

Commonwealth of Kentucky
Court of Appeals

NO. 2016-CA-001897-MR

CHAD WATSON
and KYLIE WATSON, a minor,
by and through CHAD WATSON,
her guardian

APPELLANTS

v. APPEAL FROM DAVIESS CIRCUIT COURT
HONORABLE JAY A. WETHINGTON, JUDGE
ACTION NO. 15-CI-00468

JAGOE HOMES, INC.

APPELLEE

OPINION
AFFIRMING IN PART, REVERSING IN PART, AND REMANDING

** ** * ** * ** *

BEFORE: KRAMER, CHIEF JUDGE; DIXON AND NICKELL, JUDGES.

KRAMER, CHIEF JUDGE: Chad and Kylie Watson appeal the Daviess Circuit Court's summary dismissal of their claims of breach of contract, promissory estoppel, and intentional infliction of emotional distress (IIED) they asserted

against appellee, Jagoe Homes, Inc. For the reasons discussed below, we affirm in part and reverse in part.

RELEVANT FACTUAL AND PROCEDURAL HISTORY

For purposes of reviewing the propriety of the circuit court's summary judgment, we view the evidence of this matter in the light most favorable to the Watsons, the non-moving parties. Through that lens, the relevant facts of this case are as follows.

On January 30, 2014, Chad Watson and his daughter, Kylie Watson, were the sole survivors of a fire that destroyed their home near Central City, Kentucky, and killed nine members of their family. This tragedy received major media coverage and caused an immediate outpouring of support from across the country. One example of this support came in the form of a promise from appellee Jagoe, a local homebuilding company. On or about February 2, 2014, two of its principal officers, Scott and Bill Jagoe, met with Chad's cousin, Adam Brown, who was then functioning as a representative of the Watson Family while Chad and Kylie remained hospitalized from injuries sustained in the fire. In an affidavit filed of record, Brown described their meeting in relevant part as follows:

3. . . . At that meeting, the Jagoes stated: "We're offering to build Chad and Kylie a house." At this time it was unknown whether Chad Watson would survive. The Jagoes stated that if Chad did not survive, the house would still be built for Kylie. The Jagoes also stated that this offer would remain open indefinitely.

4. At this first meeting I advised the Jagoes that other efforts were already underway to organize and build the

Watson family a house, and donations for construction were being collected. This included efforts that were being led by a local homebuilder named Locky Beasley. The Jagoes stated that efforts of these third parties to build a house would not be necessary. The Jagoes stated that they had their own crews that they used, and since the house would be under warranty, Jagoe Homes would need to use its own people for the construction.

5. Due to the fact that the Jagoes stated that the efforts of third parties to build a house would not be necessary and that Jagoe would be the homebuilder, it was suggested by the Jagoes that all efforts of third parties to build a house for the Watsons should be stopped. Subsequently, as a result of the discussion with the Jagoes, at my direction, it was communicated to Locky Beasley that his efforts and the efforts of other potential volunteers or donors to build a house were no longer needed. Those efforts immediately ended.

6. At this first meeting, the Jagoes made it clear that Jagoe Homes would be covering whatever costs were required for the house to be built. There were no statements by the Jagoes about Jagoe Homes simply “overseeing” or “managing” the construction with the help of volunteers or donors. In fact, the Jagoes made it clear that they were not interested in using volunteers, and that Jagoe Homes would be covering all necessary costs. . . .

The record also includes several articles from local media sources that extensively publicized Jagoe’s offer, some of which were published even before Jagoe’s officers met with Brown on February 2, 2014.¹ For example, one article, posted on WDRB.com on February 1, 2014, reported in relevant part:

Jagoe Homes to build new home for Watson family

. . . .

¹ Jagoe does not contest the authenticity or accuracy of any of the news releases that appear in the appellate record.

Jagoe Homes out of Owensboro, Ky has stepped forward and committed to building a new home for Chad and Kylie.

“We thought it was a good idea and Muhlenberg County is right here in our backyard and we decided we would move forward with it,” Scott Jagoe told WDRB.

Jagoe told WDRB the details will come with time but he hopes their efforts will make a difference for the Watsons who didn’t have home owners or life insurance.

“It’s just tragic and I think it’s just the right thing to do,” said Jagoe.

Another article, which appeared on the website of the Bowling Green Daily News on February 4, 2014, further reported:

When Chad and Kylie Watson are ready, Owensboro-based Jagoe Homes is going to build the father and daughter a home.

They are the only survivors of a house fire Thursday that claimed the lives of Chad Watson’s wife, Nikki, and eight of their nine children in the Depoy community outside Central City in Muhlenberg County.

“It’s just been a major blessing,” Timothy Burden, pastor of Calvary Baptist Church in Central City, said about the commitment from Jagoe Homes and the monetary donations for the family from all over the country. The Watsons attended Calvary Baptist.

Burden called Scott Jagoe, co-owner of Jagoe Homes, and told him about the need for a new home for the critically injured father and daughter, Jagoe said.

Jagoe, whose company also has built homes in Bowling Green, first heard about the fire on the news and then received Burden’s call. Burden’s and Jagoe’s fathers once worked together.

“When he asked if we would do this, we sat back and thought this is the right thing to do,” Jagoe said. “We just felt like we could come through and put the offer out there.”

Jagoe will act as the homebuilder overseeing the project. Any tradesmen or building supply owner who wants to donate time and/or materials can call Jagoe at If there are any monetary or labor shortages, Jagoe homes will cover the costs.

But Jagoe won’t move forward until he has a chance to meet with Chad and Kylie Watson to see what they want in a home. “Until they are ready for that, we’re just kind of standing ready,” he said.

On February 24, 2014, Jagoe received media attention after announcing it had scheduled a meeting with Chad and Kylie to discuss the specifics of their offer with them. On February 25, 2014, Chad was released from the hospital and later he and Brown met with Scott and Bill Jagoe. According to Chad, and as set forth in the relevant part of the affidavit he filed of record in this matter,²

3. At that meeting, the Jagoes asked me what type of house I would like to have built. My response was that I would gladly accept anything Jagoe Homes was willing to offer, but that I did not know how to ask for anything. I stated that I did not expect anything from Jagoe Homes, and would gladly accept anything Jagoe was willing to offer. The Jagoes suggested that perhaps I would need a home with as many as four or five bedrooms, and possibly even a basement, in case in the future I were to remarry and have more children. The Jagoes also stated that they would fully furnish the house. My response

² The parties and the circuit court’s order extensively reference a deposition that Chad apparently gave over the course of the proceedings below. However, his deposition was never included with the appellate record.

was gratitude and that I would be willing to accept whatever Jagoe Homes was willing to offer.

Preliminarily, it was agreed that the house would likely have four bedrooms and two stories, to be built on a lot that I would purchase. Further decisions would be made at a later date.

4. At this meeting, the Jagoes encouraged me to be open to the media, especially about the house being built, and that perhaps Adam Brown could speak for the family on my behalf if I was not emotionally up to it. Initially I expressed reservations about this. However, Scott Jagoe expressed that they would like to at least have a formal ground-breaking ceremony with the media when construction was to begin. Out of consideration for what the Jagoes were offering to do, I told the Jagoes that I would be willing to comply with their request. I agreed to make myself available to them if they wanted to do any joint interviews, and that they were free to discuss our plans with the media. In light of Scott's insistence, despite my hesitancy, I believed their request for me to cooperate in helping them to attain favorable publicity was a reasonable exchange for their agreement to build a house for my family.

5. The Jagoes stated at this meeting that Jagoe Homes' offer to build the house had no expiration date. The Jagoes encouraged me that I could take my time in making decisions about what type of house I wanted.

6. The Jagoes stated at this meeting that Jagoe Homes would be using its own people for construction. Adam and I suggested that perhaps Jagoe Homes should reconsider, and at least consider using some volunteers who were skilled. The Jagoes' response was that if there were volunteers who were licensed, they would consider using them. Adam Brown and I expressed our desire to volunteer ourselves, and do tile work in the house. This was the very type of work Adam and I had been doing together and we were eager to contribute it. Our offer to volunteer on the construction was turned down by Jagoe. We were advised by the Jagoes that Jagoe Homes needed

to use its own people to ensure the work would meet the standards of their warranty.

On March 19, 2014, Jagoe publicly announced that Chad and Kylie had selected their new home, color choices, and features inside the home; this development was reported in another article appearing of record from WDRB.com.

The article also reported:

Jagoe Homes is currently in the process of site evaluations. Jagoe says Chad and Kylie selected a lot to build the house, but because the house requires a septic tank, the company is seeking permission from the health department to use the lot. If it is approved, Jagoe Homes will move ahead with construction.

Chad elaborated upon this development in his affidavit. There, he added:

7. It was suggested by the Jagoes that the house be based on a Jagoe Homes model home. In early spring of 2014, I and individuals with Jagoe Homes toured model Jagoe Homes. It was agreed between myself and Jagoe Homes that the house that would be built would be a two-story, 4 bedroom, 2 bathroom house based upon a model known as the "Little Rock". Jagoe Homes also insisted on providing multiple upgrades to the house with respect to countertops, tile showers, and other things, which I was willing to accept.

8. Jagoe Homes prepared detailed house plans, and a detailed line-by-line estimate for all specifications of the house. The home estimate was signed by Scott Jagoe. By this point in April of 2014, all decisions about the house, down to specific colors and fine details were agreed upon.

The record also includes the detailed house plans (based upon the Jagoe's "Little Rock" design) and estimate (priced at \$267,550) signed by Scott Jagoe, mentioned in Chad's affidavit.

As indicated, in March 2014 Chad had initially selected a lot (located in Muhlenberg County) and Jagoe had begun evaluating whether the lot was a suitable place to build. Soon after Jagoe began preparing the lot for construction, however, Chad changed his mind. In his affidavit, Chad explained:

14. In early June of 2014 I asked Scott Jagoe if it would be possible to build the house on a different site outside of Muhlenberg County. Scott Jagoe's response was that it would be no problem at all to build the house in another location since no construction had yet begun on the lot in Muhlenberg County. He advised me that I would just need to find a lot, and as long as the lot was within Jagoe Homes' service area and suitable for the house that was planned, Jagoe Homes would gladly build the house on a different site. Scott Jagoe advised that I not just buy any lot because it was important that their people ensure the lot was appropriate for building on. In connection with this he said that he might know of some lots that Jagoe Homes could sell me, and suggested I give him a couple weeks to check. I agreed, and expected that I would hear back from Scott Jagoe within a couple weeks.

In the months that immediately followed, communications between Chad and Jagoe became less frequent. But, as Chad averred, there was no indication that any problems had arisen regarding Jagoe's promise:

16. After more than a couple weeks had passed since my last conversation with Scott Jagoe, I began trying to call and text Scott Jagoe. This was in late June of 2014. When I would call, Scott did not answer the phone or respond to texts. . . .

17. By September of 2014, I had still not heard back from anyone with Jagoe Homes, and my attempts to reach Scott Jagoe had been unsuccessful. I began trying to call Scott Jagoe again and left him a message. . . . Soon after that, Scott Jagoe returned my call. Scott Jagoe said to me that they were just waiting on me to find a building lot. I explained to Scott Jagoe that the last communication we had, Scott was going to check and see what lots they had available for purchase, and get back with me. Scott assured me that their plans had not changed and that as long as I bought a lot, the plans would move forward. He then told me that once I found a lot, before I purchased the lot, I was to let the Jagoes know so they could inspect the lot and be sure it was suitable for the construction of the house.

. . . .

19. By March of 2015, I had not spoken to anyone from Jagoe Homes since September of 2014. I had not been made aware of any problems from Jagoe Homes as far as the home being built, and had already been told that the offer to build the house did not expire. The weather had cleared, and I resumed my search for building lots. I found a lot in Henderson County, Kentucky that was within my budget and I thought would be suitable.

20. I got in touch with Craig Jagoe, an employee of Jagoe Homes, and let him know about the lot that I had found. Craig Jagoe agreed to come inspect the lot and a meeting was scheduled. After I had already driven to Henderson County, Craig Jagoe cancelled the meeting at the last minute. Since I was in the area, and since no one had even visited the lot in Henderson County, I expanded my search and found a lot in Daviess County that I believed would be preferable in many respects to both the Jagoes and myself. We rescheduled a time for March 15, 2015 in which Craig Jagoe would take a look at this lot. Shortly before that meeting was scheduled to occur, while in route, Craig Jagoe canceled that meeting as well.

Chad averred that the first time Jagoe indicated there was a problem, and the first time it definitively rescinded its promise to build him a house, was shortly after he concluded his conversation with Craig Jagoe on March 15, 2015:

21. After the meeting with Craig Jagoe was cancelled, I received a call from Bill Jagoe. Bill Jagoe advised me that Jagoe Homes had decided that it was no longer going to build the house. When I asked for an explanation, Bill Jagoe would not give me one. This lawsuit was filed after Jagoe continued to refuse to build the house as agreed.

The lawsuit Chad and Kylie filed in Daviess Circuit Court asserted three theories of recovery against Jagoe: (1) breach of contract; (2) promissory estoppel; and (3) IIED.

After Jagoe filed its answer and after a period of discovery had elapsed, Jagoe moved for summary judgment. As to the breach of contract claims, Jagoe defended by arguing that its promise to build Chad and Kylie a house did not qualify as an enforceable contract for three reasons. First, Jagoe contended its promise lacked consideration. Second, Jagoe contended there had been no meeting of the minds because material terms of the purported contract, along with the specifics of its obligations, had not been agreed upon. Third, Jagoe argued two conditions precedent had gone unmet: (1) Chad had failed to purchase a lot; and (2) volunteers and subcontractors would probably be unwilling to donate time and materials to the project.

As to the promissory estoppel claims, Jagoe argued Chad and Kylie presented no evidence that they had reasonably or detrimentally relied upon its promise to build them a home.

And, as to the IIED claims, Jagoe argued the evidence presented by Chad and Kylie was insufficient to demonstrate Jagoe's conduct had caused them an actionable level of emotional distress.

The circuit court ultimately granted Jagoe's motion, and this appeal followed. To the extent that it becomes necessary, additional details will be covered in the context of our analysis, below.

STANDARD OF REVIEW

Summary judgment serves to terminate litigation where “the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Kentucky Rule of Civil Procedure (CR) 56.03. Summary judgment should be granted only if it appears impossible that the nonmoving party will be able to produce evidence at trial warranting a judgment in his favor. *Steelvest, Inc. v. Scansteel Serv. Ctr., Inc.*, 807 S.W.2d 476 (Ky. 1991). Summary judgment “is proper only where the movant shows that the adverse party cannot prevail under any circumstances.” *Id.* at 480 (citing *Paintsville Hosp. Co. v. Rose*, 683 S.W.2d 255 (Ky. 1985)).

On appeal, we must consider whether the circuit court correctly determined that there were no genuine issues of material fact and that the moving party was entitled to judgment as a matter of law. *Scifres v. Kraft*, 916 S.W.2d 779 (Ky. App. 1996). Because summary judgment involves only questions of law and not the resolution of disputed material facts, an appellate court does not defer to the circuit court's decision. *Goldsmith v. Allied Building Components, Inc.*, 833 S.W.2d 378 (Ky. 1992). Likewise, we review the circuit court's interpretations of law *de novo*. *Cumberland Valley Contractors, Inc. v. Bell Cty. Coal Corp.*, 238 S.W.3d 644, 647 (Ky. 2007).

ANALYSIS

We begin by noting the parties to this appeal have spent much of their respective briefs offering competing interpretations of various “findings of fact” the circuit court included in its order, attempting to discern why the circuit court entered summary judgment in favor of Jagoe. Joining their endeavor would be pointless, however, because any “findings of fact” the circuit court made in its summary judgment order were uncalled for, unwarranted, and are entitled to no deference. *See* CR 52.01. For our purposes, it is enough to presume that the circuit court summarily dismissed Chad's and Kylie's claims because it was persuaded by each of the arguments Jagoe presented in its motion for summary judgment.³ *See Sword v. Scott*, 293 Ky. 630, 169 S.W.2d 825, 827 (1943) (“In the

³ One point the appellees raised below (but have not pressed on appeal), which the circuit court correctly resolved, was that the purported contract between Jagoe and the Watsons was not subject to Kentucky's statute of frauds, Kentucky Revised Statute (KRS) 371.010. The circuit court observed that the purported contract was capable of being performed within one year, did

absence of the court's specifying the ground or grounds for his dismissal of the petition, it will be assumed that it was upon any or all of the grounds which the proof sufficiently established.”). Moreover, “an appellate court, which has de novo review on questions of law, can affirm, even though it may cite other legal reasons than those stated by the trial court.” *Fischer v. Fischer*, 348 S.W.3d 582, 589 (Ky. 2011).

Regarding the Watsons' breach of contract claims, the circuit court erred by granting summary judgment in favor of Jagoe. Jagoe first argues that no evidence supports that the Watsons provided consideration in exchange for its promise to build them a home. We disagree.

Consideration is necessary to make any contract binding. *See Huff Contracting v. Stark*, 12 S.W.3d 704, 707 (Ky. App. 2000). “Consideration” is defined as:

A benefit to the party promising, or a loss or detriment to the party to whom the promise is made. ‘Benefit,’ as thus employed, means that the promisor has, in return for his promise, acquired some legal right to which he would not otherwise have been entitled. And ‘detriment’ means that the promisee has, in return for the promise, forborne some legal right which he otherwise would have been entitled to exercise.

Id. (Internal citations and quotations omitted.)

Here, the testimony Chad provided in his affidavit, coupled with the various news articles of record, could support a reasonable inference that the

not involve the sale or lease of real estate, and did not otherwise fall into any of the other categories of contracts enumerated in KRS 371.010(1) through (9).

Watsons agreed to help Jagoe capitalize upon and generate goodwill through the publicity they were receiving in exchange for Jagoe's promise to build them a home. This, in turn, could qualify as consideration. *See Campbell v. Campbell*, 377 S.W.2d 93, 95 (Ky. 1964) (explaining mutual promises form valid consideration for agreements).

Jagoe's second argument relating to the Watsons' breach of contract claims is that no evidence demonstrates there was a meeting of the minds regarding the material terms of the contract. We disagree.

For any contract to be enforceable, its material terms (for example, the subject matter, price, payment terms, quantity, quality, duration, or the work to be done⁴) must be fixed with substantial certainty. *See Walker v. Keith*, 382 S.W.2d 198, 204-05 (Ky. 1964). Here, Chad's affidavit and the detailed house plans (based upon the Jagoe's "Little Rock" design) and estimate (priced at \$267,550) signed by Scott Jagoe provide adequate evidence of the material terms of the purported contract between Jagoe and the Watsons.

Jagoe's third argument in this vein is that two conditions precedent had gone unmet: (1) Chad had failed to purchase a lot; and (2) volunteers and subcontractors would probably be unwilling to donate time and materials to the project.

⁴ *See, e.g.*, BLACK'S LAW DICTIONARY 991-92 (7th ed. 1999) (defining "material terms" as "Contractual provisions dealing with significant issues such as subject matter, price, payment terms, quantity, quality, duration, or the work to be done.").

To be sure, where an agreement is made subject to the happening of some future contingency, it must be viewed as a conditional agreement and, without the occurrence of the contingency, ineffective and executory in nature. *See, e.g., Green River Steel Corp. v. Globe Erection Co.*, 294 S.W.2d 507, 509 (Ky. 1956), explaining:

A contract is made at the time when the last act necessary for its formation is done, and at the place where that final act is done. . . . The general rule is that where an agreement is made, subject to the consent or approval of a third person, it must be looked on as a conditional agreement, dependent on such consent being given within a reasonable time, in default of which the agreement must be taken not to have become effective.

(Citations and quotation marks omitted.) *See also Frank v. Thompson*, 207 Ky. 335, 269 S.W. 295, 296 (1924) (“Persons who have entered into a contract to become partners at some future time, or upon the happening of some future contingency, do not become partners until the agreed time has arrived or the contingency has happened.” (Citation and quotation marks omitted)).

With respect to the first precondition, the evidence does demonstrate that Chad was to purchase a lot *before* Jagoe would commence construction. But, the evidence also supports that Jagoe needed to determine whether the lot in question was suitable for construction *before* Chad purchased it, and that because Jagoe refused to do so, Chad could not purchase any lot. If that was indeed the case, Chad did not fail to meet a condition precedent; rather, Jagoe was in breach of contract. “Within every contract, there is an implied covenant of good faith and

fair dealing, and contracts impose on the parties thereto a duty to do everything necessary to carry them out.” *Farmers Bank and Trust Co. of Georgetown, Kentucky v. Willmott Hardwoods, Inc.*, 171 S.W.3d 4, 11 (Ky. 2005) (citation omitted).

With respect to the second precondition asserted by Jagoe, Jagoe was unable to identify any volunteer or subcontractor who had promised to donate time and materials to the homebuilding project, but who was no longer willing to do so. More to the point, both Brown’s and Chad’s affidavits, along with the various news articles of record, provide some evidence that Jagoe intended to perform its promise to build the Watsons a home irrespective of the willingness of any volunteers and subcontractors to donate time and materials to the project. To paraphrase the article that appeared on the website of the Bowling Green Daily News on February 4, 2014: If people wanted to donate material or donate time building the house, Jagoe would have been glad to accept it; but if there was any shortfall, Jagoe would take care of the rest of it.⁵

The circuit court likewise erred by dismissing the Watsons’ claims of promissory estoppel. The theory of a promissory estoppel action is that detrimental reliance becomes a substitute for consideration under the facts of a given case. *McCarthy v. Louisville Cartage Co., Inc.*, 796 S.W.2d 10, 12 (Ky. App. 1990). Specifically, promissory estoppel requires “[a] promise which the promisor should reasonably expect to induce action or forbearance on the part of

⁵ In the deposition he gave below, Scott Jagoe testified that the February 4, 2014 article accurately quoted him in this and all other respects.

the promisee or a third person and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise. The remedy granted for breach may be limited as justice requires.” *Meade Constr. Co. v. Mansfield Commercial Elec., Inc.*, 579 S.W.2d 105, 106 (Ky. 1979) (citation omitted).

Here, some evidence supports that Jagoe knowingly caused the Watsons to reject the efforts of at least one other homebuilder who was organizing volunteers and collecting donations to build the Watson family a house free of cost; in reliance upon Jagoe’s offer, the Watsons did not seek out or accept any other such offers while the public’s level of interest in helping them, due to extensive media coverage at the time, remained high; and, that when Jagoe ultimately refused to fulfill its promise, the public’s level of interest in helping the Watsons had, by that time, dramatically waned.⁶ This is sufficient to present the issue of promissory estoppel to a jury.

However, with respect to the circuit court’s decision to summarily dismiss the Watsons’ claims of IIED, we find no error. To make out a claim of IIED, the following elements must be proved: (1) the wrongdoer’s conduct must be intentional or reckless; (2) the conduct must be outrageous and intolerable in

⁶ In their respective depositions, Bill and Scott Jagoe testified their primary motivation for not building a home for the Watsons was that they no longer wanted their business associated with Chad because, in their view, public sentiment had turned against Chad a few months after he had accepted their offer. This stemmed from Chad’s marriage to his wife’s best friend two months after the fire; the birth of their first child several months later; and unfounded rumors that Chad had started the fire that claimed the lives of his wife and eight of his children.

that it offends against generally accepted standards of decency and morality; (3) there must be a causal connection between the wrongdoer's conduct and the emotional distress; and (4) the emotional distress must be severe. *Gilbert v. Barkes*, 987 S.W.2d 772, 777 (Ky. 1999).

Here, and in support of their claims, the Watsons presented various records of psychological counseling they had received after the fire. However, as Jagoe points out, none of those records attributed any emotional distress suffered by the Watsons to Jagoe. Rather, the records attributed the Watsons' emotional distress to the fire and the fire's immediate aftermath. Chad also notes that he provided testimony below to the effect that, in his view, Jagoe's conduct caused him emotional distress. But, any self-serving lay testimony Chad gave in that regard was insufficient. In the context of the Watsons' freestanding IIED claims,⁷ severe emotional distress can only be demonstrated through expert medical or scientific proof. *See Keaton v. G.C. Williams Funeral Home, Inc.*, 436 S.W.3d 538, 544-45 (Ky. App. 2013).

CONCLUSION

In light of the foregoing, we AFFIRM the circuit court's summary dismissal of the Watsons' claims of IIED; we REVERSE the circuit court's

⁷ The Watsons have repeatedly emphasized the free-standing nature of their IIED claims. In one of their several responses to Jagoe's motion for summary judgment, for example, they argued: "This tort claim is completely independent of any claim for breach of contract or promissory/equitable estoppel. The tort claim does not hinge upon whether there was a breach of contract. Even if there was no contract claim, the Watsons could make a claim for this tort."

judgment in all other respects; and we REMAND for further proceedings not inconsistent with this opinion.

ALL CONCUR.

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