

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2011 CA 0927



JOHN RUSSELL AUCOIN

VERSUS

SARA POWERS STAFFORD AND DENNOU H. STAFFORD

DATE OF JUDGMENT: DEC 21 2011

ON APPEAL FROM THE DENHAM SPRINGS CITY COURT
NUMBER 19141, WARD TWO, PARISH OF LIVINGSTON
STATE OF LOUISIANA

HONORABLE CHARLES W. BORDE, JR., JUDGE

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Sara Powers Stafford and
Dennou H. Stafford

BEFORE: WHIPPLE, KUHN, AND GUIDRY, JJ.

Disposition: AFFIRMED, AS AMENDED.

Whipple, J. concurs.

Guidry, J. concurs.

KUHN, J.

Appellants, Sara Powers Stafford and Dennou H. Stafford (the Staffords), appeal a city court judgment holding them liable for damages to a house they orally agreed to purchase from plaintiff, John Russell Aucoin. Mr. Aucoin answered the appeal, seeking an increase in quantum. For the following reasons, we affirm the judgment as amended.

FACTS AND PROCEDURAL BACKGROUND

By oral agreement,¹ the Staffords agreed to purchase a house located in Denham Springs, Louisiana from Mr. Aucoin. The parties agreed that the purchase price would be \$135,000.00 and that monthly payments of \$860.00 would be made to Mr. Aucoin beginning on July 1, 2009, for a period of ten years, with a balloon payment due at the end of the term. Mr. Aucoin gave the Staffords the keys to the house on June 18, 2009, so that they could begin renovations they wanted to make before moving into the house. Specifically, they informed Mr. Aucoin that they intended to remove all of the carpet, vinyl and laminate flooring in the house, which they considered to be in unacceptably poor condition. Since they were buying the house, Mr. Aucoin raised no objection. The Staffords proceeded to remove the flooring and baseboards, causing holes in some of the sheetrock walls in the process. They then sanded the underlying concrete slab to smooth it, since they intended to replace the flooring over time as they could

¹ Louisiana Civil Code article 1839 provides, in pertinent part, that:

A transfer of immovable property must be made by authentic act or by act under private signature. Nevertheless, an oral transfer is valid between the parties when the property has been actually delivered and the transferor recognizes the transfer when interrogated on oath.

afford to do so. The Staffords also partially removed the wallpaper in one of the bedrooms preparatory to repainting that room.

As they were remodeling, the Staffords discovered several problems in the house that concerned them, including an area of rot and possible mold where the flooring was removed. Additionally, they also discovered a home inspection report in the laundry room that had been prepared for Mr. Aucoin's daughter two years earlier when he purchased the house for her. Due to information they read in the report, as well as the problems they had discovered, the Staffords decided that they wished to rescind their agreement with Mr. Aucoin.

The evidence at trial revealed that on June 30, 2009, Mr. Stafford left a message on Mr. Aucoin's answering machine advising him that he had the mortgage payment that was due on July 1. However, he left another message the following day stating that he and his wife would not be going through with their agreement. In a subsequent telephone conversation with Mr. Aucoin, Mr. Stafford reiterated that decision, which he maintained was based on the unforeseen expense that would be required to repair the additional problems discovered in the house. The Staffords moved out of the house by July 5, but did not remove their pets from the premises until July 7.

By letter dated July 6, 2009, Mr. Aucoin demanded that the Staffords pay damages for the condition in which they left the house, specifically including the removal of the flooring, baseboards, and wallpaper, as well as for lost rentals since he claimed he could have rented the house if it had not been in that condition. When the Staffords refused to meet his demands, Mr. Aucoin filed suit for damages against them in the City Court of Denham Springs.

The Staffords answered the suit, alleging that Mr. Aucoin fraudulently induced them to enter the agreement concerning the house by making materially false statements as to its condition and by failing to disclose numerous existing defects in the house of which he knew or should have known. They alleged they would not have entered into the agreement but for the fraudulent statements made by Mr. Aucoin. Further, they asserted that they were entitled to a credit or set-off for the benefits derived by plaintiff from the time and effort they expended in improving the house, "including the removal of worn, soiled, and damage[d] floor coverings throughout the house...." In addition to set-off, the Staffords also asserted the affirmative defenses of estoppel, fraud, and fraudulent inducement. Moreover, despite the fact that they did not file a reconventional demand, the Staffords alleged in their post-trial brief that they, rather than Mr. Aucoin, were entitled to an award of damages due to his fraudulent statements and conduct.

Subsequently, the trial court rendered judgment in favor of Mr. Aucoin. In its written reasons for judgment, the court concluded that, although the Staffords discovered numerous defects in the house, they were of such a nature that they would have still purchased the house, but for a lesser price, if they had known of them.² However, the court noted that the Staffords chose not to seek a reduction in price, but instead to cancel their agreement with Mr. Aucoin. The court further found that Mr. Aucoin agreed to the rescission of the agreement, since he took no

² At trial, the Staffords alleged numerous defects in the house, including but not limited to improperly installed electrical service, a septic tank that may not meet parish health requirements, an air conditioner that did not cool properly, an oven and stove that did not work, a crack in the chimney, and water damage, rot and potential mold discovered when the flooring and baseboards were removed. Defendants introduced no expert testimony to establish any of these alleged defects, and Mr. Aucoin gave opposing testimony regarding the alleged defects. In rendering judgment, the trial court did not indicate specifically which of the alleged defects it found were established by the Staffords. Nor is it necessary for this Court to make this determination, since the instant suit is not a redhibition action, and we have decided this matter on a different basis, as explained hereafter.

action to enforce it. Relying on La. C.C. arts. 2532³ and 2555⁴, the court concluded that, upon rescission of the agreement, the Staffords became liable to Mr. Aucoin for damages in failing to maintain the property as a “prudent administrator.” The court determined that an award of \$2,000.00 was appropriate for repairs to return the house to its former condition. Additionally, based on the \$860.00 monthly payment that had been agreed to by the parties, the court concluded that Mr. Aucoin was entitled to a prorated award of \$600.00 as a result of the Staffords’ possession of the property for approximately three weeks. The Staffords were also cast for all costs.

Following the denial of their motion for new trial, the Staffords took the instant appeal, raising five assignments of error in which they argue that the trial court erred in failing to award damages to them rather than to Mr. Aucoin, that the trial court erred in failing to find that Mr. Aucoin was estopped from seeking damages, and, alternatively, that the damages awarded were improperly calculated. Mr. Aucoin answered the appeal, arguing in two assignments of error that the trial court erred in admitting the 2007 house inspection report into evidence and

³ This provision states, in pertinent part, that:

A buyer who obtains rescission because of a redhibitory defect is bound to return the thing to the seller, for which purpose he must take care of the thing as a prudent administrator, but is not bound to deliver it back until all his claims, or judgments, arising from the defect are satisfied.

⁴ This provision states that:

A buyer who fails to take delivery of the thing after a tender of such delivery, or who fails to pay the price, is liable for expenses incurred by the seller in preservation of the thing and for other damages sustained by the seller.

that the amount awarded should be increased. He also requested damages for frivolous appeal.

THE STAFFORDS' CLAIM FOR DAMAGES

In their first three assignments of error, the Staffords complain that the trial court erred in failing to award them damages, costs, and attorney fees. Specifically, they argue that they were entitled to damages for fraud and redhibition under La. C.C. arts. 1958 and 2545, since Mr. Aucoin was a bad-faith seller who made material misrepresentations concerning the condition of the house which fraudulently induced them to enter into the agreement to buy it. They maintain he affirmatively concealed from them redhibitory defects that were set forth in the 2007 inspection report and fraudulently induced them into agreeing to buy the house by misrepresenting that the remaining issues identified in the report were merely cosmetic in nature.

Initially, we note that the Staffords did not file a reconventional demand or a separate suit seeking damages from Mr. Aucoin. While La. C.C.P. art. 862 provides that a trial court should grant the relief to which a party is entitled, this Court has declined to interpret this provision as authorizing a court to decide controversies not raised by the parties or to grant relief that was not demanded. See *Azalea Lakes Partnership v. Parish of St. Tammany*, 02-0050 (La. App. 1st Cir. 7/2/03), 859 So.2d 57, 62, *writ denied*, 03-2206 (La. 11/14/03), 858 So.2d 429; *Glover v. Medical Center of Baton Rouge*, 97-1710 (La. App. 1st Cir. 6/29/98), 713 So.2d 1261, 1262. Accordingly, there was no damage claim by the

Staffords before the trial court.⁵

In any event, assuming *arguendo* that the Staffords properly raised a demand for damages, they failed to establish their claim under either La. C.C. arts. 1958 or 2545. Article 1958 provides that: "The party against whom rescission is granted because of fraud is liable for damages and attorney fees." Under Article 2545, a bad faith seller who fails to disclose a known defect or who intentionally misrepresents the quality of the thing sold is liable for expenses occasioned by the sale, damages, and attorney fees. Thus, in order to recover under either of these articles, the seller must be guilty of fraud or bad faith. However, in the instant case, although the Staffords strenuously argued in the proceedings below that Mr. Aucoin was a bad-faith seller who was guilty of fraud and intentional misrepresentations that estopped him from claiming damages, the trial court obviously rejected these defenses. In light of the defenses and arguments raised by the Staffords, it is implicit in the trial court's award of damages to Mr. Aucoin that the court did not find Mr. Aucoin to be either a bad-faith seller or guilty of fraud.

Both the existence of fraud and whether or not a seller is in bad faith are questions of fact subject to the manifest error standard of review. *Smith v. Roussel*, 00-1028 (La. App. 1st Cir. 6/22/01), 809 So.2d 159, 164 (fraud); *Ollis v.*

⁵ The Staffords' argument that the pleadings were expanded in this case by the evidence introduced at trial lacks merit. The general rule is that pleadings may be enlarged by evidence adduced without objection when such evidence is not pertinent to any other issue raised by the pleadings and, hence, would have been excluded if objected to timely. La. C.C.P. art. 1154; *Fitzgerald v. Tucker*, 98-2313 (La. 6/29/99), 737 So.2d 706, 715. However, if the evidence was admissible for any other purpose, the pleadings cannot be enlarged without the express consent of the opposing party. *Hebert v. ANCO Insulation, Inc.*, 00-1929 (La. App. 1st Cir. 7/31/02), 835 So.2d 483, 492, *writs denied*, 02-2956, 02-2959 (La. 2/21/03), 837 So.2d 629. In the instant case, any evidence regarding damages and expenses incurred by the Staffords was relevant to their defenses of credit and/or set-off. Accordingly, their pleadings were not expanded at trial to include an independent claim for damages.

Miller, 39,087 (La. App. 2d Cir. 10/29/04), 886 So.2d 1199, 1209 (bad faith seller). Thus, a trial court's findings on these issues cannot be reversed unless an appellate court, after review of the entire record, finds both that no reasonable factual basis exists for the finding and that it is manifestly erroneous or clearly wrong. See *Stobart v. State, Through Department of Transportation and Development*, 617 So.2d 880, 882 (La. 1993).

In the instant case, the Staffords' contentions regarding Mr. Aucoin's alleged fraud and bad faith are largely based on their contention that he was aware of numerous defects in the house as a result of the 2007 inspection report that was prepared for his daughter when he bought the house for her. They claim that although Mr. Aucoin told them there had been an inspection and that he would provide them with a copy of the report, he never did so. The Staffords allege that instead Mr. Aucoin intentionally failed to disclose the defects identified in the report and fraudulently misrepresented both that he had addressed the major problems noted therein and that the remaining issues were merely cosmetic in nature.

At trial Mr. Aucoin initially denied seeing the inspection report, but later testified that he realized he had seen portions of the report that his daughter had e-mailed to him. He further testified that he took care of the major problems identified in the inspection report by having the roof, air conditioner, and water heater replaced, but that he considered the remaining items noted in the report to be cosmetic in nature. On appeal, the Staffords argue this testimony was not believable. In particular, they note Mr. Aucoin's denials in discovery and initially at trial that he had even seen the inspection report, only to later claim that he suddenly recalled seeing it. In view of this fact, as well as the issues noted in the

report (one of which mentioned a potential safety hazard), they strenuously attack the credibility of his testimony.

In applying the manifest error standard of review, a trial court's credibility determinations are entitled to great deference. *In re Succession of Wagner*, 08-0212 (La. App. 1st Cir. 8/08/08), 993 So.2d 709, 717. In the instant case, we cannot find that the trial court erred or abused its discretion in its obvious acceptance of Mr. Aucoin's testimony regarding the inspection report. Since he allowed his daughter to move into the house, common sense adds credence to his claim that he considered the majority of the issues raised in the inspection report not to present safety issues and to be cosmetic in nature. Consequently, based on our review of the entire record, and in light of the trial court's obvious acceptance of Mr. Aucoin's testimony regarding the inspection report, we find no manifest error in the trial court's rejection of the Staffords' claims that Mr. Aucoin was guilty of fraud and bad faith herein. Therefore, the Staffords have established no basis for the recovery of damages against Mr. Aucoin under either La. C.C. art. 1958 or 2545.

These assignments of error lack merit.

MR. AUCOIN'S ENTITLEMENT TO DAMAGES

In their fourth assignment of error, the Staffords argue the trial court erred in awarding damages to Mr. Aucoin pursuant to La. C.C. arts. 2532 and 2555. Alternatively, they contend that the trial court erred in calculating the amount awarded for the period they were in possession of the house. In their fifth assignment of error, the Staffords contend that the trial court erred in not finding that Mr. Aucoin was estopped from claiming damages for the removal of the flooring when he authorized and fraudulently induced them into taking this action.

The Staffords contend that they are not liable for damages under Article 2532 because it imposes a duty upon a buyer who obtains rescission in a redhibition action to take care of the property as a prudent administrator until it is returned to the seller. They contend that all of the actions for which Mr. Aucoin seeks damages occurred with his approval prior to the occurrence of the rescission. Accordingly, since they took no actions after the rescission for which damages are claimed, they assert that they fulfilled the obligation imposed by Article 2532. As to Article 2555, they argue that it also provides no basis for Mr. Aucoin's recovery herein, because it is not a redhibitory article and the trial court held this dispute was governed by the redhibition articles. They further assert it is inapplicable by its terms, because it applied only when a buyer fails to take delivery or pay the price, and they clearly took possession of the property in this case. In making this argument, they made no mention of their failure to make the payment due on July 1, presumably because they considered the agreement to have been rescinded by that point.

Nevertheless, irrespective of the trial court's theory of recovery, we find that the Staffords are clearly liable in damages for the breach of their agreement with Mr. Aucoin. Although the Staffords allege that they were entitled to a rescission, the present action is not one in redhibition. Rather than filing such an action, the Staffords chose to unilaterally breach their agreement with Mr. Aucoin. The record reflects that they contacted him merely to inform him of their decision and not to discuss the matter with him. Accordingly, the Staffords are liable for the damages resulting from their failure to perform their obligations under the agreement. See La. C.C. art. 1994.

Furthermore, we find no merit in the contention that Mr. Aucoin was estopped from claiming damages because he authorized and fraudulently induced the Staffords into removing the flooring. First, Mr. Aucoin testified that he did not object to the Staffords removing the flooring because they were buying the house. Thus, it is clear that his failure to protest was contingent upon their agreement to buy the house, and did not extend to them removing the flooring and then unilaterally deciding not to fulfill that agreement. Second, detrimental reliance or equitable estoppel is not favored in our law and the representation required as an essential element for the application of the doctrine is usually characterized as a "misrepresentation," which generally implies intent and suggests deliberate falsification. *Barnett v. Board of Trustees for State Colleges and Universities*, 00-1041 (La. App. 1st Cir. 6/22/01), 809 So.2d 184, 189. As we have already discussed, the trial court rejected the Staffords' contentions in this case that Mr. Aucoin was guilty of fraud and bad faith regarding the representations he made to them.

However, although we reject the Staffords' contention that Mr. Aucoin was not entitled to damages, we find merit in their argument that the court incorrectly calculated the award granted for the time they had possession of the house without making payment. In awarding \$600.00 for this item of damages, the trial court prorated the agreed \$860.00 payment due for the month of July by utilizing a period of three weeks of possession by the Staffords. The court calculated the three-week period from the time that Mr. Aucoin gave the Staffords the keys to the house on June 18 so that they could begin renovations until they vacated the premises on July 6 or 7. However, we find the trial court erred in prorating the agreed payment using a period of three weeks. The parties agreed that payment

was not due until July 1. When Mr. Aucoin allowed the Staffords access to the house prior to that date, he did so gratuitously, there being no agreement that any payment was due for this period. Accordingly, the amount awarded should have been calculated using a period of seven days possession, *i.e.*, from July 1 through July 7. Thus, the amount due to Mr. Aucoin was actually \$194.19⁶, and the trial court judgment must be amended to reduce the award for this item of damages to this amount.

QUANTUM

In his answer to this appeal, Mr. Aucoin argues that the \$2,000.00 award made by the trial court as the costs of repairs to the house should be increased to \$6,340.00. This amount represented the highest of several estimates he introduced into evidence for replacing the flooring and baseboards removed by the Staffords with comparable materials, as well as patching and painting the interior walls. Mr. Aucoin also contends he should be awarded loss rentals for four months in the amount of \$3,800.00, since it took him that long to make the necessary repairs and return the house to the rental market. He claimed that he had a potential renter to whom he could have rented the house during this period for \$950.00 per month, if not for the necessity of making the repairs.

We find no merit in these contentions. The repair estimates presented by Mr. Aucoin ranged from \$5,457.20 to \$6,340.00. However, these estimates were for the installation of brand new flooring and baseboards. The amount claimed by Mr. Aucoin failed to take into account any depreciation in value due to the age or actual condition of the flooring and baseboards that were removed. In fact, there was evidence at trial that some of the flooring was worn and/or discolored.

⁶ This amount was calculated as follows: $\$860.00 \times \frac{7}{31} = \194.19 .

Additionally, there was a large hole in the carpeting in one of the rooms. There was also some question raised as to the necessity of completely repainting all of the rooms included in the estimates. Thus, considering the totality of the evidence presented, we cannot say that the trial court erred or abused its discretion in assessing the costs of repairs at \$2,000.00.

We also reject Mr. Aucoin's claim that he is entitled to an award of \$3,800.00 due to lost rental income. At trial, he presented the testimony of Mr. Todd Semons, an individual he has known for years, in support of this claim. Mr. Semons testified that, at the time that the Staffords entered into the agreement to purchase the house, he wanted to lease the house for six months and was willing to pay rent of \$950.00 per month. However, by the time the Staffords moved out, he had made other arrangements.

In opposition to this claim, the Staffords introduced evidence as to Mr. Semons' annual household income, which indicated it was unlikely that Mr. Semons could not have afforded at that time to pay rent in the amount claimed. The trial court may also have found the period of time claimed as necessary for the repairs to be accomplished to be excessive. Moreover, even after the house was available for rent, it was not leased for several months, indicating there was no guarantee it could have been rented sooner by someone else if not for the necessity of repairs. In view of these factors, we find no error or abuse of discretion in the trial court's rejection of Mr. Aucoin's claim for lost rental income.

This assignment of error lacks merit.⁷

FRIVOLOUS APPEAL

Lastly, Mr. Aucoin contends that he is entitled to damages for frivolous appeal, since the Staffords urge in several assignments of error that they are entitled to relief that is not supported by the pleadings or the evidence. Specifically, he notes that the Staffords are seeking damages despite the fact that they did not file a reconventional demand in the trial court seeking such relief.

Damages for frivolous appeal will not be awarded unless it appears that the appeal was taken solely for the purpose of delay or that appellate counsel does not seriously believe in the position advocated. *In re Mashburn Marital Trusts*, 10-0278 (La. App. 1st Cir. 12/22/10), 52 So.3d 1136, 1148, *writ denied*, 11-0177 (La. 5/20/11), 63 So.3d 978. Because we have found merit in one of the assignments of error raised by the Staffords, we do not find that this appeal was taken solely for the purpose of delay or harassment or that counsel did not seriously believe the position he advocated. Accordingly, the request for frivolous appeal damages is denied.

⁷ In his answer to the appeal, Mr. Aucoin also asserted that the trial court erred in admitting the 2007 inspection report into evidence over his hearsay objection. In fact, the trial court allowed the inspection report to be admitted only for the limited purpose of establishing Mr. Aucoin's state of mind with respect to the allegations of his non-disclosure of known defects. The court specifically indicated that the report was not admissible for the purpose of establishing the truth or accuracy of its contents regarding the alleged defects. Further, Mr. Aucoin conceded in brief that any error in the limited admission of the report was harmless in view of the judgment in his favor. Apparently, he raised this assignment of error only as a precaution in the event that this Court should find it necessary to consider the truth or accuracy of the inspection report in reviewing this matter. Since it was unnecessary for us to do so in light of the Staffords' failure to establish fraud, intentional misrepresentation, or bad faith, this assignment of error is pretermitted.

CONCLUSION

For the above reasons, the judgment of the trial court is amended to reduce the amount awarded to Mr. Aucoin for the period that the Staffords had possession of the house from \$600.00 to \$194.19, thereby reducing the total amount awarded from \$2,600.00 to \$2,194.19. The judgment of the trial court is affirmed in all other respects. The costs of this appeal are to be split equally between the parties, one-half to be paid by the Staffords and one-half by Mr. Aucoin.

AMENDED AND AS AMENDED, AFFIRMED.