

SENECCA BOUDREAUX

NO. 24-CA-440

VERSUS

FIFTH CIRCUIT

PATRICK JACKSON, INDIVIDUALLY, AND
D/B/A SUPREME DEVELOPERS, LLC

COURT OF APPEAL

STATE OF LOUISIANA

ON APPEAL FROM THE TWENTY-THIRD JUDICIAL DISTRICT COURT
PARISH OF ST. JAMES, STATE OF LOUISIANA
NO. 40,78, DIVISION "C"
HONORABLE JAMES E. KUHN, JUDGE PRESIDING

April 09, 2025

TIMOTHY S. MARCEL
JUDGE

Panel composed of Judges Fredericka Homberg Wicker,
Marc E. Johnson, and Timothy S. Marcel

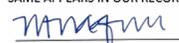
AFFIRMED IN PART, REVERSED IN PART, JUDGMENT RENDERED

TSM
FHW

DISSENTS, IN PART, WITH REASONS

MEJ

FIFTH CIRCUIT COURT OF APPEAL
A TRUE COPY OF DOCUMENTS AS
SAME APPEARS IN OUR RECORDS


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Deputy, Clerk of Court

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PATRICK JACKSON, ET AL

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COUNSEL FOR PLAINTIFF/APPELLEE,
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MARCEL, J.

In this case arising from a disputed residential home construction contract, defendants Patrick Jackson and Supreme Developers, LLC appeal a May 20, 2024 judgment of the trial court rendered in favor of plaintiff Senecca Boudreaux following a bench trial on the merits. For the following reasons, we affirm in part and reverse in part the judgment of the trial court and render judgment.

BACKGROUND AND PROCEDURAL HISTORY

On July 2, 2018, Ms. Boudreaux entered into a construction agreement with Mr. Jackson and Supreme Developers, LLC. Pursuant to this agreement, defendants were to construct a new residential home at Lot 26, Pine Street, Gramercy, Louisiana, for a total contract price of \$215,310.55 with work to have been substantially completed within 180 calendar days. According to plaintiff's petition for breach of contract, Ms. Boudreaux paid Mr. Jackson, but the work on the home was not completed. Ms. Boudreaux was then forced to pay off a \$4,822.51 lien filed by Tech-Con, one of the subcontractors who had not been paid by defendants. In her petition for damages, Ms. Boudreaux sought this sum, \$4,822.51, in damages plus \$30,000.00, the estimated cost of completing the construction, as well as attorney's fees.

In response to plaintiff's petition, Mr. Jackson and Supreme Developers, LLC, filed an answer generally denying plaintiff's allegations and additionally stating that construction delays were caused by plaintiff failing to provide for electric power or sewerage to the property. Defendants also alleged that their obligations under the contract were satisfied when plaintiff moved into the home on October 2, 2019, pursuant to an occupancy clause in the contract. Defendants further alleged that plaintiff failed to pay the full contract price, paying only

\$185,558.09.¹ Defendants filed a demand in reconvention against Ms. Boudreaux for breach of contract in the amount of \$29,752.46, representing the amount still owed under the \$215,310.55 contract price.

The matter proceeded to a bench trial on April 17, 2024 at which time the court heard testimony from Ms. Boudreaux, inspectors Todd Duhe and Robert Mark Burton, and Mr. Jackson. The construction contract, text message communications, and other handwritten notes were also introduced into evidence. Following the trial, the judge took the matter under advisement. On May 20, 2024, the trial court rendered judgment in favor of Ms. Boudreaux and against Mr. Jackson and Supreme Developers, LLC in the amount of \$23,211.25 with judicial interest from the date of the demand.² Per defendants' request, written reasons for judgment followed on July 29, 2024. In those written reasons, the trial court expressly stated that he found the testimony of Mr. Jackson not credible.

On appeal defendants raise multiple assignments of error relating to the trial court's credibility determinations and findings of fact concerning the plaintiff's breach of contract claims and defendants' demands in reconvention. Defendants also claim the trial court erred in failing to apply the New Home Warranty Act and erred in holding that Mr. Jackson was a proper defendant even though he was an employee and not the manager or owner of Supreme Builders, LLC. We consider these assignments of error in our discussion below.

DISCUSSION

We begin our discussion with defendants' fourth and fifth assignments of error. Defendants argue that the trial court legally erred by not applying provisions of the New Home Warranty Act, La. R.S. 9:3141, *et seq.*, when determining

¹ Parties stipulated at trial that the total amount paid by Ms. Boudreaux under the contract was \$211,636.59.

² In her brief, appellee requests that this court revise the judgment of the trial court and raise this award to \$48,824.20; however, because plaintiff has not raised this argument in a properly filed answer to the appeal, the request will not be considered.

whether the terms of the construction contract had been breached. In its written reasons for judgment, the trial court stated that it did not consider applying the New Home Warranty Act because no pleadings were filed nor any evidence offered on the Act's application.

A review of the record before us indicates that defendants' did not raise the New Home Warranty Act in either their answer to the petition or in their reconventional demand; nor was the Act raised in argument at trial. They argue that "defendants' memorandum" "suggested" application of the Act, however, no such memorandum appears in the record before us. Appellate courts will not consider issues raised for the first time on appeal, which are not pleaded in the court below, and which the trial court has not addressed. *First Bank & Tr. v. Bayou Land & Marine Contractors, Inc.*, 12-295, (La. App. 5 Cir. 10/30/12), 103 So.3d 1148, 1152 (citing *Council of City of New Orleans v. Washington*, 09-1067 (La. 5/29/09), 9 So.3d 854, 856); *Ehsani-Landry v. Jefferson Par.*, 17-468 (La. App. 5 Cir. 3/14/18), 240 So.3d 332, 335 (citing Uniform Rules, Courts of Appeal, Rule 1-3). Because this argument was not properly raised in the court below, we decline to consider it on appeal.

In their fifth assignment of error, defendants' argue that the trial court erred in holding Mr. Jackson as a proper defendant even though he was only an employee and not an owner or manager of Supreme Builders, LLC. The claim that Ms. Boudreaux has no cause or right of action against Mr. Jackson in his personal capacity because he was only an employee of Supreme Builders, LLC is properly raised as a peremptory exception. La. C.C.P. art. 927. Exceptions must be in written form and comply with the forms of pleadings. La. C.C.P. art. 924; La. C.C.P. art. 852; *T.P. Homes, Inc. v. Taylor*, 08-392 (La. App. 5 Cir. 10/28/08), 1 So.3d 507, 511, writ denied, 08-2784 (La. 1/30/09), 999 So.2d 760. A review of the record indicates that defendants' never filed a written peremptory exception

raising this argument either in their answer, reconventional demand, or any other written pleading in the trial court. Furthermore, we note that Mr. Jackson personally joined with Supreme Builders, LLC as a plaintiff-in-reconvention against Ms. Boudreaux for breach of contract. Because this argument was not properly raised in the court below, we decline to consider it on appeal.

Defendant's first three assignments of error relate to the trial court's credibility determinations and findings of fact concerning the plaintiff's breach of contract claims and defendants' reconventional demands. The appropriate standard for appellate review of factual determinations is the manifest error-clearly wrong standard, which precludes the setting aside of a trial court's finding of fact unless that finding is clearly wrong in light of the record reviewed in its entirety. *Mann v. Louisiana-1 Gaming*, 21-83 (La. App. 5 Cir. 12/15/21), 334 So.3d 894, 898. The issue to be resolved on review is not whether the judge was right or wrong, but whether the judge's fact-finding conclusion was a reasonable one. *Id.* Where there is a conflict in the testimony, reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed upon review. *Salgado v. Tri-Par. Roofing & Home Improvements*, 19-407 (La. App. 5 Cir. 5/27/20), 296 So.3d 1201, 1206, (citing *Glob. Constr. & Equip., L.L.C. v. Rathborne Properties, L.L.C.*, 18-169 (La. App. 5 Cir. 5/29/19), 274 So.3d 837.) If the trial court's findings are reasonable in light of the record reviewed in its entirety, the appellate court may not reverse. *Mann, supra*. When there are two permissible views of the evidence, the fact-finder's choice between them cannot be manifestly erroneous. *Stobart v. State, Through Department of Transportation and Development*, 617 So.2d 880, 883 (La.1993).

On review of the entire record, we find no manifest error in the trial court's decision to award Ms. Boudreaux \$23,211.25 on her claim for breach of contract against Mr. Jackson and Supreme Builders, LLC. The trial testimony and written

report of Mr. Duhe who inspected the flooring at the home prior to its refinishing is sufficient to establish that, more likely than not, the tiles and floors were installed in a substandard and unworkmanlike manner that required replacement. The testimony of Mr. Burton established that, more likely than not, the cost of replacing the improperly installed tiles and floors was \$48,824.20. Ms. Boudreaux's testimony also established that she paid off \$4,822.51 in subcontractor liens on the home. We find no error in the trial court's decision to credit the testimony of plaintiff and her witnesses. We therefore affirm the award of \$23,211.25 on plaintiff's main demand.

Nevertheless, we find that the trial court manifestly erred in denying defendants' demand in reconvention for Ms. Boudreaux's failure to make the final payment on the construction contract. Even accepting the trial court's decision not to credit the testimony of Mr. Jackson as stated in his written reasons for judgment, the uncontroverted evidence at trial, including Ms. Boudreaux's own testimony, was that she did not make the final payment on the construction contract, even though the final punch list items were completed and she moved into and occupied the home. The parties stipulated at trial that Ms. Boudreaux paid \$211,636.59 directly to Mr. Jackson under the contract which listed a total price of \$215,310.55. The contract states, "Owner agrees not to occupy the Home until contractor is paid in full." Based on this uncontroverted evidence, we find that the trial court manifestly erred in dismissing defendants' claim in reconvention for breach of contract. Accordingly, that part of the judgment is reversed, and we award the defendants \$3,673.96 on their demand in reconvention to be subtracted from the amount owed on the main demand.

DECREE

Finding no manifest error in the trial court's May 20, 2024 judgment awarding plaintiff Ms. Senecca Boudreaux \$23,211.25 on her petition for breach of contract, the judgment is affirmed in that particular. We reverse the trial court's dismissal of defendants' Mr. Patrick Jackson and Supreme Builders, LLC demand in reconvention. We find that Ms. Boudreaux breached the terms of the construction agreement by occupying the home before making full payment. We find in favor of the defendants on their claim, and award them \$3,673.96, to be offset from the amount owed by them to Ms. Boudreaux on the main demand.

AFFIRMED IN PART, REVERSED IN PART, JUDGMENT RENDERED

SENECCA BOUDREAUX

NO. 24-CA-440

VERSUS

FIFTH CIRCUIT

PATRICK JACKSON, INDIVIDUALLY,
AND D/B/A SUPREME DEVELOPERS,
LLC

COURT OF APPEAL
STATE OF LOUISIANA

JOHNSON, J., DISSENTS, IN PART, WITH REASONS

I, respectfully, dissent in part from the majority opinion on the issue of whether Patrick Jackson should be held personally liable to Plaintiff, Senecca Boudreaux, for the following reasons.

First, the majority opinion declines to address the issue of whether the trial court erred in holding Mr. Jackson personally liable because the argument was not properly raised at the lower court. While factually correct, the rationale disregards the fact that, as a peremptory exception of no cause of action, the argument may be noticed by an appellate court on its own motion. *See*, La. C.C.P. art. 927(B). I opine that, pursuant to the laws concerning limited liability companies, La. R.S. 12:1301, *et seq.*, and the interests of justice, this Court should raise the exception of no cause of action on behalf of Mr. Jackson on its own motion. The evidence presented at trial showed that Mr. Jackson acted as an employee of Supreme Developers, LLC (“Supreme Developers”), and he should be afforded the protections of the limited liability company. Even in the absence of an exception of no cause of action, on the merits of the issue, I find that Ms. Boudreaux failed to present sufficient evidence necessary to hold Mr. Jackson personally liable for her damages.

In this matter, Ms. Boudreaux’s petition alleged that Mr. Jackson and Supreme Developers agreed to construct her home and substantially complete

the work within 180 calendar days. It further alleged the work was never completed, and the suppliers for the construction were not paid, which forced her to pay a lien on the property. At trial, a copy of the home building contract was accepted into evidence as a joint exhibit. The contract lists Ms. Boudreaux as the owner of the lot and Supreme Developers as the contractor. Mr. Jackson's signature appears on the last page of the contract, which has "Supreme Developers, LLC: Patrick Jackson" printed under his signature.

Ms. Boudreaux testified that she mainly communicated with Mr. Jackson—as the contractor—during the construction of her home. However, she also testified that each of the bank loan payments were drawn by Supreme Developers, and no payments were made directly to Mr. Jackson. During the presentation of the defense, Mr. Jackson testified that he was the Operations Manager with Supreme Builders at the time the contract was signed. He was also the Project Manager over the construction of Ms. Boudreaux's home.

La. R.S. 12:1320, entitled "Liability to third parties of members and managers", provides:

- A. The liability of members, managers, employees, or agents, as such, of a limited liability company organized and existing under this Chapter shall at all times be determined solely and exclusively by the provisions of this Chapter.
- B. Except as otherwise specifically set forth in this Chapter, no member, manager, employee, or agent of a limited liability company is liable in such capacity for a debt, obligation, or liability of the limited liability company.
- C. A member, manager, employee, or agent of a limited liability company is not a property party to a proceeding by or against a limited liability company, except when the object is to enforce such a person's rights against or liability to the limited liability company.
- D. Nothing in this Chapter shall be construed as being in derogation of any rights which any person may by law have against a member, manager, employee, or agent of a limited liability company because of any fraud practiced upon him, because of any breach of professional duty or other negligent or wrongful act by such person, or in derogation of any right which the limited liability company may have against such person because of any fraud practiced upon it by him.

As previously mentioned, Mr. Jackson was not a party to the contract between Ms. Boudreaux and Supreme Developers, and he only signed the contract on behalf of Supreme Developers, rather than in his personal capacity. Mr. Jackson testified that he was an employee of Supreme Developers. Consequently, pursuant to La. R.S. 12:1320, Mr. Jackson should have been afforded the protection of Supreme Developers in its capacity as a limited liability company. The burden should have then shifted to Ms. Boudreaux to prove Mr. Jackson committed fraud or a negligent or wrongful act.

Ms. Boudreaux did not specifically allege in her petition that Mr. Jackson committed any fraudulent action. Thus, she had to prove Mr. Jackson committed a negligent or wrongful act. Ms. Boudreaux testified that Mr. Jackson hired subcontractors to construct the home. She further testified that there were defects in her master bathroom and the Jack and Jill bathroom, and Mr. Jackson failed to fix any of the defects. A showing of poor workmanship arising out of a contract entered into by an L.L.C., in and for itself, is insufficient to establish a “negligent or wrongful act” arising under La. R.S. 12:1320(D). *Nunez v. Pinnacle Homes, L.L.C.*, 15-87 (La. 10/14/15), 180 So.3d 285, 293, citing *Ogea v. Merritt*, 13-1085 (La. 12/10/13), 130 So.3d 888, 905-06. The evidence presented by Ms. Boudreaux against Mr. Jackson simply showed poor workmanship and a refusal to remedy the defects. Furthermore, although Ms. Boudreaux asserted throughout the trial that Mr. Jackson was the contractor, there is no indication the legislature intended for licensed contractors to owe a separate, non-contractual duty to their customers like other members of the legislatively-recognized professions. *Id.* at 292.

After reviewing the evidence presented, I find that Ms. Boudreaux failed to show Mr. Jackson owed her a separate tort duty susceptible to engage his

personal liability, and in turn, failed to prove that Mr. Jackson should be held personally liable. Accordingly, I would reverse the trial court's judgment that held Mr. Jackson personally liable to Ms. Boudreaux for \$23,211.25 with judicial interest from the date of the demand. In all other respects, I would affirm the judgment.¹

¹ I acknowledge the fact that Mr. Jackson joined Supreme Builders' reconventional demand in his personal capacity. I opine that Mr. Jackson was not a party to the contract and was not entitled to any of the alleged damages from Ms. Boudreaux in his personal capacity.

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
JOHN J. MOLAISSON, JR.
SCOTT U. SCHLEGEL
TIMOTHY S. MARCEL

JUDGES



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NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **APRIL 9, 2025** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

24-CA-440

E-NOTIFIED

23RD JUDICIAL DISTRICT COURT (CLERK)

HONORABLE JAMES E. KUHN (DISTRICT JUDGE)

ERIC M. CARTER, SR. (APPELLANT)

WILBUR W. REYNAUD (APPELLEE)

MAILED

NO ATTORNEYS WERE MAILED