2014 IL App (5th) 130308-U

NO. 5-13-0308

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

CHARLES ROPER,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Williamson County.
	)	
v.	)	No. 09-LM-324
	)	
JAMES GOLDEN, Individually and d/b/a Golden Construction,	)	Honorable
	)	Carolyn B. Smoot,
Defendant-Appellee.	)	Judge, presiding.

NO. 5-13-0309

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

RAY LISS and ANITA LISS,	)	Appeal from the
	)	Circuit Court of
Plaintiffs-Appellants,	)	Williamson County.
	)	
v.	)	No. 09-LM-227
	)	
JAMES GOLDEN, Individually and d/b/a Golden Construction,	)	Honorable
	)	Carolyn B. Smoot,
Defendant-Appellee.	)	Judge, presiding.

JUSTICE SCHWARM delivered the judgment of the court.
Justices Stewart and Spomer concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court erred in denying the plaintiffs' joint motion to reconsider their damage awards.

¶ 2 BACKGROUND

¶ 3 In the circuit court of Williamson County, the plaintiffs, Charles Roper (Roper) and Anita Liss and Ray Liss (the Lisses), filed suit against the defendant, James Golden, individually and doing business as Golden Construction (Golden) (Nos. 09-LM-324 and 09-LM-227, respectively). The plaintiffs' complaints alleged construction negligence and asserted, *inter alia*, that Golden had improperly installed the shingles on the roofs of their new homes. In April 2013, the plaintiffs' causes were consolidated, and the matter proceeded to a bench trial, where the following evidence was adduced.

¶ 4 Roper testified that in November 2000, he had purchased a home in Marion from Golden, who had constructed the home and had later installed matching shingles on an outbuilding. Roper testified that following a storm in 2005, the shingles on half of the outbuilding's roof had come off "like a sheet of plywood." Roper testified that following a storm in 2008, a section of shingles on his home's roof had similarly failed and that following a storm in 2009, the shingles on the other half of the outbuilding had failed as well. Roper indicated that in each instance, the shingles had come off in large groups "still glued together." Roper opined that the shingles in question had not been properly installed and that the damage to the roofing had not resulted from the storms themselves. After each event, Roper contacted his insurance company and a roofing contractor, and

the damages had been repaired. The total cost of all three repairs was $4,673. Roper received a check for $2,921.54 from his insurance company on his claim.

¶ 5 Ray Liss testified that Golden had sold him and his wife a home that Golden had also built in Marion. Liss testified that on a sunny day in July 2007, a large area of the shingles on the east side of the house had "slid off in one big section." Liss contacted Golden, who inspected the damage and admitted that the shingles had been improperly nailed to the roof. Golden also volunteered to repair the damage at no cost if Liss purchased the replacement shingles. Liss agreed, and Golden fixed the damaged area. The cost of the replacement shingles that Golden installed without charge was $315.16. Liss indicated that less than a year later, the shingles on his house began to buckle and slip in other areas, so he contacted Golden again. Liss stated that he and Golden had set six appointments to meet and inspect the problem, but Golden failed to make any of the meetings. Liss eventually photographed his roof and obtained repair estimates from several roofing contractors, all of whom had advised him that the entire roof needed to be replaced. Liss testified that he ultimately hired one of the contractors, who installed a new roof for $11,235.50. Liss stated that the condition of the failed shingles on his house was not the result of storm or wind damage. Liss filed a claim with his insurance company and received a check for $3,878.62.

¶ 6 Michael Dohm testified that he was a claims adjustor and certified roofing inspector and had worked as such for 40 years. Dohm indicated that he had been on thousands of roofs over the course of his career and was "familiar with the type of claims that involve wind damage as opposed to negligent installation." Dohm testified that in

October 2008, he had inspected Roper's roof on behalf of Roper's insurance company. Dohm stated that his inspection had revealed a massive failure of the shingles on the southern slope of the roof. He further stated that the failed shingles had not been nailed to the roof in accordance with the manufacturer's specifications and had thus been improperly installed. Dohm indicated that as a result, the shingles were more susceptible to wind damage and failure even without wind. Dohm also testified that several shingles on the northern slope of Roper's roof had exhibited "slippage," which is also caused by improper installation. Dohm believed that the shingles on Roper's roof might have been improperly installed "from the top down, which is a very unusual application." As a result, although eight nails should have been used to fasten each shingle to the roof, only four had been used. Dohm opined that the damage to Roper's roof was the result of improperly installed shingles and was "not from direct wind damage." Dohm testified that he had not observed similar roof damage to any of the other houses in Roper's neighborhood.

¶ 7 Dohm testified that he had not personally inspected the damage to the Lisses' roof but had reviewed photographs of the damage and had further reviewed a complaint that the Lisses filed with the Better Business Bureau. Dohm stated that the damage to the Lisses' roof was "[a]bsolutely" similar to the damage to Roper's roof and that the photographs revealed that the shingles on the Lisses' roof had also been improperly installed. Dohm testified that only four nails had been used to fasten each shingle on the Lisses' roof and that it thus appeared that the roof had been "installed from the top down as was the Roper roof." Dohm opined that the damage to the Lisses' roof was due to the

improper installation of the shingles. Dohm further opined that had the shingles been fastened to the roof in accordance with the manufacturer's application instructions, they would not have been susceptible to wind damage and failure even "without a breath of air touching the roof."

¶ 8 Golden testified that he had been a contractor for 17 years and had constructed the Roper and Liss homes. Golden indicated that he had done part of the roof work on the houses, but a subcontractor had done the majority of the work. Golden acknowledged that roofing was not his "primary trade" and that he did not have a roofing license. Golden naturally assumed that the subcontractor would have installed the shingles on the homes in accordance with the manufacturer's specifications. Golden agreed that the shingles should have been fastened with eight nails a piece rather than four, but he denied that either roof had been installed "from the top down." Golden further agreed that improper fastening makes shingles more susceptible to wind damage. Golden indicated that other than the Roper and Liss homes, he had never had significant problems with the roofs on any of his construction projects. Golden explained that he had missed his scheduled appointments with Liss because he was busy working on an out-of-town project at the time.

¶ 9 In May 2013, the trial court entered judgment in favor of Roper and the Lisses, finding that they had proven their respective cases by a preponderance of the evidence. The court found that the Lisses were entitled to a judgment award of $7,672.04 plus court costs, which the court stated was based on the cost of their roof repairs minus the $3,872.62 insurance payment that they had received. The court similarly found that

Roper was entitled to an award of $1,751.46 plus court costs, which represented the cost of his roof repairs minus the $2,921.54 insurance payment that he had received.

¶ 10 Arguing that the trial court erred in failing to apply the collateral source rule when entering judgment, Roper and the Lisses subsequently filed a joint motion to reconsider their damage awards. They also argued that the court had miscalculated the monetary amounts at issue for both Roper and the Lisses.

¶ 11 In June 2013, the trial court entered a docket order denying the plaintiffs' motion to reconsider their damage awards, ordering that the judgment in favor of Roper stand as entered, and amending the Lisses' judgment award to correct a calculation error. The plaintiffs subsequently filed timely notices of appeal, and the cases were consolidated for decision.

¶ 12 DISCUSSION

¶ 13 On appeal, repeating their assertion that the trial court erred in failing to apply the collateral source rule when entering judgment, the plaintiffs argue that the court erred in denying their joint motion to reconsider their damage awards. We agree.

¶ 14 "Under the collateral source rule, benefits received by the injured party from a source wholly independent of, and collateral to, the tortfeasor will not diminish damages otherwise recoverable from the tortfeasor." *Wilson v. Hoffman Group, Inc.*, 131 Ill. 2d 308, 320 (1989). "The justification for this rule is that the wrongdoer should not benefit from the expenditures made by the injured party or take advantage of contracts or other relations that may exist between the injured party and third persons." *Id.* "The collateral source rule protects collateral payments made to or benefits conferred on the plaintiff by

denying the defendant any corresponding offset or credit." *Arthur v. Catour*, 216 Ill. 2d 72, 78 (2005). "Such collateral benefits do not reduce the defendant's tort liability, even though they reduce the plaintiff's loss." *Id.* The collateral source rule is "applicable to property losses that have been compensated by insurance" (*Levy v. Narrod Moving Services, Inc.*, 120 Ill. App. 3d 528, 531 (1983)), and thus "the damages recovered by the plaintiff from the tortfeasor are not decreased by the amounts received from insurance proceeds" (*Wilson*, 131 Ill. 2d at 320). Where the pertinent facts are undisputed, the applicability of the collateral source rule is a question of law that is reviewed *de novo*. *Arthur*, 216 Ill. 2d at 79.

¶ 15 Here, the evidence established that Roper incurred $4,673 in repair costs and that his insurer had issued him a check in the amount of $2,921.54. The evidence further established that the Lisses' repair costs totaled $11,550.66 and that their insurer had issued them a check for $3,878.62. Under the collateral source rule, the plaintiffs' insurance proceeds, being proceeds from a collateral source, should not have been deducted from their judgment awards. While it appears that the trial court's intent in granting Golden a setoff was to make the plaintiffs whole for the actual losses that resulted from the negligent installation of their roofs, the collateral source rule is an " 'established exception to the general rule that damages in negligence actions must be compensatory.' " *Wills v. Foster*, 229 Ill. 2d 393, 399 (2008) (quoting 25 C.J.S. *Damages* § 172 (2002)).

¶ 16 CONCLUSION

¶ 17 For the foregoing reasons, the trial court's judgment denying the plaintiffs' joint

motion to reconsider their damage awards is hereby reversed. Pursuant to Supreme Court Rule 366(a)(5) (eff. Feb. 1, 1994), we accordingly amend the court's judgment to reflect a damage award of $11,550.66 plus court costs in favor of the Lisses and a damage award of $4,673 plus court costs in favor of plaintiff Roper. See *In re Estate of Johnson*, 219 Ill. App. 3d 962, 967-68 (1991); *O'Connell v. Pharmaco, Inc.*, 143 Ill. App. 3d 1061, 1072 (1986).

¶ 18 Reversed; damage awards modified.