

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Matt Fisher d/b/a Plumbway Plumbing

Court of Appeals No. L-11-1200

Appellee

Trial Court No. CI0201001146

v.

Landmark Development Co., et al.

DECISION AND JUDGMENT

Appellants

Decided: September 14, 2012

* * * * *

Arnold L. Gottlieb, for appellee.

Christopher F. Parker, for appellants.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a July 12, 2011 judgment of the Lucas County Court of Common Pleas, in favor of appellee. For the reasons set forth below this court affirms, in part, and reverses, in part the judgment of the trial court.

{¶ 2} Appellants set forth the following five assignments of error:

1. THE TRIAL COURT ERRED IN ENTERING JUDGMENT
AGAINST BAJA INVESTMENTS, LLC

2. THE TRIAL COURT ERRED IN ENTERING JUDGMENT
AGAINST 3310 WOODVILLE ROAD DEVELOPMENT, LLC

3. THE TRIAL COURT ERRED IN ITS DAMAGE AWARD ON
THE LANDMARK DEVELOPMENT, CO. COUNTERCLAIM

4. THE TRIAL COURT ERRED IN ITS DAMAGE AWARD
AGAINST LANDMARK DEVELOPMENT, LLC FOR WORK AT 3310
WOODVILLE ROAD

5. THE TRIAL COURT ERRED IN ITS DAMAGE AWARD
AGAINST LANDMARK DEVELOPMENT, LLC FOR WORK AT 3644
BOULDER RIDGE

{¶ 3} Appellant, Landmark Development Company (“Landmark”), is a property developer based in Northwestern Ohio. Appellee is a commercial contractor who performed various construction improvement projects on appellants’ properties. However, appellants failed to pay appellee for work performed on certain properties.

{¶ 4} Prior to this litigation, appellants and appellee had an established working relationship in connection with various development projects. In October 2007, faced with mounting bills issued to appellants but unpaid, appellee ceased all work for appellants. Appellee had submitted bills for work performed on multiple properties

owned by appellants, which had gone unpaid. In addition to not paying the subject contractor bills, appellee was directed to vacate an ongoing job construction site. Subsequent to these events, appellee sued for the outstanding balances owed on each of the jobs.

{¶ 5} Baja Investments, LLC (“Baja”), is a wholly owned subsidiary of Landmark. It owned commercial property located at 1500 Holland Road in Maumee, Ohio. Landmark served as a consultant to Baja for the tenant lined up to occupy the property. Appellee was hired to perform demolition work at the site and remove debris. On March 6, 2007, appellee began work at the Holland Road site. During the course of the work, appellee was never notified in any way that the work that had been performed was unsatisfactory. Consistent with this, appellee’s work passed the requisite inspections. In October 2007, appellee ceased all work given the unpaid, outstanding bills, totaling \$2,447.00.

{¶ 6} In addition to the above, while working at a property under construction at 3644 Boulder Ridge, in the Quarry subdivision in Monclova Township, appellee was directed to leave the job site without explanation. The record reflects that no problems or issues with the work that had been performed were conveyed to appellee during the Boulder Ridge project. At the time appellee was asked to leave the premises, the bulk of the work had been completed. The only task remaining for appellee to complete was to hook up plumbing fixtures. The cost of the work appellee performed was \$4,500. It was not paid.

{¶ 7} At appellants' commercial property located at 3310 Woodville Road, appellee's job was to perform construction work required in order to get the property ready for a potential salon tenant. The record reflects that appellee's work was properly completed on a time and material basis. Appellee submitted numerous invoices for the work he completed at the site. The bills were not paid.

{¶ 8} Following a bench trial, a verdict in favor of appellee was entered on all three causes of action. Appellants raise five assignments of error. All assignments are prefaced upon the same contention. Appellants contend that the trial court erred in ordering payment to be made to appellee for the work performed on the above described properties.

{¶ 9} In reviewing a disputed judgment, this court must be guided by the principal that judgments supported by competent, credible evidence must not be reversed as being against the manifest weight of the evidence. *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279, 279, 376 N.E.2d 578, 578 (1978). Every reasonable presumption must be made in favor of the judgment. *Seasons Coal Co., Inc. v. City of Cleveland*, 10 Ohio St.3d 77, 80, 461 N.E.2d 1273, 1276 (1984).

{¶ 10} In appellants' first assignment of error, appellants challenge the judgments that were rendered against Baja Investments, LLC. Appellee concedes that the judgment in the third cause of action should only be against Landmark Development. Baja Investments, LLC was never named as a party to that action. As such, this assignment of error is well-taken.

{¶ 11} Appellants' second and fourth assignments of error are similar in nature and will be addressed simultaneously. Appellants' second and fourth assignments state that appellee should not have received a judgment for work performed in connection to the commercial project at 3310 Woodville Road. We find this argument to be without merit. 3310 Woodville Road Development, LLC was the owner of the property located at 3310 Woodville Road. This fact is undisputed. It is equally undisputed that appellee performed and completed various construction services that were requested by appellants. Appellants clearly received the benefits of these services. The property was improved. Nevertheless, they failed to compensate appellee. The record contains ample evidence in support of the Woodville Road judgment in favor of appellee. The second and fourth assignments of error are not well-taken.

{¶ 12} The third assignment of error takes issue with the decision to award only portions of the damages claimed by Landmark in its counterclaim. However, the record contains ample evidence in support of a limited, partial award on the counterclaim. Specifically, the trial court did not grant any damages for appellee's failure to winterize the boiler at the 1500 Holland property. However, the record contains no evidence that appellee was ever instructed to winterize the boiler. In addition there was no evidence in this case that Landmark suffered any loss. Wherefore, we find the third assignment of error not well-taken.

{¶ 13} The fifth and final assignment of error takes issue with the amount of the damages awarded for work performed at 3644 Boulder Ridge. The trial court granted

appellee \$4,500 for the work. Appellants claim that appellee fell far short of finishing the relevant plumbing work at the location. On the contrary, appellee testified that the only thing left to be done was the final installation of the fixtures. Appellants offered no evidence contradicting appellee's claim of nearly completed work. As such, we find the fifth assignment of error not well-taken.

{¶ 14} On consideration whereof, the judgment of the Lucas County Court of Common Pleas is affirmed, in part, and reversed, in part. Appellants are ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed, in part,
and reversed, in part.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Arlene Singer, P.J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.