

NOTICE

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2015 IL App (5th) 130539-U

NO. 5-13-0539

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

ROGER SPETH and CHARLYN SPETH,)	Appeal from the
)	Circuit Court of
Plaintiffs-Appellees and Cross-Appellants,)	Jackson County.
)	
v.)	No. 06-L-11
)	
ROGER ROBERTS, d/b/a ProCraft of Central)	
Illinois,)	Honorable
)	Christy W. Solverson,
Defendant-Appellant and Cross-Appellee.)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Presiding Justice Cates and Justice Goldenhersh concurred in the judgment.

ORDER

¶ 1 *Held:* Where the plaintiffs provided no evidence of damages, we reverse the trial court's consumer fraud judgment based upon the defendant's application of a product to the plaintiffs' house. Where the trial court improperly awarded civil damages for the defendant's failure to register his assumed business name, we reverse the court's judgment. Where there was no proof of compensatory damages, we reverse the trial court's award of punitive damages. Where the plaintiffs did not prevail in their Consumer Fraud and Deceptive Business Practices Act claims, we reverse the award of attorney fees. Where the trial court correctly barred the plaintiffs' damages witnesses from testifying, we affirm the trial court's order. Where the plaintiffs provided no evidence of proximate causes and damages, we affirm the trial court's orders directing verdicts on negligence and breach of warranty counts.

¶ 2 This case involves a liquid siding product and problems that occurred in the weeks and months following its application. Roger Roberts doing business as ProCraft of Central Illinois (Roberts) is the named defendant. Roberts is the contractor who sold and applied the liquid siding to the house of plaintiffs, Roger and Charlyn Speth. This is not a products liability case. The case only involves claims based upon application of the product.

¶ 3 The trial court directed verdicts for Roberts on the two negligence counts at the close of the Speths' case. At the close of all evidence, the trial court directed a verdict for Roberts on the breach of warranty count. At the end of the trial, the judge ruled in favor of the Speths on the consumer fraud counts. The judge awarded compensatory and punitive damages, plus attorney fees. Roberts appeals from the consumer fraud verdicts, and from the attorney fees award. The Speths cross-appeal from the trial court's order directing verdicts on their negligence and breach of warranty counts. The foundation of the Speths' cross-appeal is a contention that the trial court erred in disallowing testimony on damages. We reverse the trial court's consumer fraud judgment for the Speths and affirm the trial court's orders barring expert witnesses offered by the Speths on damages and in directing the verdicts in Roberts' favor.

¶ 4 **FACTS**

¶ 5 Roger and Charlyn Speth filed their five-count complaint against Roger Roberts doing business as ProCraft of Central Illinois in 2006. Count I alleged consumer fraud (for misrepresentations during the negotiations); count II alleged negligence (for overspray of product on shingles and windows); count III alleged breach of express

warranty (for problems with product application); count IV alleged consumer fraud (based on the fact that Roberts was operating under an "illegal" name); and count V alleged negligence (in the application of the product to the house). The Speths asked for a jury trial on the three common law claims—two negligence counts and a breach of warranty count. The two statutory consumer fraud counts would be decided by the court. The case went to trial in late March 2013.

¶ 6 Testimony

¶ 7 Roger and Charlyn Speth testified at trial. The Speths testified that they own a log house in Vergennes, Illinois. They built the house in 1998. Roger testified that after five years in the log house, they were interested in having a liquid siding applied to the surface of the logs. Based on a ProCraft advertisement Charlyn saw in a Florida newspaper, the Speths sought a local agent for information. Eventually they made contact with Roger Roberts. Charlyn testified that the ProCraft advertisement indicated that the liquid siding was designed to seal the logs. Roger testified that he wanted the siding applied because it would cut down on the amount of house maintenance required. Roberts met with the Speths at their house in order to answer their questions about the product and to provide a cost estimate. Charlyn testified that Roberts told them that application of the product would make their house maintenance-free. Charlyn and Roger testified that they signed a contract with Roberts and his company, ProCraft of Central Illinois, Inc. The contract was a form contract and listed ProCraft, Inc. as the seller of the product. The contract amount was \$40,900, which the Speths paid in full. Procraft of Central IL issued a 25-year warranty that Roberts signed.

¶ 8 Roger Speth testified that in July 2003, Roberts sent out a crew who completed the liquid siding application to his house. Roberts was not there during the product application. Roger testified that the primary person on site was a man named Tim Taylor. Charlyn testified that during application of the product, the product was oversprayed. The oversprayed product was on the windows and the roof shingles.

¶ 9 Roger and Charlyn Speth both testified that within a couple of weeks after the job was completed, they began to notice bubbling on the surface of the product. Water collected in the bubbles. They also testified that water began leaking into their house. Charlyn testified that she called Roberts to complain. Roberts sent Tim Taylor to their house to inspect. Roger testified that Taylor seemed baffled by what caused the bubbling. Roger testified that many more bubbles formed over time. In addition, the product began to discolor, so that the color of the house was no longer uniform. Charlyn made several additional calls to Roberts, but no one called back. Roger testified that he eventually cut some of the bubbles open. He discovered that the water was trapped between the liquid vinyl and the raw structural logs. He noticed that mold had begun to form at the seams. He noticed that the thickness of the vinyl siding varied, leading him to conclude that it had not been applied uniformly. Roger testified that mold eventually developed inside their house in several places.

¶ 10 Roberts never returned to the Speths' house despite the number of complaints made about the product and its application. The Speths did not have the house repaired. The Speths testified that they did not know how to repair the problems. They did not hire an engineer to determine what caused the bubbling and resulting problems, or how to fix

the problems. On cross-examination, Roger Speth acknowledged that no one had determined that the water leakage was associated with application of the liquid siding. However, he testified that the house had not leaked before ProCraft applied the liquid siding. Charlyn testified that she did not see any reason to hire an expert to determine what caused the bubbling of the product. The Speths testified that they knew of no remedy other than having the house torn down and rebuilt.

¶ 11 Roberts testified that he was president of Roger W. Roberts and Associates, Inc., a Colorado corporation. In 2002, he moved to Illinois and sent a change of address form to the Colorado Secretary of State. He did not register his corporation in Illinois, nor did he register the entity he was doing business as (ProCraft of Central Illinois) in Illinois. Roberts testified that he registered the ProCraft entity in one Illinois County—Knox County. Roberts testified that he was doing business as ProCraft of Central Illinois. In 2003, he provided the estimate for services to the Speths. The estimate included having ProCraft power-wash the house with a surface conditioner, apply a primer, and apply a Kryton coating—ProCraft coating. He explained that the ProCraft coating was an "elastomeric coating that looks like paint, but *** is designed to last longer and be kind of a permanent coating." Roberts testified that there was a 25-year warranty for labor and materials associated with the ProCraft product that applied to cracking, peeling, and chipping.

¶ 12 Roberts testified that Tim Taylor came to work with him through the recommendation of the corporate ProCraft office. He had worked on several houses for Roberts before the Speth project. Roberts confirmed that Taylor told him there was an

overspray of product on the roof shingles of the Speth house. He testified that when the weather is windy, overspray is a common occurrence with any liquid product. He did not know that someone spray-painted the shingles as a means to fix the problem, and he testified that he did not believe that was an adequate repair. Roberts testified that after hearing of the bubbling problems, he sent Tim Taylor to inspect. Tim Taylor reported bubbling and discoloration to him, and Roberts contacted the corporate ProCraft office. Reviewing photographs of the Speths' house, Roberts agreed that the photographs depicted chipping and peeling of the vinyl siding. Roberts testified that the 25-year warranty was subsidized by the corporate ProCraft office in Knoxville, Tennessee. He testified that he was under the mistaken belief that the problems with the Speths' house were resolved by the ProCraft corporate office.

¶ 13 Motion *in Limine* and Motions for Directed Verdict

¶ 14 The parties' arguments concerning the motion *in limine* both before and during the trial and Roberts' motions for directed verdicts all involve the same facts as well as the same legal issues—proximate causation and damages. We will consider them together. In all of these arguments, the Speths took the unique position that they did not need to prove causation on any of their claims against Roberts. The trial court disagreed.

¶ 15 Before trial, Roberts filed a motion *in limine* seeking to bar the Speths from the use of certain "expert" witnesses. The Speths planned to offer these witnesses to testify as to the cost of tearing down the Speths' house and rebuilding it. The trial court granted the motion because the Speths had not disclosed expert testimony that would causally connect the application of the product to the problems that resulted. Furthermore, the

Speths also had not disclosed any expert whose opinion was that the only remedy available was to tear down and rebuild the house. The judge explained that the Speths were lay witnesses and their testimony that they knew of no other way to remedy the problem did not qualify as expert testimony. After the pretrial motion *in limine* arguments, the trial court barred the Speths from stating to the jury in opening statements that the measure of damages involved tearing down and rebuilding the house. The court reserved the right to revisit the issue if Roberts' testimony addressed causation.

¶ 16 Roberts' testimony at trial shed no light on causation. After Roberts' testimony, his attorney asked the court to reconsider the motion *in limine* regarding the expert witnesses the Speths planned to call about the costs to rebuild the house. The court held another hearing and commented that there was no expert causation or remediation testimony establishing that the only possible remedy was to tear down and rebuild the house. The Speths' attorney again relied upon the lay opinions of Roger and Charlyn Speth. Specifically, he argued that because the Speths knew of no other way to repair the problem, they believed that their only recourse was to rebuild the house. The Speths also argued that the warranty claim did not require proximate cause evidence because the current state of the vinyl siding established proximate causation without any need of expert evaluation or opinion. Roberts' attorney countered that the warranty simply indicated that ProCraft would pay for material and labor. Roberts' attorney argued that without testimony that the application was improper, the court could not allow the jury to consider the issue of damages. The Speths' attorney countered that on the breach of

warranty claim, the choice of remedy was up to the Speths, and because they wanted a new house, their experts should be allowed to testify as to the costs of the new house.

¶ 17 The court explained to the Speths' attorney that if he had hired an expert on causation, Roberts would also have been able to hire a causation expert. "You never disclosed anyone to say that [tearing down the house] was the only thing that had to be done." The court ruled against the Speths and did not allow their damages witnesses to testify.

¶ 18 At the close of the Speths' case, Roberts' attorney argued his motion for a directed verdict on all three common law claims: count II alleging negligence for overspray, count III alleging breach of an express warranty, and count V alleging negligence in the application of the liquid siding. Roberts argued that the Speths failed to provide any evidence on causation and damages. Regarding the overspray negligence count, he argued that no one had testified that repairs were necessary and if repairs were necessary, no one testified as to how to repair the shingles and what that repair would cost. As to breach of warranty, Roberts argued that there was no evidence of a nexus between the warranty coverage and causation—that is, there was no evidence to show that the product was flawed or the application was improper. On the negligent application issue, Roberts argued that there was no evidence offered by the Speths that ProCraft negligently applied the liquid siding to their house. He argued that while problems developed with the liquid siding, there was no evidence proximately connecting ProCraft's application with the resulting problems. Furthermore, there was no evidence of damages.

¶ 19 The court agreed that the Speths failed to establish a causal connection between the application of the product and the resulting issues. With no evidence of proximate causation or damages, the court directed verdicts on both negligence counts. However, the court concluded that the jury could determine damages under the warranty count. The court stated that the warranty covered problems involving the liquid siding and in this case, problems with the house arose after application of the liquid siding, so a directed verdict would not be proper.

¶ 20 At the conclusion of all evidence, Roberts' attorney renewed his motion for a directed verdict on the warranty count. Roberts argued that after the complete presentation of the Speths' case, there was still no evidence causally connecting the application to the resulting problems. He also argued that evidence of damages was an element of breach of warranty, and because the Speths failed to provide evidence of what it would cost to repair the house, a directed verdict was appropriate. The court again denied Roberts' motion for directed verdict on the warranty claim.

¶ 21 After the jury instructions conference, Roberts again renewed his motion on the warranty count. He argued that without evidence of damages, the jury would not have an ability to compute damages. The court agreed with this argument after review of tendered jury instructions on damages for breach of warranty. The court agreed that the Speths had no evidence of damages and directed a verdict on the warranty claim.

¶ 22 After the trial concluded, the court took the two consumer fraud counts under advisement. On May 20, 2013, the trial court entered judgment on the two consumer fraud counts. The trial court found in favor of the Speths on both counts, awarding

\$40,900 in compensatory damages, \$120,000 in punitive damages, and attorney fees. The court also awarded \$5,000 for Roberts' failure to register his company in Jackson County.

¶ 23

LAW AND ANALYSIS

¶ 24 Roberts appeals from the trial court's judgment. He contends that the court was wrong in concluding that he violated the Consumer Fraud and Deceptive Business Practices Act (Act) (815 ILCS 505/1 *et seq.* (West 2002)) because a violation of the Act requires proof of proximate causation and damages, neither of which was established in this case. He also argues that there was no proof that the alleged misrepresentations were the cause of the Speths' claimed damages. He contends that the Speths were not entitled to damages because Roberts failed to register his business in Illinois. He also argues that the Speths were not entitled to punitive damages or attorney fees. He finally contends that he is not the proper defendant in this case.

¶ 25 The Speths filed a counterappeal. They argue that the court committed error in barring the testimony of their witnesses on the issue of damages. They also argue that the trial court was wrong in directing verdicts on both negligence counts and on the warranty count.

¶ 26

Roberts' Appeal

¶ 27

Suit Against the Wrong Entity

¶ 28 We first address Roberts' argument that the Speths sued the wrong entity. At trial, Roberts testified that he was the president of a Colorado corporation, Roger W. Roberts and Associates, Inc. That entity was doing business as ProCraft of Central Illinois. He

admitted that he never registered his Colorado corporation, a foreign corporation, with the Illinois Secretary of State. Section 13.05 of the Business Corporation Act of 1983 mandates that before a foreign corporation organized for profit can transact business within Illinois, the corporation must obtain authority to transact business from the Illinois Secretary of State. 805 ILCS 5/13.05 (West 2002). Additionally, Roberts failed to register his assumed business name with the Secretary of State as required by section 4.15(c) of the Business Corporation Act of 1983¹ (805 ILCS 5/4.15(c) (West 2008)). Finally, Roberts failed to file a certificate in Jackson County registering the assumed business name as required by section 1 of the Assumed Business Name Act (805 ILCS 405/1 (West 2002)).

¶ 29 The contract signed by the Speths was confusing. The Speths entered into a contract with "ProCraft, Inc." However, the name at the top of the contract was "Procraft Central Illinois." The warranty lists the issuer as "Procraft² of Central IL," located in Galesburg, Illinois. There is no indication from the warranty that Procraft was a corporate entity. Roger Roberts signed the warranty in what appears to be his personal capacity.

¹Before Roberts could register his assumed name in Illinois, he would need to first obtain authority from the Illinois Secretary of State for his foreign corporation to transact business.

²In the warranty, the name "Procraft" was spelled with a lower-case "c," which was different from the spelling in the contract.

¶ 30 We conclude that because Roberts failed to register his foreign corporation and to obtain authority to operate under an assumed name, he had no authority to transact business in Illinois. Roberts' confusing use of various names on the contract and warranty documents added to the Speths' difficulty in naming a defendant. Finally, we note that if Roberts was concerned that the Speths failed to sue the proper party, he should have filed a special and limited appearance for the purpose of challenging the court's jurisdiction pursuant to section 2-301 of the Code of Civil Procedure (735 ILCS 5/2-301(a) (West 2002)). Alternatively, Roberts could have filed a motion to dismiss the complaint pursuant to section 2-619(9) of the Code of Civil Procedure (735 ILCS 5/2-619(9) (West 2002))—that the claim against the defendant is barred by other affirmative matter. If Roberts raised this issue early in the litigation, the Speths could have rectified any error in the name of the defendant. Having failed to do so, we find that Roberts forfeited his right to raise this as a defense.

¶ 31 *Standard of Review—Bench Trial*

¶ 32 We will not reverse a judgment following a bench trial unless the trial court's judgment is clearly contrary to the manifest weight of the evidence, because the trial judge was able to assess the credibility of each witness. *Jackson v. Bowers*, 314 Ill. App. 3d 813, 818, 731 N.E.2d 1252, 1257 (2000). A judgment is contrary to the manifest weight of the evidence if an opposite conclusion is evident. *Comm v. Goodman*, 6 Ill. App. 3d 847, 853, 286 N.E.2d 758, 763 (1972).

¶ 34 The trial court found that Roberts was conducting business in Jackson County under the name ProCraft of Central Illinois, a violation of the Consumer Fraud and Deceptive Business Practices Act. It awarded the Speths damages in the amount of \$5,000 for this violation. Specifically, the court found that Roberts was guilty of violating section 2Q(a) of the Act, which states as follows:

"No person, firm, corporation, partnership or association engaged in the business of making home improvements or repairs shall operate a business under a name other than the real names of the individuals conducting the business, an assumed corporate name under the Business Corporation Act of 1983 or an assumed business name under the Assumed Business Name Act or under the real names, assumed corporate, or assumed business names of an entity for whom the person, firm, corporation, partnership or association operates as a subcontractor, licensee or independent contractor. Any person who knowingly violates this Section commits an unlawful practice within the meaning of this Act, and in addition to the relief available under Section 7 of this Act [civil penalties, restitution], may be prosecuted for the commission of a Class A misdemeanor." 815 ILCS 505/2Q(a) (West 2002).

The court awarded damages pursuant to a violation of section 2Q of the Act. However, although this statute authorizes criminal prosecutions for violations, it does not contain a remedy or punishment in the form of damages.

¶ 35 We turn to section 7 of the Act, referenced in this section as providing other relief for violations of the Act. 815 ILCS 505/7 (West 2002). Section 7 of the Act authorizes the Illinois Attorney General or a local State's Attorney to bring a proceeding on behalf of the People of the State of Illinois. The court may exercise the following powers in this type of case: "injunction; revocation, forfeiture or suspension of any license, charter, franchise, certificate or other evidence of authority of any person to do business in this State; appointment of a receiver; dissolution of domestic corporations or association[;] suspension or termination of the right of foreign corporations or associations to do business in this State; and restitution." 815 ILCS 505/7(a) (West 2002). The Attorney General or State's Attorney may ask the court to impose a civil penalty. 815 ILCS 505/7(b) (West 2002). Section 7 of the Act is designed to protect the citizens of the State of Illinois from companies in violation of the Act. However, the Illinois Attorney General or a local State's Attorney must seek the protection offered in section 7. Section 7 does not provide a private cause of action. Therefore, the court's award of civil damages against Roberts for failing to register his assumed name in Jackson County is not allowed. We reverse the judgment of \$5,000 in damages.

¶ 36 *Consumer Fraud and Deceptive Business Practices Act—Liquid Siding*

¶ 37 In order to state a cause of action under the Illinois Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/1 *et seq.* (West 2002)), the plaintiff must allege facts that show the following: (1) a deceptive act or practice by the defendant; (2) that the defendant intended for the plaintiff to rely on the deception; (3) that the deception occurred in the course of conduct involving a trade or commerce; (4)

that the consumer fraud proximately caused the injury alleged by the plaintiff; and (5) actual damages to the plaintiff. *Capiccioni v. Brennan Naperville, Inc.*, 339 Ill. App. 3d 927, 933, 791 N.E.2d 553, 559 (2003).

¶ 38 The court's order found that the Speths proved both consumer fraud counts of their complaint. While the court makes mention of the feasibility of using the liquid siding on a log house, and notes the Speths' testimony that Roberts made that representation to them, the order points to no acts and/or statements that are even remotely deceptive or misrepresentative. There was no testimony or evidence that the liquid siding was inappropriate for application to a log house and that Roberts knew that fact when he represented that it was.

¶ 39 At trial, Roberts claimed that the liquid siding was appropriate for their house and that the product would provide a maintenance-free exterior to the house. In keeping with the warranty, he informed the Speths that the product would not crack or peel. We have difficulty in finding that those comments were deceptive simply because the product as applied to the Speths' house bubbled and changed colors. The evidence at trial was that this was very unusual. Tim Taylor, who was the person who applied the product for Roberts, was baffled in that he had never seen this occur before. Consequently, we do not agree that the statements about how the product should have worked were deceptive or misleading.

¶ 40 Even if we assume that Roberts' representation that the product would not crack, fade, or peel was "deceptive"; that Roberts knew the product would crack, fade, or peel; that Roberts intended for the Speths to rely upon this deception; and that the deceptive

representations proximately caused the problems claimed by the Speths, the Speths have no evidence establishing damages. Without the element of damages, the Speths' claims pursuant to the Consumer Fraud and Deceptive Business Practices Act fail.

¶ 41 The element of damages was critical in every count of the Speths' complaint. The trial court barred testimony during trial and entered directed verdicts on the basis that the Speths failed to establish damages. The same approach must be taken on the consumer fraud counts.

¶ 42 The Speths attempted to show how much it would cost to rebuild their house as the measure of damages. They believed that since they did not know how to fix the problems, the only solution was to tear down the original house and rebuild it. However, they offered no expert evidence that this was the only remedy available. The expert witnesses that they offered for testimony would not have testified about any other remedy. The Speths merely asked them to testify to the costs to tear down and rebuild the house. While the Speths may have the ability to ask for this measure of damages, they must have accompanying proof.

¶ 43 We find that the trial court's judgment on the consumer fraud count regarding the alleged deceptive practices of Roberts and the resulting damages to their house must be reversed. The trial court's judgment is against the manifest weight of the evidence. We reverse the court's award of \$40,900 in compensatory damages.

¶ 44 *Punitive Damages*

¶ 45 In order to award punitive damages under the Consumer Fraud and Deceptive Business Practices Act, the aggrieved party must have received an award of actual or

compensatory damages. 815 ILCS 505/10a(a) (West 2002); see also *Kirkpatrick v. Strosberg*, 385 Ill. App. 3d 119, 132, 894 N.E.2d 781, 794 (2008). We reverse the court's award of \$120,000 in punitive damages because we conclude that the trial court erred in awarding the Speths compensatory damages.

¶ 46 *Attorney Fees*

¶ 47 The court also entered an award of attorney fees in this case. Attorney fees and costs may be awarded in a consumer fraud case to the prevailing party. 815 ILCS 505/10a(c) (West 2002). With this order, we are reversing the trial court's judgment on the consumer fraud counts. Therefore, the Speths did not prevail on any statutory consumer fraud claim. We reverse the court's award of attorney fees and costs.

¶ 48 *The Speths' Cross-Appeal*

¶ 49 The Speths claim that the trial court erred in barring their witnesses from testifying at trial on the element of damages. The Speths also claim that the trial court erred in directing verdicts on both of their negligence counts, as well as on their express warranty count.

¶ 50 *Admissibility of Evidence*

¶ 51 Admissibility of evidence is a matter within the trial court's sound discretion and will not be overturned unless the trial judge clearly abused that discretion. *People v. Aguilar*, 265 Ill. App. 3d 105, 109, 637 N.E.2d 1221, 1223 (1994). In this case, the trial court concluded that the evidence of the costs to replace the house was not admissible because the Speths did not provide evidence that damages were directly related to application of the liquid siding and that this was the only remedy available. The Speths

needed expert testimony on how to repair the issues allegedly resulting from application of the product. Having failed to provide this evidence, the trial court determined that it had no choice but to bar the evidence of damages offered. We have reviewed the transcript of the trial as well as the trial exhibits. We agree with the trial court's conclusion that the Speths failed to connect their request to replace the house as the remedy to the problems that occurred after ProCraft applied liquid siding to their house. While the Speths may have desired a new house, their opinions that this is the only possible remedy have no foundation. Therefore, we find that the trial court's order barring the testimony on the issue of damages was correct.

¶ 52

Directed Verdicts

¶ 53 The standard of review we must follow in reviewing directed verdicts is whether all evidence, when viewed in the light most favorable to the opponent, so overwhelmingly favored the movant that no contrary verdict could possibly stand. *Pedrick v. Peoria & Eastern R.R. Co.*, 37 Ill. 2d 494, 510, 229 N.E.2d 504, 513-14 (1967).

¶ 54 Two of the counts alleged negligence. To prove negligence, the plaintiff must plead and prove that the defendant owed the plaintiff a duty, that the defendant breached that duty, that the breach proximately caused the plaintiff's injury, and that the plaintiff sustained damages. *Chandler v. Illinois Central R.R. Co.*, 207 Ill. 2d 331, 340, 798 N.E.2d 724, 728 (2003); *Sherer v. Sarma*, 2014 IL App (5th) 130207, ¶ 19, 18 N.E.3d 181. Breach of duty and proximate causation both present questions of fact. *Chandler*, 207 Ill. 2d at 340, 798 N.E.2d at 728. Proximate cause includes both "cause in fact" and

"legal cause." *Coole v. Central Area Recycling*, 384 Ill. App. 3d 390, 397, 893 N.E.2d 303, 310 (2008). Cause in fact occurs if there is a reasonable certainty that a defendant's acts caused the damage. *Id.*; *City of Chicago v. Beretta U.S.A. Corp.*, 213 Ill. 2d 351, 395, 821 N.E.2d 1099, 1127 (2004). Legal causation is established only if the defendant's conduct is so closely tied to the plaintiff's injury that the defendant must be held legally responsible. *City of Chicago*, 213 Ill. 2d at 395, 821 N.E.2d at 1127. The question of proximate cause can be a legal one when the facts presented indicate that a party cannot recover. *Id.* at 395-96, 821 N.E.2d at 1127-28.

¶ 55 In this case, the Speths provided no evidence at trial of the proximate cause of their damages. There was no expert testimony as to the cause of the damage. With no expert testimony, there is no way to know whether there was a problem with the product, or with the application of the product, or whether there was some other cause.

¶ 56 Additionally, the Speths provided no testimony about damages. There was no testimony about remediation and the costs associated with doing so. There was no testimony about the value of the house before and after application of the product. There was no expert opinion testimony as to the cause of the damages or even whether the Speths sustained damages. Without testimony about whether the product's application was the proximate cause of damages, there is no evidence of damages.

¶ 57 In order to plead and prove a claim for breach of an express warranty, a plaintiff must show the terms of the warranty, the failure of some part of the warranty, a demand for the defendant's performance of the warranty, a failure of the defendant to do so, and damages measured by the terms of the warranty. *Oggi Trattoria & Caffè, Ltd. v. Isuzu*

Motors America, Inc., 372 Ill. App. 3d 354, 360, 865 N.E.2d 334, 340 (2007) (quoting *Hasek v. DaimlerChrysler Corp.*, 319 Ill. App. 3d 780, 793, 745 N.E.2d 627, 638 (2001)). Causation is also a factor in a breach of warranty claim. The plaintiff must prove that the problematic outcome (the bubbling and discoloration) resulted from a defect in the product that is under warranty (the application of the liquid siding). *Oggi Trattoria & Caffè, Ltd.*, 372 Ill. App. 3d at 360, 865 N.E.2d at 340 (quoting *Collum v. Fred Tuck Buick*, 6 Ill. App. 3d 317, 322, 285 N.E.2d 532, 536 (1972)).

¶ 58 As with the negligence claims, the Speths provided no testimony linking the application of the liquid siding to the bubbling and discoloration. Similarly, they provided no evidence of damages. While the Speths believe that the situation "speaks for itself," that belief is not in keeping with Illinois law for the negligence and warranty claims they made.

¶ 59 We find that the court's orders directing a verdict for Roberts on the two negligence claims, as well as on the express warranty claim, was correct. Considering all of the evidence in the light most favorable to the Speths, there was no evidence of causation, and no evidence of damages, and therefore we find that judgment for Roberts on these claims was proper.

¶ 60 CONCLUSION

¶ 61 For the foregoing reasons, we reverse in part and affirm in part the judgment of the Jackson County circuit court.

¶ 62 Reversed in part and affirmed in part.