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Breach of Home Construction Contracts Act Does Not Entitle Homeowner To Substantial Damages or Recovery of All Attorney's Fees Incurred in Prosecuting Claim

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In *John Sweet II v. Carl E. Breivogel et al.*, 2019 ME 18 (Jan. 29, 2019), the Law Court looked at the connection between the Home Construction Contracts Act (HCCA) and the Unfair Trade Practice Act (UTPA). The case arose out of the home construction of a timber frame home by Sweet for the Breivogels on Mount Desert Island. The parties had exchanged communications prior to the commencement of construction. The Breivogels were shown several examples of Sweet's construction. Sweet gave the Breivogels estimates for construction of similar homes he showed them. The Breivogels inquired about whether Sweet could build them a saltbox style timber frame home for $275,000. The Breivogels contended that they believed they had requested a fully completed home, ready for occupancy. Sweet contended that he understood that the Breivogels only wanted an enclosed, weather tight timber frame home – including only a frame, walls, roof, insulation, doors, windows, chimney, and exterior shingles.

The Breivogels authorized Sweet to begin construction, but there was no contract. The Breivogels asked Sweet when they would formalize the project terms and Sweet responded that he had never signed a written contract in over thirty years. They did agree that the Breivogels would be billed biweekly and pay for all materials and labor at a rate of $32/hour. Throughout the construction, Sweet sent the Breivogels emails containing photographs of the progress and biweekly invoices.

Upon completion of the work that Sweet had believed the Breivogels had originally requested, it was understood by both parties that Sweet would continue to construct a fully completed home ready, for occupancy. "At this point, the Breivogels determined, without informing Sweet, that they would have Sweet continue to work on the project, but would initiate legal action against him after they obtained a certificate of occupancy. They intended to seek damages for payments made in excess of $275,000." *Id* at ¶ 9. Despite this, the Breivogels paid Sweet a total of $601,195.75 through the end of construction. Sweet invoiced the Breivogels a total of $602,250.98, but the Breivogels refused to pay any additional amounts. Sweet then placed a lien on the home for $51,953.94 for unpaid labor and plumbing work and filed an action against the Breivogels. The Breivogels filed counterclaims for negligence, breach of contract, fraud, negligent misrepresentation, breach of the implied warranty of workmanship, and violation of the Unfair Trade Practices Act.

The Superior Court determined that Sweet was entitled to the money he had received under a theory of quantum meruit for the work he performed in constructing the home, but also held that he overcharged the Breivogels by $640.77. On the Breivogels' counterclaims, the Superior Court held that they failed to establish that Sweet was negligent, that he breached any contractual obligation to perform in a workmanlike manner, that he breached an implied warranty, or that Sweet committed fraud or negligent misrepresentation. The Superior Court did determine

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that Sweet violated the Home Construction Contract Act by failing to provide a written contract, which also resulted in a finding of violation of the Unfair Trade Practices Act. The Superior Court awarded costs to the Breivogels in the amount of $3,832.43 and attorneys' fees of $30,000, as allowed under the Unfair Trade Practices Act. The Breivogels appealed the Superior Court judgment arguing that the Superior Court erred in (1) concluding that they failed to establish their counterclaims for fraud, negligent misrepresentation, and breach of contract; (2) "calculating the damages recoverable under the Unfair Trade Practices Act arising out of the violation of the Home Construction Contract Act; and (3) awarding insufficient attorneys' fees." *Id.* at ¶ 13.

The Law Court held that the Superior Court did not err in its determinations in regards to the counterclaims for fraud, negligent misrepresentation, and breach of contract.

In regards to the calculation of damages recoverable under the Unfair Trade Practices Act, the Court found that the trial court was correct in awarding only the amount overcharged by Sweet – $640.77.

> In this case, while it is clear that the parties did not sign a contract or share an exact understanding of the scope and terms of construction, the court's application of quantum meruit was appropriate. The parties engaged in months of discussions and planning before the project began and remained in fairly constant communication throughout every phase of construction. . . The Breivogels permitted Sweet to continue the project beyond the [weather tight] phase – the point at which the Breivogels realized that Sweet had a different understanding of the scope and cost of construction – and allowed him to continue working until their home was fit for occupancy.

Id. at ¶ 18. Furthermore, the Court determined that the amounts charged by Sweet to the Breivogels was appropriate for the product received.

In regards to the Breivogels recovery under the Unfair Trade Practices Act, the Court also found that the trial court was correct in the awarded damages. "To recover under the [Unfair Trade Practices Act], a party must demonstrate a loss of money or property as a result of a UTPA violation." *Id.* at 21. In performing this analysis, the court looks to whether the homeowner has suffered a financial or tangible loss, whether the materials claimed to be furnished were in fact furnished, and whether the price charged was fair and reasonable. The Court determined that the Breivogels failed to establish that they did not receive value for their payments. There also was no loss sustained because of Sweets' failure to provide a contract.

Finally, in regards to the award of attorneys' fees, the Court determined that the Superior Court award was appropriate. "An award of attorney fees pursuant to the [Unfair Trade Practices Act] is recoverable only to the extent that it is earned pursuing a UTPA claim." *Id.* at ¶ 24. The Breivogels argued that they were entitled to recover all of their attorneys' fees because all of the claims were inextricably entwined with, and arose from the UTPA violations. The Law Court rejected this argument and held that the Superior Court properly exercised its discretion where the Breivogels failed to distinguish between the fees incurred associated with the UTPA violation and those associated with the counterclaims.

This decision reemphasizes that violation of the Home Construction Contract Act does not necessarily result in an imposition of damages, but the attorneys' fees and costs awarded may be substantial – especially when considering that the contractor violating the Home Construction Contract Act will have costs and fees of his or her own.

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