conclusion, we find the trial court erred in awarding damages of \$11,000 rather than damages of \$3,000 for the Marcy Street project, but did not error in awarding damages of \$12,000 for the Swallen Avenue Project.

{¶14} The assignment of error is overruled in part and sustained in part. The judgment of the Stark County Common Pleas Court is reversed in part and affirmed in part. Pursuant to App. R. 9(B), we hereby enter final judgment in favor of Appellee in the amount of \$15,000, plus costs and interest at the statutory rate from January 23, 2019.

By: Hoffman, P.J.

Baldwin, J. and

Wise, Earle, J. concur

