MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

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IN THE COURT OF APPEALS OF INDIANA

Mary Wallskog,
Appellant-Plaintiff,

v.

Tekton Restoration Services, LLC, d/b/a Servicemaster Restoration by Tekton,
Appellee-Defendant.

June 27, 2022

Court of Appeals Case No. 21A-CC-2802

Appeal from the Porter Superior Court

The Honorable Michael A. Fish, Judge

Trial Court Cause No. 64D01-1808-CC-7709

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Defendant/Counterclaim Plaintiff, Mary Wallskog (Wallskog), appeals the trial court's summary judgment in favor of Appellee-Plaintiff/Counterclaim Defendant, Tekton Restoration Services, LLC, d/b/a Servicemaster Restoration by Tekton (Tekton), on Tekton's Complaint and against Wallskog on Wallskog's counterclaims.

[2] We affirm.

ISSUES

[3] Wallskog presents this court with two issues on appeal, which we restate as:

(1) Whether the trial court erred in granting summary judgment in favor of Tekton by denying Wallskog's counterclaim for deceptive practices, concluding, as a matter of law, that Tekton did not violate Indiana's Home Improvement Fraud Act; and

(2) Whether the trial court erred in granting summary judgment in favor of Tekton by denying Wallskog's counterclaim for conversion as a matter of law.

FACTS AND PROCEDURAL HISTORY

[4] On August 10, 2017, Wallskog's house was damaged by water infiltration. The property was insured by State Farm Insurance (State Farm), and she was referred by State Farm to Tekton, a partner in State Farm's Premier Service Program. On August 16, 2017, after contacting Tekton, Wallskog signed the

State Farm Insurance Authorization to Repair form, in which Wallskog "selected and authorized [Tekton] to perform repairs" related to the water infiltration in the residence. (Appellant's App. Vol. II, p. 19). The Authorization to Repair form scheduled the start date of the repair on August 22, 2017. Tekton provided Wallskog with a repair estimate which included an itemized summary of the services to be delivered to mitigate the water damage to the property in the amount of $2,424.82. On August 22, 2017, Wallskog signed a second State Farm Insurance Authorization to Repair form, in which Wallskog authorized Tekton to place her home contents into storage. This authorization included a detailed list of the packed items placed in storage. On August 22, 2017, Wallskog signed the State Farm Insurance Authorization to Pay, which noted that "all of the building or structural mitigation services/repairs by this contractor/service(s) have been explained to me and completed to my satisfaction." (Appellant's App. Vol. II, p. 32). On the same day, Wallskog also signed a separate Statement of Completion and Satisfaction with the repair services provided by Tekton. Thereafter, Wallskog refused to pay Tekton for its work.

[5] On August 9, 2018, Tekton filed its Complaint, alleging breach of contract and unjust enrichment in the amount of $8,000.00. On October 4, 2018, Wallskog answered the Complaint and filed three counterclaims, asserting a violation of the Indiana Home Improvement Contract Act (HICA), a breach of an oral contract to repair defects in Tekton's workmanship, and conversion resulting

from the loss of Wallskog's stored home contents. On November 5, 2018, Tekton answered Wallskog's counterclaims.

[6] On May 4, 2020, Tekton filed a motion for summary judgment on Tekton's claims and Wallskog's counterclaims. In support of its motion, Tekton designated the contractual documents and an affidavit by Jason Glass (Glass), Tekton's general manager. In his affidavit, Glass affirmed, in pertinent part,

> I have reviewed [Tekton's] pending Complaint against [Wallskog] filed on August 9, 2018. Attached to said Complaint as Exhibit is a true and genuine copy of the State Farm Insurance Authorization to Repair form. In August 2017, [Tekton] provided services to [Wallskog] to mitigate the water damage at the Property in the amount of $2,424.82. Attached to said Complaint as Exhibit is a true and genuine copy of the Summary for Dwelling detailing the services provided by [Tekton] to [Wallskog]. On or about August 22, 2017, [Wallskog] signed State Farm Insurance Authorization to Repair form. Attached to said Complaint as Exhibit is a true and genuine copy of the State Farm Insurance Authorization to Repair form. From August 2017 to February 2018, [Tekton] provided services to [Wallskog] in the form of storage of contents from [Wallskog's] Property in the amount of $4,225.75. Attached to said Complaint as Exhibit is a true and genuine copy of the detail of packing, moving and storage of Defendant's property. [Tekton] has incurred ongoing storage costs of $235.40 per month to store items from [Wallskog's] Property. On or about August 22, 2017, [Wallskog] signed State Farm Insurance Authorization to Pay. Attached to said Complaint as Exhibit is a true and genuine copy of the State Farm Insurance Authorization to Pay. On or about August 22, 2017, [Wallskog] signed the Statement of Completion and Satisfaction with the services provided by [Tekton]. Attached to said Complaint as Exhibit is a true and genuine copy of the Statement of Completion and Satisfaction signed by [Tekton].

> [Wallskog] received services from [Tekton] from February 2018 through today's date for which she has failed to pay. [Wallskog] has failed to pay any amounts to [Tekton] related to this matter. [Wallskog] received measurable benefit from the services provided by [Tekton]. [Wallskog] would be unjustly enriched if not required to pay for the materials and services provided by [Tekton].

(Appellant's App. Vol. II, pp. 50-51). Wallskog did not reply to Tekton's motion for summary judgment. On September 23, 2020, the trial court granted summary judgment to Tekton.

[7] In November 2020, Tekton commenced proceedings supplemental to execute the trial court's judgment. On December 12, 2020, Wallskog filed a motion to set aside the judgment, which was granted on February 19, 2021. The trial court ordered Wallskog to file her opposition to Tekton's motion for summary judgment by March 23, 2021. Wallskog failed to file her motion in opposition by the required date and on April 7, 2021, the trial court granted Tekton's motion for summary judgment. On May 5, 2021, Wallskog filed a motion to correct error, which was denied by the trial court on June 28, 2021.

[8] Wallskog now appeals.[1] Additional facts will be provided as necessary.

[1] On April 6, 2021, Wallskog filed a third party complaint adding State Farm to the proceedings, which was dismissed by the trial court on November 17, 2021.

DISCUSSION AND DECISION

I. *Standard of Review*

[9] Our standard of review on summary judgment is well settled: [t]he party moving for summary judgment has the burden of making a prima facie showing that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Kluger v. J.J.P. Enterprises, Inc.*, 159 N.E.3d 82, 86 (Ind. Ct. App. 2020), *trans. denied*. Once these two requirements are met by the moving party, the burden then shifts to the non-moving party to show the existence of a genuine issue by setting forth specifically designated facts. *Id*. at 87. Any doubt as to any facts or inferences to be drawn therefrom must be resolved in favor of the non-moving party. *Id*. Summary judgment should be granted only if the evidence sanctioned by Indiana Trial Rule 56(C) shows there is no genuine issue of material fact and that the moving party deserves judgment as a matter of law. *A House Mechanics, Inc. v. Massey*, 124 N.E.3d 1257, 1262 (Ind. Ct. App. 2019). We may affirm an entry of summary judgment "if it can be sustained on any theory or basis in the record." *DiMaggio v. Rosario*, 52 N.E.3d 896, 904 (Ind. Ct. App. 2016), *trans. denied*.

[10] We further note that statutory interpretation presents a pure question of law for which summary judgment is particularly appropriate. *Sanders v. Bd. of Comm'rs,* 892 N.E.2d 1249, 1252 (Ind. Ct. App. 2008), *trans. denied*. The legislature is presumed to have intended the language used in the statute to be applied logically and not to bring about an unjust or absurd result. *Id*. Finally, the fact

that the parties have filed cross-motions for summary judgment does not alter our standard of review or change our analysis: the party that lost in the trial court has the burden of persuading us that the trial court erred. *Denson v. Estate of Dillard*, 116 N.E.3d 535, 539 (Ind. Ct. App. 2018).

II. *HICA Violation*

[11] Wallskog first contends that the trial court erred in granting summary judgment to Tekton on her counterclaim that Tekton had committed a deceptive act by breaching HICA.

[12] Under HICA, a home improvement contract is required to contain nine elements. Ind. Code § 24-5-11-10. Wallskog asserts that Tekton failed to designate evidence establishing, as a matter of law, that the contractual documents complied with the requirements of Indiana Code section 24-5-11-10(c)(1)-(3), which provide that

> (c) If a real property improvement contract is entered into for damage, loss, or expense that is to be paid, in whole or in part, from the proceeds of an insurance policy, or for damage, loss, or expense for which a third party is liable, the following conditions and requirements apply to the real property improvement contract:
>
> (1) [] the description, completion dates, and statement of contingencies must be prepared for the proposed real property improvements to the extent that the damage, loss, or expense is reasonably known by the real property improvement supplier.

> (2) [] the requirement that a reasonably detailed description be included in the contract may be satisfied with a statement that the subject real estate will be repaired or restored to the same condition in which the real estate existed before the damage, loss, or expense occurred, or to a comparable condition.
>
> (3) [] the starting and completion dates may be expressed in terms of the number of days elapsed from the date when sufficient approval of the insurance carrier terms allowing for adequate repair or restoration is obtained.

We note that, when interpreting statutes, "[c]ourts must consider the goals of the statute and the reasons and policy underlying the statute's enactment," as well as the effects of the interpretation. *Bowyer v. Ind. Dep't of Nat. Res.,* 944 N.E.2d 972, 988 (Ind. Ct. App. 2011) (quotations omitted); *Kitchell v. Franklin,* 997 N.E.2d 1020, 1026 (Ind. 2013). This court has observed that the purpose of HICA

> is to protect consumers by placing specific minimum requirements on the contents of home improvement contracts [] [because] few consumers are knowledgeable about the home improvement industry or of the techniques that must be employed to produce a sound structure. The consumer's reliance on the contractor coupled with the well-known abuses found in the home improvement industry, served as an impetus for the passage of [HICA], and contractors are therefore held to a strict standard.

Benge v. Miller, 855 N.E.2d 716, 720 (Ind. Ct. App. 2006) (citations omitted). Consequently, HICA requires home improvement contracts for an amount

greater than $150 to contain the nine elements listed in Indiana Code section 24-5-11-10.

[13] Violations of HICA are labeled "deceptive acts" and are actionable by the attorney general or by the consumer. I.C. § 24-5-11-14. HICA provides victims of deceptive acts with the same remedies specified for victims of deceptive sales under the Deceptive Consumer Sales Act, which provides that "[a] person relying upon an uncured or incurable deceptive act may bring an action for the damages actually suffered as a consumer as a result of the deceptive act or five hundred dollars ($500), whichever is greater." I.C. §§ 24-5-11-14, -0.5-4. We have previously concluded that "the General Assembly did not intend that every contract made in violation of HICA to automatically be void." *Imperial Ins. Restoration & Remodeling, Inc. v. Costello*, 965 N.E.2d 723, 729 (Ind. Ct. App. 2012).

> Instead, we apply a balancing approach and examine the factors that courts use to determine whether or not a contract contravenes declared public policy. The considerations to be balanced are (1) the nature of the subject matter of the contract, (2) the strength of the public policy underlying the statute, (3) the likelihood that refusal to enforce the bargain or term wi[ll] further that policy, (4) how serious or deserved would be the forfeiture suffered by the party attempting to enforce the bargain, and (5) the parties' relative bargaining power and freedom to contract.

Id. (internal citations omitted).

[14] Although our review of the designated contractual documents indicates that the documents lack the required notifications of I.C. § 24-5-11-10(c)(1)-(3), we note

that HICA provides that "[t]he consumer or insured consumer may elect, in writing, to authorize the commencement of work on the real property before the consumer or insured consumer receives complete specifications." I.C. § 24-5-11-10(c)(5). Here, Wallskog did just that on August 16, 2017, when she signed the Authorization to Repair form which allowed Tekton to perform repairs to her property. At the completion of Tekton's authorized repairs, Wallskog signed a Statement of Completion and Satisfaction with Tekton's services, and authorized State Farm to pay for the repairs.

[15] Despite any minor deficiencies in the contract, Wallskog was not deceived; rather, she received the benefit of Tekton's services and only lodged a complaint when it came time to pay for these services. To this day she has yet to identify any damage she suffered as a result of these contractual deficiencies. *See* I.C. §§ 24-5-11-14, -0.5-4. To void the contract now, after satisfactory completion of services despite the contract's failure to strictly comply with HICA, would result in a windfall for Wallskog and would leave Tekton deprived of compensation for work completed. "HICA aims to protect consumers from abuse, not to provide an escape from legitimate contractual obligations." *Paul v. Stone Artisans, Ltd.*, 20 N.E.3d 883, 889 (Ind. Ct. App. 2014). Accordingly, we affirm the trial court's summary judgment in favor of Tekton on Wallskog's counterclaim that Tekton violated HICA.

III. *Conversion*

[16] Next, Wallskog contends that the trial court erred in concluding, as a matter of law, that Tekton did not commit conversion when it placed her personal property in storage and refused to return it to her.

[17] A person who knowingly or intentionally exerts unauthorized control over property of another person commits criminal conversion. I.C. § 35-43-4-3. A person who has suffered a pecuniary loss as a result of a criminal conversion may bring a civil action to recover the loss. *Sam & Mac, Inc. v. Treat,* 783 N.E.2d 760, 766 (Ind. Ct. App. 2003). Unlike in a criminal trial, a claimant needs to prove by only a preponderance of the evidence that the defendant committed the criminal act; a criminal conviction of conversion is not a condition precedent to recovery in the civil action. *Id*.

[18] However, the claimant, here Wallskog, must establish all the elements of the alleged criminal act. *Id.* In any criminal conversion action, criminal intent is an essential element that must be determined. *Id*. It is this *mens rea* requirement that differentiates criminal conversion from a more innocent breach of contract or failure to pay a debt, situations the criminal conversion statute was not intended to cover. *Id.* To establish this element of the crime of conversion, a plaintiff must show the defendant was aware of a high probability his control over the plaintiff's property was unauthorized. *JET Credit Union v. Loudermilk*, 879 N.E.2d 594, 597 (Ind. Ct. App. 2008), *trans. denied*.

[19] The designated evidence reflects that Tekton was not aware of a high probability its control over Wallskog's real property was unauthorized, and

therefore did not have criminal intent. On August 22, 2017, at the commencement of the contracted repair work, Wallskog signed the State Farm Insurance Authorization to Repair form, in which Wallskog authorized Tekton to place her home contents into storage. This authorization included a detailed list of the packed items placed in storage. In the absence of any designated evidence that Wallskog satisfied the storage fee, Tekton's refusal to return the property to her simply amounts to a request to be paid for the storage debt incurred by Tekton as a result of the authorized repair work and storage. Therefore, we agree with the trial court's conclusion that, as a matter of law, Tekton did not commit conversion.

CONCLUSION

[20] Based on the foregoing, we hold that the trial court did not err in issuing summary judgment in favor of Tekton on Wallskog's counterclaims.

[21] Affirmed.

[22] May, J. and Tavitas, J. concur