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ARKANSAS COURT OF APPEALS

DIVISION IV
No. CA10-1184

GEORGE PAGE and PAGE ENTERPRISES APPELLANTS V. TONY BALLARD and MEDA BALLARD APPELLEES	**Opinion Delivered** MAY 11, 2011 APPEAL FROM THE POLK COUNTY CIRCUIT COURT [NO. CV-2005-0145] HONORABLE J. W. LOONEY, JUDGE AFFIRMED

RAYMOND R. ABRAMSON, Judge

Appellees Tony and Meda Ballard (collectively, "the Ballards") hired Appellants George Page and Page Enterprises (collectively, "Page") to build a home for them in Polk County, Arkansas. Construction on the home commenced in March 2003. The Ballards moved into the home in December 2003 and immediately began experiencing problems with the construction of the home. Among their complaints were that the home leaked and that the foundation, masonry, walls, framing, roof, and floor of the house (among other things) were deficient. Mrs. Ballard notified Page of the problems, but he failed to rectify the issues. Despite the alleged deficiencies, the Ballards continued to live in the home.

On October 6, 2005, the Ballards filed suit against Page claiming that Page (1) had not constructed the house in a good and workmanlike manner; (2) had not constructed the house

pursuant to the agreed-upon plans and diagrams; (3) had not constructed the house in a timely manner; and (4) had breached their oral contract. Page timely filed an answer denying the allegations.

The case was tried to a jury over a two-day period. During trial, Mrs. Ballard testified that they had purchased the land on which the house was built for approximately $25,000. She stated that she paid Page approximately $222,000 for the construction of the home and also personally spent approximately $55,000 on fixtures and other items used in the construction of the house. She then stated that she believed the property would be worth approximately $400,000 without any defects, but since she could not sell the property in its current condition, the property was worthless. George Page denied that the house had any serious defects, but that it would cost between $350,000 and $375,000 to tear down the house and rebuild it. Neither side presented any evidence regarding the cost to repair the defects. Page moved for a directed verdict on liability and damages at the close of the Plaintiffs' case and at the close of all the evidence. The trial court denied both motions.

The court gave the following instruction as to damages:

> The element of damage that Tony Ballard and Meda Ballard claim is the difference in the fair market value of the home as constructed and the fair market value of the home if it had been as warranted. Whether this element of damage has been proved by the evidence is for you to determine.

After some deliberation, the jury requested an alternative means of determining value. The court, however, instructed the jury to utilize the instructions they had been given. The jury then returned a verdict awarding damages to the Ballards in the amount of $75,000. Page

made an oral motion for judgment notwithstanding the verdict on the issue of damages, but the trial court ultimately entered judgment on the verdict in the amount of $75,000 as determined by the jury.

On appeal, Page only challenges the amount of damages that the jury awarded; they do not contest the jury's finding of liability. More specifically, Page argues that the Ballards failed to provide sufficient proof of the fair market value of the property. Page claims that the Ballards failed to introduce any independent evidence from a real estate agent or appraiser as to the market value of the property; that the Ballards failed to produce any evidence regarding the cost to repair and/or replace or rebuild the property; and that Mrs. Ballard was not sufficiently knowledgeable about the property or the real estate market to provide an adequate opinion as to the fair market value. Moreover, Page asserts that none of the figures presented by the Ballards support a damage award of $75,000. As a result, the jury's award of damages must have been based solely upon speculation and conjecture.

In cases involving breach of warranty for a newly constructed house, Arkansas has recognized two ways of proving damages. The preferred measure of damages in construction-contract cases involving new structures is to use the cost of repairing the defects so that the vendee-owner recovers an amount that will repair the house to the quality expected. However, this preference for the cost-of-repairs measure does not limit the injured buyer to only one measure of damages. *Williams v. Charles Sloan, Inc.*, 17 Ark. App. 247, 706 S.W.2d 405 (1986). The other method is to fix damages as the difference in the house's value as

defective versus its value without defects. *See Carter v. Quick*, 263 Ark. 202, 563 S.W.2d 461 (1978).

Here, the parties submitted the issue of damages to the jury using the value method rather than the cost-of-repair method. Mrs. Ballard testified that, in her opinion, the property as warranted would have been worth approximately $400,000, but that it was worthless as constructed because of the substantial defects in the construction of the home. Page claims that Mrs. Ballard did not have sufficient knowledge to give an opinion on the value of her home. However, this court has consistently allowed a property owner to give his opinion as to the values of his property. In fact,

> [c]onsiderable latitude of discretion has been allowed in admitting a landowner's opinion of the value of his property when he possesses a high degree of familiarity with the property. When the landowner has [in]sufficient knowledge and familiarity his opinion is to be stricken when it is unrelated to any fact in the record and is apparently plucked from the air and without any fair and reasonable basis. Where, however, the landowner is intimately acquainted with the land and conditions pertaining thereto and its highest and best use, his testimony is not to be stricken simply because it is not based upon comparable sales, or solely because of the owner's lack of knowledge of property values.

Ark. State Hwy. Comm'n v. Steen, 253 Ark. 908, 914–15, 489 S.W.2d 781, 784–85 (1973) (citations omitted).

Here, the Ballards were intimately familiar with the property as they lived in the house for seven years and lived with the consequences of the alleged defects. Thus, contrary to Page's assertions, Mrs. Ballard was sufficiently knowledgeable as to her property's value, and, therefore, her testimony was admissible on that issue. Moreover, Page was allowed to cross-

examine Mrs. Ballard as to the basis of her opinions and the jury was allowed to determine the weight and credibility her testimony should be given. This is how it should be. And, while we agree that testimony or evidence from an independent residential appraiser might have been helpful, neither party presented such evidence, nor was such evidence required to submit the Ballards' claims to the jury given Mrs. Ballard's testimony as to value. Nor, as contended by Page, were the Ballards required to submit evidence regarding the cost to repair their residence since they were not seeking damages under that method.

Page next argues that it is clear that the award of damages was based upon speculation, because the jury's award cannot be mathematically obtained by the evidence presented. However, exactness on the proof of damages is not required, and the finder of fact has some latitude in awarding damages when arriving at a figure. *Bank of Am., N.A. v. C.D. Smith Motor Co.*, 353 Ark. 228, 106 S.W.3d 425 (2003). The question of damages, both as to measure and amount, is a question of fact. *Quality Truck Equip. Co. v. Layman*, 51 Ark. App. 195, 912 S.W.2d 18 (1995).

Here, there was evidence that the property was worth somewhere between $0 and $400,000. Based on Mrs. Ballard's testimony, the land was worth at least $25,000. The jury also heard evidence that the home was livable (as the Ballards had been residing there since December 2003); that the deficiencies may not have been as severe as the Ballards asserted; and that Mrs. Ballard frequently used a kiln in the home, which the jury could have determined contributed to some of the damages to the home's interior.

As stated above, we give the fact-finder some latitude in its decision in awarding damages when arriving at a fair-market-value figure and have not required exactness on the proof of damages. *See Lancaster v. Schilling Motors, Inc.*, 299 Ark. 365, 772 S.W.2d 349 (1989); *Moore Ford Co. v. Smith*, 270 Ark. 340, 604 S.W.2d 943 (1980); *see also Jim Halsey Co. v. Bonar*, 284 Ark. 461, 683 S.W.2d 898 (1985). If it is reasonably certain that some loss has occurred, it is enough they can be stated only approximately. *Dr. Pepper Bottling Co. v. Frantz*, 311 Ark. 136, 842 S.W.2d 37 (1992). Given the evidence recited above that was placed before the jury and given that the damages awarded by the jury in this case fell well within the range of damages for which evidence was presented, we cannot say that the jury's award should be overturned.

Finally, it appears that Page has argued that the Ballards incorrectly submitted the question of damages to the jury based on the market-value assessment of damages rather than on the cost-of-repair method. If Page had believed that the value method was not the correct measure of damages, he had an opportunity to present evidence on the cost to repair and could have requested a jury instruction on this amount. *See Williams*, *supra*. It does not appear that he did so. Nor did Page present any evidence that the Ballards were incorrect in their assertion that the difference in market value was the correct measure of damages or any witnesses with real estate experience to rebut the Ballards' property valuations. For these reasons, this argument must fail.

Affirmed.

WYNNE and BROWN, JJ., agree.