

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2493

September Term, 2023

OLD TOWN BUILDERS, INC.,

v.

CAROLE A. LUBER, ET AL.

Shaw,
Kehoe, S.,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, J.

Filed: June 13, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Old Town Builders, Inc., trading as Paul Davis Restoration of the Delmarva Peninsula (“Old Town”), entered into a contract with Carole and Steven Luber to provide property damage restoration services at the Lubers’ home in the aftermath of a flood. Before the scope of work was complete, the Lubers became dissatisfied with Old Town’s work and hired another contractor to complete the job.

In ensuing litigation in the Circuit Court for Worcester County, the court found that Old Town breached the contract by failing to comply with local construction permit requirements and failing to provide workmanship in conformance with industry standards. The court determined that the Lubers were entitled to a portion of the costs they incurred to finish the restoration work and awarded damages in the sum of \$139,849.13.

Old Town appealed and presents two questions,¹ which we have rephrased:

1. Did the trial court err in awarding the Lubers \$59,649.13 for testing and repair of the plumbing drainage and vent system?
2. Did the trial court err in awarding the Lubers \$78,200 for completion of two bathrooms and kitchen backsplash?

Finding no error, we affirm.

¹ The questions as posed by Old Town are:

1. Did the trial court err and/or was it clearly erroneous when it awarded damages of \$59,649.13 against Old Town for the search and repair of leaks in the drainage and vent system, which Old Town was not authorized to perform under the insurance contract?
2. When the trial court awarded \$139,849.13 [sic] to the Lubers against Old Town for the completion of the two bathrooms, for which insurance had allotted only \$31,000, did it err as a matter of law and/or was it clearly erroneous?

BACKGROUND

In 2017, the Lubers purchased a second home in Ocean City (“the Property”). On January 9, 2018, numerous indoor plumbing pipes burst due to a power outage during sub-freezing weather conditions. The result was extensive flooding and water damage throughout the Property. The Lubers filed a claim with their homeowner’s insurance carrier, Cincinnati Insurance (“Cincinnati”). The Lubers hired Old Town, a remodeling and reconstruction company that works with insurance companies, to perform mitigation services, including the demolition and removal of damaged material and the use of dehumidifiers and air movers to stabilize the Property and prevent the growth of mold.

On April 25, 2018, after mitigation work was complete, the Lubers and Old Town entered into a contract to repair the damage to the Property. The original contract amount was \$179,109.90. The scope and cost of the work was detailed in a computerized estimate prepared by Wade Lingenfelter, a claims adjuster who worked for Cincinnati.

As the work progressed and additional damage was discovered, the insurance estimate was supplemented several times, generating several change orders. The final estimate for the work necessary to repair the damage to the Property and restore it to its pre-loss condition, which was prepared by Mr. Lingenfelter in August of 2019, was \$330,999.74.

Tensions developed between the parties as the work progressed. At some point prior to June 19, 2019, the Lubers advised that they did not want Old Town to restore two bathrooms.

On June 19, 2019, the Lubers received an email from Frank Willing, the president of Old Town, along with the final bill and a “Certificate of Completion” for them to sign and return to the insurance company.² Mr. Willing advised the Lubers that the final bill reflected a credit to account for their decision to hire another contractor to finish the bathrooms.

The Lubers were dissatisfied with the work done by Old Town and refused to sign the certificate. On July 19, 2019, they met with Mr. Willing and Mr. Lingenfelter at the Property. The Lubers pointed out work that Old Town failed to complete and voiced concerns about the quality of the work that Old Town had done. Following that meeting, the Lubers decided that they did not want Old Town to continue working on the Property. They hired Coastal Cabinetry and Renovations (“Coastal Cabinetry”) to remedy Old Town’s work and complete the restoration work.

Old Town subsequently filed a petition to establish a mechanics lien on the Property, in which it claimed the Lubers had an outstanding balance of approximately \$65,000. The Lubers sued Old Town in a separate action that alleged several causes of action including breach of contract and wrongful detention of property. The two cases were consolidated.

² Mr. Willing testified that a certificate of completion is required by the insurance company. According to Mr. Willing, a signed certificate “would signify that the policyholder[s] . . . are satisfied with the work and depreciation can be released at that time.”

Trial

A two-day bench trial was held in October of 2021. Because the only issue on appeal is the court’s award of damages for breach of contract, we limit our discussion of the evidence to the facts necessary to resolve that issue.

The Lubers presented testimony from Damien Mareno, the owner of Coastal Cabinetry, and Ryan McManus, a project manager for Coastal Cabinetry. Mr. Mareno and Mr. McManus first viewed the Property on June 12, 2019. According to Mr. Mareno, the quality of the work done by Old Town was “poor” and “substandard.” He explained:

I mean, doors that were supposedly finish painted still had wood putty on them, weren’t sanded, weren’t painted.

Hardware that was painted over. Walls that weren’t painted correctly.

The kitchen install was poor. When we took down the range hood to put up the tile backsplash and adjust the cabinets, there was just haphazard sheet metal, so we removed the sheet metal, and behind the sheet metal was daylight. You could see going outside the house. There was nothing closing it out to the elements.

* * *

[I]t was very poor quality workmanship. Honestly, it looked like the handyman tried to do the job. That’s the kind of work it was.

The initial contract between Coastal Cabinetry and the Lubers called for the completion of the kitchen backsplash and restoring two bathrooms that had been “gutted down to [the] subfloor” during the mitigation process.³ Coastal Cabinetry began work on

³ Coastal Cabinetry also made improvements to the Property at the request of the Lubers. Costs for improvements were not included in the claim for damages.

the Property in July of 2019. Mr. McManus testified that the scope of the job expanded after it was discovered that the work done by Old Town had not been inspected.

Jacob Doub, the building official for the Town of Ocean City, inspected the Property on August 26, 2019. Mr. Doub noted that a plumbing permit was required for the repairs to plumbing lines concealed behind walls, above ceilings, and beneath floors. Old Town did not apply for a permit, however, and plumbing work had evidently been concealed without first being inspected. Mr. Doub stated that the plumbing subcontractor for Coastal Cabinetry had concerns about reconnecting the plumbing system because “he did not know what was behind the walls and what the quality of the work was like.” According to Mr. Doub:

The plumber had a difficult time because every time he would cap off a section [and] put air on it, he would find a leak. So those areas had to be uncovered, any plumbing would have to be repaired and dry wall[ed] and repainted again. This went on from August [of 2019] to January [of 2020].

At some point, Mr. Doub required a complete test of the plumbing system, including the drain system and the water supply system, to locate the source of the leaks and “anything else that . . . was not code compliant[.]”

Testing revealed four leaks in the drain lines: (1) a drain pipe behind a wall in one of the bedrooms had apparently been cut with a reciprocating saw during removal of damaged drywall; (2) a vent line in a bathroom had been pierced by two screws during installation of the vanity; (3) a crack in a pipe in the crawl space that, according to Mr. McManus, was “[l]ikely a freeze issue” in the trap; and (4) a crack in a trap below a shower

that had been demolished during mitigation. Coastal Cabinetry charged the Lubers \$59,649.13 to test the plumbing system and repair the damage to the drain system.

Before the kitchen backsplash could be tiled, it was necessary to remove and reinstall the wall cabinets, which, according to Mr. McManus, had been “incorrectly” installed and were not properly aligned. The two bathrooms were restored to “usable” condition. The total charge for the work in the kitchen and bathrooms was \$78,200. Both Mr. McManus and Mr. Mareno testified that the charges were fair and reasonable.

Brian Bramel, who holds a Ph.D. in structural civil engineering, testified for the Lubers as an expert in the field of forensic civil engineering and related fields. His work entailed evaluation of construction defects, including plumbing failures; assessment of resulting damage; and estimation of the scope and cost of work necessary to repair the damage.

Dr. Bramel inspected the Property in November of 2019. He testified about numerous construction defects and instances of faulty workmanship he observed at that time. Dr. Bramel opined that the work done by Coastal Cabinetry was “necessary to rectify the building[,]” and the amount charged for the work was reasonable and customary “based on published data.”

On cross-examination, counsel for Old Town asked Dr. Bramel whether it would cost \$40,000 per bathroom “[j]ust to get them functional[.]” Dr. Bramel responded, “In today’s market[,] that’s a pretty reasonable price for a gutted bathroom[.]” Counsel for Old Town suggested that Dr. Bramel’s opinion did not take into account the condition of the Property prior to the flood. Dr. Bramel stated that he had reviewed photographs included

in real estate marketing material, which depicted the condition of the Property months before the incident. According to Dr. Bramel, the photographs showed that the bathrooms were “usable, high-end bathrooms at that point.”

Dr. Bramel’s opinion regarding the high-end nature of the Property was corroborated by the testimony of other witnesses, including Mr. Lingenfelter, who said the Lubers “had a high-end home. The place was gorgeous. So a lot of their material was of high grade.” The Luber’s insurance agent testified that the Property was “high valued” because “it has all the upgraded finishes.” She described the Property as “four floors of just beautiful hardwood, beautiful granite, beautiful cabinetry.”

Mr. Lingenfelter testified on behalf of Old Town as an expert in the field of insurance estimates and claims adjustment. He had estimated a total cost of \$31,000 to restore both bathrooms to their pre-loss condition. His estimate was generated using Xactimate, a software program used in the insurance industry. According to Mr. Lingenfelter, his estimate accurately reflected the cost to restore the bathrooms to their pre-loss condition, and anything more would be a “betterment.” He said:

I cannot allocate betterments in a policy. So anything done to make a bathroom more appealing would not be considered by myself and would be denied. So it wasn’t in these estimates, that’s why it’s [\$15,500 per bathroom]. That’s what was there. If you want to make it 40 [thousand dollars per bathroom] that’s wonderful, but that’s not what was there originally.

In rebuttal, Dr. Bramel stated that Mr. Lingenfelter’s estimate for the restoration of another full bathroom in the house worked out to \$247.60 per square foot. Dr. Bramel testified that the same rate, applied to the combined square footage of the two unfinished

bathrooms, would amount to \$64,793. Dr. Bramel pointed out that Coastal Cabinetry’s total charge of \$78,200 was not solely for the completion of the bathrooms but also included work in the kitchen.

In response, Old Town proffered that, if recalled as a witness, Mr. Lingenfelter would testify that he did not agree with Dr. Bramel’s cost-per-square-foot analysis as a means of comparison. The court accepted the proffer.

In defense of the Lubers’ claim for costs associated with testing of the drain system and the repair of the leaks, Mr. Willing testified that such testing was outside the scope of the restoration work. According to Mr. Willing, drain lines “typically” do not get damaged during a freeze because they do not hold water.

Mr. Lingenfelter said that, in his thirty years of experience in insurance claims, he had “never heard” of testing the drain system. According to Mr. Lingenfelter, “water will find the easiest path of travel[,]” therefore, “[i]f there’s a hole in a drainpipe, chances of that leaking are slim to none.”

Circuit Court’s Opinion and Order

In its written opinion and order, the court denied Old Town’s request for a mechanics’ lien, finding that the amount claimed by Old Town represented work that either had not been completed or had been done incorrectly.

The court found that Old Town materially breached the terms of the parties’ contract by failing to obtain required permits and failing to provide workmanship in conformance with industry standards. The court ruled that the Lubers were therefore justified in terminating the contract with Old Town and were entitled to recover monies paid to Coastal

Cabinetry to finish the job. The court noted that, according to Dr. Bramel, the charges of \$78,200 to restore the bathrooms and finish restoration work in the kitchen was fair and reasonable.

The court found that completion of the work under the contract required the issuance of a plumbing permit, which, in this case, required a pressurized test of both the supply and drain lines. The court determined that Old Town’s poor workmanship was the cause of the four leaks that were subsequently discovered in the drain lines. The court ruled that the Lubers were entitled to recover \$59,649.13 for costs incurred to remedy the plumbing issues. The total amount of damages awarded by the court was \$139,849.13.⁴

Old Town filed a motion to alter or amend the judgment, which the court denied. Old Town noted this timely appeal.

STANDARD OF REVIEW

“When an action has been tried without a jury, an appellate court will review the case on both the law and the evidence.” Md. Rule 8-131(c). “[W]e give due regard to the trial court’s role as fact-finder and will not set aside factual findings unless they are clearly erroneous.” *Clickner v. Magothy River Ass’n, Inc.*, 424 Md. 253, 266 (2012). “The appellate court must consider evidence produced at the trial in the light most favorable to the prevailing party and if substantial evidence was presented to support the trial court’s

⁴ The court’s total award included damages of \$2,000 for appliances that were removed from the Property at the outset of the restoration process but not returned. Old Town does not challenge that part of the award.

determination, it is not clearly erroneous and cannot be disturbed.” *Id.* (quoting *Ryan v. Thurston*, 276 Md. 390, 392 (1975)).

Questions of law are reviewed without deference to the trial court. *Id.* “Where a case involves both issues of fact and questions of law, this Court will apply the appropriate standard to each issue.” *Id.*

DISCUSSION

I. Damages Awarded for Testing and Repair of Drain Lines

Old Town asserts that the trial court erred in awarding the Lubers \$59,649.13 in damages for work that was done to locate and repair leaks in the drain system because such work was “never a part of Old Town’s contractual obligation.” Old Town claims that testimony provided by Mr. Willing and Mr. Lingenfelter should have been considered by the court as “custom and usage” evidence that conclusively established that “the restoration insurance contract in the present case does not include pressurizing and testing the drain system in a dwelling where freeze damage has been sustained.” The specific testimony Old Town relies on is (1) Mr. Willing’s testimony that drain lines do not hold water, therefore they “typically . . . do not get damaged during a freeze”; and (2) Mr. Lingenfelter’s testimony that he had “never heard of flooding a drain system.”

The Lubers contend that the evidence supports the court’s finding that Old Town was contractually required to comply with local requirements for building permits and inspections, pursuant to which testing of the drain lines was determined to be mandatory. The Lubers further assert that the award was proper as there was substantial evidence to

support the court’s finding that the leaks in the drain system were the result of Old Town’s failure to comply with industry standards for workmanship.

“When a contractor on a building contract fails to perform, one of the remedies of the owner is to complete the contract, and charge the cost against the wrongdoer.” *Keystone Eng’g Corp. v. Sutter*, 196 Md. 620, 628 (1951) (citing 5 Samuel Williston & George J. Thompson, *Williston on Contracts* § 1363, at 3825 (Rev. Ed. 1937); Restatement (First) of Contracts, ch. 12, § 346(1)(a)(i), at 573, 576 cmt. 1 (Am. L. Inst. 1932)). “The amount of damages recoverable for breach of contract is that which will place the injured party in the monetary position he would have occupied if the contract had been properly performed.” *Hall v. Lovell Regency Homes Ltd. P’ship*, 121 Md. App. 1, 12 (1998). “In a breach of contract action for defective performance of a real estate construction contract, the primary measure of damages is the cost of repairing or remedying the defect.” *Id.* at 12-13 (citing *Andrulis v. Levin Constr. Corp.*, 331 Md. 354, 370 (1993); *Gilbert Constr. Co. v. Gross*, 212 Md. 402, 411 (1957); *Ray v. William G. Eurice & Bros., Inc.*, 201 Md. 115, 129 (1952)).

Old Town does not challenge the court’s finding that its poor workmanship and failure to comply with permit and inspection regulations constituted a material breach of the parties’ contract. And it is undisputed that proper performance of the contract required Old Town to apply for a plumbing permit for repairs that would eventually be concealed and ensure that the work was inspected. Because Old Town failed to do so, and because the plumbing system continued to malfunction, the building official for the Town of Ocean City required the Lubers to do a complete test of the plumbing system, including the drain

system, to “verify” work that had been concealed and to determine the source of ongoing leaks. The court found that the four leaks discovered in the drain system were caused by poor workmanship on the part of Old Town. Old Town does not challenge that finding. Nor does Old Town dispute the reasonableness of the costs.

On these facts, the court did not err in awarding the Lubers \$59,649.13 in damages for the testing and repair of the drain system. Substantial evidence in the record supports a finding that the costs were incurred as a consequence of Old Town’s breach of its contractual duties to comply with local permit and inspection requirements and to provide workmanship in accordance with industry standards.

II. Damages Awarded for Completion of Bathrooms and Kitchen Backsplash

Old Town contends that the court erred in determining that the expenses claimed for completion of the two bathrooms was fair and reasonable. According to Old Town, “[g]iven the extreme disparity” between Mr. Lingenfelter’s estimate of \$31,000, and Coastal Cabinetry’s final bill of \$78,200, “it is apparent that the fair and [reasonable] amount lay somewhere in between.” The Lubers maintain that the evidence supports the court’s finding that the costs were reasonable.

We perceive no clear error in the court’s finding. The finding was supported by the testimony of three witnesses: Mr. Mareno, Mr. McManus and Dr. Bramel, each of whom stated that the total charge of \$78,200 to restore the bathrooms, reinstall the kitchen cabinets, and tile the backsplash was reasonable. The court also considered Dr. Bramel’s testimony that, on the basis of cost per square foot, the charges were generally comparable to what Mr. Lingenfelter had estimated for another bathroom in the house. The court was

free to credit Dr. Bramel’s opinion over that of Mr. Lingenfelter. *See Quinn v. Quinn*, 83 Md. App. 460, 470 (1990) (“Where, as here, there are two experts, the trier of fact must evaluate the testimony of both of them and decide which opinion, if any, to accept.”).

At oral argument, Old Town asserted that the court had no evidentiary basis for its conclusion that the amount claimed to complete the restoration work was reasonable because neither Dr. Bramel nor Mr. McManus saw what the bathrooms looked like prior to demolition. According to the record, however, Dr. Bramel reviewed a “plethora” of photographs from real estate listings that depicted the condition of the interior of the house months before the flooding occurred, as well photographs taken by Old Town during the mitigation phase of the work. Moreover, the evidence considered by the court included more than 200 color photographs of the Property, including the bathrooms, that were taken in January of 2018, shortly after the flood incident but before demolition.

Viewing the evidence in the light most favorable to the Lubers, as the prevailing parties, we conclude there was substantial evidence in the record to support the court’s finding that Coastal Cabinetry’s charges of \$78,200 for completion of the two bathrooms and kitchen backsplash was reasonable. The court did not err in awarding damages in that amount.

**JUDGMENT OF THE CIRCUIT COURT
FOR WORCESTER COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**