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DISTRICT II

November 27, 2019

To:

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You are hereby notified that the Court has entered the following opinion and order:

2018AP1640

Quantus Pools, Inc. v. Melissa Urlakis (L.C. #2015CV677)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Quantus Pools, Inc., appeals from a judgment granted in favor of Melissa and John Urlakis relative to a breach-of-contract claim involving the construction of a swimming pool. Based upon our review of the briefs and record, we conclude at conference

that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2017-18).¹ We affirm.

The Urlakises entered into a \$219,500 contract with Quantus to construct a custom outdoor pool and surrounding improvements. The Urlakises ceased payment on the contract when construction did not commence or proceed in the promised timely manner and because much of the work was substandard. Quantus filed a suit alleging breach of contract, unjust enrichment, and quantum meruit. The Urlakises counterclaimed, alleging breach of contract and violations of WIS. ADMIN. CODE § ATCP 110 (through Sept. 2019). A subsequent pool contractor removed and replaced defective material and completed the installation. The court found that the parties mutually abandoned the contract, that cost-to-repair was the proper measure of damages, and entered judgment against Quantus for \$83,400. Quantus appeals.

Quantus concedes that it abandoned the contract, but argues that any breach was not material. A breach is material if it destroys the essential object of the agreement. *Ranes v. American Family Mut. Ins. Co.*, 219 Wis. 2d 49, 57, 580 N.W.2d 197 (1998). Facts relevant to determining materiality include the character of the performance, the purpose expected to be served by it, the extent to which nonperformance defeats that purpose, and the reasons for the failure. *M&I Marshall & Ilsley Bank v. Pump*, 88 Wis. 2d 323, 333, 276 N.W.2d 295 (1979). If one party materially breaches a contract, performance by the other party is excused. *Management Comp. Servs. Inc. v. Hawkins, Ash, Baptie & Co.*, 206 Wis. 2d 158, 183, 557 N.W.2d 67 (1996). Whether a party's breach is material is a question of fact. *Id.* at 184. We

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

will not reverse the trial court's factual findings unless they are clearly erroneous. WIS. STAT. § 805.17(2).

The trial court found that Quantus breached the contract by failing to install or installing contrary to accepted industry standards and practices and in a not workmanlike manner either contracted-for components of the pool or necessary or desired accoutrements; by failing to meet the mutually agreed-upon completion deadline; by failing to pour footings for a fire pit; and by failing to install electrical conduits in conformity with the national electrical code. The court's findings, well-supported by the record, are not clearly erroneous.

Quantus also contends that no evidence supports the damage award. We disagree. The general principle regarding the measure of damages for defects and omissions in the performance of a building contract is that a party is entitled to have what he or she contracts for or its equivalent. *Jacob v. West Bend Mut. Ins. Co.*, 203 Wis. 2d 524, 541, 553 N.W.2d 800 (Ct. App. 1996). Our review of a challenge to an award of damages is highly deferential. We may not disturb the fact finder's damage award "[i]f there is any credible evidence which under any reasonable view supports the ... finding." *D.L. Anderson's Lakeside Leisure Co. v. Anderson*, 2008 WI 126, ¶26, 314 Wis. 2d 560, 757 N.W.2d 803 (citation omitted). We determine only whether the award is within reasonable limits and view the evidence in the light most favorable to support the damage award. *Teff v. Unity Health Plans Ins. Corp.*, 2003 WI App 115, ¶41, 265 Wis. 2d 703, 666 N.W.2d 38.

The trial court identified \$100,600 in damages that the Urlakises suffered as a result of defective materials and poor workmanship. It offset that sum by \$17,200 for stone pavers that

were delivered to the Urlakis home but that were not installed or returned, for a net judgment of \$83,400 in the Urlakises' favor. The court's findings have ample record support.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals