NOT DESIGNATED FOR PUBLICATION

GEORGE PRICE AND SARAH PRICE	*	**NO. 2002-CA-0353**
	*	**COURT OF APPEAL**
VERSUS		
	*	**FOURTH CIRCUIT**
SPA AND TUB WORLD, INC., D/B/A SPA 'N TUB WORLD, INC., ITS UNKNOWN INSURER, XYZ INSURANCE COMPANY, FOUR SEASONS SOLAR PRODUCTS CORP., AND ITS UNKNOWN INSURER, XYZZ INSURANCE COMPANY	*	**STATE OF LOUISIANA**
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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 96-10443, DIVISION "C-6"
HONORABLE ROLAND L. BELSOME, JUDGE
* * * * * *
JUDGE MAX N. TOBIAS, JR.
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(COURT COMPOSED OF JUDGE CHARLES R. JONES, JUDGE MICHAEL E. KIRBY, AND JUDGE MAX N. TOBIAS, JR.)

JONES, J., DISSENTS WITH REASONS

CATHERINE J. SMITH
1501 SHIRLEY DRIVE
NEW ORLEANS, LA 70114
COUNSEL FOR PLAINTIFF/APPELLANT

GEORGE E. ESCHER
ONE GALLERIA BOULEVARD

SUITE 1610
METAIRIE, LA 70001
COUNSEL FOR DEFENDANT/APPELLEE

AFFIRMED.

The plaintiffs, George and Sarah Price, appeal from a judgment awarding them damages for a defectively installed sunroom, contending that the award was inadequate in light of the evidence presented. After reviewing the record, and finding no manifest error or abuse of discretion on the part of the trial court, we affirm the judgment.

On 29 November 1995, the Prices contracted with the defendant, Spa 'N Tub World, to build a sunroom addition to their home located at 25 Chatham Drive in New Orleans. Spa 'N Tub World's executive officer, Gary C. Landrieu, supervised the construction. During construction, Mr. Landrieu noticed that the old roof was defective and needed extensive repairs; this information was conveyed to the plaintiffs. The addition was completed on 14 February 1996; thereafter the plaintiffs purchased and installed a hardwood floor for the sunroom. On 19 February 1996, the Prices saw and reported to the defendant that water appeared to be leaking

from seams and skylights in the sunroom when it rained, resulting in substantial damage to the hardwood floor. The defendant sent workers to locate and repair the leak in the structure; the repair was completed on 23 February 1996. Subsequently, the plaintiffs replaced the floor.

The record reveals that the defendant's first attempt to repair the leak was unsuccessful. Although the defendant performed further repairs, the structure continued to leak, causing additional damage.

The matter was tried on 25 April 2001. On 18 May 2001, the trial court rendered judgment in favor of the plaintiffs in the amount of $20,000.00. The judgment was amended on 1 October 2001 to include interest from the date of judicial demand, costs, and expert witness fees. In its reasons for judgment, the trial court acknowledged the poor condition of the original roof, but found that Spa 'N Tub World had a duty to notify the Prices of the condition or refuse to add the sunroom because of the possibility that the poor condition of the original roof of the dwelling would adversely affect the addition, while causing further damage to the original roof. Additionally, the trial court stated:

> It is the opinion of this Court that the installation of the sunroom created a condition which caused

> the original roof to more rapidly deteriorate. This Court finds that the sunroom structure is defective both in workmanship and materials. The design allowed for water to back up due to an inadequate drainage system. Even though the structure is prefabricated and comes with specifications for installation which Mr. Landrieu contends were followed he is not absolved from liability.

In their first assignment of error, the plaintiffs argue that they presented uncontroverted evidence that their actual damages were in the range of $55,000.00 to $60,000.00, and therefore, the trial court abused its discretion in only awarding $20,000.00. In response, the defendant contends that the plaintiffs were properly compensated for their losses.

In support of their claim, the plaintiffs presented the expert testimony of architect James R. Washington, Jr. Mr. Washington testified that the addition of the sunroof caused a water leak that was a water source for termites. He also testified that the water damage spread from the addition throughout the main roof by capillary action. Mr. Washington's opinions *presumed the absence of any pre-existing water or termite damage to the old roof*, although he conceded that he did not see the roof until 10 March 2001, less than two months before the trial.

The defendant's expert, Neil B. Hall, an architect and civil engineer, testified that the old roof in the area adjacent to the sunroom addition had pre-existing apertures, and other defects, which resulted in the absorption of

water. Contributing to the absorption was the fact that the roof was flat, which did not allow for proper water runoff. Mr. Hall testified that it was the water absorption, and not the addition, which most likely caused the water and termite damage to the home. However, he admitted that the construction of the sunroom addition slightly damaged the old roof and should have been considered prior to construction. Further, Mr. Hall thought the sunroom gutters were poorly designed, and could cause water back up with excessive leaf accumulation.

Mr. Washington initially estimated the cost of repairs to the Price home at $15,000.00 to $20,000.00 with the cost of replacing the addition bringing the total to $35,000.00 to $40,000.00. He later adjusted this estimate to $55,000.00 to $60,000.00, because the damage to the older part of the home was more extensive than he originally thought. On the other hand, Mr. Landrieu, a licensed contractor, testified that the original cost of the addition was $7,600.00 and that it would cost $200.00 to $300.00 to remove it.

A plaintiff is required to prove special damages by a preponderance of the evidence, and the findings of the trier of fact are subject to the manifest error standard of review. *Johnson v. State, Department of Public Safety and Corrections*, 95-0003, p. 8 (La. App. 1 Cir. 10/6/95), 671 So.2d 454, 459.

Here, the trial court was presented with conflicting evidence as to the extent of roof damage *preceding* the addition and that the cost of repairing the damage most likely related to the construction. We find that the trial court did not commit manifest error.

The plaintiffs' second assignment of error is that the trial court did not award general damages for inconvenience and loss of enjoyment of their home. Because the trial court did not itemize the damage award, we cannot say what part of the $20,000.00, if any, is for general damages. However, since the trial court had evidence before it from Mr. Landrieu that the cost of the addition was $7,600.00 and would cost $300.00 to remove, by implication, the differential between the $7,900.00 and $20,000.00 could be viewed as an award of $12,100.00 for general damages. In any event, vast discretion is accorded the trier of fact in fixing general damage awards. La. C. C. art. 2324.1. We do not find that the trial court abused

its vast discretion in its award to the plaintiffs. Accordingly, we affirm the trial court and assess all costs of this appeal to the plaintiffs.

AFFIRMED.