STATE OF MICHIGAN

COURT OF APPEALS

YOLANDA PARSON,

Plaintiff/Counter-Defendant-Appellant,

v

URBAN INSURANCE ADJUSTERS, INC. and LAMARC BUILDERS, INC.,

Defendants/Counter-Plaintiffs-Appellees,

and

WAYNE WALLER, SR. and MARCUS R. WALLER,

Defendants.

UNPUBLISHED
October 23, 2007

No. 273098
Wayne Circuit Court
LC No. 04-403230-CK

Before: Bandstra, P.J., and Talbot and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting the corporate defendants' motion for judgment notwithstanding the verdict. We affirm in part, reverse in part, and remand.

After plaintiff's rental property was damaged by fire in January 2003, she retained defendant Urban Insurance Adjusters, Inc., to settle the claim with her insurance company, Michigan Basic, and retained defendant LaMarc Builders, Inc., to perform repairs and renovations. She contended that defendants breached their contracts. The jury agreed and awarded plaintiff $5,117.50 against Urban and $45,000 against LaMarc. The trial court determined that plaintiff failed to prove that either defendant breached its contract and granted defendants' motion for judgment notwithstanding the verdict.

The trial court's ruling on a motion for judgment notwithstanding the verdict is reviewed de novo on appeal. *Craig v Oakwood Hosp,* 471 Mich 67, 77; 684 NW2d 296 (2004). In conducting its review, this Court is to "review the evidence and all legitimate inferences in the light most favorable to the nonmoving party. Only when the evidence viewed in this light fails to establish a claim as a matter of law is the moving party entitled to judgment notwithstanding

the verdict (JNOV)." *Id.* (footnotes and internal quotation marks omitted). "When the evidence presented could lead reasonable jurors to disagree, the trial court may not substitute its judgment for that of the jury." *Foreman v Foreman*, 266 Mich App 132, 136; 701 NW2d 167 (2005).

"To state a breach of contract claim under Michigan law, a plaintiff must first establish the elements of a valid contract." *In re Brown*, 342 F3d 620, 628 (CA 6, 2003). There is no dispute that the parties entered into valid contracts. "Once a valid contract has been established, a plaintiff seeking to recover on a breach of contract theory must then prove by a preponderance of the evidence the terms of the contract, that the defendant breached the terms of the contract, and that the breach caused the plaintiff's injury." *Id.*

Plaintiff's contract with Urban required Urban to "represent and assist in the adjustment and collection from the Insurance Company interested in claim for loss or damage by Fire which occurred on" January 5, 2003 at 515/517 Crawford in exchange for "10% of the amount of such claim paid." There is no dispute that Urban submitted a claim to Michigan Basic or that Michigan Basic settled the claim and issued two checks payable to plaintiff and other interested parties, one in the amount of $60,080, and one in the amount of $5,716.62. There is no evidence that Urban retained anything other than its ten percent commission of the larger check. Plaintiff testified that she received $5,125 from the second check, which is $20 less than 90 percent of $5,716.62. Such evidence, when viewed in a light most favorable to plaintiff, showed that Urban breached its contract by retaining $20 more than it was entitled under the contract. Therefore, the trial court erred in granting Urban's motion for JNOV. Instead, the court should have either granted Urban a new trial on the ground that the verdict of $5,117.50 was grossly excessive, MCR 2.116(A)(1)(d), or denied Urban's motion for new trial on the condition that plaintiff consent in writing to the entry of judgment in the amount of $20, the highest amount the evidence supports. MCR 2.611(E)(1).

Plaintiff's contract with LaMarc required it "to make all necessary repairs caused by a fire occurring on" January 5, 2003 at 515/517 Crawford in exchange for the insurance proceeds for the fire loss. The necessary repairs were the specifications approved by the owner before the work started. It was agreed that "the property damaged by fire is to be restored to as good a condition or better than existed before the fire for the amount of the adjusted claim."

Plaintiff approved the specifications that were in turn approved by the city's Buildings and Safety Engineering Department. Wayne Waller testified that the work in the specifications was completed. The testimony of plaintiff's expert and two city inspectors indicated that inspections are required for the work for which a permit is issued and that if the work passes the final inspection, a certificate of acceptance is issued. The certificate of acceptance means that the work in the specifications submitted with the permit application has been completed. The only permits issued were a building permit and electrical permits. The property passed the final inspection done in connection with the building permit and a certificate of acceptance was issued. Although plaintiff's expert opined that the inspection would not have covered bathroom fixtures, there is no evidence that a separate plumbing permit was issued, the city's chief building inspector testified that the final inspection covered everything in the specifications submitted with the permit application, and the job specifications included replacing one toilet and two sinks. Plaintiff presented photographs showing apparently incomplete work, but did not prove that they were taken within a reasonable time after the certificate of acceptance was issued. Plaintiff's expert further testified that he estimated that the cost of the work done by LaMarc was

$7,375, but his calculation was based only on the work plaintiff admitted had been done, not the work as it existed at the time the certificate of acceptance was issued.

The specifications included repairing the fire damage to the electrical system and separate permits were issued for the electrical work. One permit was issued to plaintiff's brother in the summer of 2004. There is no evidence that the work for which the permit was issued was in any way related to the fire repair work contracted by LaMarc. Two permits were issued to Thomas Electric in the spring of 2003. It is undisputed that the electrical system never passed a final inspection and a certificate of acceptance was not issued for the work. However, one of the city's electrical inspectors testified that on her first inspection in May 2003, she found one code violation. When she returned in June, that violation had been corrected. While plaintiff testified that there were unspecified "electrical problems," she presented no evidence that the electrical system, i.e., the internal wiring and related components, had not been repaired. Because plaintiff failed to prove by a preponderance of the evidence that LaMarc breached its repair contract, the trial court did not err in granting LaMarc's motion for JNOV.

The trial court's order as to LaMarc is affirmed. The trial court's order as to Urban is reversed and the case is remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Richard A. Bandstra
/s/ Michael J. Talbot
/s/ Karen M. Fort Hood