

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

IBYH, LLC,
Appellant-Defendant,

v.

Masiongale Electrical-
Mechanical, Inc.,
Appellee-Plaintiff.

June 7, 2023

Court of Appeals Case No.
22A-PL-2945

Appeal from the Delaware Circuit
Court

The Honorable Marianne L.
Vorhees, Judge

Trial Court Cause No.
18C01-2205-PL-45

Memorandum Decision by Judge Bailey
Judges Tavitas and Kenworthy concur.

Bailey, Judge.

Case Summary

- [1] IBYH, LLC (“IBYH”) appeals the denial of its motion to correct error, which challenged a grant of summary judgment in favor of Masiongale Electrical-Mechanical, Inc. (“Masiongale”) upon Masiongale’s breach of contract claim. IBYH presents the sole issue of whether the trial court improvidently granted summary judgment because there exists a genuine issue of material fact as to the terms of an oral contract between the parties.¹ We affirm.

Facts and Procedural History

- [2] IBYH acquired property on Main Street in Muncie, which IBYH intended to renovate prior to occupancy (“the Property”). In February of 2022, IBYH contacted Masiongale and requested that it perform electrical work. Masiongale’s existing commitments precluded it from performing the electrical work on IBYH’s proposed schedule. However, Masiongale assisted IBYH with completing the application for a work permit. The application estimated the value of work to be performed at \$22,000.00.
- [3] The City of Muncie issued to IBYH a permit for electrical work, and IBYH hired an electrical contractor other than Masiongale to perform the work. Thereafter, Masiongale inspected the Property and advised IBYH that the

¹ IBYH does not articulate an issue regarding the separate order for foreclosure of Masiongale’s mechanics lien.

electrical work was substandard and the premises would not likely be approved for occupancy. At IBYH's request, Masiongale performed remedial electrical work. Masiongale issued two invoices to IBYH, totaling \$24,293.63, but IBYH did not make a payment thereon.

[4] On April 8, 2022, Masiongale recorded a mechanics lien in the Delaware County Recorder's Office. On May 9, 2022, Masiongale filed a complaint for breach of contract and to foreclose its mechanics lien. Masiongale alleged that it had "furnished labor, equipment, materials and supplies totaling the amount of \$24,293.63 for the repair and renovation of [the Property]" and that IBYH had breached a contract with Masiongale by wrongfully withholding payment. App. Vol. II, pg. 12. Masiongale attached to its complaint copies of invoices to IBYH dated March 8 and March 16, 2022, totaling \$24,293.63.

[5] IBYH answered the complaint and admitted "that [Masiongale] was orally contracted to do work for [IBYH]." *Id.* at 28. However, IBYH alleged that the amount for the services had been capped at \$6,500.00. IBH filed a counterclaim alleging that, by filing a mechanic's lien in excess of \$6,500.00, Masiongale had "engaged in illegal action by slandering" IBYH's title to the Property. *Id.* at 30.

[6] On July 22, 2022, Masiongale filed a motion for summary judgment and contemporaneously filed the affidavit of owner Kenneth Masiongale. Therein, Kenneth averred that he had sent workers to the Property to correct faulty wiring, after having been advised by IBYH President Jason Squillante to "do

anything necessary to complete and correct the problem.” *Id.* at 35. He further averred that the invoices attached to the complaint accurately detailed labor and materials furnished by Masiongale. According to Kenneth, the work had been performed on “a time and materials basis” and involved changing electrical service on the second floor from 100 amps to 200 amps, a process made more difficult by the necessity of threading wiring through finished and painted walls. *Id.* Finally, Kenneth stated that Jason had objected to the amounts shown on the invoices but had identified no billing error.

[7] Several months later, on October 10, 2022, IBYH filed its objection to the summary judgment motion together with Jason’s affidavit. Therein, he averred that he had agreed to pay no more than \$6,500.00 for the work to be completed by Masiongale. On the same day, Masiongale filed a motion to strike IBYH’s affidavit as untimely under Indiana Trial Rule 56(C).

[8] On October 12, 2022, the trial court conducted a summary judgment hearing, at which arguments of counsel were heard. On October 17, 2022, the trial court entered its order striking IBYH’s affidavit and granting summary judgment to Masiongale. IBYH was ordered to pay Masiongale \$32,669.55, consisting of \$24,293.63 as invoiced, prejudgment interest, and attorney’s fees.² On November 14, the trial court entered a separate order foreclosing the mechanics lien and ordering the sale of the Property to satisfy Masiongale’s judgment. On

² IBYH has not challenged the inclusion of prejudgment interest or attorney’s fees.

the same day, IBYH filed a motion to correct error, which was summarily denied. This appeal ensued.

Discussion and Decision

- [9] Pursuant to Rule 56(C) of the Indiana Rules of Trial Procedure, summary judgment is appropriate when there are no genuine issues of material fact, and the moving party is entitled to judgment as a matter of law. The party moving for summary judgment bears the initial burden to establish its entitlement to summary judgment. *Pfenning v. Lineman*, 947 N.E.2d 392, 396-97 (Ind. 2011). Only then does the burden fall upon the nonmoving party to set forth specific facts demonstrating a genuine issue for trial. *Id.* at 397 (quotation omitted).
- [10] When we review a grant of summary judgment, our standard of review is the same as that of the trial court. *Shambaugh & Son, Inc. v. Carlisle*, 763 N.E.2d 459, 461 (Ind. 2002). We consider only those facts that the parties designated to the trial court. *Id.* The Court must accept as true those facts alleged by the nonmoving party, construe the evidence in favor of the nonmovant, and resolve all doubts against the moving party. *Id.*
- [11] A trial court's order on summary judgment is cloaked with a presumption of validity; the party appealing from a grant of summary judgment must bear the burden of persuading this Court that the decision was erroneous. *Indianapolis Downs, LLC v. Herr*, 834 N.E.2d 699, 703 (Ind. Ct. App. 2005), *trans. denied*. We may affirm the grant of summary judgment upon any basis argued by the

parties and supported by the record. *Payton v. Hadley*, 819 N.E.2d 432, 438 (Ind. Ct. App. 2004). However, Trial Rule 56(H) specifically prohibits this Court from reversing a grant of summary judgment on the ground that there is a genuine issue of material fact, unless the material fact and the evidence relevant thereto shall have been specifically designated to the trial court.

AutoXchange.com, Inc. v. Dreyer and Reinbold, Inc., 816 N.E.2d 40, 45 (Ind. Ct. App. 2004). A genuine issue of material fact exists where facts concerning an issue that would dispose of the litigation are in dispute or where the undisputed material facts are capable of supporting conflicting inferences on such an issue. *Huntington v. Riggs*, 862 N.E.2d 1263, 1266 (Ind. Ct. App. 2007), *trans. denied*.

[12] In order to recover for a breach of contract, a plaintiff must prove: (1) a contract existed; (2) the defendant breached the contract; and (3) the plaintiff suffered damage as a result of the defendant's breach. *Collins v. McKinney*, 871 N.E.2d 363, 370 (Ind. Ct. App. 2007). Here, the parties do not dispute that they orally contracted for Masiongale to perform electric work at the Property. Nor do they dispute whether Masiongale performed its contractual duties or whether IBYH made any payment. The controversy between the parties distilled to the third contractual element, that is, to what extent Masiongale suffered damages as a result of IBYH's failure to pay for labor and materials. "It is axiomatic that a party injured by a breach of contract may recover the benefit of its bargain but is limited in its recovery to the loss actually suffered." *L.H. Controls v. Custom Conveyor, Inc.*, 974 N.E.2d 1031, 1043 (Ind. Ct. App. 2012).

[13] A review of summary judgment is dependent upon what evidence the parties designated for review. *Beal v. Blinn*, 9 N.E.3d 694, 698 (Ind. Ct. App. 2014). As to the value of the labor and materials and IBYH’s agreement to pay for such, Masiongale designated invoices and Kenneth Masiongale’s affidavit. The invoices – which Kenneth averred were accurate – included descriptions of work performed on March 8 and March 16, 2022, together with itemized costs for electrical parts. The cost of parts, corresponding sales taxes, and labor aggregated to \$24,293.63. Kenneth Masiongale averred that IBYH’s president had authorized Masiongale to perform whatever remedial work was necessary. IBYH filed no timely response.³

[14] To withstand summary judgment after Masiongale made a prima facie showing that it was entitled to payment of its invoices by IBYH, it was incumbent upon IBYH to come forward with some designated evidence to the contrary. IBYH did not do so. IBYH has not persuaded us that the summary judgment decision of the trial court is erroneous.

Conclusion

[15] The trial court did not improvidently grant summary judgment to Masiongale.

³ Trial Rule 56(C) provides in relevant part: “The motion and any supporting affidavits shall be served in accordance with the provisions of Rule 5. An adverse party shall have thirty (30) days after service of the motion to serve a response and any opposing affidavits.” The motion for summary judgment was filed and served on July 22, 2022, and IBYH filed its affidavit on October 10, 2022, clearly outside the parameters of Rule 56(C).

[16] **Affirmed.**

Tavitas, J., and Kenworthy, J. concur.