

Commercial Law

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Violation of Home Repair and Remodeling Act Does Not Equate to Violation of the Consumer Fraud Act

In *Kunkel v. P.K. Dependable Construction, LLC*, 387 Ill. App. 3d 1153, 902 N.E.2d 769 (5th Dist. 2009), the Fifth District of the Illinois Appellate Court held that a violation of the Home Repair Remodeling Act, 815 ILCS 513/20, does not necessarily establish a claim under the Illinois Consumer Fraud and Deceptive Business Practices Act (ICFA), 815 ILCS 505/2Q(c), 2Z. The case involved homeowners who sued the contractor they hired to replace their roof. The roof repair did not go well. After the contractor completed its work, the homeowners experienced numerous leaks in the home. Over a three-year period, the contractor attempted to repair the roof. Finally fed up with the contractor's inability to repair the roof, the homeowners filed a lawsuit. They filed a claim for breach of contract and warranty, as well as a claim under the ICFA.

The case went to trial and the homeowners prevailed. The trial court awarded \$6,725 in damages for breach of contract and warranty. The Court also awarded the homeowners attorneys' fees in the amount of \$6,151, under the ICFA claim. The contractor appealed.

The appellate court affirmed the trial court's finding of liability on the breach of contract and warranty claim. The appellate court found that there was ample evidence in the record to support the trial court's finding that the problems with the roof were a product of the contractor's defective workmanship. The trial court's rejection of what amounted to an impossibility defense involved a credibility determination and a resolution of contradictory evidence, which the appellate court refused to disturb.

The appellate court, however, reversed the award of attorneys' fees. The trial court's award of fees was based on its finding that the contractor violated Sections 2Q(c) and 2Z of the ICFA. §2Z provides: "Any person who knowingly violates the ... Home Repair and Remodeling Act ... commits an unlawful practice within the meaning of [the Consumer Fraud and Deceptive Business Practices] Act." 815 ILCS 505/2Z. Although the contractor was found to have violated the Home Repair and Remodeling Act by not providing the homeowner with a copy of a consumer rights brochure, the court found this was not enough to establish a violation of the ICFA. Because the homeowners provided no evidence of the contractor's state of mind in not providing the brochure, there was no evidence in the record to support a knowing violation of the Home Repair and Remodeling Act. Consequently, there was no violation of §§2Q(c) or 2Z of the ICFA, and thus no basis for the award of attorneys' fees.

The court also noted that there must be a showing of actual damage in order to sustain a private right of action under the ICFA, and the homeowners produced no evidence that the contractor's failure to provide the brochure proximately caused their damages. Accordingly, the homeowners had no private right of action under the ICFA.

About the Author

James K. Borcia is a partner with the Chicago firm of *Tressler, Soderstrom, Maloney & Priess, LLP*, and is active in the firm's litigation practice with an emphasis on commercial and complex litigation. He was admitted to the bar in 1989 after he received his J.D. from Chicago-Kent College of Law. Mr. Borcia is a member of the Chicago and Illinois State Bar Associations, as well as the IDC and DRI.

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