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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3701-21**

**CRAIG and MELISSA
PEREIRA,**

Plaintiffs-Appellants,

v.

**O&J CONTRACTING LLC,
and JOHN HARRIS,**

Defendants-Respondents.

Submitted September 26, 2023 – Decided October 4, 2023

Before Judges Sabatino and Marczyk.

On appeal from the Superior Court of New Jersey, Law
Division, Monmouth County, Docket No. L-0289-19.

Piro, Zinna, Cifella, Paris & Genitempo, LLC,
attorneys for appellants (Kristen Jones, of counsel and
on the brief).

Respondents have not filed a brief.

PER CURIAM

In this one-sided appeal arising out of a home construction case, the homeowners, plaintiffs Craig and Melissa Pereira, appeal certain aspects of the trial court's default judgment entered in their favor. The challenged aspects are: (1) alleged inadequate damages; and (2) failure to extend the judgment against the defendant limited liability company to the co-defendant principal of that company. For reasons that follow, we remand this matter for further proceedings.

We glean these facts from the record developed at a proof hearing. Plaintiffs hired a contractor to renovate a bathroom at their residence. They dealt with John Harris, the principal of O&J Contracting, LLC ("the LLC").

Harris prepared a contract for the work, listing his LLC on the first page but having a signature line that simply stated "John Harris" rather than "John Harris, for O&J Contracting, LLC." The copy of the contract in the record is unsigned by anyone. The contract detailed the work to be performed, but it omitted several items required to be specified by state regulations. The contract price was \$10,645.95, which plaintiffs fully paid over three installments.

According to plaintiffs, the work on the bathroom was defective. They consulted with a replacement contractor, which gave them an estimate of \$21,350 to remove defendants' subpar work and install a new

bathroom. Plaintiffs also retained for litigation a construction expert, who identified numerous violations by defendants of the home construction regulations. The most glaring Consumer Fraud Act ("CFA") violation was defendants' failure to have the work inspected by building code officials. See N.J.A.C. 13:45A-16.2(10).

Plaintiffs sued both the LLC and Harris in the Law Division, alleging common-law breach of contract and violations of the Consumer Fraud Act, N.J.S.A. 56:8-1 to 8-20. Defendants did not answer the complaint and defaulted.

At the ensuing proof hearing, Melissa Pereira and plaintiffs' construction expert testified. Defendant Harris appeared and, per custom, was allowed to question plaintiffs' witnesses. See Fox v. Fox, 76 N.J. Super. 600, 604 (Ch. Div. 1962); Perry v. Crunden, 79 N.J. Super. 285, 321 (Law Div. 1963). Harris advised the court that the LLC was defunct.

After considering the evidence, the court granted plaintiffs only a part of the damages they sought. Specifically, the court awarded plaintiffs a refund of the \$10,645.95 they paid, which the court considered to be CFA damages, and trebled them as required by N.J.S.A. 56:8-19. The court also awarded plaintiffs \$6,983.16 in counsel fees under the CFA.

However, the trial court denied plaintiffs any of the costs to remove the defective work. The court also did not award plaintiffs any portion of the price they would have to pay to obtain a conforming bathroom. In addition, the court declined to extend the judgment to Harris personally, because it assumed plaintiffs could try to recover the debt from the LLC when it was dissolved.

On appeal, plaintiffs request an enhancement of the damages and to have the judgment extended to Harris personally. We address those issues in turn.

The record reflects that the court undervalued plaintiffs' compensable damages. Under basic contracts law, plaintiffs are entitled not only to restitution of the money they paid, see Restatement (Second) of Contracts §347(a) (Am. L. Inst. 1981), but also to recover the consequential damages caused by the cost of removing the contractor's defective work. See id. § 348(c).

Plaintiffs are further entitled to the benefit of the bargain, which would be the reasonable costs of a bathroom conforming to the contract, minus the \$10,645.95 the court directed to be refunded to them. That net amount cannot be calculated on the present record, because the replacement contractor's \$21,350 estimate does not break out the price for removing the defective work. There also may be "extras" in the new price that go beyond the scope of defendants' promised work.

As for the CFA damages, the court reasonably found that the paid contract price was an "ascertainable loss" under N.J.S.A. 56:8-19. See Dabush v. Mercedes-Benz USA, LLC, 378 N.J. Super. 105, 114 (App. Div. 2005) (quoting N.J. Citizen Action v. Schering-Plough Corp., 367 N.J. Super. 8, 12-13 (App. Div.) (2003)). That ascertainable loss can be traced, in particular, to defendants' failure to arrange the inspections required by state regulations. Had those inspections been duly performed, the defective aspects of the work may well have been spotted and cured. Depending on the proofs, the costs to remove the defective work may also qualify as an ascertainable loss under the CFA that can be trebled.

Hence, the trial court made a few errors of law in calculating damages. The case must be remanded to afford plaintiffs a supplemental proof hearing to amplify the record and to enable the court to calculate a revised damages award under both the common law and the CFA. In the meantime, the present monetary judgment, including the counsel fees, should remain in place, subject to possible enhancement on remand.

We turn to the question of potential personal liability of Harris. The court did not necessarily have to "pierce the corporate veil" to extend the judgment to Harris. Under Allen v. V & A Brothers., Inc., 208 N.J. 114 (2011), Harris might

be personally liable for the company's CFA violations if he had a "policy" to disobey the regulations. *Id.* at 134-36. On remand, plaintiffs should be afforded an opportunity to depose Harris concerning (1) his policies in operating his business; and (2) his personal assets.

If plaintiffs on remand fail to satisfy Allen, they still might be able to successfully prove a claim of veil-piercing. Under New Jersey law, a court may pierce the corporate veil when there is "evidence sufficient to justify disregard of the corporate form." Verni ex rel. Burstein v. Harry M. Stevens, Inc., 387 N.J. Super. 160, 199 (App. Div. 2006). Discovery should be permitted on remand to address the pertinent veil-piercing factors, including, among other things, whether the LLC was undercapitalized and whether, de facto, this business was operated like a sole proprietorship. *Id.* at 200.

The court's assumption that the debts of the LLC would be paid in the dissolution process might be overly optimistic. The LLC statute, N.J.S.A. 42:2C-49(b)(1), does prescribe that the debts of the LLC are to be paid when it winds down. But the statute contains no enforcement mechanism for such payment to occur, especially if the LLC has no assets.

Any appellate counsel fees sought by plaintiffs shall abide the outcome of the remand and be considered by the trial court in the first instance. R. 2:11-4.

Remanded for further discovery and proceedings concerning the damages calculation and potential personal liability of codefendant Harris. We do not retain jurisdiction.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION