[Cite as *Textiles, Inc. v. Design Wise, Inc.*, 2010-Ohio-1524.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

MADISON COUNTY

TEXTILES, INC. dba JORDAN YOUNG INTERNATIONAL,	:	
Plaintiff-Appellee/Cross-Appellant,	:	CASE NOS. CA2009-08-015 CA2009-08-018
	:	O P I N I O N
- vs -	:	4/5/2010
	:	
DESIGN WISE, INC.,	:	
Defendant-Appellant/Cross-Appellee.	:	

CIVIL APPEAL FROM MADISON COUNTY COURT OF COMMON PLEAS
Case No. 2008CV-03-170

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BRESSLER, J.

{¶1} Defendant-appellant/cross-appellee, Design Wise, Inc., (Design Wise) appeals the decision of the Madison County Court of Common Pleas awarding damages to plaintiff-appellee/cross-appellant, Textiles, Inc. dba Jordan Young International (Jordan Young). Jordan Young appeals the same decision finding Design Wise's counterclaims well-taken and awarding damages. We affirm the decision of the trial

court in part, reverse in part, and remand for further proceedings.

{¶2} Design Wise, a company that specializes in outfitting hotels and motels with furniture, fixtures, and equipment, entered into four contracts with Jordan Young, which specializes in manufacturing hotel furniture. Among other deals, the parties contracted for purchase and delivery of a style of furniture called Romeo, comprised of a decorative headboard and matching furniture pieces. Specifically, the Romeo headboard included an inlay diamond shape and contrasting wood tones. Mimicking the headboard's angular shape, the Romeo line also contained a matching armoire, night stands, and tables topped with black granite.

{¶3} The manufacturing aspect of Jordan Young's business is performed in Asia, and the finished furniture arrives in the United States in large freight containers. The freight containers eventually arrived at several hotel/motel locations in Minnesota and Wisconsin where Design Wise was either remodeling existing structures or opening a newly-constructed establishment. Upon receiving one particular delivery, Design Wise unloaded the furniture and discovered that the headboards did not conform to the original Romeo design because the diamond shape was not inlayed and did not offer contrasting colors.

{¶4} Design Wise contacted Jordan Young to discuss the nonconformity and Jordan Young offered to sell the headboards at half price should Design Wise choose to use them. One hotel approved the use of the nonconforming headboards, while others did not. Jordan Young agreed to ship conforming headboards, and Design Wise used the nonconforming version until the proper headboards were delivered. However, after the headboards were properly replaced, Design Wise neither returned the nonconforming product, nor paid Jordan Young for keeping them.

{¶5} Other issues arose from Jordan Young's deliveries, including furniture doors that fell off their hinges and problems with finished edges. Additionally, as part of the Romeo line, the granite that topped some of the furniture was designed and presented as very dark black. However, Design Wise soon learned that the granite had been dyed to achieve a dark color and that the dye was causing problems with the furniture. Specifically, Design Wise's customers complained that the granite was cloudy and eventually began to peel. Design Wise communicated with Jordan Young regarding the several problems, and eventually, was forced to pay for furniture repairs in order to satisfy its customers when Jordan Young did not remedy the flaws.

{¶6} After many months of negotiating over the problems and possible solutions, communication between the companies eventually broke down. Jordan Young filed suit in the Madison County Municipal Court, claiming that Design Wise breached several contract terms by not paying two invoices completely. At first, Design Wise filed a brief answer, but later moved the court to amend its answer to include several counterclaims. Because the counterclaim damage request exceeded the municipal court's jurisdiction, the case was moved to the common pleas court.

{¶7} During a one-day bench trial, the parties submitted evidence and testimony regarding Jordan Young's claims and Design Wise's counterclaims. The trial court awarded damages to both parties, finding that Design Wise failed to pay the invoices and that Jordan Young failed to comply with its warranty responsibilities. The trial court did not award either party prejudgment interest. The parties filed motions requesting relief from judgment and a new trial. The trial court overruled the motions in its nunc pro tunc entry whereby it also corrected a clerical error in its original order.

{¶8} The parties now appeal the trial court decision raising four assignments

and four cross-assignments of error. For ease of discussion, we will combine the assignments when appropriate.

{¶9} Assignment of Error No. 1:

{¶10} "THE TRIAL COURT ERRED IN GRANTING JUDGMENT TO THE PLAINTIFF FOR THE VALUE OF THE NON-CONFORMING, NON-RETURNED HEADBOARDS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶11} Assignment of Error No. 2:

{¶12} "THE TRIAL COURT ERRED IN GRANTING JUDGMENT TO THE PLAINTIFF FOR ALLEGED DAMAGES OUTSIDE THE SCOPE OF THE PLEADINGS."

{¶13} Assignment of Error No. 3:

{¶14} "THE TRIAL COURT ERRED IN GRANTING JUDGMENT TO APPELLEE THAT WAS FAR IN EXCESS OF APPELLEE'S PRAYER FOR RELIEF."

{¶15} In its first three assignments of error, Design Wise asserts that the trial court erred by awarding damages to Jordan Young for the nonconforming headboards because Jordan Young failed to raise Design Wise's nonpayment in its complaint, and because the evidence did not support such an award. These arguments lack merit.

{¶16} Although Jordan Young's complaint did not include reference to the headboards, "when issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings." *Jones v. Alvarez*, Butler App. No. CA2006-10-257, 2008-Ohio-1994, ¶ 23, citing Civ.R. 15(B).

{¶17} In the trial court's written opinion, it recognized that Jordan Young had not requested damages for the unreturned headboards. However, the court noted that while the parties never amended the complaints to conform with the evidence adduced

at trial, the issue had been litigated without objection. While Design Wise now challenges the trial court's application of Civ.R. 15(B), this court has recognized a court's ability to sua sponte consider an unplead issue so long as the decision to do so complies with Civ.R. 15(B). See *Stafford v. Aces & Eights Harley-Davidson, LLC*, Warren App. No. CA2005-06-070, 2006-Ohio-1780 (affirming trial court's decision to sua sponte apply Civ.R. 15[B] even though the parties never moved to amend their pleadings); and *Hogan v. Hogan*, Warren App. Nos. CA2007-12-137, CA2007-12-141, 2008-Ohio-6571 (affirming sua sponte recognition of mutual mistake because the affirmative defense was fully litigated, although never included in the pleadings). A trial court's application of Civ.R. 15(B) is reviewed under an abuse of discretion standard. *Stafford*.

{¶18} "Under Civ.R 15(B), implied consent is not established merely because evidence bearing directly on an unpleaded issue was introduced without objection; it must appear that the parties understood the evidence was aimed at the unpleaded isues. *** Various factors to be considered in determining whether the parties impliedly consented to litigate an issue include: whether they recognized that an unpleaded issue entered the case; whether the opposing party had a fair opportunity to address the tendered issue or would offer additional evidence if the case were to be tried on a different theory; and, whether the witnesses were subjected to extensive cross-examination on the issue." *State ex rel. Evans v. Bainbridge Twp. Trustees* (1983), 5 Ohio St.3d 41, paragraphs one and two of the syllabus.

{¶19} After reviewing the record, we find the trial court did not abuse its discretion in considering the unplead issue or in ordering damages in an amount greater than Jordan Young first requested. Instead, the parties gave their implied consent to

have the headboard issue tried and both understood that the evidence was directed at establishing who was responsible for paying for the nonconforming headboards. Each factor raised in the *Evans* decision is easily fulfilled and establish that both Jordan Young and Design Wise impliedly tried the headboard issue at trial.

{¶20} First, the record reveals that both parties recognized that an unplead issue entered the case. Even during opening statements, both parties referenced the headboards. In Jordan Young's opening, counsel discussed the contract to sell headboards, the nonconformance, and the fact that Design Wise kept the nonconforming pieces. Counsel went on to state, "they did not pay the 50 percent, so they still have those. As far as we know, they still have those headboards in their possession to be freely used for whatever they are going to be used for. They have not paid us for any value for them. *That is another element of the case, which you will hear about*." (Emphasis added.)

{¶21} Design Wise's opening also references the headboards, and seems to indicate that it was under the impression that Jordan Young's prayer for relief included damages for Design Wise failing to pay for the nonconforming pieces. "Therefore, part of the $4,700 of the claim against us represents the amount that we were billed for, representing 50 percent of the cost of the headboards. That is an improper charge inasmuch as we didn't use it and we didn't resell them." We also note that both parties addressed the headboard issue in their post-trial briefs, thereby demonstrating their understanding that the issue had been tried. From the opening statements on, the parties acted as if the headboard issue was part of the trial proceedings and were well aware that the unplead issue had entered the case.

{¶22} Secondly, Design Wise, as the opposing party, had a fair opportunity to

address the headboard issue. Given the testimony and evidence it presented at trial, Design Wise is unable to say that it would now offer additional evidence even if the case were to be tried to specifically include the headboard issue. Instead, during Design Wise's case, David Janssen, president of Design Wise, offered direct testimony regarding the nonconforming headboards and how his company dealt with them.

{¶23} Janssen testified that after he spoke to Jordan Young about the nonconformity, Jordan Young offered a 50 percent discount, and that the two companies discussed terms regarding the headboards. Janssen testified that his understanding of the terms included Design Wise's ability to use the nonconforming headboards in a future job, and that if it could not, Jordan Young would make arrangements to have the headboards shipped back to its warehouse in Ohio. However, Janssen went on to testify that his company was not able to use the headboards in future jobs because Design Wise no longer worked with Jordan Young and instead started dealing with a different furniture manufacturer. When asked what had happened to the nonconforming headboards, Janssen replied, "if I'm not going to use them, why would I want them. So I had to dispose of them. I donated them. I gave them to a liquidator."

{¶24} It is clear from this testimony that Janssen believed that it was Jordan Young's responsibility to ship the headboards back to its warehouse in Ohio, and that Design Wise was not going to pay for the nonconforming products. Janssen also told the court what eventually happened to the headboards, and Design Wise's reason for disposing of them. Therefore, Design Wise had a fair opportunity to address the issue, and offered testimony and evidence that it would have offered had Jordan Young specifically included the headboards in its complaint.

{¶25} Lastly, each witness was subjected to extensive cross-examination on the

issue. During Jordan Young's case, Philip Jordan, the company's president, and Rob Jordan, the company's acting officer, testified at length about the headboard issue. Each was then cross-examined by Design Wise specific to the terms of the 50-percent-off offer, and who held responsibility for getting the headboards back to Jordan Young's Ohio warehouse. During Philip Jordan's cross-examination, Design Wise asked, "whose responsibility – turning to the headboards in Wilmar,[1] whose responsibility is it to get that product back to Ohio or back into your possession if it is not sold?" Philip Jordan then replied that it was Design Wise's responsibility to ship the headboard's back to Ohio and that Jordan Young would reimburse for freight charges.

{¶26} During Design Wise's cross-examination of Rob Jordan regarding the terms of the agreement to sell the nonconforming headboards for 50 percent off or return them to Jordan Young's Ohio warehouse, the following exchange occurred:

{¶27} "[Design Wise] It says that Jordan Young will ship to their warehouse, does it not?

{¶28} "[Jordan] They set up delivery and we will pay for the shipment.

{¶29} "[Design Wise] It doesn't say that, does it? It says you will ship it.

{¶30} "[Jordan] It's an interpretation, correct.

{¶31} "[Design Wise] And in fact those headboards were not able to be utilized by Design Wise; is that correct?

{¶32} "[Jordan] I don't know that to be true. They were used at the hotel for six months.

{¶33} "***

{¶34} "[Design Wise] Did you ever attempt to pick them up?

1. Wilmar refers to the location of a Holiday Inn in Minnesota where the hotel declined to accept the

{¶35} "[Jordan] No, absolutely not. That wasn't our agreement.

{¶36} "[Design Wise] You billed them for half the cost.

{¶37} "[Jordan] If they were to keep them, correct."

{¶38} This cross-examination demonstrates that Design Wise was given, and took, ample opportunity to cross-examine Jordan Young regarding the headboard issue.

{¶39} Having found that the headboard issue was tried by the parties implied consent, and that the trial court did not err in finding as such, we will now address the trial court's decision to award damages to Jordan Young.

{¶40} Judgments supported by competent and credible evidence going to all the essential elements of the case will not be reversed by an appellate court as being against the manifest weight of the evidence. *C.E. Morris Co. v. Foley Constr. Co*. (1978), 54 Ohio St.2d 279. Additionally, we have an obligation to presume that the trial court's findings of fact are correct, given the trial court's ability to observe the witnesses' "demeanor, gestures, and voice inflections." *Seasons Coal Co., Inc. v. Cleveland* (1984), 10 Ohio St.3d 77, 80.

{¶41} The trial court found that Jordan Young replaced the headboards and that the value of the nonconforming pieces was $10,242. The court further held that Design Wise "accepted the non-conforming headboards, subject to replacement with conforming headboards and disposal of the non-conforming headboards ***. This essentially establishes a cure in favor of the plaintiff." Given the testimony noted above, the trial court's decision is supported by competent and credible evidence.

{¶42} Specifically, the trial court heard evidence that Jordan Young offered to sell the headboards at a discount price, or to pay for freight to return the items back to

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nonconforming headboards.

its Ohio warehouse. The court also heard evidence from Design Wise's own president that in lieu of sending the headboards back to Jordan Young, it "donated" the nonconforming pieces to its liquidator. While Design Wise presented evidence at trial that it was Jordan Young's responsibility to arrange shipment back to Ohio, the trial court found this testimony less credible than Jordan Young's testimony that it was Design Wise's responsibility to arrange for shipment. As the trial court's findings of fact are presumed correct, the record demonstrates that the trial court's decision to award damages was not in error.

{¶43} Having found that the trial court properly considered the headboard issue, and that its decision was supported by competent and credible evidence, the trial court's decision to grant damages, even in excess of that originally prayed for, was not in error and Design Wise's first three assignments of error are overruled.

{¶44} Assignment of Error No. 4

{¶45} "THE TRIAL COURT ABUSED ITS DISCRETION IN FAILING TO GRANT PREJUDGMENT INTEREST TO APPELLANT."

{¶46} Cross-Assignment of Error No. 1:

{¶47} "THE TRIAL COURT ERRED [sic] FAILING TO SPECIFICALLY GRANT PREJUDGMENT INTEREST IN FAVOR OF APPELLEE/CROSS-APPELLANT UPON THE FULL AMOUNT OF THE JUDGMENT IN ITS FAVOR DETERMINED TO BE 'DUE AND PAYABLE' UNDER THE WRITTEN AND ORAL CONTRACTS."

{¶48} In Design Wise's assignment of error and Jordan Young's cross-assignment of error, the parties claim that the trial court abused its discretion in not awarding prejudgment interest. While the trial court did not abuse its discretion in denying prejudgment interest to Design Wise, it failed to determine a due and payable

date for interest owed to Jordan Young.

{¶49} The right to recover interest is governed by R.C. 1343.03, and this court has held that section (A) is the interest provision related to contract claims. *Hance v. Allstate Ins. Co.,* Clermont App. No. CA2008-10-094, 2009-Ohio-2809, ¶7. According to R.C. 1343.03(A), "when money becomes due and payable *** upon all judgments, decrees, and orders of any judicial tribunal for the payment of money arising out of *** a contract *** the creditor is entitled to interest ***." "Once a plaintiff receives judgment on a contract claim, the trial court has no discretion but to award prejudgment interest under R.C. 1343.03(A)." *Zeck v. Sokol*, Medina App. No. 07CA0030-M, 2008-Ohio-727, ¶44.

{¶50} While the statute's language is mandatory, "this does not mean that a trial court is divested of all discretion in a R.C. 1343.03(A) claim. Instead, this discretion is confined to a determination of when money becomes 'due and payable.'" *Hance* at ¶17. More than mere error of judgment, an abuse of discretion requires that the court's attitude was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶51} After setting forth its legal analysis and conclusions, the trial court entered judgment according to its decision, and in the process ordered "statutory interest" to both parties. Because it did not specifically state the due and payable date, in stating that "statutory interest" was awarded, the default due and payable date would be February 18, 2009, the date of the entry, thereby denying the parties prejudgment interest.

{¶52} In regard to Design Wise, the trial court's holding was not an abuse of discretion. We note first that Design Wise failed to include a request for interest in its

original complaint. Unlike the unplead headboard issue, the parties did not specifically argue the prejudgment interest issue before, during, or after the trial. Having failed to raise the issue with the trial court, Design Wise has waived the preinterest judgment issue on appeal. See *Preload, Inc. v. R.E. Schweitzer Constr. Co*., Hamilton App. Nos. C-030182, C-030215, C-030517, 2004-Ohio-2278 (finding appellant waived prejudgment interest argument by not raising it with the trial court).

{¶53} However, even if Design Wise had specifically requested prejudgment interest, the trial court did not abuse its discretion in denying such. Instead, the record demonstrates that the contract terms were in dispute and that the damages eventually awarded were not due and payable under the contract, as is required by the statute. Instead, the trial court awarded damages for several warranty breaches, and the consequential damages that resulted from Design Wise's actions to correct the damaged furniture when Jordan Young failed to do so.

{¶54} Because the matter was not resolved until the trial court journalized its entry in February 2009, and the damages were not otherwise due and payable under the contract, we cannot say that denying prejudgment interest to Design Wise was an unreasonable, arbitrary, or unconscionable decision. Design Wise's fourth assignment of error is overruled.

{¶55} However, the trial court's failure to establish a due and payable date for the damages owed to Jordan Young was an abuse of discretion. Jordan Young requested damages based on two unpaid contracts. According to the mandatory nature of the statute, once Jordan Young received judgment on its contract claim, the trial court had no discretion but to award prejudgment interest under R.C. 1343.03(A). Unlike the warranty breach and consequential damages awarded to Design Wise, the damages

awarded to Jordan Young were specific to the contract itself.

{¶56} The trial court's judgment entry specifically states, "the court finds that the parties entered into four separate and distinct contracts for the sale and delivery of hotel furnishings at prices formerly set forth with final payments due five days after delivery. There is *due and owing under the contracts* an aggregate amount of $6,237.00." (Emphasis added.) See *Butterfield v. Moyer*, Logan App. No. 8-04-04, 2004-Ohio-5891 (reversing trial court's decision denying prejudgment interest where appellant was awarded damages under the contract).

{¶57} Having found that the damages were due and payable under the contracts, the trial court was statutorily required to establish a date that the contract damages were due and payable so that the prejudgment interest required under R.C. 1343.03(A) could be computed. The trial court's failure to do so requires this court to sustain Jordan Young's first cross-assignment of error and remand so that the trial court can establish a due and payable date and order statutory prejudgment interest accordingly.

{¶58} Cross-Assignment of Error No. 2:

{¶59} "THE TRIAL COURT'S JUDGMENT IN FAVOR OF CROSS-APPELLEE DESIGN WISE FOR REPLACEMENT OF HINGES, IN THE AMOUNT OF $4,961.25, IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶60} In Jordan Young's second cross-assignment of error, it claims that the trial court erred in awarding damages for hinge replacement when evidence of the replacement cost was offered only through excluded evidence. This argument lacks merit.

{¶61} After doors continually fell off of the Romeo nightstands, Design Wise asked Jordan Young to replace the hinges because they were defective. However,

when Jordan Young did not replace the hinges as requested, Design Wise commissioned the replacement of all 248 hinges at a cost of $5,990.62. The trial court found that the faulty hinges were a breach of warranty and awarded Design Wise the full replacement value of the hinges. Jordan Young now claims that the decision was not based on credible, competent evidence because the exhibit that listed the total cost of the hinges was excluded as impermissible hearsay testimony.

{¶62} However, after reviewing the record, the trial court had competent, credible evidence on which it could base its damage award. During the direct examination of Design Wise's President, David Janssen, Design Wise introduced Defendant's Exhibit 26, which was a compilation of emails that discussed the hinge issue and what it would cost to replace them. When Janssen began discussing an email that contained a third party's opinion that the hinges fell off because they were the wrong size, Jordan Young objected to the email as inadmissible hearsay.

{¶63} The trial court agreed that the emails would not be admissible should Design Wise try to use them to prove the truth of the matter asserted, mainly that Jordan Young failed to use properly-sized hinges. However, the record indicates that the trial court later admitted "Defendant's exhibits 1-26" at the close of Design Wise's case. In a post-trial entry overruling Jordan Young's request to limit damages, the trial court referenced "Defendant's Exhibit 2" [sic] and stated that "it is true that the Court sustained plaintiff's objections and excluded the exhibit." However, a review of the record seems to indicate that the trial court sustained Jordan Young's objection only insofar as it applied to the third-party opinion, and otherwise admitted exhibit 26. While the record remains unclear whether exhibit 26 was admitted in part or held fully inadmissible, the ambiguity bears no weight on this issue.

{¶64} Instead, even if exhibit 26 had been excluded in total, the trial court had before it other evidence regarding the replacement costs. During Janssen's direct testimony, he discussed the problems Design Wise encountered as a result of the defective hinges. After explaining that Design Wise was forced to replace all the hinges, the following exchange occurred:

{¶65} "[Janssen] I said I am going to buy the thousand hinges and it will cost roughly whatever is on Exhibit 2.

{¶66} "[Trial counsel] Tell me what it did cost.

{¶67} "[Janssen] These were the costs that were done by the installer. And I sent the quotes directly to [Jordan Young]. For 248 hinges they charged six bucks per hinge per cabinet. And then there was a magnetic close latch down. They charged one buck, approximately 25 center per latch. The European hinge was $3.26 a unit. We had to buy a thousand. That's labor outside of staff labor that helped out on the project. It equaled $5,990.62 to replace 248 hinges."

{¶68} This testimony was also supported by the information contained in Design Wise's Exhibit 2, a properly admitted piece of evidence. Therein, the costs to replace and install the hinges are explicitly listed and support Janssen's testimony that Design Wise paid $5,990.62 to correct the hinge problem. Jordan Young claims that the information contained in exhibit 2 was merely a summary of information "taken solely from" exhibit 26 so that the summary contained in exhibit 2 should be excluded as inadmissible hearsay.

{¶69} However, a close comparison of the two exhibits demonstrates that Design Wise's Exhibit 2 is more than a summary because it contains specific and more detailed information not found in exhibit 26, as well as different pricing and installation charges

than that referenced in the emails that comprise exhibit 26. In fact, the replacement estimation in exhibit 26 is $4,961.25, while the trial court awarded $5,990.62 based on the specific and actual charges detailed in Janssen's testimony and exhibit 2.

{¶70} Further, the information contained in Design Wise's exhibit 26 was also found in Jordan Young's Exhibit 23. There, the court admitted the very email that contained the estimated hinge replacement costs, which also appears in Design Wise's exhibit 26.

{¶71} Based on properly admitted exhibits and testimony, the trial court had competent and credible evidence on which to base its decision, and Jordan Young's second cross-assignment of error is overruled.

{¶72} Cross-assignment of Error No. 3:

{¶73} "THE TRIAL COURT'S JUDGMENT IN FAVOR OF CROSS-APPELLEE DESIGN WISE FOR WARRANTY CLAIMS MADE BEYOND THE ONE-YEAR WARRANTY PERIOD IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶74} In Jordan Young's third cross-assignment of error, it claims that the trial court erred in awarding Design Wise damages for warranty claims made after the one-year warranty period expired. There is no merit to this argument.

{¶75} According to the furniture sales contracts, "JORDAN YOUNG INTERNATIONAL WARRANTS ITS FURNITURE PRODUCTS TO BE FREE OF DEFECTS IN MATERIALS AND WORKMANSHIP FOR A PERIOD OF 1 YEAR FROM DATE OF INVOICING." (Emphasis sic.) Jordan Young now claims that the one-year warranty period had passed before Design Wise communicated the warranty breaches. However, the trial court found that the evidence adduced at trial demonstrated that Jordan Young was aware of the warranty problems before the one-year period expired.

There is no error to this conclusion.

{¶76} The trial court heard testimony from Craig Carlin, who worked for Jordan Young and was the direct sales representative to Design Wise. Carlin testified that he was on location when furniture was delivered to one of Design Wise's furnishing jobs in Wisconsin. According to his testimony, Carlin noticed right away the cloudiness of the granite, broken granite pieces, and the nonconforming headboards. Carlin also testified that he appeared at a Minnesota job site where several more loads of furniture were delivered. Carlin noted that the doors to the night stands were "coming off." According to Carlin's testimony, he informed Jordan Young of the problems in the furniture and continued to communicate Design Wise's complaints as more and more problems in the furniture developed.

{¶77} In addition to several emails dated before the one-year warranty expiration date that contained Design Wise's concerns over the furniture defects, the trial court also heard testimony from Janssen regarding telephone calls to Jordan Young regarding the warranty claims. For example, during cross-examination, Janssen testified that he made phone calls prior to the one-year expiration date, communicating Design Wise's concerns over the faulty hinges. The trial court also noted that Rob Jordan, Jordan Young's acting officer, visited a job site in May 2005 to inspect Design Wise's complaints.

{¶78} Based on the testimony and other evidence submitted at trial, the court had competent and credible evidence before it from which to determine that while some of the work to correct the defects was performed after the one-year expiration, Jordan Young was made aware of the warranty claims before the one-year period terminated. Jordan Young's third cross-assignment of error is overruled.

{¶79} Cross-assignment of Error No. 4:

{¶80} "THE TRIAL COURT ABUSED ITS DISCRETIONS [sic] AND ERRED AS A MATTER OF LAW IN OVERRULING CROSS-APPELLANT JORDAN YOUNG'S MOTION TO DISMISS THE UNTIMELY COMPULSORY COUNTERCLAIMS OF CROSS-APPELLEE DESIGN WISE."

{¶81} In Jordan Young's final cross-assignment of error, it claims that the trial court abused its discretion by allowing Design Wise to amend its pleading to include counterclaims. This argument lacks merit.

{¶82} Although Design Wise's original answer did not contain any counterclaims, the trial court granted Design Wise's motion to amend its pleadings. Jordan Young now asserts that the trial court abused its discretion because according to Civ.R. 13(E) and (F), a party may only amend its pleading to include a counterclaim where that counterclaim matured or was acquired after the pleading, or where the party omitted the counterclaim through oversight, inadvertence, or excusable neglect. However, Civ.R. 13(F) goes on to state that an omitted counterclaim may be added "when justice requires." Additionally, and according to Civ.R. 15(A), "a party may amend his pleading only by leave of court ***. Leave of court shall be freely given when justice so requires."

{¶83} The grant or denial of leave to amend a pleading is within the trial court's discretion and will not be reversed on appeal absent an abuse of that discretion. *Bravard v. Curran*, 155 Ohio App.3d 713, 2004-Ohio-181, ¶14. "Civ.R. 15(A) favors a liberal amendment policy and absent evidence of bad faith, undue delay or undue prejudice, a party's motion for leave to amend should be granted. The primary consideration when deciding whether to grant or deny leave to amend is whether there will be actual prejudice because of delay." *City of Hamilton v. Abcon Const*. (Nov. 24,

1997), Warren App. No. CA97-03-027, 8-9.

{¶84} The trial court did not abuse its discretion in granting leave to amend Design Wise's complaint to include counterclaims. Instead, Design Wise first moved the municipal court in October 2007, a full five months before the case was transferred to the common pleas court, to amend its complaint to include the counterclaims. The municipal court granted the motion, finding that the interests of justice would best be served by allowing Design Wise to file its counterclaims and to have all issues heard and adjudicated without having multiple proceedings.

{¶85} Jordan Young moved the trial court to reconsider the municipal court's ruling, and moved the court to dismiss the amended counterclaims. However, the trial court applied Civ.R. 15(A) and found that the interests of justice required full and final judgment on all claims. The trial court agreed with the municipal court that Design Wise's counterclaims were compulsory and that they related to the underlying events that gave rise to Jordan Young's claims. The trial court further found that Jordan Young would not have been prejudiced by allowing Design Wise to try its counter claims, and that trying all of the claims together would ensure timely resolution of the case.

{¶86} Given the liberal amendment policy of Civ.R. 15(A), taken in consideration with the fact that the counterclaims were compulsory, Jordan Young was not prejudiced, and the record does not indicate that Design Wise acted in bad faith or caused undue delay, the trial court's decision to grant Design Wise's motion to amend was not arbitrary, unreasonable, or capricious. Having found no abuse of discretion, Jordan Young's final cross-assignment of error is overruled.

{¶87} Judgment affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion.

YOUNG, P.J., and POWELL, J., concur.