

**IN THE COURT OF COMMON PLEAS FOR THE STATE OF  
DELAWARE IN AND FOR NEW CASTLE COUNTY**

ASHLEY B. THOMPSON )

Plaintiff, )

v. )

C.A. No. CPU4-19-003543

MIR WAIS, ROOZIA SAHIBZADA, & )  
SHIELD HOMES, LLC )

Defendants. )

Submitted: February 24, 2022

Decided: April 25, 2022

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**DECISION AFTER TRIAL**

Ashley B. Thompson (“Plaintiff”) brought this action against Mir Wais, Roozia Sahibzada, and Shield Homes, LLC (“Defendants”) alleging Defendants breached their contractual obligation to professionally repair or replace the roof of the property Plaintiff purchased and falsely represented material facts to induce Plaintiff to proceed with the settlement of such property. On February 24, 2022, a trial was held, and the Court reserved its decision.

The Court heard testimony from Plaintiff; Yvette Bronner, Plaintiff's realtor; Chad Wloczewski, owner of MW Roofing, LLC; Defendant Roozia Sahibzada, a principal of Shield Homes, LLC; and Defendant Mir Wais, principal and registered agent of Shield Homes, LLC. The Court granted Defendant's Motion to Dismiss as to Defendant Roozia Sahibzada due to her lack of involvement with the purchase agreement between Plaintiff and Defendant Shield Homes, LLC ("Shield Homes") and the events that transpired based on the testimony provided at trial.

### **FACTUAL HISTORY**

Based on the testimony and evidence presented at trial, the Court finds the relevant facts to be as follows.

On June 9, 2019, Plaintiff and Defendants entered into a purchase agreement for a property located at 1015 San Remo Court in Bear Delaware (the "Property").<sup>1</sup> The agreed-upon price was \$179,900 and the final settlement was scheduled for July 31, 2017.<sup>2</sup> On June 19, 2017, a home inspector inspected the property and concluded, among other things, that the roof was in overall poor condition and at the end of its normal life expectancy. The home inspector recommended the roof be evaluated by a licensed roofing contractor and for the roof be repaired or replaced as necessary.<sup>3</sup> The inspection report findings prompted Plaintiff and Defendant Wais, on behalf of Defendant Shield Homes, to sign a Home Inspection Addendum ("Addendum") in which the seller agreed to make certain repairs or

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<sup>1</sup> JX-1.

<sup>2</sup> *Id.*

<sup>3</sup> JX-3 p. 4.

replacements.<sup>4</sup> On June 23, 2017, the Parties signed the Addendum, which included a provision stating, “a licensed roofing contractor should be called in to make further evaluation and to repair or replace as needed”.<sup>5</sup>

On June 28, 2017, MW Roofing, LLC (“MW Roofing”) performed an evaluation of the roof, at the request of Plaintiff, and determined that the roof was approximately 25 years old, it was not repairable, it was past its life expectancy and the shingles had been worn down to the microfiber layer. MW Roofing provided Plaintiff with a proposal for the installation of a new roof in the amount of \$4,510.<sup>6</sup> On the same day, Plaintiff’s realtor forwarded the new roof proposal to Defendants, to which Defendant Wais replied he was “totally rejecting the roof replacement”.<sup>7</sup> Subsequently, Defendants provided an invoice from Gul Construction LLC (“Gul”) for roof repairs that were apparently completed on or about July 15, 2017.<sup>8</sup> There was no testimony establishing Gul as a licensed roofing contractor.

On July 27, 2017, Plaintiff did a walkthrough of the property and found a leak coming from the skylight in the master bedroom. Plaintiff’s realtor promptly notified Defendants and requested a licensed roofing contractor inspect and repair the roof and the skylight.<sup>9</sup> On July 28, 2017, MW Roofing returned to inspect the roof and determined no work had been previously performed, which Plaintiff’s realtor informed Defendants of on

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<sup>4</sup> JX-4.

<sup>5</sup> *Id.*

<sup>6</sup> JX-5.

<sup>7</sup> JX-6.

<sup>8</sup> JX-10; The invoice states “roof patched and replaced where needed, siding, flashing & Trim work where needed, deck posts bring to code & hole by stairs filled, hall foyer window sealed, which totaled \$1,990.

<sup>9</sup> JX-8.

July 29, 2017.<sup>10</sup> Defendant Wais apologized for the lack of work done in his absence and asked if MW Roofing provided a repair quote as he was not going to replace the roof.<sup>11</sup> MW Roofing did not provide a roof repair estimate nor did Defendant Wais contact it for such.

On or about July 30, 2017, Homepros, Inc. (“Homepros”), on behalf of Defendants, addressed the leak in the skylight and provided an invoice of \$700, which was provided to Plaintiff along with photos.<sup>12</sup> Again, there was no testimony establishing Homepros was a licensed roofing contractor. Defendant Wais was out of town at the time; therefore, Defendant Wais’ friend had hired Homepros in his absence. There was rain before the closing date and there was no further indication that the skylight was still leaking, suggesting the leak was fixed. On July 31, 2017, the Parties proceeded with closing.<sup>13</sup>

Sometime in October 2017 after settlement, Plaintiff discovered the roof was still leaking, requiring her to have MW Roofing return to evaluate the roof. Upon further investigation, MW Roofing discovered extensive water damage to the structural framing and sheathing underneath the roof system, which indicated the roof had been leaking for some time.<sup>14</sup> Based on Chad Wloczewski’s (“Wloczewski”), owner of MW Roofing, knowledge and experience, he determined that the water damage and deterioration of the structural framing was so extensive that it had to have been getting wet for some time, approximately 15 years, because the structural framing would take years to deteriorate,

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<sup>10</sup> JX-9.

<sup>11</sup> *Id.*

<sup>12</sup> JX 12.

<sup>13</sup> JX-14.

<sup>14</sup> JX-13.

unlike the roof sheathing which could accumulate water damage and mold within only three to four rainfalls.<sup>15</sup> Because of the extensive water damage and the presence of black mold, mold treatment was required and the interior drywall and framing needed to be repaired. The final invoice for the roof replacement was \$7,538.04.

### **PARTIES CONTENTIONS**

Plaintiff asserts that Defendants breached their duty under the Addendum by failing to repair or replace the roof as needed and made false representations regarding the roof repair to induce Plaintiff to proceed with settlement. Regarding the breach of contract claim, Plaintiff argues that Defendants promised to fix the bad roof but failed to do so allowing a leak to continue, which caused extensive water damage and mold. It is Plaintiff's position that the attempt to repair the roof did not alleviate Defendants' duty to replace the roof. Plaintiff was required to pay for the roof replacement and interior repairs because of Defendant's breach.

Further, Plaintiff asserts Defendants fraudulently induced her to proceed with the settlement because 1. Defendants continuously made misrepresentations and provided false assurances that the roof had been repaired evidenced by the receipts from two separate contractors; 2. Defendants knew or should have known these representations were false or made in reckless indifference to the truth; 3. Defendants intended Plaintiff to be induced by such misrepresentations in order for Plaintiff to proceed with settlement; 4. Plaintiff

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<sup>15</sup> JX-23.

indicated she relied on such misrepresentations and felt induced to proceed with settlement; and 5. Damages resulted when Plaintiff was required to pay for a roof replacement.

It is Defendants' position that they fulfilled their contractual duty under the Addendum because Gul performed the necessary repairs as per the Addendum, which was silent as to the skylights. Further, once Plaintiff informed Defendants that there was a leak in the skylight, Defendants had a contractor, Homepros, fix the leak, evidenced by the rain that occurred before closing and no subsequent indication of further leakage. Defendant contends their contractual obligations were satisfied as there was no further indication that the roof was leaking at the time of closing and Plaintiff proceeded with closing despite knowing the roof was at the end of its life expectancy. Defendants argue the Addendum stated, "repair or replace as needed" and were never provided any documentary indication from MW Roofing or any other roofing company that stated the roof had to be replaced.

Although Defendant Wais rejected the quote to replace the roof from MW Roofing, Defendant argues that Plaintiff's realtor failed to insist Defendants were obligated under the Addendum to replace the roof and instead insinuated repairing the roof was still a viable option. Thus, Defendants did not breach their contractual obligations under the Addendum because repairs were made, it rained, there was no indication of leaks, and the Parties proceeded with closing. Defendants contend their contractual obligations under the Addendum ended once repairs were made and the Parties made settlement on the Property.

Defendants also assert Plaintiff has failed to meet her burden to establish fraud. Defendants argue there was no indication the roof was leaking at the time the contract was signed, at the time the seller's disclosure was executed, nor at the time of closing therefore no false misrepresentations were made. Further, Defendants did ensure the roof was repaired to satisfaction, as evidenced by the fact it had rained before closing and there was no further indication of a leak. Defendants contend that Plaintiff's realtor knew that if she was not satisfied with the information, she received regarding the roof, that she could have pushed closing or chose not to proceed with the sale but declined to do so.

### STANDARD OF REVIEW

The Court is the trier of facts and has the sole discretion to determine the credibility of the witnesses and any evidence provided.<sup>16</sup> If there is conflicting evidence presented at trial, the Court has to reconcile these conflicts—if reasonably possible—in order to find congruity.<sup>17</sup> However, if the Court is unable to find such congruity, the Court must determine which portions of the testimony deserve more weight.<sup>18</sup> Any portion of the testimony which the Court finds unsuitable for consideration must be disregarded.<sup>19</sup> The Court considers “the witnesses’ demeanor, the fairness and descriptiveness of their testimony, their ability to personally witness or know the facts about which they testify, and any biases or interests they may have concerning the nature of the case”.<sup>20</sup>

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<sup>16</sup> *Leep v. Weline*, 2018 WL 301089, \*5 (Del. Com. Pl. Jan. 3, 2018).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

## DISCUSSION

Plaintiff has brought a breach of contract claim, a fraudulent inducement claim, and a statutory fraud claim against Defendants for their failure to properly abide by the language in the Addendum and for the numerous misrepresentations and false assurances about the roof repairs. The Court will address each claim separately.

### ***Breach of Contract***

In order for the plaintiff to prevail on a claim for breach of contract, she must establish by a preponderance of the evidence that: (1) a contract existed between the parties; (2) the defendant breached an obligation imposed by the contract, and (3) the plaintiff suffered damages as a result of the breach.<sup>21</sup>

As stated above, it is undisputed that the Addendum constituted a contract between the Parties. In the Addendum, Defendants agreed to make certain repairs and included a provision that stated, “a licensed roofing contractor should be called in to make further evaluation and to repair or replace as needed”. Once the home inspection was completed, both Parties were aware the roof was beyond its reasonable life expectancy and still agreed to the provision that the roof was to be “repair[ed] or replace[d] as needed” subject to an evaluation by a licensed roofing contractor. Defendant Wais acknowledged responsibility, through his testimony and the evidence, for repairing and/or replacing the roof as needed. When both things are put together 1) Defendants knew the roof was beyond its reasonable

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<sup>21</sup> See *Gregory v. Frazer*, 2010 WL 4262030, \*1 (Del. Com. Pl. Oct. 8, 2010); *VLIW Technology, LLC v. Hewlett-Packard, Co.*, 840 A.2d 606, 612 (Del. 2003).



life expectancy and 2) Defendants accepted the responsibility to repair or replace the roof as needed. The Court finds it difficult to escape the conclusion that Defendants knew there was a high probability that if a licensed roofing contractor found the roof needed to be replaced it would be Defendants' responsibility to replace the roof as required by the Addendum.

With regard to damages, Plaintiff has established by a preponderance of the evidence she suffered damages attributable to Defendants' breach of contract. It has been established that the final price of the roof installment was \$7,538.02. Plaintiff has also established by a preponderance of the evidence that she has paid \$1,633.06 in interest attributable to the fact that Plaintiff was required to finance the total cost of the roof installment.<sup>22</sup>

Defendants contend their contractual duty was not breached because repairs were made and there was no indication of a roof leak until well after settlement. Implicit in the promise to have "all necessary repairs made" is to have those repairs made properly.<sup>23</sup> In *Gutridge v. Iffland*, the Parties agreed to an Addendum that could be "reasonably read to require that qualified contractors evaluate the roof, the heating, and the electrical system, and make 'all necessary [or needed] repairs.'" The Sellers construed this language to mean the Seller's obligations ended with the completion of an inspection and alleged repair, meaning even if Sellers' replaced the roof the Sellers "had no further responsibility even if

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<sup>22</sup> JX-18.

<sup>23</sup> *Gutridge v. Iffland*, 889 A.2d 28, (Del. Supr. 2005).

the roof continued to leak”. The Delaware Supreme Court determined that this construction of the language was “not commercially reasonable and rendered the Addendum obligation illusory because it is no longer a promise to cure the property defects, but only a promise to hire someone to try”.<sup>24</sup>

The same applies here. Defendant Wais has on multiple occasions taken responsibility to repair/replace the roof. The fact that Defendants made repairs and no leaks were obvious does not render their responsibility fulfilled because the roof continued to leak. The fact that there was no indication of a leak did not render Defendants’ duty to repair/replace the roof moot. The only testimony the Court has from a licensed roofing contractor is that the roof was not repairable. While repairs were made, there was no evidence the Defendants used a licensed roofing contractor, and the roof ultimately needed to be replaced. Defendants cannot avoid responsibility simply because Defendant Wais tried to have the roof repaired instead of replaced.

Therefore, the Court concludes Defendants did breach their duty.

### ***Fraudulent Inducement***

The Court finds Plaintiff has not satisfied her burden to establish fraudulent inducement or statutory fraud.

To prove fraudulent inducement, a plaintiff must be able to present evidence to satisfy the elements of common law fraud.<sup>25</sup> Fraud has been defined as consisting of the

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<sup>24</sup> *Id.* at \*3.

<sup>25</sup> *E.I. DuPont de Nemours Co. v. Fl Evergreen Foliage*, 744 A.2d 457, 461-62 (Del. 1999).

following: “(1) a false representation, usually one of fact, made by the defendant, (2) the defendant’s knowledge or belief that the representation was false, or was made with reckless indifference to the truth; (3) an intent to induce the plaintiff to act or to refrain from acting; (4) the plaintiff’s action or inaction taken in justifiable reliance upon the representation; and (5) damage to the plaintiff as a result of such reliance”.<sup>26</sup> Common law fraud requires the representation to “an essential part of the transaction”, not simply material.<sup>27</sup>

Here, Plaintiff argues that Defendants knew or should have known the roof was leaking and that Defendant Wais intended to induce Plaintiff into proceeding to settlement or that Plaintiff relied on such misrepresentations. Plaintiff asserts that she and her realtor felt induced to proceed with settlement based on Defendant Wais’ false assertions that the roof had been repaired. However, Plaintiff was reminded by Defendant Wais, through email communication to her realtor, that she could walk away from the sale and that he had no intention of replacing the roof. The fact that Defendant wanted to maximize his profits does not mean he meant to misrepresent material facts to Plaintiff to induce her to proceed to settlement especially if he reminded her of her ability to walk away from the sale.

Therefore, the Court finds Plaintiff has failed to establish the elements of fraudulent inducement.

### ***Delaware Consumer Fraud Act***

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<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

In order to bring a private cause of action under the Delaware Consumer Fraud Act, a plaintiff must establish 1) the defendant engaged in conduct that violated the statute, 2) the plaintiff was a victim of the unlawful conduct, and 3) a causal relationship exists between the defendant's unlawful conduct and the plaintiff's ascertainable loss.<sup>28</sup> Under § 2513 Unlawful Practice, is “the act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, or the concealment, suppression, or omission of any material fact with the intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise, whether or not any person has been misled, deceived, or damaged thereby, is an unlawful practice”.<sup>29</sup> The defendant must have intended others to rely on the omitted or concealed material fact.<sup>30</sup> Although the misrepresentation must have been made with the intent to induce action or inaction by the plaintiff, the statute does not require proof of such intent.<sup>31</sup>

Plaintiff contends that the numerous statements Defendants made indicating that the roof was repaired, when in fact it was not, constitutes “deception, fraud, false pretense, false promise, misrepresentation, and/or the concealment, suppression or omission of a material fact” and such statements were made with the intent that Plaintiff would rely on such concealment, suppression, or omission, in connection with the sale of the property to Plaintiff. Plaintiff asserts she did rely on Defendants' misrepresentations by proceeding

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<sup>28</sup> *Teamsters Local 237 Welfare Fund v. AstraZeneca Pharm. LP*, 136 A.3d 688, \*693 (Del. Supr. April 12, 2016).

<sup>29</sup> 6 Del. C. § 2513(a).

<sup>30</sup> *supra*, note 24.

<sup>31</sup> *DuPont*, 744 A.2d 457, 461-62.

with the final settlement. Further Plaintiff states she was misled, deceived, and damaged by the Defendants' deception and fraudulent conduct because the roof was in not repaired.

However, these contentions are not supported by the evidence presented at trial. Both Parties testified that there was no obvious indication of a roof leak until Plaintiff did a walk-through before closing and noticed a leak coming from the skylight. Further, both Parties testified that Homepros performed some work and it thereafter rained and at the time of closing there was still no obvious indication the roof had been or still was leaking. The fact that there was a roof leak causing immense damage, which according to the evidence was unknown to Defendants, does not retroactively establish an intentional misrepresentation necessary to support a claim of fraud. Defendant Wais, through the evidence submitted and his testimony, has established that he acknowledged the roof was his responsibility and did take steps to address such responsibility through the hiring of two separate contractors. While these attempts to repair the roof do not relieve Defendants of their responsibility to replace the roof, they do not establish that Defendants violated the Delaware Consumer Fraud Act.

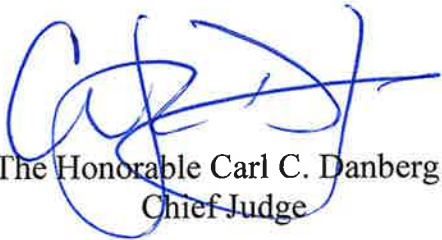
Therefore, the Court finds Plaintiff failed to establish Defendants violated 6 *Del. C.* § 2513(a).

### **CONCLUSION**

For the foregoing reasons, judgment is entered against Mir Wais and Shield Homes, LLC and in favor of Thompson in the amount of \$9,171.08, plus prejudgment and post-

judgment interest at the legal rate and reasonable attorney's fees.<sup>32</sup> Judgment is entered against Thompson and in favor of Mir Wais and Shield Homes, LLC regarding the fraud claims.

**IT IS SO ORDERED, this 25<sup>th</sup> day of April 2022.**



The Honorable Carl C. Danberg  
Chief Judge

cc: Patricia Thomas, Judicial Case Manager

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<sup>32</sup> Prejudgment interest is properly allowable when the amount of damages is calculable and such interest is awarded in contract cases. *St. Farm Mut. Auto. Ins. Co. v. Baron*, 20020 WL 32007217, (Del. Comm. Pls. July 26, 2002).