2015 IL App (2d) 140482-U
No. 2-14-0482
Order filed June 29, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

SHELDON BANKS and MARILYN BANKS, Plaintiffs and Counterdefendants-Appellants, v. CONTINENTAL WALL SYSTEMS GROUP, INC., and RYSZARD ZBROINSKI CONSTRUCTION, INC., Defendants and Counterplaintiffs-Appellees.	)	Appeal from the Circuit Court of Lake County. No. 12-L-293 Honorable Diane E. Winter, Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices McLaren and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: The judgment was affirmed as modified where: (1) the findings as to the breach-of-contract counterclaims and the claims for extra work were not against the manifest weight of the evidence; (2) the trial court did not abuse its discretion in limiting plaintiffs' cross-examination of one of defendant's witnesses; and (3) the court abused its discretion in awarding $750 in attorney fees that it had previously awarded as a discovery sanction, but did not abuse its discretion in awarding the remaining attorney fees.

¶ 2 Plaintiffs and counterdefendants, Sheldon and Marilyn Banks, appeal from a judgment entered against them following a bench trial on counterclaims for breach of contract filed by

defendants and counterplaintiffs, Continental Wall Systems Group, Inc. (Continental) and Ryszard Zbroinski Construction, Inc. (RZ Construction). For the following reasons, we affirm the judgment as modified.

¶ 3 I. BACKGROUND

¶ 4 Plaintiffs hired Continental to remove the Dryvit exterior wall coating from their home and replace it with stucco. At the same time, they hired RZ Construction to replace the metal copings covering their home's parapet walls and to sealcoat the roof. The parapet walls were low walls surrounding the home's flat roof, and the copings were pieces of metal flashing covering the tops of the parapet walls. According to Continental and RZ Construction, plaintiffs also orally agreed to have Continental remove the tiles from a concrete walkway so that new tiles could be installed, and to have RZ Construction replace three roof drains and install flashing around 30 windows.

¶ 5 After most of the work was completed, plaintiffs filed a two-count complaint against Continental and RZ Construction alleging breach of contract. Plaintiffs alleged that Continental and RZ Construction did not substantially perform the work in a workmanlike manner, thereby allowing water leaks to occur.

¶ 6 Continental and RZ Construction each filed a counterclaim for breach of contract against plaintiffs. Continental alleged that it substantially performed under the contract and that an unpaid balance of $7,900 remained. Continental also sought $1,000 as extra payment for removing the tiles from plaintiffs' walkway, plus attorney fees and costs. RZ Construction alleged that it substantially performed under the contract and that an unpaid balance of $11,500 remained. It also sought $6,000 as extra payment for replacing the three roof drains and $4,500 as extra payment for installing flashing around the windows.

¶ 7 Prior to trial, plaintiffs voluntarily dismissed their complaint. However, as affirmative defenses to the counterclaims, plaintiffs incorporated by reference the allegations of their complaint. Plaintiffs alleged that, because Continental and RZ Construction each breached its contract with plaintiffs by, among other things, not substantially performing in a workmanlike manner, plaintiffs' obligations were discharged.

¶ 8 At the bench trial on the counterclaims, Continental was first to proceed. Its only witness was Eric Mazur, president of the company. Mazur testified that Continental specializes in commercial and residential stucco work, masonry work, and moisture intrusion remediation, completing approximately 200 projects per year. Plaintiffs were referred to him by their neighbors, who were prior customers. Mazur's first meeting with plaintiffs was at their house in July 2010. On August 12, 2010, plaintiffs signed a contract for replacement of the Dryvit exterior with stucco at a cost of $60,350.

¶ 9 Mazur testified that Continental began work approximately 10 days after the contract was signed. Once the Dryvit was removed, he observed that approximately 30 to 35% of the exterior of the home had signs of moisture intrusion, including on the gypsum board and insulation. Continental removed all of the gypsum board, replaced the damaged insulation, and treated the walls with a mold-preventative product. It then installed plywood sheathing, a waterproof membrane, flashing, and wire mesh to which the stucco adhered. The stucco was then installed in three layers, with drying time between each layer. The final step was to apply an acrylic finish. Mazur testified that the work was completed in its entirety in approximately two months. According to Mazur, the unpaid balance on the contract was $7,350 at the time of trial.

¶ 10 Mazur further testified that, when he met with plaintiffs on August 12, 2010, he asked Mr. Banks to check with the Village of Bannockburn as to whether a permit was required. According to Mazur, the parties agreed that plaintiffs would obtain a permit if one was required.

¶ 11 Mazur also testified that, in October 2010, while the stucco work was being completed, he had a conversation with Mrs. Banks about replacing the tiles on plaintiffs' front walkway. Mazur prepared a proposal for completing the work at a cost of $3,500. Plaintiffs never signed the proposal; however, Mrs. Banks gave verbal approval to Mazur to remove the old tiles. Continental removed the tiles and invoiced plaintiffs $1,000 for the work, but was not paid.

¶ 12 On cross-examination, plaintiffs' counsel asked Mazur about his failure to obtain a permit, questioning whether failing to do so would hurt his reputation with municipalities. After Continental's counsel objected, plaintiffs' counsel explained that he was trying to use Mazur's failure to obtain a permit as impeachment, because it reflected on his truthfulness. The court found the line of questioning irrelevant and directed counsel to move on to a new topic.

¶ 13 Plaintiffs' counsel later asked Mazur about his relationship with RZ Construction. After Continental's counsel objected on relevancy grounds, plaintiffs' counsel explained that he was inquiring into the relationship as impeachment, because counsel intended to show during plaintiffs' case-in-chief that Mazur recommended RZ Construction to plaintiffs and told them that he would coordinate his work with RZ Construction's work. The court sustained the objection as to whether the two companies had worked together before, but otherwise overruled the objection. Mazur then denied recommending RZ Construction to plaintiffs or telling them that he would coordinate his work with RZ Construction's work.

¶ 14 Also on cross-examination, Mazur testified that plaintiffs experienced a major water leak in September 2010 that damaged a computer. Mazur admitted that he sent "a computer guy" to

fix the computer. Another major leak occurred in March or April 2011, and Mazur sent a painter to the house to repaint a damaged wall. On redirect, Mazur explained that he was just trying to help plaintiffs and that he never agreed to assume responsibility for the repairs.

¶ 15 Following Mazur's testimony, Continental introduced into evidence its affidavit of attorney fees. Continental's counsel explained that, although he also represented RZ Construction in the suit, the affidavit contained only Continental's fees. The affidavit divided counsel's court time in half, since half of the time was attributable to RZ Construction. Plaintiffs' counsel filed a response, arguing that the affidavit failed to distinguish between time spent for the two clients, that it failed to distinguish between time spent responding to plaintiffs' original complaint and time spent pursuing Continental's counterclaim, and that it included fees that the court had previously granted as a sanction pursuant to Illinois Supreme Court Rule 219 (eff. July 1, 2002).

¶ 16 RZ Construction was next to present its case. Its only witness was Piotr Zbroinski, one of the company's owners. Zbroinski testified that the company was a licensed roofing contractor and performed residential and commercial roofing and sheet metal work. Zbroinski met with plaintiffs in August 2010, after Mrs. Banks called him to request an estimate for copings. About one week later, he met with plaintiffs to submit his proposal. The signed written contract, which was admitted into evidence, provided for installation of 700 linear feet of copings and 5 rolls of roofing membrane at a cost of $15,000, and painting of the entire roof with an aluminum sealer at a cost of $2,000. The contract provided that, prior to sealcoating, RZ Construction would "[c]heck [the] whole roof for any damages and repair." It further specified that RZ Construction would check and repair the rubber roof membrane in a number of areas, including "around all drain downspouts." The total contract price was $16,000, which included a $1,000 discount.

¶ 17 Zbroinski testified that work began in the middle of September. RZ Construction first removed the old copings and cleats used to affix them to the parapets. It then installed a rubber membrane over the parapet walls. The last step was installing new cleats and copings. According to Zbroinski, RZ Construction installed 100% of the roofing membrane, but only 75% of the copings. Work on the copings ceased in November 2010 because plaintiffs were leaving town for the winter and did not want anyone working on the home in their absence.

¶ 18 Zbroinski also testified that, on September 10 or 11, 2010, prior to beginning work, he received a phone call from plaintiffs regarding a roof leak. Mrs. Banks showed him the location of the leak inside the house, and Zbroinski identified the cause of the leak as one of the roof's 12 drains, which drained water into a plumbing system inside the home's walls. He told Mrs. Banks that the drain had no visible damage and that he needed to remove the drain to "see what's happening." Once he removed the "ring piece" from the drain, he "saw that the roofing membrane started veering out and it's cracked [*sic*]." Zbroinski identified a photograph of the drain in poor condition. According to Zbroinski, he quoted plaintiffs $2,000 to replace the drain, and they orally agreed. He replaced the drain and the surrounding roof membrane the next day. As demonstrative evidence, Zbroinski showed the court a drain like the one that he replaced, which included a pipe that connected to the plumbing inside the wall, a rubber cylinder that held the pipe, another drain piece that sat flush with the plywood roof surface, and a ring piece that secured the rubber roof membrane to the drain so that it was watertight.

¶ 19 According to Zbroinski, after plaintiffs returned to their home in the spring of 2011, he began calling about returning to finish the copings. He testified that plaintiffs refused to allow him to return for various reasons. This continued until April 10, 2011, when plaintiffs called about another leak. When Zbroinski arrived, he observed the leak in plaintiffs' bedroom and

identified the source of the leak as another roof drain. Once again, Zbroinski explained that there was no visible damage but that, once he removed the ring piece from the drain, he saw that "the roofing membrane failed underneath." As they did with the previous failed drain, plaintiffs agreed to replacement of the drain for $2,000. Zbroinski identified photographs of the original drain and the new drain with new roofing membrane installed around the drain.

¶ 20 Zbroinski next received a phone call from plaintiffs on Sunday, April 17, 2011, about another leak. Zbroinski found the source of the leak, which was a skylight near the second drain that the company had replaced. He recommended replacing the skylight, but plaintiffs declined. At plaintiffs' request, Zbroinski's crew placed new roofing membrane around the skylight.

¶ 21 Zbroinski received another phone call from plaintiffs on May 17, 2011, about a problem with their windows. Plaintiffs were concerned with the appearance of the windows, which were surrounded by failed caulking and had screws "popping out" of the window frames. Zbroinski recommended replacing the windows, but plaintiffs wanted only a cosmetic fix. Zbroinski suggested installing pieces of white aluminum flashing to cover the portions of the window frames that were in poor condition. Plaintiffs agreed to do the work on 30 windows at a cost of $4,500. Zbroinski identified before and after photographs of the windows.

¶ 22 The last call about a leak that Zbroinski received from plaintiffs was on June 12, 2011. Zbroinski returned to the house and identified the source of the leak as another roof drain. Again, he explained that there was no visible damage, but "[t]he rubber [was] just failing underneath that metal ring," as with the first two drains. With plaintiffs' approval, Zbroinski replaced the drain for an agreed price of $2,000. Again, he identified before and after photographs showing a new drain and new roofing membrane installed.

¶ 23 Zbroinski testified that, during the entire time that RZ Construction worked on plaintiffs' house, plaintiffs paid a total of $4,500. He further testified that not installing the final 25% of the copings resulted in him saving approximately $1,020 in labor costs. It did not result in any savings on material, because all of the coping material had been purchased and delivered to plaintiffs' residence.

¶ 24 On cross-examination, Zbroinski testified that, when he first met with plaintiffs, he spent 30 to 45 minutes inspecting the roof. According to Zbroinski, he recommended replacing the roof, but plaintiffs told him they did not want the roof replaced because they were not experiencing any leaks. He admitted that he did not draft a written contract for any of the extra work. He further admitted that he did not sealcoat the roof. However, he did check and repair the rubber roof membrane in all areas. He never told plaintiffs that he would assume responsibility for the interior damage caused by the water leaks.

¶ 25 On redirect, Zbroinski testified that checking and repairing the rubber roof membrane prior to sealcoating was required "by the code" and by the manufacturer of the paint. The purpose was to ensure that the roof had no visible damage prior to sealcoating.

¶ 26 After RZ Construction rested its case, Marilyn Banks was plaintiffs' first witness. She testified that plaintiffs wanted to replace their home's Dryvit exterior with stucco before placing their house on the market. As of July 2010, plaintiffs had no water leaks anywhere in the home.

¶ 27 Mrs. Banks testified that, at the second meeting with Mazur, he recommended hiring a roofer to coordinate roofing work with Continental's work. Plaintiffs asked Mazur to suggest a roofer, and he suggested his relative. Mazur then brought Zbroinski to the next meeting, and Zbroinski inspected the roof and said that it was in "really good condition." At the second meeting, the parties also discussed coordinating the copings and stucco work, and Mazur and

Zbroinski assured plaintiffs that they had worked together before and that "there would be no problems." Mazur also told plaintiffs that obtaining a permit was not necessary. However, six to eight weeks after work started, the Village of Bannockburn issued a stop work order, and plaintiffs were required to obtain permits before work could continue.

¶ 28 Mrs. Banks further testified that, while the stucco work was being completed, Mazur gave her a list of contacts with phone numbers to call if plaintiffs had any problems and Mazur was unavailable. The contact list included Zbroinski's name and phone number, among others. Plaintiffs' counsel offered the contact list into evidence, and the trial court sustained an objection on grounds of relevancy. The court rejected plaintiffs' counsel's argument that the document rebutted Mazur's testimony that he did not refer Zbroinski to plaintiffs.

¶ 29 According to Mrs. Banks, on September 17 or 18, 2010,[1] the workers on the roof asked her to go inside the house and listen for tapping so that they could locate where a vent led to. She heard tapping in the upstairs bathroom. The next day, it was raining, and water was pouring into the wall between the office and the upstairs bathroom. A computer got wet as well as the carpet. She called Mazur, who came to the house and said that he had a painter and a "computer man," and that he would assume full responsibility for the damage.

¶ 30 Regarding the water leak in plaintiffs' bedroom in April 2011, Mrs. Banks testified that Zbroinski agreed to take full responsibility for the damage. Zbroinski told her at that time that there was nothing wrong with the roof drain or the skylight above the bedroom. Mrs. Banks testified that a second leak occurred in plaintiffs' bedroom in April 2011, but she provided no additional detail about the incident. She denied agreeing to pay extra for replacement of the drains.

[1] On cross-examination, she testified that it was September 8, 2010.

¶ 31 Mrs. Banks testified that the last meeting that plaintiffs had with Mazur and Zbroinski was in July 2011, the purpose of which was to discuss finishing the stucco and roof work. According to Mrs. Banks, plaintiffs also wanted to give the men receipts showing the costs of repairing the damage caused by the leaks. The parties agreed that Zbrionski would return the next day to pick up the receipts, but he did not return until three days later. When Zbrionski returned, Mrs. Banks told him she would make copies of the receipts. While she was making the copies, Zbrionski left and never came back. Mrs. Banks testified that she was not satisfied with Zbroinski's work, but that Mazur "did a very good job," although he did not complete his work.

¶ 32 Sheldon Banks' testimony was consistent with Mrs. Banks' testimony. He testified that, prior to July 2010, plaintiffs had no leaks in the house. He was not satisfied with Mazur's stucco work, because the quality of the work was poor and it was left unfinished in three areas. In addition, Continental was supposed to replace scupper boxes,[2] which never occurred, and the old scupper boxes disappeared. Plaintiffs had an unpaid balance under the contracts because work was unfinished and the contractors told them they would pay for the water damage.

¶ 33 According to Mr. Banks, plaintiffs agreed to have Mazur demolish the existing walkway so that new walkway tiles could be installed. However, Mazur's workers used a jackhammer and left the walkway uneven, such that new tiles could not be installed.

¶ 34 On rebuttal, Mazur testified that the village inspector approved the stucco work after it was completed. He further testified that the bumpy surface of the walkway after removal of the tiles was better for adherence of the new tiles.

[2] Scupper boxes are receptacles that receive rainwater runoff from the roof and funnel the water into a downspout.

¶ 35 On April 17, 2014, the trial court entered a written judgment finding in favor of Continental and RZ Construction. The court found that Continental completed all of the stucco work, that the work passed inspection, and that an unpaid balance of $7,350 remained. The court also found that Continental was entitled to $8,006.25 in attorney fees under the contract. It found that the affidavit's division of attorney time between Continental and RZ Construction was reasonable. The court further found credible Mazur's testimony that he received verbal approval to remove the old tiles from the walkway and that the work was completed.

¶ 36 As to RZ Construction's counterclaim, the court found that Zbroinski removed all of the old copings, installed all of the new membrane, and installed 75% of the new copings. However, Zbroinski did not sealcoat the roof. From the contract price of $16,000, the court deducted the $4,500 that plaintiffs paid, $1,020 for the unfinished coping installation, and $2,000 for the unfinished sealcoating, leaving an unpaid balance of $8,480. Regarding extras, the court found that RZ Construction had met its burden of proof as to the replacement of the three drains at a cost of $6,000 and as to the installation of the window flashing at a cost of $4,500.

¶ 37 The court then addressed plaintiffs' "affirmative defenses," including that Continental and RZ Construction breached the contracts by failing to perform in a workmanlike manner. The court found credible Mazur's and Zbroinski's testimony as to the manner in which their work was completed, and it found that the work was completed in a workmanlike manner. It further found that, without expert testimony, it was impossible to determine if either of the contractors was responsible for any of the leaks that occurred. The court found that plaintiffs' testimony "did not persuade the court that inferior work caused the water problems."

¶ 38 The court entered judgment in Continental's favor in the amount of $16,356.25 and in RZ Construction's favor in the amount of $18,980. Plaintiffs timely appeal.

¶ 39 II. ANALYSIS

¶ 40 On appeal, plaintiffs argue that the trial court's judgment was against the manifest weight of the evidence, that the court abused its discretion in limiting counsel's cross-examination of Mazur, and that the court abused its discretion in awarding attorney fees to Continental.

¶ 41 A. Sufficiency of the Evidence

¶ 42 Plaintiffs argue that the judgment on the counterclaims for breach of contract was against the manifest weight of the evidence because Continental and RZ Construction did not prove that they performed in a workmanlike manner. The elements of a breach-of-contract action are (1) a valid and enforceable contract, (2) performance by the plaintiff, (3) breach by the defendant, and (4) injury to the plaintiff. *Pyramid Development, LLC v. Dukane Precast, Inc.*, 2014 IL App (2d) 131131, ¶ 35. "The general rule in construction contract cases is that a party is held to a duty of substantial performance in a workmanlike manner." *Pyramid Development*, 2014 IL App (2d) 131131, ¶ 35. A reviewing court will not disturb a judgment unless it is against the manifest weight of the evidence, which occurs only when the opposite conclusion is apparent or when findings appear to be arbitrary, unreasonable, or not based on the evidence. *Fantino v. Lenders Title & Gauranty Co.*, 303 Ill. App. 3d 204, 206 (1999).

¶ 43 Plaintiffs argue that neither Mazur nor Zbroinski testified as to the quality of their work. According to plaintiffs, Mazur's and Zbroinski's testimony "related merely to pre-existing water infiltration problems with the house before they started to work." Plaintiffs assert: "In fact, neither Mazur nor Zbroinski provided any testimony that their workmanship stopped the existing water problems or prevented new water infiltration problems."

¶ 44 Plaintiffs misrepresent the substance of Mazur's and Zbroinski's testimony. Both witnesses testified in detail about the work their companies performed. Mazur explained the

process of removing the Dryvit, gypsum board, and damaged insulation and of installing the plywood sheathing, waterproof membrane, flashing, wire mesh, and stucco. Similarly, Zbroinski explained the process of removing the old copings and cleats and installing a rubber membrane, new cleats, and new copings. Mazur testified that the stucco passed inspection, while Zbroinski testified that he installed 100% of the new roofing membrane and 75% of the copings. Based on this testimony, the trial court's finding that the companies performed in a workmanlike manner was not against the manifest weight of the evidence.

¶ 45 Plaintiffs' theory of the case before the trial court and on appeal seems to be that Continental and RZ Construction failed to remedy or prevent water leaks. However, there was no evidence that the contracted work was intended to remedy or prevent water leaks. Plaintiffs testified that their home had no leaks of any kind as of July 2010 and that they wanted to replace the Dryvit to make it easier to sell. Zbroinski presented the only testimony as to the causes of the leaks—*i.e.*, three failing roof drains and a dilapidated skylight. Although Mrs. Banks testified that the September 2010 leak occurred in the office, a day after she heard men working in that area of the roof, she had no personal knowledge of the cause of the leak. Likewise, although she testified that Zbroinski told her in April 2011 that the roof drains worked fine, this does not show that Zbroinski's failure to perform in a workmanlike manner caused any leaks. Plaintiffs contend that, during the April 2011 leaks, "the water was coming from the exterior wall in which Continental did the stucco work and the junction between the stucco work and the copings." However, plaintiffs' vague and speculative contention about the cause of the leaks is unsupported by the record. Again, Zbroinski provided the only testimony as to the causes of the leaks, and plaintiffs presented no competent evidence to the contrary.

¶ 46 Plaintiffs assert in a single sentence, without elaboration or supporting analysis, that the trial court misapplied the burden of proof by treating as an affirmative defense the issue of whether the work was performed in a workmanlike manner. Because plaintiffs have failed to develop this argument, it is forfeited. See *Wolfe v. Menard, Inc.*, 364 Ill. App. 3d 338, 348 (2006) ("A conclusory assertion, without supporting analysis, is not enough [to satisfy the requirements of Supreme Court Rule 341]."). Furthermore, even assuming *arguendo* that the trial court treated the issue as an affirmative defense, plaintiffs invited the error by pleading it as an affirmative defense. See *Forest Preserve District v. First National Bank of Franklin Park*, 2011 IL 110759, ¶ 27 ("A party may not urge a trial court to follow a course of action, and then, on appeal, be heard to argue that doing so constituted reversible error.").

¶ 47 Plaintiffs also challenge the trial court's finding that Continental removed the sidewalk tiles in a workmanlike manner. According to plaintiffs, Mr. Banks "explicitly testified that he was very dissatisfied with the walkway as it was left bumpy and new tiles could not be placed down due to Continental's improper demolition of the existing walkway." While this may have been Mr. Banks' testimony, Mazur testified that the rough surface was better for adherence of the new tiles. The trial court is in the best position to resolve conflicts in the evidence and to evaluate witnesses' credibility. *Nelson v. County of De Kalb*, 363 Ill. App. 3d 206, 210-11 (2005). We cannot set aside the judgment simply because there was conflicting testimony.

¶ 48 Plaintiffs next challenge the sufficiency of the evidence regarding RZ Construction's claim for payment for the three roof drains and the window flashing. For a contractor to recover payment for extra work, he or she must establish by clear and convincing evidence that: (1) the work was outside the scope of the original contract; (2) the work was ordered at the owner's direction; (3) the owner agreed to pay extra; (4) the work was not voluntarily furnished by the

contractor; and (5) the work was not rendered necessary by any fault of the contractor. *Curran Contracting Co. v. Woodland Hills Development Co.*, 235 Ill. App. 3d 406, 415 (1992).

¶ 49 Plaintiffs argue that RZ Construction failed to prove that the work on the drains was outside the scope of the contract, because the contract required the company to check the roof and perform any necessary repairs prior to sealcoating. Plaintiffs assert that replacement of the drains "must certainly come within the plain and ordinary meaning of roof repair." The interpretation of a contract presents a question of law reviewed *de novo*. *Bituminous Casualty Co. v. Plano Molding Co*., 2015 IL App (2d) 140292, ¶ 8.

¶ 50 The contract provided that, prior to painting the roof with aluminum sealer, RZ Construction would "[c]heck [the] whole roof for any damages and repair." It further specified that the company would check and repair the "rubber around all drain downspouts," among other things. The total price for sealcoating the roof was $2,000, and there was no separate charge for checking and repairing the rubber prior to sealcoating. Construing the contract as a whole, it is clear that the provisions pertaining to checking and repairing the roof membrane were ancillary to the sealcoating and did not contemplate extensive roof repairs or replacement of drains. See *Thompson v. Gordon*, 241 Ill. 2d 428, 441 (2011) (a court must construe a contract as a whole, viewing each provision in light of the other provisions). The contract says nothing about removing drains or replacing the drains themselves. We reject plaintiffs' contention that the contract included replacing the roof drains as part of the preparation for sealcoating.

¶ 51 Even assuming that the contract is ambiguous, the extrinsic evidence leads to the same conclusion. See *Gallagher v. Lenart*, 226 Ill. 2d 208, 233 (2007) (if a contract is ambiguous, courts may consider extrinsic evidence to ascertain the parties' intent). Plaintiffs testified that their home had no leaks as of July 2010. Thus, the parties' intent in entering the contract was not

to remedy existing roof leaks, such as by replacing failed roof drains. Furthermore, Zbroinski testified that checking and repairing the membrane prior to sealcoating was pursuant to "code" and the paint manufacturer's specifications. Thus, in entering the contract, the parties clearly did not intend RZ Construction to perform extensive roof repairs or replace roof drains.

¶ 52 Plaintiffs next argue that RZ Construction did not prove that plaintiffs agreed to pay extra for the drains or window flashing. Plaintiffs rely on Mr. Banks' testimony that "there was never an agreement to pay extras for drains [or] windows." Again, the trial court is in the best position to resolve conflicts in the evidence and evaluate witnesses' credibility. *Nelson*, 363 Ill. App. 3d at 210-11. We cannot set aside the judgment simply because Mr. Banks' testimony conflicted with Zbroinski's testimony. Zbroinski testified to the circumstances surrounding the oral agreements to replace the three drains, as well as the oral agreement to install the cosmetic window flashing. The trial court's finding that there were oral agreements to replace the drains and install the flashing was not against the manifest weight of the evidence.

¶ 53 Plaintiffs also assert that the contract required any agreement to perform extra work to be in writing. However, plaintiffs do not develop this argument and cite no authority to support it, thereby forfeiting the issue. See *Wolfe*, 364 Ill. App. 3d at 348 ("A conclusory assertion, without supporting analysis, is not enough [to satisfy the requirements of Supreme Court Rule 341]."). Furthermore, a requirement that extra work be provided for in writing can be waived by the parties' subsequent conduct, which occurred here when plaintiffs requested the work and orally agreed to pay. See *Joray Mason Contractors, Inc. v. Four J's Construction Corp., Inc.*, 61 Ill. App. 3d 410, 411 (1978).

¶ 54 Plaintiffs' final argument regarding the extra work is that RZ Construction did not prove that the work on the drains was not due to its own conduct. We disagree. Zbroinski testified in

detail as to the causes of the leaks, and there was no connection between the causes and any work that the company had performed. Zbroinski testified that each leak was cause by a failed roof drain that needed to be replaced. The photographs of the failed drains in poor condition support his testimony. Furthermore, the September 2010 leak occurred before RZ Construction had begun work on the home. This evidence was sufficient to prove that the work on the drains was not necessitated by RZ Construction's own conduct.

¶ 55 B. Limitation of Cross-Examination

¶ 56 We next address plaintiffs' argument that the trial court abused its discretion in limiting the cross-examination of Mazur. The scope of cross-examination rests within the trial court's broad discretion. *Chapman v. Hubbard Woods Motors, Inc.*, 351 Ill. App. 3d 99, 105 (2004). A court abuses its discretion where no reasonable person would take the view that the court adopts. *Santorini Cab Corp. v. Banco Popular North America*, 2012 IL App (1st) 122070, ¶ 21.

¶ 57 Plaintiffs argue that it was an abuse of discretion to limit cross-examination on the issue of Continental's relationship with RZ Construction. According to plaintiffs, the coordination of work was important, because plaintiffs wanted the companies to work together "to do the job correctly and to prevent water infiltration." Plaintiffs maintain that they were denied "a chance to completely discredit Mazur" on this issue.

¶ 58 The trial court permitted plaintiffs to ask Mazur on cross-examination whether he recommended RZ Construction to plaintiffs or agreed to coordinate his work with RZ Construction's work. Mazur's answer was no. We do not see how any further inquiry into the relationship between Continental and RZ Construction was relevant to the issues at trial or would have discredited Mazur. The contracts did not require the two companies to coordinate their work. Even assuming that plaintiffs chose RZ Construction as their roofing contractor because

of its relationship with Continental, this is irrelevant to the issue of whether the companies substantially performed in a workmanlike manner. The trial court did not abuse its discretion in concluding that this inquiry was irrelevant. See *Preston v. Simmons*, 321 Ill. App. 3d 789, 803 (2001) (the scope of cross-examination is not "so broad as to overcome the fundamental principle that only that which is relevant is admissible").

¶ 59 Plaintiffs next contend that it was an abuse of discretion to limit cross-examination on the issue of the need for permits. Mazur testified on direct that no permits were obtained, because the parties agreed that plaintiffs would obtain permits if necessary. The trial court limited the cross-examination of Mazur on this issue only when plaintiffs' counsel began asking Mazur whether failing to obtain permits would hurt his reputation with municipalities. This inquiry was argumentative and irrelevant to the issues at trial, and the trial court did not abuse its discretion in prohibiting it. Plaintiff's assertion that the issue of permits was "extremely important" ignores that nothing in the contracts obligated any party to obtain permits.

¶ 60 Plaintiffs also contend that the trial court refused to allow counsel to impeach Mazur "with his own contact list." However, plaintiffs do not cite to the page in the record where they attempted to impeach Mazur with his contact list. The only reference to the contact list was when Mrs. Banks testified that, while the stucco work was being completed, Mazur gave her a list of contacts with phone numbers to call if plaintiffs had any problems and Mazur was unavailable. The contact list contained Zbroinski's name and phone number, among others. The trial court declined to admit the list into evidence because it was irrelevant. We agree that the list was irrelevant to the issues at trial, and the court did not abuse its discretion in declining to admit it.

¶ 61 Plaintiffs also assert that the court abused its discretion in refusing to allow them to "fully develop its [*sic*] rebuttal testimony on either the issue of Mazur's relationship with Zbroinski or on the permit issue." Plaintiffs do not develop this argument, and we reject it for the same reasons that we reject their argument that it was error to limit cross-examination on these issues.

¶ 62 C. Attorney Fees

¶ 63 Plaintiffs' final argument is that the trial court abused its discretion in awarding Continental's attorney fees. When reviewing a judgment awarding attorney fees under a contractual attorney fee provision, we review *de novo* the trial court's interpretation of the provision. *Wendy & William Spatz Charitable Foundation v. 2263 North Lincoln Corp.*, 2013 IL App (1st) 122076, ¶ 40. However, we review the court's application of the provision to the facts of the case for an abuse of discretion. *Wendy & William Spatz Charitable Foundation*, 2013 IL App (1st) 122076, ¶ 40.

¶ 64 Plaintiffs argue that Continental's decision to split the court time equally between Continental and RZ Construction was improper, because the transcript "explicitly shows that substantially more trial time was spent on the roofing issues as opposed to the stucco and walkway issues." Plaintiffs did not raise this specific argument below, and they cannot raise it for the first time on appeal. See *K & K Iron Works, Inc. v. Marc Realty, LLC*, 2014 IL App (1st) 133688, ¶ 25 (arguments not raised before the trial court are forfeited and cannot be raised for the first time on appeal). Furthermore, we agree with the trial court that splitting the court time equally between Continental and RZ Construction was reasonable. After all, had Continental's counsel not represented RZ Construction as well, plaintiffs would have been liable for all of the court time, since Continental's counsel would have been present for the entire trial.

¶ 65 Plaintiffs also argue as follows: "Continental's affidavit fails to take into account that a substantial amount of the time spent prior to the trial date related to the Banks' initial claim against Continental and RZ and not just the counterclaim. There is absolutely no account taken for that." Plaintiffs do not develop this two-sentence argument or support it with relevant authority. The issue of whether the contract's attorney fee provision allowed recovery for time spent responding to plaintiffs' complaint is one of contract interpretation, reviewed *de novo*. Plaintiffs do not identify the contract's precise language, make any attempt to interpret the language, or cite any relevant authority regarding how it should be interpreted. "The appellate court is not a depository in which the appellant may dump the burden of argument and research." (Internal quotation marks omitted.) *Kic v. Bianucci*, 2011 IL App (1st) 100622, ¶ 23. Therefore, we conclude that plaintiffs have forfeited this argument, and we decline to address it. See *Gakuba v. Kurtz*, 2015 IL App (2d) 140252, ¶ 19 (forfeiting an argument where the only cases cited were to establish a standard of review and to support a tangential argument).

¶ 66 Plaintiffs' final argument concerning fees is that Continental's attorney fee affidavit improperly included fees that the trial court previously awarded as a discovery sanction. On April 2, 2013, the trial court ordered plaintiffs to pay $750 in attorney fees to defendants' counsel as a sanction under Supreme Court Rule 219. The entries included in the attorney fee affidavit supporting the sanctions order also appear in Continental's final attorney fee affidavit, on which the trial court's final judgment was based. Therefore, we agree with plaintiffs that it was improper to include the $750 in attorney fees in the final judgment, and we modify the April 17, 2014, final judgment to reduce the amount of attorney fees awarded to Continental by $750. See Ill. S. Ct. R. 366 (eff. Feb. 1, 1994) (the reviewing court has the power to enter any judgment

and make any order that ought to have been given or made, and make any other and further orders and grant any relief that they case may require).

¶ 67 III. CONCLUSION

¶ 68 For the foregoing reasons, the amount of attorney fees awarded to Continental is reduced by $750, and the judgment of the circuit court of Lake County is affirmed as modified.

¶ 69 Affirmed as modified.