No. 2—08—1181
Order filed March 2, 2011

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

FOUR SEASONS HEATING & AIR CONDITIONING, INC.,	)	Appeal from the Circuit Court of Du Page County
Plaintiff-Appellant,	)	
v.	)	No. 08—CH—2403
HARLAN KRUMPFES and DIANA KRUMPFES,	)	Honorable Bonnie M. Wheaton,
Defendants-Appellees.	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Schostok and Birkett concurred in the judgment.

ORDER

Held: The trial court erred in dismissing the complaint for plaintiff's failure to comply with certain provisions of the Home Repair and Remodeling Act (Act) (815 ILCS 513/1 *et seq.* (West 2006)).

Plaintiff, Four Seasons Heating & Air Conditioning, Inc., filed a two-count complaint against defendants, Harlan and Diana Krumpfes. The first count sounds in contract, and the second is an attempt to foreclose a mechanic's lien. The circuit court of Du Page County dismissed the complaint with prejudice due to plaintiff's failure to comply with certain provisions of the Home Repair and

Remodeling Act (Act) (815 ILCS 513/1 *et seq.* (West 2006)). Plaintiff now appeals, and, for the reasons that follow, we reverse and remand for further proceedings.

During the pendency of this appeal, this court decided *Artisan Design Build, Inc. v. Bilstrom*, 397 Ill. App. 3d 317 (2009). In that case, we held that the failure of a contractor to provide a consumer with a pamphlet explaining the consumer's rights as required by the Act (see 815 ILCS 513/20 (West 2006)) did not act as an absolute bar to a contractor recovering in law or equity for work performed for the consumer. See *Artisan Design Build, Inc.*, 397 Ill. App. 3d at 328-29. Instead, such a violation of the Act may give rise to a cause of action under the Consumer Fraud and Deceptive Business Practices Act (see 815 ILCS 505/1 *et seq*. (West 2006)) if the failure to provide the pamphlet is the proximate cause of the consumer's damages (see *Kunkel v. P.K. Dependable Construction, LLC*, 387 Ill. App. 3d 1153, 1160 (2009)). The defendant in *Artisan Design Build, Inc.* sought leave to appeal to the supreme court, and we stayed the instant appeal while the supreme court took action on that case. Ultimately, the supreme court denied leave to appeal. Accordingly, the stay is now lifted, and we will address the merits of this case. As this appeal comes to us following the dismissal of plaintiff's complaint by the trial court in accordance with section 2—619 of the Civil Practice Law (735 ILCS 5/2—619 (West 2008)), our review is *de novo*. *Sellers v. Rudert*, 395 Ill. App. 3d 1041, 1045 (2009).

We begin with *Artisan Design Build, Inc.,* and, more specifically, its effect upon this case. We note that *Artisan Design Build, Inc.*, 397 Ill. App. 3d at 327, considered the question of whether the failure to provide a pamphlet as required by the Act would bar a contractor from any recovery for work performed. In this case, defendants assert, in addition to not providing them with the required pamphlet, plaintiff failed to comply with the Act in two additional aspects. Defendants

assert that plaintiff omitted from the contract between the parties certain terms required by the Act (see 815 ILCS 513/15 (West 2006)) and did not maintain insurance in the amounts required by the Act (see 815 ILCS 513/25 (West 2006)). The same rationale this court applied in *Artisan Design Build, Inc.*, 397 Ill. App. 3d at 328-29, controls here. In that case, we reasoned that section 20 of the Act, which contains the requirement regarding providing consumers with a pamphlet advising them of their rights (815 ILCS 513/20 (West 2006)), contained no provision barring a contractor from recovering for failing to comply with the section. Similarly, section 25, which contains the insurance requirements (815 ILCS 513/25 (West 2006)), contains no such provision. Section 15, which specifies the contents of the contract (815 ILCS 513/15 (West 2006)), also does not provide for the complete denial of any remedy to a contractor that does not comply with it. Thus, like the *Artisan Design Build, Inc.*, 397 Ill. App. 3d at 328-29, court, we conclude that the plain language of the Act does not preclude a contractor's recovery in law or equity for work performed. Rather, such violations of the Act may provide a cause of action under the Consumer Fraud and Deceptive Business Practices Act (see 815 ILCS 505/1 *et seq*. (West 2006)). *Artisan Design Build, Inc.*, 397 Ill. App. 3d at 329. Succeeding on such a claim requires a plaintiff to prove the violation was the proximate cause of the damages suffered. *Artisan Design Build, Inc.*, 397 Ill. App. 3d at 329, citing, *Kunkel*, 387 Ill. App. 3d at 1160. Accordingly, in light of *Artisan Design Build, Inc.*, we conclude that the violations of the Act alleged by plaintiff do not preclude plaintiff from proceeding in the trial court.

We note that defendants claim they can demonstrate proximate causation between violations of the Act and their damages. They contend that the contract provided by plaintiff was insufficient in that it failed to adequately describe the work to be performed, the cost of the parts and materials,

the completion date, and the grounds upon which defendants could terminate the project. Further, defendants continue, plaintiff's failure to provide them with a consumer-rights pamphlet prevented them from understanding their rights. As a result, they argue, they could not determine if plaintiff's fees and costs were reasonable, what work was to be performed, what the costs of various parts were, and how they could terminate the project to avoid a mechanics lien. At best, these contentions raise questions to be explored through further proceedings below. For example, that defendants could not determine what plaintiff's fees were does not constitute a damage in itself. Defendants may have been damaged if the fees and costs were in fact unreasonable. Perhaps they can prove damages in some other manner, and we do not intend to limit them to a particular theory here. However, simply not knowing whether plaintiff's fees were reasonable, in and of itself, is clearly insufficient. Similarly, knowing how to avoid a mechanic's lien would have benefitted defendants only if there was actually some way in which they could have done so. While some of these theories may bear fruit for defendants at trial or perhaps at the summary judgment stage, they do not provide a proper basis to dismiss plaintiff's complaint.

Defendants, pointing out that we can affirm on any basis apparent in the record (*Dalan/Jupiter, Inc. ex rel. JRC Midway Marketplace, L.P. v. Draper & Kramer, Inc.*, 372 Ill. App. 3d 362, 366 (2007)), argue that plaintiff breached the contract between the parties and as such, cannot recover upon it. It is true that a defendant is excused from performing under a contract where a plaintiff has already breached it. See *Finch v. Illinois Community College Board*, 315 Ill. App. 3d 831, 836 (2000). In support of this argument, defendants rely upon the affidavit of Diana Krumpfes, which merely states that plaintiff's performance was unsatisfactory and unworkmanlike; that she attempted to contact plaintiff; that plaintiff did not correct the work, and that she was forced to

expend additional sums of money to remediate the situation. In *Venezky v. Central Illinois Light Co.*, 168 Ill. App. 3d 612, 614 (1988), this court found an affidavit to be an insufficient basis to support a motion to dismiss under section 2—619 where, rather than setting forth affirmative matter that would defeat the cause of action, the affidavit simply contradicted the allegations in the complaint. In this case, plaintiff pleaded that it "completed all work necessary under said Contracts." Hence, the allegations in the affidavit upon which defendants rely regarding plaintiff's failure to satisfactorily complete the work are essentially a denial of a paragraph in the complaint. As such, the affidavit provides no legal basis for dismissal.

In light of the foregoing, we conclude that the trial court erred in dismissing plaintiff's complaint. We therefore reverse its judgment. This cause is remanded for further proceedings.

Reversed and remanded.