

STATE OF MICHIGAN
COURT OF APPEALS

ARCHIE A. VAN ELSLANDER,

Plaintiff-Appellant,

v

THOMAS SEBOLD & ASSOCIATES, INC.,
DANIEL S. FOLLIS, and MARY ELIZABETH
FOLLIS,

Defendants-Appellees,

and

HOME INSPECTORS NORTH, INC., and
LINCOLN WOOD PRODUCTS INC.,

Defendants.

ARCHIE A. VAN ELSLANDER,

Plaintiff-Appellee-Cross-Appellant,

v

THOMAS SEBOLD & ASSOCIATES, INC.,

Defendant-Appellee,

and

DANIEL S. FOLLIS and MARY ELIZABETH
FOLLIS,

Defendants-Appellants-Cross-
Appellees,

and

UNPUBLISHED
December 2, 2008

No. 272396
Oakland Circuit Court
LC No. 2003-051583-CZ

No. 274966
Oakland Circuit Court
LC No. 2003-051583-CZ

HOME INSPECTORS NORTH, INC., and
LINCOLN WOOD PRODUCTS, INC.,

Defendants.

Before: Schuette, P.J., and Borrello and Gleicher, JJ.

SCHUETTE, J. (*concurring in part and dissenting in part*).

I concur in the portion of the opinion of my distinguished colleagues, Judges Borrello and Gleicher, that affirms the trial court's grant of summary disposition to Thomas Sebold & Associates, Inc. However, because I would affirm the trial court's judgment effectuating the jury verdict in plaintiff's favor in the amount of \$706,465.30,¹ I must respectfully dissent from that portion of the opinion.

I disagree with the majority's conclusion that "[v]iewing the testimony of Morbach and Wise in the light most favorable to plaintiff, the testimony of neither witness supports a reasonable inference that the Follises' failure to repair the shim under the south-facing dining room French doors resulted in the extensive damage to the dining room floor, or contributed to the mold in that area."

"If reasonable jurors could honestly have reached different conclusions, neither the trial court nor this Court may substitute its judgment for that of the jury." *Hunt v Freeman*, 217 Mich App 92, 99; 550 NW2d 817 (1996). This Court may only review questions of fact to determine that the jury verdict is supported by the evidence; and the verdict should not be disturbed if it falls within the range of the testimony given. *Merkur Steel Supply, Inc v Detroit*, 261 Mich App 116, 137-138; 680 NW2d 485 (2004).

I find that the expert witness testimony of Wise and Morbach provides sufficient evidence to support that the Follises' failure to repair did contribute to the damage and mold resulting in the dining room and the basement. Also, a reasonable jury could infer from the trial testimony that the disrepair of the dining room doors and the basement window well did indeed contribute to plaintiff's damages.

Wise testified that "there appeared to be extensive water damage from two French doors" and that "it appeared to be either [sic] coming in under the threshold." Wise further stated that there was mold in the area of the south French doors as well as in the basement room with the egress pit. Morbach testified that in the area of the south dining room doors there was "discoloration on that toe molding there that provided evidence of water intrusion." Concerning

¹ The jury verdict award in favor of plaintiff was for the amount of \$680,838.82 at four percent interest for thirteen months, for a total award of \$706,465.30.

the basement egress pit, Morbach also testified that “there were cracks under the window, water stains under the window, and water stains and visible growth on the floor, the lower six inches of the drywall under the window.” Morbach concluded her testimony by stating that had the person responsible for the repair of the window well fixed it, the repair would have corrected the water intrusion and resulting mold.

Additional testimony regarding the actual billing for the damages linked to the Follises’ failure to repair was admitted into evidence as exhibits 307, 316, and 320. The exhibits are the necessary and crucial element to sufficiently find that the jury award was not excessive. At first glance, it may seem difficult to determine the exhibits’ room allocations for the billing; however, the exhibits were explained in detail throughout the trial testimony.

Ultimately, the issue of whether the jury award is excessive boils down to whether the Follises’ failure to repair can be connected with plaintiff’s damages and which exhibits are the accurate and appropriate remediation connected with that failure to repair. A reasonable jury could infer from the expert testimony of Wise and Morbach that the disrepair of the dining room doors and basement window well significantly contributed to the resulting mold. If the minimum attributable damages of that mold are calculated from exhibits 307, 316, and 320, the amount totals \$695,956.65. Therefore, the jury verdict for \$680,838.82 is within the minimum amount of billing attributable, and is not an excessive award that should be overturned by this Court. For these reasons, I would affirm the circuit court’s order effectuating the jury verdict in plaintiff’s favor.

/s/ Bill Schuette