NO. COA13-241
NORTH CAROLINA COURT OF APPEALS

Filed: 3 September 2013

ABC ROOFING, INC.,
Plaintiff,

v. Guilford County
No. 11 CVD 8527

GREGORY SAWYER, SR.,
Defendant.

Appeal by defendant from judgment entered 6 August 2012 by Judge Jan Samet in Guilford County District Court. Heard in the Court of Appeals 5 June 2013.

A.G. Linett & Associates, PA, by Adam G. Linett and J. Rodrigo Pocasangre, for plaintiff appellee.

Douglas S. Harris for defendant appellant.

McCULLOUGH, Judge.

Defendant Gregory Sawyer, Sr. ("Sawyer" or "defendant") appeals from a judgment of the trial court concluding that defendant breached his contract with ABC Roofing, Inc. ("ABC Roofing" or "plaintiff") by failing to pay the balance due under the contract in the amount of $4,201.05. On appeal, defendant argues that multiple findings of fact in the trial court's

judgment are not supported by sufficient evidence and that the trial court's conclusions of law are erroneous and not supported by sufficient findings of fact. Defendant further argues that the trial court's award of prejudgment interest was erroneous as a matter of law. After careful review, we affirm.

I. Background

On 28 May 2010, Gregory Flury ("Flury"), president of the plaintiff business, met with defendant at defendant's home on West Market Street in Greensboro, North Carolina, and provided estimates to defendant for the replacement of defendant's roof. While surveying defendant's roof for the estimates, Flury observed storm damage, including wind damage and hail damage, and Flury met with defendant's insurance adjuster to assist defendant in getting approval for insurance to pay for the roof replacement. Defendant received approval and payment for the full cost of replacing the roof from his insurance company.

On 23 June 2010, plaintiff and defendant entered into a contract for the replacement of roofing shingles on defendant's home. Pursuant to the terms of the contract, plaintiff was to provide the labor and materials selected by defendant to replace the shingles, and defendant was to pay $10,886.00 for the work. Defendant selected a higher-end architectural shingle

manufactured by GAF. At the time the contract was entered, defendant tendered a deposit of $4,000.00 to plaintiff.

On 5 August 2010, plaintiff began work to replace the shingles and install a new roof on defendant's home. On 7 August 2010, the date that the work was completed, defendant tendered an additional payment of $2,133.95 against the balance due under the parties' contract. Defendant had no complaints about the roofing work on that date.

Defendant thereafter complained about the condition of his roof to Flury, including that there were scuffed, scored, and broken shingles and that the shingles were not properly aligned. Upon returning to inspect defendant's roof, Flury agreed to replace the scuffed, broken, and torn shingles and made such repairs in November 2010. Flury also discovered that many of the shingles on defendant's roof were not consistent in length, resulting in the aesthetic misalignment. In light of this discovery, Flury contacted GAF, the shingle manufacturer, and assisted defendant with submitting a claim. GAF denied any defect in the shingles' variable length; however, GAF tendered to defendant $3,000.00 in settlement of defendant's claims against GAF in connection with the shingles installed on defendant's roof.

Several months after the job was completed, defendant also complained that plaintiff's employees had damaged some of his window screens and that part of his roof leaked after the new roof was installed. Plaintiff denied that its employees damaged defendant's window screens and verified that the shingles were not installed incorrectly so as to cause the small leak that had occurred.

After receiving the settlement check from the shingle manufacturer and having been paid for the roofing work by his insurance company, defendant refused to pay the balance due on his contract with plaintiff, totaling $4,201.05. After giving notice to defendant of his non-payment of the balance due under the contract, on 28 July 2011, plaintiff commenced the present action against defendant for breach of contract, seeking the balance due under the contract, as well as interest, costs, and attorney's fees. Defendant counterclaimed for both breach of contract, alleging that plaintiff failed to perform the roofing work in a workmanlike manner, and fraud in the inducement, seeking punitive damages.

A bench trial was held on 3 April 2012, at which Flury; John Quinn ("Quinn"), an employee of plaintiff who oversaw the roofing project at defendant's home; and defendant testified.

At the conclusion of the hearing, defendant voluntarily dismissed his claims for fraud in the inducement and punitive damages. On 6 August 2012, the trial court entered judgment in favor of plaintiff, concluding that defendant had breached his contract with plaintiff by refusing to pay the balance owed under the contract and that plaintiff did not breach its contract with defendant by failing to perform the roofing services in a workmanlike manner. The trial court's judgment ordered defendant to pay interest, attorney's fees, and costs, in addition to the balance owed under the contract. Defendant entered written notice of appeal from the trial court's judgment on 5 September 2012.

II. Propriety of Judgment Entered

Defendant's first five arguments on appeal address the propriety of multiple findings of fact and conclusions of law made by the trial court. "In reviewing a trial judge's findings of fact, we are 'strictly limited to determining whether the trial judge's underlying findings of fact are supported by competent evidence, in which event they are conclusively binding on appeal, and whether those factual findings in turn support the judge's ultimate conclusions of law.'" *State v. Williams*, 362 N.C. 628, 632, 669 S.E.2d 290, 294 (2008) (quoting *State v.*

Cooke, 306 N.C. 132, 134, 291 S.E.2d 618, 619 (1982)); *see also Sisk v. Transylvania Cmty. Hosp., Inc.*, 364 N.C. 172, 179, 695 S.E.2d 429, 434 (2010) ("[F]indings of fact made by the trial judge are conclusive on appeal if supported by competent evidence, even if . . . there is evidence to the contrary." (alteration and ellipsis in original) (internal quotation marks and citations omitted)).[1] "Conclusions of law are reviewed de novo and are subject to full review." *State v. Biber*, 365 N.C. 162, 168, 712 S.E.2d 874, 878 (2011); *see also Carolina Power & Light Co. v. City of Asheville*, 358 N.C. 512, 517, 597 S.E.2d 717, 721 (2004) ("Conclusions of law drawn by the trial court from its findings of fact are reviewable *de novo* on appeal.").

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[1] Although defendant acknowledges the proper standard of review applicable to the trial court's findings of fact in this case, he nonetheless repeatedly argues that the trial court abused its discretion in making the challenged findings of fact. Defendant's argument insists that because the trial court failed to use certain language, *e.g.*, that the trial court weighed the parties' evidence and/or the trial court found evidence presented by one party to be more credible than that presented by the other, in making its findings of fact, our standard of review is transformed into an abuse of discretion standard, rather than a review of whether the challenged findings are supported by competent evidence in the record. We find defendant's argument wholly without merit. Our standard of review for a trial court's findings of fact in a bench trial is well established, as set forth above, and the trial court is not required to include any specific language when making its findings of fact unless statutorily mandated to do so, which does not apply in this case.

Defendant first challenges finding of fact 7 in the trial court's judgment, which states: "Plaintiff replaced the scuffed, cut and torn shingles in Defendant's roof." Defendant argues that this finding implies that all scuffed, cut, and torn shingles were replaced by plaintiff and that the record evidence shows that only some of such shingles were replaced by plaintiff. We disagree.

Finding of fact 7 is supported by the testimony of both Flury and Quinn. Flury testified that he recalled only one instance where a shingle had actually been cut and that he believed his crew had replaced that shingle, although he did not return to defendant's residence to inspect the repairs made to that shingle. Flury testified that plaintiff replaced the shingles that "had some damage[,]" including shingles that were torn or scraped. Flury also testified that plaintiff replaced any scuffed and scraped shingles that defendant had expressed concerns about. When directly asked whether scored and scuffed shingles had been replaced, Flury testified that "[t]here might have been a few that had minor marks that were not replaced, but it was not a nature that would impair the integrity or performance of the roof." Flury further testified that upon inspecting the roof a final time, he did not observe any defects

that would affect the integrity of the roof or "that would have resulted in compromise of service level."

Similarly, Quinn testified that defendant had placed pieces of red tape over each shingle that defendant had a concern with, and Quinn, with the assistance of two other men, repaired those areas. Quinn further testified that plaintiff returned to defendant's residence and "replaced the cosmetic concerns that [defendant] had." Thus, the trial court's finding of fact that "[p]laintiff replaced the scuffed, cut and torn shingles in Defendant's roof" is supported by competent evidence in the record.

Next, defendant challenges finding of fact 8 in the trial court's judgment, which states: "After a meeting with the representative of the shingle manufacturer, it was determined that the issues concerning the vertical alignment of the roof tiles and aesthetic issues were caused by a manufacturing defect in the shingle product itself, which was the responsibility of the shingle manufacturer." Defendant argues that this finding of fact is erroneous in that it does not specify who made such a determination and that the record evidence shows there existed dual responsibility on behalf of both the manufacturer and the

installer – plaintiff – for the roof's vertical alignment failure.

Despite defendant's assertions to the contrary, finding of fact 8 is supported by the testimony of both Flury and Quinn as well as email correspondence between Flury and a GAF representative that was introduced into evidence by defendant at the hearing. Although Flury testified that GAF's letter to defendant offering to settle defendant's claims for the sum of $3,000.00 did not expressly admit to any manufacturing defect in the shingles, an email from Flury to a GAF representative, dated after GAF's initial letter, explained Flury's and defendant's understanding of the shingles' variable lengths and the $3,000.00 compensation being offered by the manufacturer:

> The ***aesthetic defect*** for which GAF is giving [defendant] $3,000.00 will not be covered under this warranty upgrade, nor is it covered under any other warranty. Furthermore, [defendant] understands that his acceptance of the $3,000.00 compensation from GAF will release GAF from any [and] all liability ***as regards the specific aesthetic defect for which he is being compensated***, namely the inconsistencies in the shingle lengths which resulted in the notches not lining up properly. [Defendant] also understands that all other parts of the warranty and warranty upgrade will remain in full effect should he accept the $3,000.00 compensation from GAF.

(Emphasis added.) In response to this email, the GAF representative replied, in pertinent part, "[t]hat is correct." This correspondence supports the trial court's finding of fact that after communicating with a representative of the shingle manufacturer, it was confirmed that the issues concerning the vertical alignment of the roofing shingles were caused by a manufacturing defect in the shingle product itself. Although Quinn acknowledged that vertical misalignment can be both a manufacturer and an installation problem, he opined that plaintiff's work was "an acceptable job with this particular shingle."

In addition, both Flury and Quinn continuously testified that any aesthetic misalignment in the shingles was solely attributable to the variable lengths of the shingles themselves and that plaintiff did a high quality job in installing the shingles, despite the defect in the product. Flury testified on cross-examination that "[t]he nature of the defect, the shingles, prevented [plaintiff] from keeping the notches vertically aligned," which created the "aesthetic problem[.]" Flury stated that "[t]he manufacturing defect created an aesthetic problem[.]" Flury also testified on cross-examination that the vertical misalignment was "something that was caused by

the manufacturer[,] not by the installers." Flury explained that "[t]he problem [was] the shingles[,] not the installer. The shingles [had] a defect where they vary in length, that's what[] . . . creat[ed] the difficulty with keeping the vertical notches lined up."

Quinn likewise testified that "[t]his particular shingle was problematic because it was inadequate in its measurements." Quinn testified that "[t]he shingle itself was defective . . . because the shingle was . . . manufactured at random lengths." Furthermore, we note that defendant's own answer and counterclaim states that "the roofing shingles came in which were manufactured improperly by the manufacturer such that their alignment was off and cast a noticeable bad pattern." Thus, defendant's own pleading appears to admit that the varying lengths in the shingles installed on his home was a manufacturing defect in the shingle product. "'A party is bound by his pleadings and, unless withdrawn, amended, or otherwise altered, the allegations contained in all pleadings ordinarily are conclusive as against the pleader. He cannot subsequently take a position contradictory to his pleadings.'" *Bradley v. Bradley*, 206 N.C. App. 249, 255-56, 697 S.E.2d 422, 427 (2010) (quoting *Davis v. Rigsby*, 261 N.C. 684, 686, 136 S.E.2d 33, 34

(1964)). Defendant's arguments challenging finding of fact 8 are without merit.

Defendant next challenges finding of fact 10 in the trial court's judgment, which states: "After negotiations, the manufacturer agreed to settle the Defendant's manufacturing defect claim for $3,000.00. On 8 April 2011, the defendant accepted a $3,000.00 settlement check from the shingle manufacturer as compensation for the vertical misalignment issue and the aesthetic issue with his roof." Defendant argues that this finding of fact is erroneous in that there is no record evidence supporting a finding that the $3,000.00 check was compensation for the vertical misalignment issue and the aesthetic issue. Defendant asserts that the release signed by defendant only pertained to the manufacturer and not to plaintiff and further denied that the settlement check was in compensation for the alleged defects.

As explained above in addressing defendant's challenge to finding of fact 8, there is competent evidence in the record supporting a finding of fact by the trial court that the manufacturer, through its representative, acknowledged a product defect in the varying lengths of the shingles used on defendant's roof. There is also competent evidence in the

record supporting a finding by the trial court that the manufacturer's payment of $3,000.00 to defendant was in settlement of defendant's claims concerning the shingles' varying lengths. Although the initial letter indicating GAF's willingness to offer defendant $3,000.00 in settlement of defendant's claims concerning the shingles installed on his roof denied the existence of any manufacturing defect and released only the manufacturer from liability, subsequent correspondence between plaintiff and the shingle manufacturer, as set forth prior, supports the trial court's finding that such sum was offered in settlement of the aesthetic misalignment issue resulting from the varying lengths of the shingle product. In addition, although the release from liability pertained only to the shingle manufacturer, Flury testified that he informed GAF that if defendant filed an action against plaintiff regarding the aesthetic issue resulting from the vertical misalignment of the shingles, then plaintiff would be forced to "drag" the shingle manufacturer into the litigation. Thus, there is competent evidence in the record supporting the trial court's finding of fact 10, and defendant's arguments challenging finding of fact 10 are without merit.

Finally, defendant challenges finding of fact 14 in the trial court's judgment, which states: "The Defendant presented no proof that the installment of the roof by the Plaintiff was done in an unworkmanlike manner." Defendant argues he did in fact present such evidence by way of cross-examination of plaintiff's witnesses. We find no merit in defendant's argument.

Although defendant cross-examined Flury and Quinn regarding defendant's complaints about plaintiff's roofing services, Flury and Quinn repeatedly testified that defendant received a high-quality roofing job, that any aesthetic problems attributable to the vertical misalignment of the shingles were solely the responsibility of the shingle manufacturer and not the installers, and that defendant's remaining concerns with torn, scuffed, or broken shingles were corrected by plaintiff. Flury testified that he was an experienced roofer, having worked approximately 25 years in the roofing industry; he had earned an excellence award as a roofing installer and had been certified by GAF, the shingle manufacturer involved in the present case; and he had installed approximately 1600 roofs since he started the plaintiff business. Similarly, Quinn testified that he had

been in the roofing business for approximately 35 years and had installed "thousands" of roofs.

In addition, defendant failed to offer any witness testimony that plaintiff's roofing services were not performed in a workmanlike manner. Thus, although defendant attempts to rely on cross-examination testimony of plaintiff's president and employee, defendant did, in fact, present no proof that plaintiff's roofing services were performed in an unworkmanlike manner. The record before this Court supports the trial court's findings of fact.[2]

Defendant further challenges the trial court's conclusions of law that "[p]laintiff did not breach its contract with the Defendant[,]" and that "Defendant did breach his contract with

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[2] Contrary to defendant's argument, the trial court is not required to include any specific language in its findings of fact indicating the weight it placed on the various testimony and other evidence received at the hearing. *See, e.g., Hassell v. Onslow Cty. Bd. of Educ.*, 362 N.C. 299, 307, 661 S.E.2d 709, 715 (2008) (noting that a trial court "'does not have to explain its findings of fact by attempting to distinguish which evidence or witnesses it finds credible. Requiring [a trial court] to explain its credibility determinations and allowing the Court of Appeals to review [a trial court]'s explanation of those credibility determinations would be inconsistent with our legal system's tradition of not requiring the fact finder to explain why he or she believes one witness over another or believes one piece of evidence is more credible than another.'" (quoting *Deese v. Champion Int'l Corp.*, 352 N.C. 109, 116-17, 530 S.E.2d 549, 553 (2000))). Rather, the trial court is only required to state its findings of fact, which the trial court properly did in this case.

Plaintiff when he failed to pay the balance of $4,201.05." In light of the trial court's findings of fact that (1) defendant received compensation for the roof installation from the shingle manufacturer as well as payment in full for the roofing services from his insurance company, (2) defendant failed to present any evidence that plaintiff's installation of defendant's roof was performed in an unworkmanlike manner, and (3) defendant refused to pay the balance due to plaintiff under the contract, the trial court's conclusions of law that defendant breached his contract with plaintiff by failing to pay the balance due under the contract and that plaintiff did not breach its contract with defendant in failing to perform the roofing services in a workmanlike manner are supported by the findings of fact. Defendant's arguments are without merit.

III. Propriety of Prejudgment Interest Award

Defendant also argues on appeal that the trial court's award of prejudgment interest was erroneous as a matter of law. Defendant contends the trial court's award was prohibited by N.C. Gen. Stat. § 24-2, North Carolina's usury statute. Defendant further contends the trial court was without authority to award plaintiff prejudgment interest at the legal rate when

such interest was not specifically asked for in plaintiff's complaint.

N.C. Gen. Stat. § 24-2 (2011) provides, in pertinent part:

> The taking, receiving, reserving or charging a greater rate of interest than permitted by this chapter or other applicable law, either before or after the interest may accrue, when knowingly done, shall be a forfeiture of the entire interest which the note or other evidence of debt carries with it, or which has been agreed to be paid thereon.

Id. First, as plaintiff argues on appeal, the laws on usury in this state apply only to lending transactions. *See* N.C. Gen. Stat. § 24-2.1 (2011); *Odell v. Legal Bucks, LLC*, 192 N.C. App. 298, 314, 665 S.E.2d 767, 778 (2008) (delineating the four elements of a usury claim: "'1. A loan or forbearance of money, either express or implied. 2. An understanding between the parties that the principal shall be or may be returned. 3. That for such loan or forbearance a greater profit than is authorized by law shall be paid or agreed to be paid. 4. That the contract is entered into with an intention to violate the law.'" (emphasis omitted) (quoting *MacRackan v. Bank*, 164 N.C. 24, 34, 80 S.E. 184, 188 (1913))). "The conduct condemned by our usury statutes is the extraction or reception of more than a specified legal rate for the hire of money, and not for anything else."

Hansen v. Kessing Co., 15 N.C. App. 554, 555, 190 S.E.2d 407, 409 (1972).

Rather, an award of prejudgment interest in a breach of contract action is governed by N.C. Gen. Stat. § 24-5(a) (2011), which provides, in pertinent part:

> In an action for breach of contract, except an action on a penal bond, the amount awarded on the contract bears interest from the date of breach. The fact finder in an action for breach of contract shall distinguish the principal from the interest in the award, and the judgment shall provide that the principal amount bears interest until the judgment is satisfied. If the parties have agreed in the contract that the contract rate shall apply after judgment, then interest on an award in a contract action shall be at the contract rate after judgment; otherwise it shall be at the legal rate.

Id. "Once breach is established, plaintiffs are entitled to interest from the date of the breach as a matter of law." *Cap Care Grp., Inc. v. McDonald*, 149 N.C. App. 817, 824, 561 S.E.2d 578, 583 (2002). Thus, defendant's argument that plaintiff was not entitled to prejudgment interest at the legal rate because it did not specifically ask for such relief in its breach of contract complaint is without merit.

IV. Conclusion

We hold the trial court's findings of fact are supported by competent evidence in the record and support the trial court's conclusions of law that defendant breached his contract with plaintiff and that plaintiff did not breach its contract with defendant. We further uphold the trial court's award of prejudgment interest at the legal rate. In light of our holding, we need not reach plaintiff's and defendant's remaining arguments regarding the issue of double recovery.

Affirmed.

Judges HUNTER (Robert C.) and GEER concur.

Report per Rule 30(e).