IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

A.W.R. CONSTRUCTION, INC., d/b/a COMET ROOFING,	)	**No. 27776-3-III**
	)	
Appellant,	)	
	)	**Division Three**
v.	)	
	)	
SCOTT MANINA, a single man,	)	
	)	**UNPUBLISHED OPINION**
Respondent.	)	
	)	

Sweeney, J. — This appeal follows the unsuccessful attempt by a roofing contractor to recover on a contract for work done replacing a roof. The court concluded that the contractor had breached the contract and awarded the owner damages. We conclude that the award of damages is supported by fact and law, and we affirm the judgment.

FACTS

Scott Manina owns a house in Spokane that has been converted into eight apartments. The house's roof is large and architecturally complex; there is a turret at

each end. A.W.R. Construction, Inc. d/b/a Comet Roofing, through its owner Robert Apple, assured Mr. Manina that it had the experience necessary to re-roof the house, including the turrets, even though it had never worked on turrets before. In 2006, Mr. Manina contracted with Comet to re-roof his house for $16,693.60. The parties later agreed to reduce the price to $14,428.04 for damage that Comet caused when it tore off the old roof.

The parties' written contract required that Comet install decking as needed, ice-shield material to the roof's critical areas, 30 pound felt to the remaining areas, ventilation, metal valleys and drip edges, and 30-year architectural roofing shingles. The contract did not provide that Comet would install step flashing or counter flashing. Comet did, however, guarantee its work and promise to replace faulty work free of charge. The contract required payment upon completion. And it had an attorney fees clause.

Mr. Manina shared some concerns about the quality of Comet's work with Mr. Apple shortly after Comet started installing the new roof. Mr. Apple subcontracted with Mark Bohn to address Mr. Manina's concerns about the turrets and improperly installed flashing and shingles.

Mr. Apple and Mr. Bohn subsequently agreed that they did not want Mr. Manina

at the work site when the city inspected the roof after it was finished. Mr. Apple cancelled one inspection because Mr. Manina was present. But the roof eventually passed inspection. Comet then demanded payment, and Mr. Manina refused to pay. He, instead, wrote to Comet and cited several defects that had yet to be repaired.

Comet filed a lien against the property for the revised contract price, $14,428.04. It then sued for breach of contract and to foreclose on its lien.

The case was tried to the court sitting without a jury. Mr. Manina is an experienced roofer. He testified that he refused to pay because the roof leaked and Comet refused to fix it. He also testified that the least expensive way to repair the roof was to replace it. Three experts testified that Comet did not properly roof the house. They concluded that Comet improperly installed step flashing and failed to install counter flashing. They opined that the duty to install step flashing and counter flashing is implied in roofing contracts because flashing is essential to a properly functioning roof. The experts testified that the best way to fix the roof was to replace it. One testified that it would cost $13,418.44 to replace the roof.

The trial court concluded that Comet had implied contractual duties to install step flashing and counter flashing and to follow the city code and manufacturer installation instructions. And it concluded that Comet failed to do this. The court then concluded

that Comet had breached its contract with Mr. Manina. The court ruled that Mr. Manina had no duty to pay because the damages more than offset Comet's lien. The court also awarded Mr. Manina attorney fees and costs.

DISCUSSION

Implied Duty to Install Flashing

Comet argues that the contract with Mr. Manina was fully integrated, that it did not agree to install flashing, and thus the court erred by implying a duty to install flashing.

The essential facts here are undisputed. The issue is whether the court erred by implying an obligation to install flashing. The court's conclusion that the obligation was implied is a conclusion of law that we will review de novo. *Martinez v. Kitsap Pub. Servs., Inc.*, 94 Wn. App. 935, 943-44, 974 P.2d 1261 (1999). Here is what the court concluded: "[U]nder application of the 'context rule' [step flashing and counter flashing] were within the scope of the contract." Clerk's Papers (CP) at 42 (Conclusion of Law A3).

Comet argues that the context rule does not apply because the contract here was fully integrated: "**DO NOT SIGN THIS CONTRACT UNTIL COMPLETELY FILLED IN, NO VERBAL AGREEMENTS RECOGNIZED**." CP at 9.

At least since *Berg v. Hudesman*, Washington has applied the "context rule" to determine the intent of parties to a contract. 115 Wn.2d 657, 662, 667-68, 801 P.2d 222 (1990). That rule allows the admission of extrinsic evidence to help courts determine the intent of the parties to a written contract. *Hollis v. Garwall, Inc.*, 137 Wn.2d 683, 693, 974 P.2d 836 (1999). The rule applies regardless of whether or not a contract contains an integration clause. *King v. Rice*, 146 Wn. App. 662, 670-71, 191 P.3d 946 (2008), *review denied*, 165 Wn.2d 1049 (2009). The court here, then, appropriately relied on expert opinions that trade practices and good workmanship require the installation of step flashing and counter flashing when replacing a roof. Indeed, flashing was essential. And Comet failed to install it properly or at all.

These expert opinions, Comet's failures, and additional evidence support other findings challenged by Comet:

- "[T]he parties entered a contract for Comet Roofing to re-roof Manina's property." CP at 35 (Finding of Fact A5);
- "The contract did not specifically include or exclude metal step flashing and counter flashing, which are an integral part of a roof system normally installed prior to laying shingles." CP at 36 (Finding of Fact A13);
- "Mr. Apple did not advise Manina that he considered metal step flashing and counter flashing to be outside the scope of the contract, but rather had Comet Roofing continue to work on the same." CP at 37 (Finding of Fact A30); and
- "Mr. Bohn was never advised by Mr. Apple that metal step flashing and

> counter flashing were not part of the contract, worked on the same, and knew they were required by City code." CP at 38 (Finding of Fact A36).

No one reported that flashing fell outside the scope of the work agreed to in the contract. But, again, there was ample expert testimony that flashing was essential. The trial court, then, properly inferred from its findings that the contract here required Comet to install step flashing and counter flashing.

Comet also challenges the trial court's conclusion that it had a contractual duty to comply with the city code and the manufacturer installation instructions: "Prevailing local standards of workmanship in the roofing industry require, at a minimum, compliance with applicable City code and manufacturer installation instructions." CP at 39 (Finding of Fact A48). Comet argues that the term "prevailing local standards of workmanship" is vague. But the evidence here adequately describes the term as part of the custom and practice of roofing contractors. *See* Report of Proceedings (RP) at 227-28, 395. And these standards include the obligation to install flashing.

Our conclusion here necessarily addresses Comet's further argument that it did not breach the contract. If the installation of flashing was a necessary part of this agreement (as the court implied), and if Comet failed to install flashing properly or at all (which it did), then Comet breached its contract. *See Seabed Harvesting, Inc. v. Dep't of Natural Res.*, 114 Wn. App. 791, 797, 60 P.3d 658 (2002) (defining breach of a contract).

Findings of Fact

In a related argument, Comet challenges the trial court's findings that Mr. Apple cancelled the final city inspection on August 30, 2006, when he learned that Mr. Manina was on site pointing out deficiencies. CP at 38 (Finding of Fact A40). Mr. Bohn testified that he and Mr. Apple agreed that Mr. Manina was not allowed at the job site during inspections. Mr. Manina, however, showed up to the final inspection on August 30, 2006, and expressed his concerns about the roof to the inspector. Mr. Bohn called Mr. Apple and told him that Mr. Manina was at the job site. Mr. Apple then called the inspector and cancelled the inspection. Comet does not explain why this evidence does not substantially support the court's finding, or why the finding is material to the court's holding. Indeed, these findings are not essential to the trial court's decision here. But they are supported by the record in any event.

Comet also challenges the trial court's findings that (1) the city code requires that roofers comply with manufacturer installation instructions; and (2) city inspections do not guarantee that the contractor provided quality workmanship and did not violate city code:

- "Compliance with manufacturer installation instructions are incorporated by reference in the applicable City code as requirements to be met in a roofing project." CP at 39 (Finding of Fact A46);

- "City inspections are not designed to insure that no code violations exist or that workmanship is not defective, and it is not uncommon to find problems after no code violations are found in a final City inspection." CP at 39 (Finding of Fact

A44).

Comet contends that a trial court is not competent to decide the purpose of a roof inspection or the requirements of the city code. It, however, offers no argument or citation to authority to support its contention. And trial courts appropriately decide these issues based on expert testimony all the time. *See* ER 702 (court may determine issue of fact based on expert's technical or specialized knowledge). Our review is limited to determining whether substantial evidence supports the findings. *Pierce County v. State*, 144 Wn. App. 783, 847, 185 P.3d 594 (2008). And it does. Roy Campbell is an inspector for the city of Spokane. We will infer from his profession that he is familiar with the city code and inspections. He testified that the code requires roofers to follow manufacturer installation instructions. He also testified that roof inspections do not insure that the work is done in a workmanlike manner. The trial court's findings are supported by Mr. Campbell's expert testimony.

Damage Award

Comet next challenges, under various legal theories, the court's failure to award it money.

The trial court here found that Comet damaged Mr. Manina's property by installing a leaky roof:

The defective workmanship subjects Manina to existing leakage areas

> throughout the entire roof along with long term consequential damages resulting from loose and falling shingles, wind damage, dry rot, mold, interior water damage, and loss of the 30 year manufacturer's warranty on materials due to failure to follow manufacturer's installation instructions.

CP at 41 (Finding of Fact A56).

Comet contends that Mr. Manina's roof is not leaky because Mr. Bohn said so. The court was not persuaded by Mr. Bohn's testimony. Instead, it was persuaded by the testimony of other experts. They opined that water permeates the eyebrow roofs where Comet improperly installed flashing; that water seeps into the cracks in the siding; and that it seeps into caulking voids next to the chimneys. They also testified that water leaks into the voids next to the chimneys where Comet improperly installed step flashing on top of the siding. All of this testimony supports the fact of damages; the amount is then discretionary with the trier of fact. *Womack v. Von Rardon*, 133 Wn. App. 254, 262, 135 P.3d 542 (2006). Here, the roof was inspected, deficiencies were noted and the costs to repair were established by experts. That is sufficient evidence to support the trial court's findings of damages. And we defer to those findings. *Pierce County*, 144 Wn. App. at 847.

Comet also takes issue with the court's finding of potential long term consequential damages. It maintains that evidence that the Manina roof will likely suffer consequential damages is speculative. It is not. The finding is based on an expert opinion that a leaky roof leads to mold, dry

rot, and interior damage. Comet argues that Mr. Smith's testimony was unreliable because he was paid to testify. This argument goes to the burden of persuasion. The trial court determined which evidence was persuasive. *Welch Foods, Inc. v. Benton County*, 136 Wn. App. 314, 322, 148 P.3d 1092 (2006). We are concerned with only the burden of production here on appeal. *Id.* The trial court did not award consequential damages in any event.

Comet further contends that only speculation supports the trial court's finding that Mr. Manina's roof decking would probably have to be re-nailed: "In addition, more probably than not the decking under the shingles will require re-nailing at a cost of $1,200 plus tax of $100.80 at 2006 prices for a total of $1,300.80." CP at 41 (Finding of Fact A61).

A fact finder can draw logical inferences from the evidence. *Fannin v. Roe*, 62 Wn.2d 239, 243, 382 P.2d 264 (1963). Mr. Manina showed several deficiencies in the way Comet installed the roof, including failing to properly affix shingles with the proper number of nails in the proper patterns and locations throughout the entire roof. The evidence shows that Comet improperly installed each part of the roof that is visible to the naked eye. The trial judge, then, logically inferred that Comet improperly installed the decking underneath the felt and shingles as well. The trial court's finding here is based

on sufficient evidence of faulty workmanship.

Comet also challenges the amount of damage Mr. Manina says he suffered. The trial court found that Comet harmed the Manina property's shrubs, sprinklers, windows, siding, and interior while it was tearing off the old roof and that Mr. Manina estimated the damage would cost more than $3,000 to repair:

> When Comet Roofing commenced tear-off of the existing roof in approximately July 2006, it damaged shrubbery, sprinklers, broke a window, and damaged siding on the front of the house.

CP at 36 (Finding of Fact A14);

> Additionally, during tear-off of the existing roof Comet Roofing failed to tarp the roof resulting in interior water damage during a rainstorm.

CP at 36 (Finding of Fact A15);

> Manina estimated the cost to repair the damages occurring during the tear-off phase in excess of $3,000.

CP at 36 (Finding of Fact A16).

Comet argues that the estimated cost to repair this damage is not "reasonably certain." Its argument, however, is based on the faulty premise that this $3,000 figure is part of Mr. Manina's damages award. The trial court did not award Mr. Manina money for the damage Comet caused by tearing off Mr. Manina's old roof. The parties resolved that dispute. They agreed that Comet would reduce the contract price from $16,693.60 to

$14,428.04 to compensate Mr. Manina for the damage. Whether this estimate is reasonably certain or not, then, would not change the amount of Mr. Manina's award.

Finally, on this point, contract damages are supposed to give the injured party the benefit of the bargain by awarding him a sum of money that will put him in as good a position as he would have been in had the contract been performed. *Ford v. Trendwest Resorts, Inc.*, 146 Wn.2d 146, 155, 43 P.3d 1223 (2002). And, when a contractor breaches a construction contract, the owner may recover the cost of remedying construction defects if the cost is not clearly disproportionate to the loss in value to the owner. *Panorama Village Homeowners Ass'n v. Golden Rule Roofing, Inc.*, 102 Wn. App. 422, 427, 10 P.3d 417 (2000).

Here, Mr. Manina's expert testified that the workmanship defects could best be remedied by replacing the roof, which would cost $13,418.44. The trial court agreed. Comet had to show that Mr. Manina's property suffered no loss in value. *Id.* at 429. It, however, failed to satisfy that burden; it also failed to challenge Mr. Manina's estimate to replace the roof. The trial court, then, did not err by awarding Mr. Manina damages based on the cost to replace his roof. And we reject Comet's general challenges to the findings related to this issue: Findings of Fact A31, A34, A57-A60, A64, B1.

Comet also complains that the court should have offset Mr. Manina's total

damages award ($16,670.41) using the original contract price ($16,693.60), not the revised contract price ($14,428.04). The trial court found: "Manina's costs at 2006 prices to repair the defective workmanship are $16,670.41 which exceeds the revised contract price of $14,428.04 by $2,242.37." CP at 41 (Finding of Fact A62). Comet argues that Mr. Manina had to pay the revised contract price to get the revised contract price. But there is no showing that the revised contract price was conditioned upon Comet receiving payment. The revised contract price was consideration for the damage Comet caused to Mr. Manina's property while it was tearing off the old roof. The trial court properly used the revised contract price ($14,428.04) to offset Mr. Manina's damages award.

Finally, Comet contends that Mr. Manina has been unjustly enriched and that it is entitled to restitution for the money it spent under the equitable theory of quantum meruit. Again, the court's conclusion that Comet breached the contract and that Mr. Manina was entitled to an award of damages obviates any claim for relief under quantum meruit. The idea behind the equitable doctrine of quantum meruit is that one party has been unjustly enriched at the expense of another. *Dragt v. Dragt/DeTray, LLC*, 139 Wn. App. 560, 576-77, 161 P.3d 473 (2007). Mr. Manina has not been unjustly enriched at the expense of Comet. Comet breached its contract and Mr. Manina was damaged as a result of that

breach.

Attorney Fees and Costs

Both parties request fees and costs on appeal. Mr. Manina is the prevailing party and is therefore entitled to fees and costs on appeal. RCW 4.84.330 authorizes us to award those fees because the contract here contains an attorney fees clause. We, then, award Mr. Manina reasonable attorney fees and costs for this appeal.

We affirm the judgment of the trial court and award attorney fees and costs.

A majority of the panel has determined that this opinion will not be printed in the Washington Appellate Reports but it will be filed for public record pursuant to RCW 2.06.040.

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Sweeney, J.

WE CONCUR:

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Kulik, C.J.

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Brown, J.