[Cite as *Kapusta v. Dad & Sons, Inc.*, 2010-Ohio-4888.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93886

LOUIS J. KAPUSTA

PLAINTIFF-APPELLEE

vs.

DAD & SONS, INC.

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Civil Appeal from the
Garfield Heights Municipal Court
Case No. CVI 0805191

BEFORE: Stewart, P.J., Boyle, J., and Sweeney, J.

RELEASED AND JOURNALIZED: October 7, 2010

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MELODY J. STEWART, P.J.:

{¶ 1} Defendant-appellant, Dad & Sons, Inc., appeals from a Garfield Heights Municipal Court judgment finding that appellant installed a new roof in an unworkmanlike manner and awarding plaintiff-appellee, Louis Kapusta, damages in the amount of $3,000. For the following reasons, we affirm.

{¶ 2} In mid-2000, appellee contracted with appellant to tear off the existing roof on his home and install a new roof. The new roof was installed and appellee paid the contract price of $5,400. After several years appellee called appellant complaining of leakage near the eaves. Appellant responded and inspected the roof but found no defects. Appellee contacted appellant

again in the winter of 2005-2006 to complain about leaks. When appellee did not get satisfaction from appellant, he contracted with Hinckley Roofing, Inc. ("Hinckley") to make the necessary repairs. The repairs were completed in September 2006 at a cost of $3,195.

{¶ 3} In December 2008, appellee filed a small claims complaint alleging that appellant failed to install the roof in a good and workmanlike manner. A small claims trial was held, after which the trial court issued a judgment entry in appellee's favor, awarding damages in the amount of $3,000. Appellant timely appeals raising two errors for review.

{¶ 4} In the first assignment of error, appellant asserts that the judgment is against the manifest weight of the evidence. Relying on the testimony of Dennis Glendenning, the company president, appellant claims its work was performed according to industry standards and in a good workmanlike manner and that any damage sustained was the result of extreme weather conditions causing the formation of ice dams on the roof. Appellant relies on a University of Minnesota article on the causes of ice dams and argues that damage to the roof might have been avoided if appellee had followed appellant's recommendation and had roof vents installed in 2000 with the new roof. Appellant notes that Hinckley installed roof vents as part of its repairs. Appellant also challenges the credibility of the testimony of Ed Walkuski, Hinckley's president, and argues that his conclusions are based

upon an erroneous assumption that the roof was only one year old when he inspected it in 2006.

{¶ 5} "Judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence." *C.E. Morris v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, 376 N.E.2d 578, at syllabus. In making this review, an appellate court must be guided by the presumption that the findings of the trier of fact are correct. *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77, 79-80, 461 N.E.2d 1273. "The underlying rationale of giving deference to the findings of the trial court rests with the knowledge that the trial judge is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony." Id. at 80.

{¶ 6} While there is no trial transcript available in this case, appellant has provided a statement of the evidence or proceedings according to App.R. 9(C), that was approved by the trial court. According to the 9(C) statement and the exhibits admitted at trial, appellee contacted Hinckley in August 2006 complaining of leaks occurring around the bay window, gutter line, and around the chimney. Walkuski inspected the roof and concluded that it had been improperly installed. He testified that there was improper ice guard

installation along the chimney, improper flashing around the chimney, and rotting wood in the chimney area. He also found that appellant had not torn off all of the existing roofing, but had installed the new roof over more than two existing layers of shingles around the bay window. He also concluded that the ice guard had been improperly installed around the window as well. He stated that as a result of the improper installation, water was going behind the fascia metal and then behind the bay window flashing and ultimately leaking into the home. At appellee's request, Hinckley repaired the roof in September 2006. Appellee testified that he has had no problems with the roof since that time.

{¶ 7} This case pits two roofing contractors against each other, with each offering conflicting opinions as to why appellant's roof leaked. Appellant's witness blamed extreme winter weather and appellee's refusal to install roof vents. Appellee's witness blamed appellant's work performance and pointed to specific examples of improper installation. In such cases, it is best left to the trial court to weigh the evidence and determine the credibility of the witnesses. *Seasons Coal Co. v. Cleveland*; *State v. DeHass* (1967), 10 Ohio St.2d 230, 227 N.E.2d 212. We find there is competent, credible evidence in the record to support the trial court's judgment finding appellant liable for the defects in the roof and responsible for the costs of repair. Accordingly, the first assignment of error is overruled.

{¶ 8} In the second assignment of error, appellant challenges the trial court's award of damages. Appellant argues that even if found liable for installing appellee's roof in an unworkmanlike manner, the work performed by Hinckley far exceeded any remedial work that may have been needed. Appellant contends that certain items of work performed by Hinckley constitutes additional work and materials not contemplated by the parties at the time they negotiated the contract for the new roof. Appellant argues that this places appellee in a significantly better position than the one to which he was entitled.

{¶ 9} When a builder or contractor breaches its implied duty to perform in a workmanlike manner, the cost of repair is the proper measure of damages. *McKinley v. Brandt Constr., Inc.*, 168 Ohio App.3d 214, 2006-Ohio-3290, 859 N.E.2d 572, at ¶10; *McCray v. Clinton Cty. Home Improvement* (1998), 125 Ohio App.3d 521, 523, 708 N.E.2d 1075. "[T]he repair of deficient work may involve both additional activities necessitated by the deficient work, and activities previously omitted, but necessary, to proper performance in a workmanlike manner." *Barton v. Ellis* (1986), 34 Ohio App.3d 251, 254, 518 N.E.2d 18.

{¶ 10} Appellee offered appellant the opportunity to repair the leaks in the roof it had installed. Appellant declined. Appellee's witness provided both oral testimony and a written estimate of the cost to repair the defective

work performed by appellant. He justified the need for the additional work and materials. Thus, there exists competent and credible evidence in the record to support the judgment of the trial court on the amount of damages awarded. While appellant challenges the need for the additional work and argues that Hinckley's estimate included unnecessary and redundant repairs in order to "gouge" appellee, the weight to be given the evidence and the credibility of the witnesses are primarily for the trier of fact. *Seasons Coal Co. v. Cleveland*; *State v. DeHass*. Because the cost of repairs exceeded the jurisdiction of the small claims court, the trial court properly reduced the damage award to conform to the court's jurisdiction. Finding no error in the amount of damages awarded, the second assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover of appellant his costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Garfield Heights Municipal Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MELODY J. STEWART, PRESIDING JUDGE

MARY J. BOYLE, J., and

JAMES J. SWEENEY, J., CONCUR