

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2013 CA 0822

CHAD B. BORDELON

VERSUS

DAVID M. PAGLIARULO AND  
PAGLIA HOLDINGS, L.L.C.

CONSOLIDATED WITH

2013 CA 0823

MICHAEL AND LISA ORLANDO

VERSUS

DAVID M. PAQLIARULO

Judgment Rendered: DEC 27 2013

\*\*\*\*\*

Appealed from the  
22nd Judicial District Court  
In and for the Parish of St. Tammany, Louisiana  
Trial Court Numbers 2007-12579 c/w 2007-12789

Honorable Martin E. Coady, Judge

\*\*\*\*\*

Craig J. Robichaux  
Alexandra D. Area  
Mandeville, LA

Attorneys for Appellee  
Plaintiff – Chad B. Bordelon

Stephen K. Conroy  
Rebecca Fenton Henderson  
Metairie, LA

Attorneys for Appellants  
Defendants – David M. Pagliarulo  
and Paglia Holdings, L.L.C.

\*\*\*\*\*

**BEFORE: WHIPPLE, C.J., WELCH, AND CRAIN, JJ.**

**WELCH, J.**

Defendants, David Pagliarulo and Paglia Holdings, L.L.C., appeal a trial court's judgment on a promissory note in favor of plaintiff, Chad B. Bordelon, seeking an increase in the amount of reimbursement awarded by the trial court to offset the amount due on the promissory note. We affirm.

**BACKGROUND**

On June 8, 2007, Mr. Bordelon instituted this suit on a promissory note executed in his favor by Mr. Pagliarulo and his company, Paglia Holdings, L.L.C. (sometimes collectively referred to as "Mr. Pagliarulo"). The note was executed in connection with Mr. Bordelon's sale of an unfinished residence to Mr. Pagliarulo. Mr. Pagliarulo asserted that the note was invalid because of a lack of consideration and because the terms were uncertain. He also filed a reconventional demand seeking to offset any amount due on the note based on alleged construction defects in the home that allowed water to seep into the home, causing damage to its interior. Mr. Pagliarulo asserted that there were defects in the initial design of the home because the foundation of the house was built nearly seven feet below the elevation of the street and dirt was piled against the foundation and exterior walls, thereby creating a moisture problem. He further asserted that the exterior walls were never sealed and waterproofed, adding to the failure of the initial design.<sup>1</sup>

The record reflects that Mr. Bordelon had been a licensed contractor and the owner of various construction companies since 1995. In 1999, one of his companies purchased a lot at 1159 Hardy Drive in Covington, Louisiana. The lot was subsequently transferred to another of Mr. Bordelon's companies, Bordpell, LLC, in 2005. Some time in 2005, Mr. Bordelon began construction on the home in question. The home had a unique split-level design because it was on a street

---

<sup>1</sup> The instant lawsuit was consolidated with a lawsuit filed by Michael and Lisa Orlando against Mr. Bordelon and Mr. Pagliarulo. After trial, judgment was entered dismissing the Orlandos' lawsuit with prejudice; that judgment has not been appealed.

that backed up to a river, and the lot upon which it was to be constructed sloped drastically from front to rear. It was designed so that the first floor would be a basement and the living area would be the second floor. The design encompassed a drainage system that would take the water away from the home and into the river.

Some time shortly before August 29, 2005, the date on which Hurricane Katrina hit Louisiana, Mr. Bordelon decided to get out of the construction business. He closed up the home and sought to find a buyer for it. He stated that at the time he ceased construction, the "bones of the house" had been built: the physical structure was there; most of the sheet rock had been hung, and the home had been "roughed in." Additionally, prior to abandoning the project, Mr. Bordelon had begun construction on a French drainage system. He dug the trench below the grade of the slab, installed a sock pipe, extended it to the back of the home, and put some rocks to hold the sock pipe down during construction. A cinder block wall had been constructed, which Mr. Bordelon claimed was sealed with block sealer. Mr. Bordelon testified that the French drainage design contemplated that once construction was completed outside, a temporary wall would have been built on the back side where rocks could be installed, then landscaping was to be installed. All of this work would have been done in connection with the final grade of the property. At the time Mr. Bordelon abandoned the project, the final grade had not been done, and Mr. Bordelon denied ever having piled dirt up against the retaining wall of the home. According to Mr. Bordelon, the drainage system was 100% incomplete at the time he sold the unfinished home to Mr. Pagliarulo because water and wind from Hurricane Katrina had caused the sock pipe to ride up and to have humps in it, requiring that the sock pipe be taken out, re-dug, re-graded, and put back in.

Mr. Pagliarulo, an acquaintance of Mr. Bordelon, like Mr. Bordelon, was engaged in the business of "flipping" houses. Mr. Pagliarulo, who was not a

licensed contractor at the time, agreed to purchase the home from Mr. Bordelon. The parties agreed that the purchase price would be the amount owed by Mr. Bordelon at that time on the line of credit used in connection with the home's construction (approximately \$380,000.00), and that Mr. Bordelon would be paid a sum of money on top of that amount. The record reflects that on July 12, 2006, almost a year after Mr. Bordelon abandoned the construction project, Mr. Bordelon's company sold the Hardy Drive property to Mr. Pagliarulo's company for the sum of \$383,193.96. Although there was some dispute as to the exact amount Mr. Pagliarulo agreed to pay Mr. Bordelon, the record reflects that on June 12, 2006, Mr. Pagliarulo and his company executed a promissory note in the amount of \$26,781.04 in favor of Mr. Bordelon, to be due and payable at the closing of the sale of the Hardy Drive property or 30 days after an occupancy permit had been received from local officials, whichever was first.

Prior to purchasing the property, Mr. Pagliarulo hired two inspectors to conduct inspections of the home and also personally inspected the home. During one inspection, mold was discovered in the garage and a mold remediation company was hired to remedy the problem. It was undisputed that prior to purchasing the home, Mr. Pagliarulo was concerned that it would have a drainage problem. He expressed this fear to Mr. Bordelon, who advised Mr. Pagliarulo to call Mike France, the landscaper who initially installed the sock pipe, in order to complete the French drain. Mr. Pagliarulo called Mr. France, who advised him that he would come out to replace the sock pipe. Mr. Pagliarulo decided that was not the proper course to take, and he hired a certified drainage expert, who dug up the existing sock pipe system and replaced it with a plastic PVC drain, and covered it with pebbles and rocks to give it a layer of protection.

Mr. Pagliarulo testified that during his inspection of the home, dirt had been piled up on top of the French drain, which sat on a bed of rocks, and which was

covered with another bed of rocks. He acknowledged that the actual landscaping and the additional dirt to bring the property to grade, in order to direct water, was done while he was completing construction of the home.

On March 22, 2007, a certificate of occupancy was issued to Bordelon Construction for the Hardy Drive property by the St. Tammany Parish Department of Permits & Regulatory. It is undisputed that Mr. Pagliarulo did not pay Mr. Bordelon any amount owed on the promissory note thereafter.

On May 29, 2007, Mr. Pagliarulo's company sold the Hardy Drive property to Richard and Elizabeth Hart for \$625,000.00. Subsequently, the Harts made a demand on Mr. Pagliarulo and Mr. Bordelon to repair numerous alleged defects uncovered after the sale of the home, including: (1) improper grading of the property which caused water and runoff to be directed to the home and which caused dirt to be piled up against the stucco; (2) lack of water proofing around the perimeter of the home which allows water to intrude into the walls and home; (3) improper drainage around the home which contributed to the overall water intrusion; (4) lack of proper sealing and/or defective workmanship which allowed water to intrude into the storage area in the garage; (5) improper sealing of the exterior stucco; (6) substandard workmanship on the driveway; (7) separation of the rear patio from the slab of the house; (8) defective support for the rear deck and roof; (9) defective craftsmanship of the front steps; (10) lack of an installed security system; (11) inadequate exterior paint which was applied in multiple shades; and (12) lack of tiling in two closets.

On August 8, 2007, Aldridge Construction prepared an estimate for repairs to the home. This repair estimate sets forth a lump sum amount of \$67,775.00 and sets forth 23 repair items, including landscaping repairs, repair of the drainage system, and interior repairs. It encompasses removing the soil in the rear of the home, building a retaining wall, installing a French drainage system below the

slab, and exposing all cinder blocks and waterproofing them. The estimate also includes, among other things, installing a sump pump and electrical lines for it, building a retaining wall around a sewer station, re-pouring the slab for the stairs, and rebuilding the stairs. It further encompasses interior work, including repairing sheet rock wall bulge and repainting, removing molding and sheet rock to inspect for mold and replacing the sheetrock. Lastly, there is a notation that an additional \$1,450.00 would be added if the subdivision did not install a culvert. There is no itemization of the cost for any of the recommended repairs in the estimate.

On February 22, 2008, Mr. Pagliarulo settled with the Harts regarding their defect claims for the sum of \$55,000.00. According to Mr. Pagliarulo, he had expended about \$10,000.00 in remedying the Harts' demands before Mr. Aldridge prepared his report. He insisted that the \$55,000.00 settlement primarily remedied the water intrusion issues.

At trial, Mr. Pagliarulo offered the deposition testimony of Harley Nethken, a licensed civil engineer. Mr. Nethken was originally hired by the Harts to address water intrusion into the lower level of the home after a rain. Mr. Nethken inspected the home at the Harts' request on June 6, 2007. According to Mr. Nethken, because of the split-level design of the home, the majority of the lower exterior walls acted as both a supporting wall and a retaining wall. According to Mr. Nethken, the fact that water had been leaking into the lower level of the home after a rain called into question the construction of the retaining wall. Mr. Nethken was able to see the top couple of feet of the retaining wall because it had been exposed due to the remediation efforts underway at the time of his inspection. He observed that the exterior of the retaining wall was covered with a white substance he assumed to be paint and then covered with pieces of loosely attached building paper, which he stated was not a proper waterproofing system. He was unable to observe the method of waterproofing on the other portion of the retaining wall

because it was still intact. Mr. Nethken concluded that the lack of proper waterproofing along the exterior retaining wall allowed water to seep into the walls along the lower slab surface.

According to Mr. Nethken, three components are involved in properly waterproofing a structure that is below grade. First, there must be adequate site preparation and an adequate drainage system outside the home to keep as much water away from the home as possible. An air space must be created so that the water can go through the air space, through the drainage system, and be discharged off site. Additionally, a moisture/vapor barrier must be created by sealing the pores of the concrete block. During his inspection, Mr. Nethken did not see evidence of anything having been placed between the dirt and the retaining wall, such as a gravel layer, to act as an air space. Mr. Nethken testified that he would expect all of the barriers to be in place at the time the backfill was placed up against the retaining wall.

Mr. Nethken stated that his typical retaining wall waterproofing designs incorporate a French drain at the bottom of the foundation in conjunction with the other components. In his report, he noted that he observed other areas of distress during his inspection, the cause and the severity of which could not be easily determined, including the front entrance stairs, the rear patio, and the overall alignment of the wall relative to the edge of the slab. In his report, Mr. Nethken concluded that the remediation proposal by Aldridge Construction seemed to be "reasonably relevant to the problem." During his deposition, he added that the report seemed reasonable and that he had no real comments regarding it.

The trial court entered judgment in favor of Mr. Bordelon, awarding him \$16,784.04 on the promissory note, interest, and attorney's fees. The award reflected the amount owed on the note, \$26,784.04, minus \$10,000.00, which the court applied as a setoff against the amount owed by Mr. Pagliarulo on the note for

defects associated with waterproofing. In setting the reimbursement award, the court found that there had been evidence presented on “waterproofing” and “the drainage system” as two separate items. The court stated that there was evidence showing that there were issues with the waterproofing of the home, such as the exterior surface of the retaining wall having been covered with loosely attached building paper, which Mr. Nethken opined caused damage to the interior of the home. Thus, the court found that Mr. Bordelon was responsible as a good faith seller of the home to Mr. Pagliarulo for a portion of the subsequent repairs as Mr. Pagliarulo had presented evidence through the testimony of Mr. Nethken that some of the problems with the home originated from the original waterproofing. However, the court found that the evidence showed that Mr. Pagliarulo was aware of the potential drainage issue prior to sale, and it concluded that Mr. Bordelon was not responsible for any damage caused by the drainage system because there were changes made to the system following Hurricane Katrina that could not be attributable to Mr. Bordelon.

Mr. Pagliarulo appealed, contending that the trial court’s award of \$10,000.00 to him for construction defects is not reasonably supported by the record and constitutes an abuse of discretion. He insists that expert testimony at trial established that the mitigation and proper installation of water proofing will cost \$69,225.00. Although acknowledging that he initially sought reimbursement for defective waterproofing and an inadequate drainage system, Mr. Pagliarulo notes in brief that this appeal relates only to the defects associated with waterproofing the property.

After a thorough review of the record, we find no abuse of the trial court’s discretion in awarding Mr. Pagliarulo \$10,000.00 for the cost of repairs due to the waterproofing issues. The repair estimate upon which Mr. Pagliarulo relies to support his contention that the proper amount he is owed is \$69,225.00 is a lump



sum estimate for numerous problems associated with the home constructed by Mr. Bordelon and Mr. Pagliarulo. The repair estimate clearly encompasses replacement of the existing drainage system, which the trial court held Mr. Bordelon was not responsible for. Mr. Pagliarulo has not contested that factual finding in this appeal. It was simply impossible for the trial court to determine, from the relied-upon estimate, the cost of the repairs attributable to problems with the drainage system, for which Mr. Bordelon was held not to be accountable, and the cost of repairs resulting from the failure to apply waterproofing material to the cinder blocks, for which Mr. Bordelon was held to be accountable. In light of the evidence submitted to the trial court, we find the \$10,000.00 award to Mr. Pagliarulo to be entirely reasonable and within the trial court's discretion. Therefore, we may not disturb the reimbursement award.

#### **CONCLUSION**

For the foregoing reasons, the judgment appealed from is affirmed. All costs of this appeal are assessed to appellants, David Pagliarulo and Paglia Holdings, L.L.C.

**AFFIRMED.**