

JOHN ROBERTELLI, ESQ. (012601990)

RIVKIN RADLER LLP

21 Main Street

Court Plaza South – West Wing

Hackensack, New Jersey 07601

201-287-2460

Attorneys for and Third Party Defendants,

CRA Construction and Home Elevations, LLC, Christopher Aldarelli,

Paul Logan and Steve Pisano as to Count II of the Counterclaim/Third Party Complaint.

<p>CRA CONSTRUCTION & HOME ELEVATIONS, LLC</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>KELLY BLOZEN AND RONALD BLOZEN,</p> <p style="text-align: center;">Defendants/Third-Party Plaintiffs,</p> <p>v.</p> <p>CRA CONSTRUCTION & HOME ELEVATIONS, LLC, CHRISTOPHER ALDARELLI, PAUL LOGAN, AND STEVE PISANO</p> <p style="text-align: right;">Defendants</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MONMOUTH COUNTY</p> <p style="text-align: center;">DOCKET NO.: MON-L-3504-16</p> <p style="text-align: center;">Civil Action</p> <p style="text-align: center;">ORDER FOR PARTIAL SUMMARY JUDGMENT PURSUANT TO R. 4:46-1 ET. SEQ. DISMISSING ALL CLAIMS SET FORTH IN COUNT II OF THE COUNTERCLAIM/THIRD PARTY COMPLAINT WITH PREJUDICE.</p>
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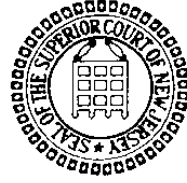
THIS MATTER, having come before the Court upon motion of Rivkin Radler LLP (John Robertelli, Esq.), counsel for Defendants, CRA Construction and Home Elevations, LLC, Christopher Aldarelli, Paul Logan and Steve Pisano for partial summary judgment as to claims asserted in Count II of the Counterclaim/Third Party Complaint, and the Court having read and considered the moving papers and for good cause having been shown;

IT IS this 14th day of September, 2018, hereby

~~ORDERED~~ that Partial Summary Judgment is granted as to Defendants, CRA Construction and Home Elevations, LLC, Christopher Aldarelli, Paul Logan and Steve Pisano

SUPERIOR COURT OF NEW JERSEY

CHAMBERS OF
DANIEL L. WEISS, J.S.C.
SUPERIOR COURT JUDGE



MONMOUTH COUNTY COURT HOUSE
71 MONUMENT PARK
POST OFFICE BOX 1266
FREEHOLD, NEW JERSEY 07728-1266
TELEPHONE (732) 677-4395

September 14, 2018

Third-Party Plaintiff/Defendants' Attorney: Alyssa E. Spector, Esq.

Plaintiffs/Third-Party Defendants' Attorney: Dennis Melofchik, Esq.

Third Party Defendants' Attorney for Count II: John Robertelli, Esq.

**CRA CONSTRUCTION & HOME ELEVATIONS, LLC V. KELLY BLOZEN AND
RONALD BLOZEN V. CRA CONSTRUCTION & HOME ELEVATIONS,
CHRISTOPHER ALDARELLI, PAUL LOGAN, AND STEVE PISANO**

Docket No.: MON-L-3504-16

STATEMENT OF REASONS

This matter is before the court on a motion for partial summary judgment as to Count II of the Counterclaim/Third Party Complaint filed by CRA Construction & Home Elevations, LLC, Christopher Aldarelli, Paul Logan, and Steve Pisano ("Third-Party Defendants") on June 8, 2018. Kelly Blozen and Ronald Blozen ("Third-Party Plaintiffs/Defendants") have filed a cross-motion for summary judgment with opposition to Third Party Defendants' motion for partial summary judgment. Third-Party Defendants have also filed a cross-motion for summary judgment on Third-Party Plaintiffs/Defendants' complaint and a motion to dismiss Third-Party Plaintiffs/Defendants' counterclaim.

On May 18, 2015, CRA and Third-Party Plaintiffs/Defendants entered into a contract in the sum of \$101,500.00 for remedial work to be performed at 618 Columbia Avenue in Union Beach, New Jersey after the home was damaged by Hurricane Sandy. The project price later increased to \$168,684.21. CRA claims they are still owed \$47,343.29 from Third-Party

Plaintiffs/Defendants for the work performed. Third-Party Plaintiffs/Defendants claim CRA left the home in disrepair and that the work performed was of “sub-par quality.” They specifically state CRA installed crooked kitchen cabinets, improperly installed the kitchen countertops, and failed to close off spaces between floors and walls, allowing animals to enter the home. It is further alleged CRA improperly installed the siding, the HVAC system, and the windows throughout the house. Third-Party Plaintiffs/Defendants have paid \$114,871.00 to date to CRA.

Third-Party Defendants’ Contentions

Third-Party Defendants argue that they are entitled to partial summary judgment as to Count II of the Counterclaim/Third-Party Complaint filed because there are no material facts in dispute. Third-Party Defendants contend that the expert report produced by Defendant should be barred as a net opinion that is not in compliance with R. 4:17-4. Third-Party Defendants also argue Defendants have failed to establish by competent evidence that CRA breached its duty of care to Defendants. Third-Party Defendants further contend that Defendants have failed to establish that any action or inaction on the part of CRA was a proximate cause of the Defendants alleged damages.

Third-Party Plaintiffs/Defendants’ Cross Motion and Opposition

Third-Party Plaintiffs/Defendants argue that the Third-Party Defendants have failed to meet their burden of proof to warrant summary judgment. Third-Party Plaintiffs/Defendants contend that CRA violated the Consumer Fraud Act and thus their complaint must be dismissed. Third-Party Plaintiffs/Defendants allege that Third-Party Defendants are not entitled to summary judgment because an expert is not needed to prove matters within the knowledge of a juror.

Plaintiffs/Third-Party Defendants' Cross-Motion for Summary Judgment

Plaintiffs/Third-Party Defendants argue they are entitled to summary judgment as a matter of law for the first count of the Plaintiff/Third-Party Defendants' complaint for breach of contract because Third-Party Plaintiffs/Defendants promised to make timely payments and have failed to do so. Plaintiffs/Third-Party Defendants argue that the first count of the Third-Party Plaintiffs/Defendants' counterclaim should be dismissed because the Third-Party Plaintiff/Defendants' failed to provide a proper expert record supporting the claim for damages. Plaintiffs/Third-Party Defendants further argue that the second count of the Third-Party Plaintiffs/Defendants' counterclaim should be dismissed because of the failure to produce an expert report. Plaintiffs/Third-Party Defendants argue that the third count of the Third-Party Plaintiffs/Defendants' counterclaim should be dismissed because it alleges there was no express warranty in the contract. Plaintiffs/Third-Party Defendants further argue that the fourth and fifth counts of the Third-Party Plaintiffs/Defendants' counterclaim should be dismissed because of the failure to produce an expert report that can show ascertainable loss. Plaintiffs/Third Party Defendants argue that the sixth count of the Third-Party Plaintiffs/Defendants' counterclaim should be dismissed because the Change Orders were properly signed by Ms. Blozen and because of the failure to produce an expert report that can show ascertainable loss. Plaintiffs/Third-Party Defendants further argue that the seventh count of the Third-Party Plaintiffs/Defendants' counterclaim should be dismissed because CRA signed its contract and the change orders were properly signed by Ms. Blozen on CRA letterhead. Plaintiffs/Third-Party Defendants further contend that the eighth, ninth, and tenth counts of the Third-Party Plaintiffs/Defendants' counterclaim should be dismissed because any delays on the project were allegedly due to Third-Party Plaintiff/Defendants' own failure to make timely payments pursuant

to the contract. Lastly, Plaintiffs/Third-Party Defendants argue that the eleventh count of the Third-Party Plaintiffs/Defendants' counterclaim should be dismissed because they claim no tort has been committed that would require a piercing of the corporate veil.

Summary Judgment Standard

The standard to be applied by the trial judge when determining a motion for summary judgment in Brill v. Guardian Life Insurance Co., 142 N.J. 520 (1995). Specifically, the Court focused on whether an existing issue of fact is to be considered "genuine" under Rule 4:46-2 or, in the alternative, merely "of an insubstantial nature" thereby allowing the granting of summary judgment. Id. at 530. The Supreme Court stated that the essence of the inquiry by the trial judge should be the same as is applied in motions for directed verdicts: "whether the evidence presents a sufficient disagreement as to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Id. at 536 (quoting Anderson v. Liberty Lobby, 477 U.S. 242, 251-52 (1986)).

Thus, the standard for determining whether a "genuine issue" of material fact exists in a summary judgment motion requires the trial court to "consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged dispute in favor of the non-moving party." Id. at 540. However, where there "exists a single, unavoidable resolution of the alleged of the alleged disputed issues of the fact, that issue should be considered insufficient to constitute a genuine issue of material fact for the purposes of Rule 4:46-2." Id. The Court concluded by stating, "[t]he thrust of today's decision is to encourage trial courts not to refrain from granting summary judgment when the proper circumstances present themselves." Id. at 541.

Negligence

“To prevail on a claim of negligence, a plaintiff must establish four elements: (1) that the defendant owed a duty of care; (2) that the defendant breached that duty; (3) actual and proximate causation; and (4) damages.” Fernandes v. DAR Dev. Corp., Inc., 222 N.J. 390, 403-4 (2015) (citing Townsend v. Pierre, 221 N.J. 36, 51 (2015) (further citations omitted)). “[T]he plaintiff bears the burden of proving the defendant’s negligence and that such negligence was the proximate cause of the plaintiff’s injury. Fernandes, 222 N.J. at 404 (citing Myrlak v. Port Auth. of N.Y. & N.J., 157 N.J. 84, 95 (1999)). “The ‘[a]bility to foresee injury to a potential plaintiff does not in itself establish the existence of a duty, but it is a crucial element in determining whether imposition of duty on an alleged tortfeasor is appropriate.” Fernandes, 222 N.J. at 404 (citing Carter Lincoln-Mercury, Inc. v. EMAR Grp., Inc., 135 N.J. 182, 194 (1994) (internal citation omitted)).

It is well settled law of the State of New Jersey that ordinary negligence must be proven and will never be presumed; indeed, there is a presumption against it, and the burden of proving negligence is on the plaintiffs. Buckelew v. Grossbard, 87 N.J. 512, 525 (1981); Hansen v. Eagle Picher Lead Co., 8 N.J. 133, 139 (1951). To prove liability, the plaintiff must prove the defendant’s actions were the proximate cause of the loss. Barr v. Francks, 70 N.J. Super. 565 (App. Div. 1961); Pisano v. S. Klein, 78 N.J. Super. 375, 391 (App. Div. 1963).

Consumer Fraud Act

The New Jersey Consumer Fraud Act was enacted by the legislature to provide broad protection to consumers. N.J.S.A. 56:8-1, et. Seq. The act provides as follows:

Any person who suffers any ascertainable loss of moneys or property, real or personal, as a result of the use or employment by another person of any method, act, or practice declared unlawful under this act or the act hereby amended and supplemented

may bring an action or assert a counterclaim therefore in any court of competent jurisdiction.

N.J.S.A. 56:8-19. To state a CFA claim, a plaintiff must allege “three elements: (1) unlawful conduct; (2) an ascertainable loss; and (3) a causal relationship between the defendants’ unlawful conduct and the plaintiff’s ascertainable loss.” Int’l Union of Operating Engineers Local 68 Welfare Fund v. Merck & Co., Inc., 192 N.J. 372, 389 (2007).

An “unlawful practice” arises from either an (1) affirmative act, (2) an omission, or (3) a violation of an administrative regulation. Cox v. Sears Roebuck & Co., 138 N.J. 2, 17 (1994); Gennari v. Weichart Co. Realtors, 148 N.J. 582, 605 (1997). The term “unlawful practice” is specifically defined under the CFA as follows:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby.

N.J.S.A. 56:8-2. When the alleged unlawful practice consists of regulatory violations, “intent is not an element of the unlawful practice, and the regulations impose strict liability for such violations.” Feinberg v. Red Bank Volvo, Inc., 331 N.J. Super. 506, 510 (App. Div. 2000) (citing Cox, supra, 138 N.J. at 18). Within this strict liability framework, contractors are presumed to be familiar with the CFA and its regulations. Cox, supra, 138 N.J. at 18-19. Moreover, liability under the CFA does not require that the consumer actually be misled or defrauded by a merchant; any violation is enough to create liability. Skeer v. EMK Motors, Inc., 187 N.J. Super. 465, 470 (App. Div. 1982).

Holding

Expert testimony is not typically required in “ordinary” negligence cases, as a jury is “competent to determine what precautions a reasonably prudent man in the position of the defendant would have taken.” Sanzari v. Rosenfeld, 34 N.J. 128 (1961).

Here, the Plaintiffs/Third-Party Defendants are seeking summary judgment primarily due to a lack of proper expert records. While the Third-Party Plaintiffs/Defendants suggest that the reason for the lack of expert reports are that they are unnecessary for a juror to make a determination as to whether there has been any ascertainable damage, this court disagrees.

As stated by Plaintiffs/Third-Party Defendants, workmanship claims need some form of liability expert to be provided in order to determine if any ascertainable damages exist. In this case, the Plaintiffs/Third-Party Defendants requested an expert report be provided by the Third-Party Plaintiffs/Defendants. Since no expert report was ever provided, the ascertainable losses, if any, cannot be determined. Third-Party Plaintiffs/Defendants have admitted they did not conduct an expert report and therefore, have shown no genuine dispute of this issue exists. Therefore, Plaintiffs/Third-Party Defendants motion for summary judgment is hereby **GRANTED.**

Third-Party Plaintiffs/Defendants contend that CRA violated the Consumer Fraud Act, but this Court disagrees. Third-Party Plaintiffs/Defendants may have shown unlawful conduct because the CRA change orders may have been missing certain regulatory terms. However, Third-Party Plaintiffs/Defendants have failed to show ascertainable loss and the causal relationship between the defendants’ unlawful conduct and the plaintiff’s ascertainable loss because an expert report was required in order to do so. Therefore, a Consumer Fraud Act

violation has not been properly asserted and Third-Party Plaintiffs/Defendants cross-motion for summary judgment is hereby **DENIED**.

/s/ Daniel L. Weiss, J.S.C.

HON. DANIEL L. WEISS, J.S.C.