

SUPREME COURT OF WYOMING

Legacy Builders, LLC v. Andrews

2014 WY 103 · No. S-13-0231 · Decided August 15, 2014

SUMMARY

The Wyoming Supreme Court addressed damages arising from defective construction of a newly built home, including the appropriate measure of damages for breach of contract and breach of the implied warranty of habitability. The court held that although the plaintiff must prove damages, the defendant bears the burden of presenting evidence that cost-of-repair damages are disproportionate or that an alternative measure should apply. The court affirmed most of the award, reduced future repair damages by 5 percent for unforeseeable roof and truss repairs, and remanded for entry of judgment reflecting total repair damages of \$189,498.

CASE DETAILS

COURT	Supreme Court of Wyoming
WRITING FOR THE COURT	Fox, Justice; Burke, C.J.; Hill, J.; Kite, J.; Davis, J.; Fox, J.
JURISDICTION	Wyoming
DECIDED	August 15, 2014
DOCKET	S-13-0231
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from a bench-trial judgment awarding homeowners \$319,302 in damages for breach of a construction contract and breach of the implied warranty of habitability.
STANDARD OF REVIEW	The methodology or legal standard used to calculate damages is reviewed de novo. Factual findings concerning the damages calculation and causation are reviewed for clear error. A trial court's discretionary rulings are reviewed for abuse of discretion.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Legacy Builders, LLC, Joe Seneshale v. Brittany Andrews, Brian Andrews

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QUESTIONS PRESENTED

1. When repair costs in a homeowners' construction case may be disproportionate to the property's loss in value, which party bears the burden of establishing diminution in value or another lesser measure of damages?
2. Did the district court clearly err by relying on cost estimates for future repairs, including collateral damage from foundation stabilization?
3. Did the district court clearly err in finding that expansive soils contributed to the damage to the home's foundation?

HOLDINGS

1. In a breach-of-contract or breach-of-warranty construction case, the plaintiff bears the initial burden of proving damages, but the defendant bears the burden of challenging the reasonableness or disproportionality of the plaintiff's repair-cost method and, when appropriate, presenting evidence supporting an alternative measure based on diminution in value.
2. Where the plaintiff proves repair costs and the defendant presents no evidence of diminution in value or disproportionality, a trial court may use cost of repair to measure damages for breach of the implied warranty of habitability.
3. Consequential and future repair damages may be recovered for breach of a construction contract when foreseeable at the time of contracting and established with reasonable certainty, but damages for unforeseeable items may not be recovered.
4. The district court did not clearly err in finding that expansive soils were a contributing factor in the home's foundation damage.

KEY QUOTATIONS

"We hold that, while the plaintiff has the burden of proving damages at trial, it is the defendant's burden to challenge the reasonableness or disproportionality of the plaintiff's method and, where appropriate, to present evidence supporting an alternative measure of damages." (¶ 28)

"We remand to the district court for entry of judgment reflecting the reduction of the cost of repairs to the amount of \$189,498." (¶ 42)

FACTUAL BACKGROUND

The Andrews contracted with Legacy to purchase a newly constructed home in Rock Springs, Wyoming. A soils test disclosed expansive soils, but Legacy did not provide the report or its recommendations to the Andrews. After taking possession, the Andrews observed cracking, warped frames, and basement-floor movement; the defects worsened over time. Experts testified about the cost of stabilizing the foundation with helical piers and repairing existing and foreseeable collateral damage.

PROCEDURAL HISTORY

The Andrews purchased a newly constructed home from Legacy and sued after discovering structural and cosmetic defects. Following a bench trial, the Sweetwater County District Court found Legacy liable and awarded damages based primarily on the cost of repairs. Legacy appealed the damages methodology, the award for future repairs, and the finding that expansive soils contributed to the foundation damage. The Wyoming Supreme Court affirmed the liability determination and most of the damages award, but remanded for reduction of the repair award by five percent to exclude unforeseeable roof and truss damage.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to the district court for entry of judgment reducing the cost-of-repairs component from \$199,472 to \$189,498 by excluding the five percent attributable to unforeseeable roof and truss damage.

CASES CITED

- Knight v. TCB Constr. & Design, LLC, 2011 WY 27, 248 P.3d 178 (Wyo. 2011)
- McCullough v. Golden Rule Ins. Co., 789 P.2d 855, 859 (Wyo. 1990)
- Madison v. Marlatt, 619 P.2d 708, 713-14 (Wyo. 1980)
- Graham v. State, 2001 WY 5, 16 P.3d 712 (Wyo. 2001)
- City of Kemmerer v. Wagner, 866 P.2d 1283, 1287-88 (Wyo. 1993)
- Ely v. Kirk, 707 P.2d 706, 713, 715 (Wyo. 1985)
- Belle Fourche Pipeline Co. v. Elmore Livestock Co., 669 P.2d 505, 514 (Wyo. 1983)
- Town Council of City of Hudson v. Ladd, 37 Wyo. 419, 425-26, 263 P. 703, 705 (1928)
- Anderson v. Bauer, 681 P.2d 1316, 1324-25 (Wyo. 1984)
- Cottonwood Valley Ranch, Inc. v. Roberts, 874 P.2d 897, 899 (Wyo. 1994)
- Bird v. Rozier, 948 P.2d 888, 892 (Wyo. 1997)
- Berthel Land & Livestock v. Rockies Express Pipeline LLC, 2012 WY 52, 275 P.3d 423 (Wyo. 2012)
- Willmschen v. Meeker, 750 P.2d 669, 672 (Wyo. 1988)
- Sturgeon v. Phifer, 390 P.2d 727, 731 (Wyo. 1964)
- John Thurmond & Associates, Inc. v. Kennedy, 668 S.E.2d 666, 669 (Ga. 2008)
- Martin v. Design Construction Services, Inc., 902 N.E.2d 10, 15 (Ohio 2009)
- GSB Contractors, Inc. v. Hess, 179 S.W.3d 535, 543 (Tenn. Ct. App. 2005)
- Deisch v. Jay, 790 P.2d 1273, 1277 (Wyo. 1990)
- Tavares v. Horstman, 542 P.2d 1275, 1279, 1282 (Wyo. 1975)
- JBC of Wyoming Corp. v. City of Cheyenne, 843 P.2d 1190, 1195 (Wyo. 1992)
- Velasquez v. Chamberlain, 2009 WY 80, 209 P.3d 888 (Wyo. 2009)

- *Dysthe v. State*, 2003 WY 20, 63 P.3d 875 (Wyo. 2003)

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