

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

All Seasons Heating and Air
Conditioning Company, Inc.,
Appellant-Plaintiffs,

v.

Brent Stevens and
Tessa Stevens,
Appellees-Defendants.

October 25, 2022

Court of Appeals Case No.
22A-PL-255

Appeal from the Monroe Circuit
Court

The Honorable Holly M. Harvey,
Judge

Trial Court Cause No.
53C06-2006-PL-951

Weissmann, Judge.

- [1] Brent and Tessa Stevens contracted with All Seasons Heating and Air Conditioning (All Seasons) for plumbing work on a home they were building. After All Seasons billed the Stevenses for part of the work, a dispute between the parties resulted in the Stevenses banning All Seasons from their property. The Stevenses hired another company to complete the plumbing work, but neither All Seasons nor the new plumbing company connected the wastewater line to the septic system. This omission was not discovered until months after the Stevenses moved into the home and damage had already occurred.
- [2] The Stevenses did not pay All Seasons, leading All Seasons to record a mechanic's lien on the Stevenses' property for expenses related to additional work not related to the wastewater line connection. All Seasons later filed an action to foreclose on the property to pay the lien, raising alternative claims of breach of contract and unjust enrichment. The Stevenses counterclaimed for breach of contract related to the wastewater leak. The trial court granted partial relief to both All Seasons and the Stevenses, leaving neither satisfied. Finding the trial court reached the right result, we affirm.

Facts

- [3] The Stevenses contracted with All Seasons to perform various plumbing and HVAC installations on the home the Stevenses were building. The plumbing contract provided for All Seasons to "rough in" all waste lines and vents with PVC pipes and fittings and trim out the owner-supplied plumbing fixtures. The contract provided for payment as the work progressed.

[4] Another contractor, who is not a plumber, installed the home's septic system. All Seasons designated the spot at which the septic drain line should enter the home's crawlspace, where it would be connected with the home's wastewater line. The septic system installer placed the septic line there but did not connect the septic line to the wastewater line. He was not a plumber, and only a licensed plumber could do that work. An All Seasons' employee informed the septic system installer that All Seasons would connect the two lines in the crawlspace so that the wastewater would flow to the septic field. Unknown to the Stevenses, All Seasons never completed that connection before billing the Stevenses for the rough-in. The Stevenses terminated All Seasons' work on the home three weeks later and never paid All Seasons.

[5] The Stevenses then hired Harrell-Fish, Inc. (HFI), another plumbing contractor, to complete plumbing and HVAC work on the interior of the home. The work did not require entering the crawl space where the wastewater line remained unconnected. HFI completed the specified work, and the Stevenses paid the company \$5,475.

[6] Meanwhile, All Seasons recorded a mechanic's lien on the Stevenses' property for the unpaid labor, services, and services for other work unrelated to the

omitted septic system connection.¹ The Stevenses moved into the home a few months later. By the time they discovered the omitted septic-wastewater connection a couple of months after their move, the wastewater from the home had accumulated in the crawlspace, rather than flowing into the septic field. The moisture soared in the interior of the home to levels damaging to the flooring. The Stevenses hired HFI to clean the crawlspace, connect the septic and wastewater lines, and condition the crawlspace to prevent further damage. About a month after that troubling discovery and six months after filing its mechanics lien, All Seasons filed a complaint to foreclose that lien. All Seasons also claimed breach of contract and unjust enrichment. The Stevenses counterclaimed for breach of contract.

[7] After a bench trial, at which All Seasons amended its claim from \$11,000 to \$7,100, the trial court entered findings of fact and conclusions of law that granted relief to both parties. The trial court determined that on its mechanics lien claim, All Seasons was due \$7,100 from the Stevenses for unpaid work unrelated to the omitted septic connection. But the court found All Seasons

¹ All Seasons recorded the mechanics lien under Indiana Code § 32-28-3-3, which specifies in relevant part

A contractor . . . or any other person performing labor or furnishing materials or machinery . . . for . . . the erection, alteration, repair, or removal of . . . a house . . . may have a lien separately or jointly . . . upon the house . . . that the person erected, altered, repaired, moved, or removed . . . or . . . for which the person furnished materials or machinery of any description . . . and . . . on the interest of the owner of the lot or parcel of land . . . on which the structure or improvement stands . . . to the extent of the value of any labor done or the material furnished, or both, including any use of the leased equipment and tools.

breached its contract with the Stevenses as to the rough-in by failing to complete it by connecting the wastewater line to the septic system. The court found All Seasons liable for \$22,756.49 in damages resulting from that breach of contract.

[8] Because the amount All Seasons owed the Stevenses exceeded the amount the Stevenses owed All Seasons for work unrelated to the septic system connection, the trial court entered a judgment for the Stevenses for \$15,656.49 (their damages of \$22,756.49 less the \$7,100 they owed All Seasons). All Seasons appeals, and the Stevenses cross-appeal.

Discussion and Decision

[9] All Seasons raises three claims. First, it asserts that the trial court contravened Indiana law by entering judgment on the Stevenses' breach of contract claim because the Stevenses never tried to perform the contract. Second, All Seasons argues it had a right to recover its attorney fees and collection costs under its contract with the Stevenses. Finally, All Seasons contends the trial court erred in finding that All Seasons' actions caused the Stevenses' damages. In the Stevenses' cross-appeal, the couple challenges the \$15,656.49 damages award as inadequate.²

² The Stevenses do not challenge the trial court's determination that All Seasons was due \$7,100 for work unrelated to the failed septic connection.

I. Standard of Review

[10] When, as here, a trial court enters findings of fact and conclusions of law under Indiana Trial Rule 52, we first determine whether the evidence supports the findings before deciding whether the findings support the judgment. *Litton v. Baugh*, 122 N.E.3d 1034, 1039 (Ind. Ct. App. 2019). We will not set aside any findings or the judgment unless clearly erroneous. *Id.* (citing Indiana Trial Rule 52(A)). We consider only the evidence and reasonable inferences that support the findings without reweighing the evidence or judging witness credibility. *Id.*

II. All Seasons' Appeal

[11] All Seasons claims the Stevenses could not enforce the contract because the Stevenses never tried to perform their duties under the contract—that is, pay All Seasons. If the contract was enforceable, All Seasons contends the trial court improperly determined that: 1) All Seasons' breach of contract caused the damage to the Stevenses' home; and 2) All Seasons was not entitled to attorney fees and collection costs.

A. Enforceability

[12] All Seasons first suggests the Stevenses cannot recover for breach of contract because they breached the contract first by failing to pay All Seasons. Citing *U.S. Rsch. Consultants, Inc. v. County of Lake*, 89 N.E.3d 1076, 1086 (Ind. Ct. App. 2017), All Seasons contends that the Stevenses needed to establish the following to recover under their breach of contract claim: 1) a valid and binding contract; 2) performance by the complaining party (the Stevenses); 3) non-

performance or defective performance by All Seasons; and 4) damages arising from All Season's breach. All Seasons contends the Stevenses failed to prove their performance of the contract, given that the Stevenses never paid All Seasons.

[13] All Seasons cites the wrong standard. *U.S. Research Consultants* involved unpaid commissions allegedly due on collections. Therefore, the complaining party had to prove its performance of the work that entitled it to commissions before the party could recover them. *Id.* No commissions are involved in this case. To prevail on their contract claim, the Stevenses simply needed to establish a valid contract, a breach of that contract, and damages. *Alexander v. Linkmeyer Dev. II, Inc.*, 119 N.E.3d 603, 612-13 (Ind. Ct. App. 2019).

[14] Although the parties do not dispute that a contract existed, they disagree about who breached and when. The timing is important because the party who committed the first material breach of the contract cannot enforce the provisions of the contract against the other party, even if that other party also breached the contract later. *A House Mechs., Inc. v. Massey*, 124 N.E.3d 1257, 1262 (Ind. Ct. App. 2019).

[15] All Seasons claims it did not materially breach the contract.³ Assuming it did

³ The parties do not appear to dispute that failing to connect the septic system to the interior wastewater pipe would be a material breach by the party contractually responsible for doing so. They disagree, however, as to whether All Seasons had that duty under the contract and whether All Seasons' failure to connect the pipes caused the Stevenses' damages.

materially breach, All Seasons suggests the breach occurred when the damage was discovered, which was months after the Stevenses allegedly breached the contract by failing to pay All Seasons. The Stevenses, on the other hand, agree with the trial court that All Seasons breached the contract when it billed for the rough in without connecting the wastewater line to the septic system.

[16] In reaching that conclusion, the court relied on testimony showing that an All Seasons' employee: (1) chose the site where the pipe from the septic field would connect with the interior waste line; and 2) told the non-plumber septic system installer that All Seasons would complete that connection, which required a licensed plumber. All Seasons focuses on the lack of any testimony from the two plumber witnesses establishing that the connection of the septic system pipe to the wastewater line is a necessary part of the rough in. But All Seasons is merely asking us to reweigh this evidence, which we will not do. *See Litton*, 122 N.E.3d at 1039. The trial court properly found that All Seasons breached the contract when it represented the rough in was completed by invoicing the Stevenses.

B. Causation

[17] All Seasons next argues that its breach of contract did not cause the Stevenses' damages. All Seasons argues that HFI was hired to check and complete the rough in of the septic line and was thus responsible for the failed connection. But this is just another request to reweigh evidence.

[18] In finding All Seasons' breach caused the awarded damages, the trial court properly relied on evidence establishing the limited scope of HFI's work. That evidence showed HFI was not hired to check or connect the septic system under the home. Instead, it was hired to complete interior plumbing rough ins in an interior portion of the house some distance from the crawlspace in preparation for drywall installation.

[19] All Seasons focuses on an invoice HFI submitted to the Stevenses after completing its work. The invoice listed the completed work as including: "CHECK ALL PLUMBING AND TOILET ROUGH-IN" and "HVAC AND PLUMBING ROUGH-IN." Exhs., p. 19. But that language refers to the interior work for which the Stevenses contracted with HFI. *Id.* at 17-19. The contract between HFI and the Stevenses does not specify that HFI will check "all" plumbing. No such language appears in the actual contract between HFI and the Stevenses. Although the evidence was somewhat conflicting, the trial court, as fact finder, properly resolved that conflict by determining the Stevenses' damages flowed from All Seasons' breach of contract. *See Zimmerman v. McColley*, 826 N.E.2d 71, 78 (Ind. Ct. App. 2005) (ruling that the trial court, as fact finder, has the responsibility "to weigh the conflicting evidence and determine the relative credibility of the witnesses").

C. Attorney Fees and Collection Costs

[20] In its final argument, All Seasons challenges the trial court's failure to award its attorney fees and collection costs. All Seasons contends it is entitled to

reimbursement based on this provision in the contract: “Buyer agrees to pay all costs of collection and reasonable attorney’s fees if payment is not made within the terms of this proposal.” Exhs., p. 5. Relying on mechanic’s lien law, rather than the terms of the contract, the court ruled:

30. Under Ind. Code § 32-28-3-14(a), “in an action to enforce a lien under this chapter, a plaintiff or lienholder who recovers a judgment in any sum is entitled to recover reasonable attorney’s fees.” However, if a judgment on a counterclaim exceeds the judgment on the mechanic’s lien claim, the judgment on the mechanic’s lien is defeated and the lienholder is not entitled to attorney’s fees. *Farah, LLC v. Architura Corp.*, 952 N.E.2d 328, 335 (Ind. Ct. App. 2011).

31. The amount of damages proven by the Stevenses exceeds the amount due to All Seasons. All Seasons is not entitled to a lien on the property and is not entitled to attorney’s fees

Appellant’s App. Vol. II, p. 6.

[21] To avoid this result, All Seasons rests its attorney fees and collection costs claim on contract law. All Seasons contends it was entitled to those fees and costs in connection with the \$7,100 credited by the trial court for All Seasons’ unpaid work for the Stevenses. But as noted above, All Seasons has no right to enforce the terms of a contract that it materially breached. *See A House Mechs., Inc.*, 124 N.E.3d at 1264. That presumably is why the trial court awarded All Seasons relief under the mechanics lien statute for fees unrelated to the septic dispute, rather than under contract law. All Seasons has thus failed to establish the trial court erred in failing to award attorney fees and collection costs.

III. The Stevenses' Cross-Appeal

[22] In their cross-appeal, the Stevenses claim the trial court erroneously failed to award them damages for replacement of their bamboo and laminate flooring.

At issue is this trial court finding:

22. The moisture in the crawlspace transferred up through the flooring in the residence. For a time, the flooring moisture measured an amount of excess moisture. The Stevenses acquired estimates for the replacement of the hardwood and bamboo flooring. The combined estimates total \$30,999.45. Tessa Stevens also estimated that there would be an additional amount for labor and materials associated with the trim and baseboard trim. There is no indication that the costs for the baseboard and trim were damaged by the wastewater or required for the replacement of the flooring. While it is likely that some of the flooring did have excess moisture and could have been permanently damaged, there is no evidence that the entirety of the hardwood flooring required replacement.

Appellant's App. Vol. II, p. 5. The trial court included no flooring, trim, or baseboard costs in its calculation of damages. *Id.*

[23] Citing *Lees Inn of Am., Inc. v. William R. Lee Irrevocable Tr.*, 924 N.E.2d 143, 160 (Ind. Ct. App. 2010), the Stevenses note that any doubt as to the proof of damages should be resolved against the wrongdoer. The purpose of that rule is ensuring that the breaching party bears responsibility for all consequences of its wrongdoing. *See id.* The Stevenses claim that their evidence showing damage to parts of the flooring was sufficient under the *Lees Inn* standard to prove the

likelihood of damage to all the flooring. All Seasons responds by arguing that the Stevenses are merely seeking a reweighing of the evidence.

[24] The trial court correctly found that the Stevenses did not meet their burden of proof to establish floor damage. Although the Stevenses presented evidence suggesting that some boards were damaged, their only evidence of replacement/repair costs called for replacement of all the existing wood or laminate flooring. Their proof of damage to all the flooring was speculative, and the trial court, as fact finder, was not required to accept it as true. *See Bokori v. Martinoski*, 70 N.E.3d 441, 446 (Ind. Ct. App. 2017) (noting that a factfinder is free to accept, reject, or determine a value within the range presented by the parties). Because the Stevenses failed to offer evidence of the costs of replacing only the portion of the flooring showing damage, the trial court did not err in refusing to award the nearly \$31,000 in floor replacement costs that the Stevenses sought.⁴

[25] We affirm the trial court's judgment.

Robb, J., and Pyle, J., concur.

⁴ The Stevenses also contend, and All Seasons does not dispute, that the trial court mislabeled one component of the overall damages. As that alleged mislabeling does not impact the amount of the judgment or our resolution of the issues on appeal, we view the alleged error as harmless. We therefore do not address it further.