



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-16-00113-CV

Richard **RAMOS**, Individually and
d/b/a Green Energy of SA and Green Energy of San Antonio,
Appellant

v.

Carol **BURROWS**,
Appellee

From the 407th Judicial District Court, Bexar County, Texas
Trial Court No. 2015-CI-04008
Honorable Larry Noll, Judge Presiding

Opinion by: Patricia O. Alvarez, Justice

Sitting: Marialyn Barnard, Justice
Patricia O. Alvarez, Justice
Jason Pulliam, Justice

Delivered and Filed: November 30, 2016

AFFIRMED

Richard Ramos, individually and d/b/a Green Energy of SA and Green Energy of San Antonio (“Green Energy”), appeals the trial court’s judgment awarding Carol Burrows \$6,134 in damages and \$15,000 in attorney’s fees for claims she made arising from Green Energy’s installation of a gutter system on her home. On appeal, Green Energy challenges the legal sufficiency of the evidence to support the judgment, asserting “there is no evidence of any failure of the [gutter] system in the form of damage to the Appellee’s home.” If this court agrees the

evidence is legally insufficient, Green Energy asserts the court must reverse both the award of damages and attorney's fees. We affirm the trial court's judgment.

BACKGROUND

In April of 2011, Green Energy and Burrows entered into a contract for the installation of a Snaplock gutter system on her home. The gutter system was installed in May of 2011. In May of 2012, Burrows contacted Green Energy because the gutter system was leaking.

Richard Ramos, Green Energy's owner, and John Ramos, Green Energy's general manager, testified they did not observe any leaks; however, neither of them inspected the gutter system during a rainstorm. Both Richard and John testified that another Green Energy employee did inspect the gutter system during a rainstorm and did not observe any leaking.

In addition to testifying about her observations of the leaking when it rained, Burrows recorded the alleged leaking on video, and the videotape was admitted as evidence at trial. Burrows also testified she observed leaks during a water test conducted by Green Energy's contractor, Carlos Munoz, who installed the gutter system. Munoz did not testify at trial.

Although Green Energy undertook several measures in an effort to address the reported leak even though Green Energy did not observe the leak, Burrows testified the gutter system continued to leak even after all of these measures were taken. Burrows subsequently sued Green Energy asserting claims for breach of contract, violations of the Texas Deceptive Trade Practices Act, negligence and negligent misrepresentation, and breach of warranty.

After a bench trial, the trial court awarded Burrows damages in the amount she paid for the gutter system less prior credits Green Energy previously paid to Burrows and attorney's fees. The trial court's judgment allowed Green Energy to remove the gutter system from Burrows's home, provided that Green Energy "plug" any holes caused by the installation of the gutter. The trial

court's judgment stated Green Energy would forfeit the gutter system if it was not removed within thirty days. Green Energy appeals.

STANDARD OF REVIEW

“We will sustain a legal-sufficiency challenge if no more than a scintilla of evidence is offered to prove a finding.” *Kingsaire, Inc. v. Melendez*, 477 S.W.3d 309, 313 (Tex. 2015). “More than a scintilla of evidence exists when the evidence rises to a level that would enable reasonable and fair-minded people to differ in their conclusions.” *King Ranch, Inc. v. Chapman*, 118 S.W.3d 742, 751 (Tex. 2003) (internal quotations omitted). “Less than a scintilla of evidence exists when the evidence is so weak as to do no more than create a mere surmise or suspicion of a fact.” *Id.*

The trial judge, as the factfinder in this case, is the sole judge of the credibility of the witnesses and the weight to give their testimony. *City of Keller v. Wilson*, 168 S.W.3d 802, 819 (Tex. 2005). In our review, we credit evidence favorable to the trial court's findings if a reasonable factfinder could and disbelieve evidence contrary to the trial court's findings unless a reasonable factfinder could not. *Id.* at 827.

BREACH OF CONTRACT

The elements of a breach of contract claim are ““(1) a valid contract; (2) the plaintiff performed or tendered performance; (3) the defendant breached the contract; and (4) the plaintiff was damaged as a result of the breach.”” *Brooks v. Excellence Mortg., Ltd.*, 486 S.W.3d 29, 36 (Tex. App.—San Antonio 2015, pet. denied) (quoting *McLaughlin, Inc. v. Northstar Drilling Techs., Inc.*, 138 S.W.3d 24, 27 (Tex. App.—San Antonio 2004, no pet.)). In this case, Green Energy challenges the sufficiency of the evidence to support the trial court's findings that Green Energy breached the contract and Burrows was damaged as a result of the breach.

A. Breach by Green Energy

Burrows testified she contracted with Green Energy to purchase a watertight gutter system. Burrows's expert similarly testified a gutter system is meant to be watertight. Burrows testified the gutter system installed by Green Energy leaked between her house and the gutter.

A videotape was introduced into evidence which Burrows testified showed the water leaking. Although Richard Ramos testified he did not see any water leaking on the videotape, the parties withdrew their exhibits at the conclusion of the hearing. Accordingly, we must defer to the trial court's observation of the videotape.

Both Richard and John Ramos testified that one of Green Energy's employees did not observe any water leaking when he inspected the gutter system during a rainstorm; however, the trial court could disbelieve that testimony. *City of Keller*, 168 S.W.3d at 819. Although Green Energy places great emphasis on the testimony of Burrows's expert who stated he did not observe any failure in the system, the expert testified he inspected the gutter system on a sunny day, and failures are normally discovered when it is raining.

Having reviewed the evidence in the light most favorable to the trial court's judgment, we hold the evidence is legally sufficient to support a finding that Green Energy breached the parties' agreement by installing a gutter system that leaked.

B. Damages

With regard to damages, Green Energy refers to the witnesses' testimony that they did not observe any damage to Burrows's home. Even if Burrows's home was not damaged, however, Burrows did not receive a watertight gutter system. The trial court awarded Burrows damages in the amount she paid Green Energy for the gutter system less prior credits Green Energy previously paid to Burrows. *Geis v. Colina Del Rio, LP*, 362 S.W.3d 100, 112 (Tex. App.—San Antonio 2011, pet. denied) (quoting *Phillips v. Phillips*, 820 S.W.2d 785, 788 (Tex. 1991)) (“The universal

rule for measuring damages for [a] breach of contract is just compensation for the loss or damage actually sustained.”) Because the evidence established Burrows paid for a watertight gutter system but the gutter system Green Energy installed leaked, the evidence supports the finding that Burrows was damaged by Green Energy’s breach.

C. Conclusion

Because we hold the evidence is sufficient to support the trial court’s finding as to Burrows’s breach of contract claim, we need not address the sufficiency of the evidence to support her other claims. Green Energy’s first issue is overruled. Because Green Energy’s second issue regarding the award of attorney’s fees is contingent on this court finding the evidence insufficient to support the trial court’s liability finding, Green Energy’s second issue is also overruled.

CONCLUSION

The trial court’s judgment is affirmed.

Patricia O. Alvarez, Justice