Circuit Court for Prince George's County
Case No. CAL2013614

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 244

September Term, 2021

MCDONALD AND EUDY PRINTERS LLC

v.

LTS HOME IMPROVEMENTS, ET AL.

Reed,
Ripken,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Ripken, J.

Filed: May 18, 2022

McDonald & Eudy Printers LLC ("McDonald") filed suit in the Circuit Court for Prince George's County against LTS Home Improvements ("LTS"), a sole proprietorship, and its owner, Lou Sequenzia ("Sequenzia"), for breach of contract relating to roof repair services. The court entered a default judgment in favor of McDonald. The court held a hearing on damages. At the conclusion of the hearing, the court ruled that McDonald failed to prove its damages and awarded it zero dollars. McDonald timely appealed.

For the reasons explained below, we shall affirm.

PROCEDURAL AND FACTUAL BACKGROUND

In July 2020, McDonald filed a complaint against LTS and Sequenzia for breach of contract. The complaint alleged as follows: In June 2017, McDonald contracted LTS to repair the roof of McDonald's production plant in Temple Hills, Maryland. Repairs took eight months to complete, and McDonald paid LTS in full. Eventually, McDonald's roof began leaking. LTS attempted to address the issue, but the roof continued to leak. A different contractor informed McDonald that LTS's deficient repair work had caused the leak. The complaint sought $118,814 in damages from LTS and Sequenzia.

No answer was filed by LTS or Sequenzia. On February 12, 2021, the circuit court entered an order of default against LTS and Sequenzia. On March 23, 2021, the court held a remote hearing to determine McDonald's damages. McDonald's vice president testified on its behalf as follows: McDonald accepted written proposals from LTS for the repair work, which involved sealing the roof with spray foam. The parties reached an oral agreement concerning the work, under which McDonald paid $141,689. After LTS completed the work, McDonald requested that LTS return to address leaks that were

becoming progressively worse. Sequenzia brought a specialist to review the work, and Sequenzia assured McDonald that the leaks were unrelated to the application of the spray foam. McDonald had another contractor, with a company called American Homes Specialists, inspect LTS's work. The McDonald vice president stated that American Homes Specialists was "one of three" companies that came to inspect the damage to the roof. The American Homes Specialists contractor determined that LTS had not properly completed the repairs. He estimated it would cost $178,000 to properly preform the repair and to remediate damage caused by LTS's deficient performance. McDonald also sought costs for its legal expenses: the vice president testified that McDonald's counsel spent $2,099.29 for work performed by counsel and $259 for service on Sequenzia and LTS.

Sequenzia appeared at the hearing on damages pro se. The court permitted Sequenzia to cross-examine McDonald's vice president, who explained that McDonald's damages resulted from LTS's failure to apply spray foam in the proper thickness and from its application in such a way that screws were popping through the foam. The vice president stated that besides American Home Specialists, a spray foam company called SPF Roofing had found LTS's work deficient. On cross-examination, Sequenzia asked to see either photographs or a report of the damages. McDonald did not have photographs. Sequenzia also elicited testimony from McDonald's vice president that another McDonald executive had recently sold his home to the owner of American Home Specialists.

In his own direct testimony, Sequenzia stated that American Home Specialists was a commercial roofer rather than a specialist in spray foam.

In an oral ruling, the court found as follows:

> And, number one, these damages that are being testified to—I have Mr. McDonald talking about a particular company that provided some estimate. I have another testimony contradicting that the estimates that were provided do not even do that kind of work.
>
> There are no photographs for the Court to even observe as to what, if any, damages actually occurred.
>
> And so while the Court would find that with respect to—there has not been a motion to vacate the default judgment, there has not been a request to vacate the default judgment, it was just merely argument.
>
> But as to damages, the Court cannot find that the Plaintiff met by a preponderance of the evidence the amount of damages. And so, therefore, damages awarded will be zero.

The court denied McDonald's request to be heard on the damages ruling. McDonald timely appealed to this Court.

DISCUSSION

On appeal, McDonald argues first that the circuit court improperly considered liability, where the issue before the court was the amount of McDonald's damages. Second, McDonald argues that the court erred by awarding zero dollars in damages.

The standard of review for an appeal from a bench trial is set out in Maryland Rule 8-131(c):

> When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

"[W]e assume the truth of all the evidence relied upon by the trial court, and of all favorable inferences fairly deducible from that evidence." *Cherry v. Mayor and City Council of Baltimore City*, 475 Md. 565, 594 (2021) (quoting *Leavy v. Am. Fed. Sav. Bank*, 136 Md.

App. 181, 200 (2000)). A circuit court's ruling that a party failed to meet their burden of persuasion on a factual issue is not clearly erroneous so long as the record reveals "a state of honest doubt" about that issue. *Bricker v. Warch*, 152 Md. App. 119, 137 (2003) (quoting *Starke v. Starke*, 134 Md. App. 663, 680–81 (2000)); *see also Omayaka v. Omayaka*, 417 Md. 643, 658–59 (2011) ("Although it is not uncommon for a fact-finding judge to be clearly erroneous when he [or she] is affirmatively *persuaded* of something, it is . . . almost impossible for a judge to be clearly erroneous when he [or she] is simply *not persuaded* of something." (emphasis in original)). The court reviews questions of law de novo. *Anderson v. Great Bay Solar I, LLC*, 243 Md. App. 557, 582 (2019).

"[T]he entry of a judgment by default in a claim for unliquidated damages merely establishes the non-defaulting party's right to recover." *Greer v. Inman*, 79 Md. App. 350, 356 (1989). "The general rule, therefore, is that, although the defaulting party may not introduce evidence to defeat his opponents' right to recover at the hearing to establish damages, he is entitled to present evidence in mitigation of damages and cross examine witnesses." *Id.* at 356–57 (internal quotation marks omitted).

Compensatory damages must be proven with "reasonable certainty, and may not be based on speculation or conjecture." *Asibem Assocs. v. Rill*, 264 Md. 272, 276 (1972). A party who fails to prove compensatory damages is entitled to recover only nominal damages. *Id.* Damages for contractual breach in a case of defective construction may be measured by "the reasonable cost of reconstruction and completion in accordance with the contract, if this is possible and does not involve unreasonable economic waste." *Andrulis v. Levin Const. Corp.*, 331 Md. 354, 371 (1993) (quoting A. Corbin, *Corbin on Contracts*

§ 1089, at 485–87 (1964)); *see also* Restatement (Second) on Contracts § 348(2)(b) (noting that in the defective performance of a construction contract, the injured party may recover "the reasonable cost of completing performance or of remedying the defects if that cost is not clearly disproportionate to the probable loss in value to him").

Here, we discern no clear error in the circuit court's conclusion that McDonald failed to prove the reasonable cost of remedying LTS and Sequenzia's deficient performance. The only evidence before the circuit court of a specific cost estimate to correct LTS's deficient performance was the testimony of McDonald's vice president about American Home Specialists' estimate of $178,000. Although McDonald's witness referred to documents supporting that cost estimate, marked as Exhibit Two, those documents were never moved or admitted into evidence and accordingly may not be considered evidence before the court.[1] Even if those documents were admitted, our decision would not change. The circuit court was not required to find that the single estimate established the "reasonable cost" of remedial construction by a preponderance of the evidence. *See Bricker*, 152 Md. at 137. The circuit court appears to have credited Sequenzia's testimony that American Home Specialists was inexperienced with spray foam roofing, which could support honest doubts about its estimate. McDonald's witness referred to the American

[1] Documents must be authenticated or identified, including by testimony of a witness with knowledge, before they may be admitted into evidence. Maryland Rule 5-901. Testimony about a marked exhibit is not sufficient to move the exhibit into evidence.

Home Specialists estimate as "one of three," but no evidence was presented as to the cost of the other estimates.[2]

Furthermore, the record does not support McDonald's contention that the circuit court impermissibly considered liability during the damages hearing. The circuit court repeatedly sustained objections to Sequenzia's testimony as not relevant to damages, and it redirected him to present evidence related to damages. The circuit court noted that there had not been a motion to vacate the default order; it suggested that Sequenzia's liability-related testimony would be treated as argument rather than evidence. Most importantly, the court explicitly stated that its ruling was based on a finding that McDonald failed to meet its burden as to damages.

So too, the circuit court's statement that McDonald had not produced photographs "for the Court to even observe [] what, if any, damages actually occurred" did not indicate that its ruling was based on evidence of liability or that it was impermissibly addressing liability. Rather we understand that statement as a comment on McDonald's decision to present its damages exclusively through witness testimony about a single estimate. *See Omayaka*, 417 Md. at 657 n.4 ("When a party attempts to prove a particular point by presenting evidence that is less clear, less direct, less reliable and/or less satisfactory than other evidence available to that party, the trier of fact is permitted—but not required—to find that the "better" evidence "would have been detrimental to [that party] and would have

[2] We shall not address the issue of whether remand would be appropriate for an award of nominal damages or for a ruling on McDonald's request for costs as McDonald has not raised any argument relating to those issues on appeal.

laid open deficiencies in, and objections to [that party's] case which the more obscure and uncertain evidence did not disclose.").

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.