IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA

CIVIL ACTION

MICHAEL CATALDO, t/d/b/a CATALDO BUILDERS,	:	
Plaintiff	:	
	:	
v.	:	**No. 05-0732**
	:	
KAREN ALTOBELLI AND STEPHEN JAMES,	:	
Defendants	:	

Michael Cataldo	**Pro se**
David A. Klein, Esquire	**Counsel for Defendants**

MEMORANDUM OPINION

Nanovic, P.J. – December 27, 2011

In May 2003, the Plaintiff, Michael Cataldo, t/d/b/a Cataldo Builders ("Contractor"), and the Defendants, Karen Altobelli and Stephen James ("Homeowners"), entered an agreement for Contractor to build a home on Homeowners' property located at Lot 51, Dogwood Drive, Bear Creek Lakes, Carbon County, Pennsylvania. The agreed-upon price for this construction, as modified by agreement dated September 2003, was $185,909.00. Construction of the home began in October 2003 and was substantially completed by December 2004.

In December 2004, Contractor submitted a final billing in the amount of $16,064.63, which Homeowners refused to pay. Previously, Homeowners had paid Contractor the sum of $179,294.00. The amount of Contractor's final billing consisted

of $6,615.00, representing the unpaid balance of the original contract price, and an additional $9,449.63 for extras and costs in excess of allowances which Contractor contended Homeowners had agreed to. (Plaintiff Exhibit No. 16).

Homeowners denied that any further monies were due and owing. Instead, Homeowners alleged that the home was not built in accordance with the architectural plans they had provided to Contractor, and that the work performed was defective and incomplete. Homeowners contended that the home was structurally unsound; and that the cost of remediating the structural defects plus the cost of correcting and completing work already begun would total $109,350.00.

At the conclusion of a four-day jury trial, the jury found Contractor was entitled to $12,631.95 on his claim for the unpaid balance of the contract price and extra work. The jury further found Homeowners were entitled to $12,631.95 for Contractor's breach of contract in constructing the home. Presently before us is Homeowners' Motion for Post-Trial Relief.

FACTUAL AND PROCEDURAL BACKGROUND

Contractor commenced this action by filing a complaint on April 14, 2005. The complaint contained one count for breach

of contract and claimed damages in the amount of $14,764.63.[1] Homeowners' answer to the complaint contained counterclaims for the following: breach of contract; common-law fraud and misrepresentation; consumer fraud premised upon alleged violations of the Unfair Trade Practices and Consumer Protection Law; punitive damages; and negligence. After several rounds of preliminary objections, these claims were reduced to one count of breach of contract and one count of consumer fraud. By Order dated January 7, 2008, the consumer fraud count was further limited to include only those claims predicated upon charges made by Contractor for materials which were allegedly never supplied and/or labor which was allegedly never performed.

Trial commenced on Monday, February 8, 2010, and was delayed two days – Wednesday and Thursday – due to snow. The jury was permitted to take notes. On February 15, 2010, after approximately two hours of deliberation, the jury returned its verdict. A copy of the Verdict Slip has been reproduced and is attached to this Opinion as Appendix 1.

As reflected by the Verdict Slip, the jury awarded both the Contractor and the Homeowners $12,631.95, in effect,

[1] The difference between this figure and the amount of Contractor's final billing, $1,300.00, is attributable to the addition of a window in the garage which Contractor had agreed to install at no extra cost in exchange for the elimination of brick piers on the exterior of the home. (N.T. 02/09/10, p.188). In his final bill, Contractor billed for both items. At the time of trial, Contractor agreed that the correct amount of this claim was $14,746.63. (N.T. 02/15/10, pp.803-804).

nullifying the verdict for each against the other. After the verdict was returned, the Court inquired as to whether either counsel had any motion to present before the jury was discharged. After both parties indicated there were none, the jury was discharged. (N.T. 02/15/2010, p. 991). The verdict was filed with the Prothonotary's Office the same day it was reached.

On Monday, March 1, 2010, Homeowners filed the instant Post-Trial Motion. Therein, Homeowners request that the verdict on their counterclaim be molded to provide for an increased damages award or, in the alternative, that a new trial be ordered limited to damages. Homeowners also request that statutory damages and counsel fees be awarded pursuant to the Unfair Trade Practices and Consumer Protection Law ("UTPCPL"), 73 P.S. §201-1 *et seq*.[2] The Motion does not challenge the verdict on Contractor's complaint.

Contractor, acting *pro se*, filed an answer to the Motion on October 21, 2010.[3] Argument on the Motion was held

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[2] **The Homeowners' Motion also references the admission into evidence of photographs which they allege were taken by virtue of the Contractor trespassing upon their property. Homeowners have failed to elaborate how this constitutes an error or what prejudice, if any, they sustained. As such, the issue will be addressed no further. *See* Rothrock v. Rothrock Motor Sales, Inc., 53 Pa.D.&C.4th 411, 422 (Pa.Com.Pl. 2001) (issues not briefed and argued for purposes of post-trial motion are waived), *affirmed*, 883 A.2d 511 (Pa. 2005).**

[3] **Contractor, in his response to Homeowners' Motion, objected to the late filing of the Motion. In order to be timely, the Motion should have been filed no later than Thursday, February 25, 2010. *See* Pa.R.C.P. 227.1(c)(1). However, snow again intervened, and the Homeowners claim this delayed their**

October 27, 2010, at which time Contractor's trial counsel was permitted to withdraw her representation, and Contractor thereafter represented himself. We now address the merits of the Motion.

DISCUSSION

1. *Molding the verdict*

Homeowners request that we award damages on their counterclaim for breach of contract over and above the $12,631.95 awarded by the jury. Homeowners claim the amount of this award has no rational relationship to the proof of damages they presented.

With respect to this issue, Contractor argues first that Homeowners' counsel was required to object to the jury's verdict at the time it was rendered in order to preserve the issue for review. We disagree.

In Picca v. Kriner, 645 A.2d 868 (Pa.Super. 1994), *appeal denied*, 651 A.2d 540 (Pa. 1994), the Court held that whenever a jury returns a verdict which is objectionable for any reason, the right to move for a new trial or otherwise claim error because of problems in the verdict is waived, unless the

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filing of the Motion. Rather than denying the Motion on this basis, we will consider its merits. *See* Leffler, Inc. v. Hutter, 696 A.2d 157, 165-67 (Pa.Super. 1997) (finding trial court abused its discretion in failing to entertain post-trial motion which had been filed one day late due to inclement weather, absent showing of prejudice).

litigant objects before the jury is dismissed. This rule was subsequently clarified in King v. Pulaski, 710 A.2d 1200, 1204 (Pa.Super. 1998) to apply only

> **to cases in which a litigant's failure to object to improper or ambiguous jury instructions or interrogatories causes an inconsistent verdict. The waiver rule should not be applied to cases in which the verdict is clear and unambiguous, albeit problematic, troublesome or disappointing.**

Homeowners have not questioned the propriety of the jury charge, nor have Homeowners pointed to any ambiguity or inaccuracy in the charge or verdict slip which affected the verdict. Rather, as in King, the verdict

> **while arguably inadequate, problematic, and disappointing to the [Homeowners], nonetheless clearly and unambiguously reflected the jury's fact-finding and credibility determinations. There was no flaw in the verdict in the sense that the jury misunderstood the applicable law, received an ambiguous jury charge, or answered poorly worded interrogatories in a confusing manner.**

Id. **at 1204.**

Under the circumstances of the instant case, it would have been inappropriate for us to attempt to determine why the jury did what it did. To have done so would have been to question the jury's credibility and fact-finding determinations, and suggest that the jury make a substantive change in its findings. A trial judge may not, in follow-up instructions, "inject itself into the deliberation and encourage a basic

change in the intended verdict of the jury." King, 710 A.2d at 1204 (quoting Fillmore v. Hill, 665 A.2d 514, 517 (Pa.Super. 1995); *see also* Gorski v. Smith, 812 A.2d 683, 707 (Pa.Super. 2002) ("A trial judge is not at liberty to suggest to the jury that the weight of the evidence did not support its damage award.") (citation and quotation marks omitted), *appeal denied*, 856 A.2d 834 (Pa. 2004). Because no basis existed for Homeowners to object to the verdict and request further deliberations by the jury on this issue, we address Homeowners' request to mold the verdict on its merits.

"The change of a jury's verdict after it has been received and recorded is rarely asked for and even more rarely permitted." Maize v. Atlantic Refining Co., 41 A.2d 850, 854 (Pa. 1945). The jury's verdict is what determines the rights of the parties. *See* id. If we were to amend the verdict, the amendment must not be what we think the verdict ought to have been, but rather what the jury intended it to be. *See* id. at 855. Here, the jury clearly intended that the parties stand where they were, that neither recover anything further from the other. Whether this intent should be sustained is a different question which we address next in this opinion. For the moment, we will not "under the guise of amending the verdict, invade the exclusive province of the jury or substitute [our] verdict for

theirs." Id. (citing Acton v. Dooley, 16 Mo.App. 441, 449 (St. Louis Court of Appeals, Missouri 1885)).

2. *Awarding a new trial*

As an alternative to molding the verdict, Homeowners request a new trial limited to damages on their claim for breach of contract. It is well-settled that "the decision whether to grant a new trial, in whole or in part, rests in the sound discretion of the trial court." Mendralla v. Weaver Corp., 703 A.2d 480, 485 (Pa.Super. 1997).

> **[A] new trial may not be granted merely because the jury could have awarded greater damages. Instead, the movant must demonstrate that the verdict reached was palpably and grossly inadequate. As this Court long ago held, "[t]he mere fact that the court below would have been more generous to [the movant] does not justify ousting the jurors and moving into their seats."**

Id. at 487 (citations omitted).[4]

In essence, Homeowners argue that the verdict bears no reasonable relationship to their evidence on damages and was,

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[4] ***See also*** **Commonwealth v. Hunter, which states:**

> **A motion for new trial on the grounds that the verdict is contrary to the weight of the evidence, concedes that there is sufficient evidence to sustain the verdict. Thus, the trial court is under no obligation to view the evidence in the light most favorable to the verdict winner. An allegation that the verdict is against the weight of the evidence is addressed to the discretion of the trial court. A new trial should not be granted because of a mere conflict in testimony or because the judge on the same facts would have arrived at a different conclusion. . . . Trial judges . . . do not sit as the thirteenth juror. Rather, the role of the trial judge is to determine that "notwithstanding all the facts, certain facts are so clearly of greater weight that to ignore them or to give them equal weight with all the facts is to deny justice."**

768 A.2d 1136, 1143 (Pa.Super. 2001) (citations omitted).

therefore, against the weight of that evidence. However, to state that a damage award must be supported by the evidence of record if it is to be upheld, is not the same as stating that the amount of the award, its precise figure and manner of computation, must be able to be replicated by the court to withstand challenge. This is especially true when, as here, there is reason to believe that the verdict is the product of a compromise. Guidry v. Johns-Manville Corporation, 547 A.2d 382, 385 (Pa.Super. 1988).

At trial, Homeowners chose to present their evidence in the form of lump sum damages: $85,850.00 for structural defects and $23,500.00 for non-structural defects. (N.T. 02/12/10, pp.545-47; Defendant Exhibit Nos. 23 and 24). Although the work to be done was itemized, no separate values were assigned to each item. In effect, as a matter of tactics, Homeowners asked the jury to accept their evidence as to damages in its entirety, or to reject it, with no in-between. The jury decided otherwise. By awarding Homeowners damages for Contractor's incomplete and/or defective work in an amount equal to that which they found Homeowners owed Contractor, the jury effectively determined not only that Homeowners were not entitled to recover damages, but also that they were not liable for any damages to Contractor. We believe this result was

within the province of the jury to decide and can be explained as the jury's attempt to compromise Homeowners' claim.

"The duty of assessing damages is for the fact-finder, whose decision should not be disturbed . . . unless the record clearly shows that the amount awarded was the result of caprice, partiality, prejudice, corruption, or some other improper influence." Lesoon v. Metropolitan Life Ins. Co., 898 A.2d 620, 628 (Pa.Super. 2006), *appeal denied*, 912 A.2d 1293 (Pa. 2006; *see generally* Spang & Co. v. U.S. Steel Corp., 545 A.2d 861, 866-67 (Pa. 1988) (discussing broad discretion of trial court to fashion fair estimate of damages in contract cases where specific amount of damages cannot be precisely determined, provided the evidence establishes to a fair degree of probability a basis for the assessment of damages); *see also* Siegel v. Struble Bros., Inc., 28 A.2d 352, 355 (Pa.Super. 1942). Here the verdict rendered, while low in comparison to the amount sought by Homeowners, was "certainly not a nominal verdict such as would give rise to an inference of mistake or partiality by the Jury." Elza v. Chovan, 152 A.2d 238, 240 (Pa. 1959) (citation and quotation marks omitted). Moreover, the amount, offsetting to the penny what was awarded to the Contractor, demonstrates that the jury knew exactly what it was doing.

"The fact that a verdict is low, standing alone, does not indicate that the verdict is inadequate. If the low verdict can be explained by viewing it as a compromise verdict, then it should not be disturbed on appeal. Where the evidence is conflicting and the resulting verdict is low, the verdict may be regarded as a compromise verdict, i.e., 'one where the jury, in doubt as to defendant's [fault] or plaintiff's freedom from [fault], brings in a verdict for the plaintiff but in a smaller amount than it would have if these questions had been free from doubt.'" Guidry at 385 (citations omitted).

"There is no magic in amounts but only in circumstances, and compromise verdicts are both expected and allowed. The compromise may arise out of damages or [liability], or the balance of evidence concerning either or both, and the grant of a new trial may be an injustice to the defendant rather than an act of justice to the plaintiff." Elza, 152 A.2d at 240 (citations omitted). Indeed, granting a new trial is a "gross abuse of discretion" in a case where "the result [of granting a new trial] is to overturn the verdict of a jury reached on dubious evidence of damages." *Id.* at 241.

Compromise verdicts are favored in the law. Austin v. Harnish, 323 A.2d 871 (Pa.Super. 1974). Only where the verdict is so low "as to present a case of clear injustice," should the

verdict be set aside. Campana v. Alpha Broadcasting Co., Inc., 361 A.2d 708, 709 (Pa.Super. 1976). This is not such a case.[5]

3. *Awarding damages and counsel fees pursuant to the Pennsylvania Unfair Trade Practices Act and Consumer Protection Law*

Homeowners pray that we award statutory damages and counsel fees as permitted by the Unfair Trade Practices and Consumer Protection Law. Under Section 201-9.2 of the UTPCPL,

> [a]ny person who purchases or leases *goods or services* primarily for personal, family or household purposes and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by any person of a method, act or practice declared unlawful by section 3 of this act,[6] may bring a

[5] Although raised by neither party, it is worth noting that the cost of repairs may not be the proper measure of Homeowners' damages. In building contracts, for the cost of repairs to be the basis of damages for incomplete or defective construction, such costs may not be clearly disproportionate to the probable loss in value to the owner as measured by the difference between the value that the property would have had without the defects and its value with the defects. Freeman v. Maple Point, Inc., 574 A.2d 684, 687 (Pa.Super. 1990); Gloviak v. Tucci Construction Company, Inc., 608 A.2d 557, 560 (Pa.Super. 1992). The burden of proving this difference is upon the owner, "although it need not be shown with exactitude." Freeman, 574 A.2d at 687. This is particularly true in a case such as the instant one where the cost of repairs presented by the Homeowners' experts, $109,350.00, represents almost 59 percent of the original construction costs. "[T]here must be some reasonable basis for determining reduction in value, before a judgment may be made that the cost of repairs is a proper measure of damages, where the required repairs to a new house represent a high percentage of the cost of the house." *Id*. Without this information it is impossible to determine whether the cost of repairs sought will result in a windfall to the Homeowners, such as would occur in the present case were it determined, using the Homeowners' figures, that repair costs are $109,350.00, but the diminution in value is closer to $15,000.00. Because Homeowners presented no information as to this reduction in value, it cannot be intelligently determined whether the $12,631.35 in damages found by the jury is in fact low when measured against the true measure of damages provided for by law.

[6] The UTPCPL enumerates twenty-one specific acts of prohibited conduct, the twenty-first being a catchall: "Any other fraudulent or deceptive conduct which creates a likelihood of confusion or misunderstanding." *See* 73 P.S. §§ 201-2, 201-3.

> **private action to recover actual damages or one hundred dollars ($100), whichever is greater. The court *may*, in its discretion, award up to three times the actual damages sustained, but not less than one hundred dollars ($100), and may provide such additional relief as it deems necessary or proper. The court *may* award to the plaintiff, in addition to other relief provided in this section, costs and reasonable attorney fees.**

73 P.S. § 201-9.2 (emphasis added).[7] This section of the UTPCPL not only authorizes the filing of a private action but also provides that the claimant therein may sue for either actual or nominal damages (the latter being set at $100.00), whichever is greater.

In this case, Homeowners elected to sue for actual damages, never seeking a nominal amount. On this claim, the jury found that Contractor "committed . . . unfair, fraudulent, or deceptive acts or practices . . . with respect to the services it agreed to provide to the [Homeowners] in this matter," but that Homeowners did not "suffer any ascertainable loss of money or property as a result of any unfair, fraudulent, or deceptive act or practice committed by [Contractor]."

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[7] **In Gabriel v. O'Hara, 534 A.2d 488, 491-93 (Pa.Super. 1987), the Pennsylvania Superior Court held, based on policy considerations, that this section of the UTPCPL extends to real estate transactions notwithstanding its language which, on its face, authorizes a private action only to those persons who purchase or lease "goods or services" primarily for personal, family or household purposes. As noted by the Pennsylvania Supreme Court in Schwartz v. Rockey, 932 A.2d 885, 897 (Pa. 2007) n.15, this interpretation has been criticized as being inconsistent with the plain terms of the statute. Nevertheless, because Contractor has not challenged the validity of Homeowners' standing to invoke the statute, nor the soundness of Gabriel, this issue is not before us.**

As to Homeowners' claim that we should award $100.00 in non-compensatory damages (i.e., "punitive damages"), the plain language of the UTPCPL allows that we award no further damages: "The court *may*, in its discretion, award up to three times the actual damages sustained, but not less than one hundred dollars ($100) . . . ." 73 P.S. § 201-9.2 (emphasis added). Here, with respect to the UTPCPL claims submitted to the jury, we do not find Contractor's conduct to have been either "intentional or reckless, wrongful conduct, as to which an award of treble damages would be consistent with, and in furtherance of, the remedial purposes of the UTPCPL." Schwartz v. Rockey, 932 A.2d 885, 898 (Pa. 2007).[8] Such claims were primarily, if not exclusively, claims for breach of contract, the terms of which were heavily disputed.

Further, since the jury found Homeowners did not suffer any ascertainable loss as the result of conduct prohibited by the UTPCPL, and given the qualifying phrase permitting the award of nominal damages, which appears to apply only if actual damages have been proven, the award of non-compensatory damages is not appropriate. *See* Equitable Gas Co.

[8] In order to establish a violation of the catchall provision of the UTPCPL, a plaintiff must establish either fraud or deception. Burkholder v. Cherry, 607 A.2d 745, 749 (Pa.Super. 1992) ("[I]t is not enough to establish a violation of the [UTPCPL] that [Contractor] failed to fulfill the [owner's] expectations regarding the quality of his work."); *see also* Skurnowicz v. Lucci, 798 A.2d 788, 794 (Pa.Super. 2002) (noting that to succeed on a cause of action for fraudulent misrepresentation, "[t]he key inquiry is not whether there was an intent to injure, but whether there was an intent to deceive.").

v. City of Pittsburgh, 488 A.2d 270, 273 (Pa. 1985) ("[W]e must adhere to the accepted principle of English grammar, 1 Pa.C.S. § 1903(a), which states that unless plainly meant otherwise, a modifying clause operates only upon the phrase preceding it. This has long been the mode of statutory construction in this jurisdiction.").

We next consider Homeowners' prayer for counsel fees under the UTPCPL.

> **In a case involving a lawsuit which include[s] claims under the UTPCPL . . . the following factors should be considered when assessing the reasonableness of counsel fees: (1) The time and labor required, the novelty and difficulty of the questions involved and the skill requisite properly to conduct the case; (2) The customary charges of the members of the bar for similar services; (3) The amount involved in the controversy and the benefits resulting to the clients from the services; and (4) The contingency or certainty of the compensation.**
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> *** * ***
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> **[Further]: (1) there should be a sense of proportionality between an award of damages [under the UTPCPL] and an award of attorney's fees, and (2) whether plaintiff has pursued other theories of recovery in addition to a UTPCPL claim should [be] given consideration in arriving at an appropriate award of fees.**

Neal v. Bavarian Motors, Inc., 882 A.2d 1022, 1030-31 (Pa.Super. 2005) (citations and quotation marks omitted), *appeal denied*, 907 A.2d 1103 (Pa. 2006). Moreover,

> **[a] court in awarding attorney fees under the UTPCPL must link the attorney fee award to the amount of damages a plaintiff sustained under that Act, and eliminate from the award of attorney fees the efforts of counsel to recover on non-UTPCPL theories. . . . [T]here is "no statutory authority for awarding attorney's fees for time spent pursuing [non-UTPCPL] counts." . . . "[A]n effort should be made to apportion the time spent by counsel on the distinct causes of action."**

Id. **at 1031-32 (citations omitted). Since, as determined by the jury, Homeowners established only a violation of the UTPCPL, but no resulting harm, an award of counsel fees is not warranted on this record.[9]**

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[9] **The stock plans and specifications which Homeowners originally presented to Contractor to obtain an estimated cost for construction depicted nineteen masonry piers at various locations in the crawlspace to provide support. These masonry piers were replaced in the home, as built by Contractor, by ten beam pockets in the poured concrete foundation and ten six by six pressure treated solid wooden posts. The parties heavily disputed whether these changes in construction were agreed upon and whether the structural integrity of the home was compromised thereby. These differences accounted for the majority of Homeowners' breach of contract claim related to the structural soundness of the home.**

To the extent Homeowners assert that we abused our discretion in not submitting to the jury a claim for consumer fraud based upon Contractor's alleged misrepresentation as to the structural integrity of the residence with the changes made by Contractor, this claim was not a part of Homeowners' initial counterclaim, first amended counterclaim, second amended counterclaim, or third amended counterclaim. This claim was raised for the first time on the final day of trial. (N.T. 02/15/10, pp.804-807). We found that to have permitted Homeowners to present this claim at that time would have been contrary to our Order dated January 7, 2008, would have been highly prejudicial to Contractor given the timing of the request, and was untimely. Moreover, the claim, at its core, is one of contract – whether Contractor failed to perform its work in a good and workmanlike manner - and not one of fraud. ***See*** **eToll, Inc. v. Elias/Savion Advertising, Inc., 811 A.2d 10, 14 (Pa.Super. 2002) (Under Pennsylvania law, the gist of the action doctrine "precludes plaintiffs from re-casting ordinary breach of contract claims into tort claims.").**

In addition, Homeowners' brief does not discuss the elements of fraud nor do Homeowners provide us with any authority supporting their assertion that this claim should have gone to the Jury. ***See supra*** **footnote 2 (regarding waiver);** ***see also*** **Commonwealth v. Brookins, 10 A.3d. 1251, 1255 (Pa.Super.**

CONCLUSION

We have carefully examined the evidence submitted and testimony given at trial in this case. Homeowners' evidence as to defects and cost of repairs was hotly contested, with Contractor adamantly disputing that the work was substandard or structurally unsound. *See* Davis v. Steigerwalt, 822 A.2d 22, 30 (Pa.Super. 2003) (contrasting the situation where the claimant's evidence as to damages is uncontroverted).[10] As to these disputes, the jury was free to accept or reject, in whole or in part, the evidence of either side. Although Homeowners are clearly disappointed in the outcome, we are nevertheless unable to discern a valid, legal reason as to why we should upset the decision of the jury. In accordance with our order directly

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2010) (defining the standard for finding an abuse of discretion, including the burden upon the movant to establish resulting prejudice).

[10] Nor was the Homeowners's evidence as to damages uncontested, even accepting Homeowners' evidence alone. An example of this was the combined estimate Homeowners presented at trial to remediate the claimed structural and non-structural defects. This estimate totaled $109,350.00, yet previously Homeowners had obtained another estimate from another contractor to make the same repairs. That estimate totaled $65,220.00. (N.T. 02/09/10, pp.344-47; Plaintiff Exhibit Nos. 27 and 28). To this can be added that the contractor Homeowners called to establish their damages was not employed primarily in the building business and had limited experience: Homeowners' expert had built a total of four homes, none in Pennsylvania and none in the last twenty years, and most of his work involved small jobs. (N.T. 02/12/10, pp.532, 563-64, 573). In addition, this expert had no cost information to back up his estimates and was unable to provide any breakdown of the cost to repair any specific item which Homeowners claimed was defective. (N.T. 02/12/10, pp.551-52, 561). In this same vein, since no breakdown was given of the cost to repair any specific item, in the event the jury found that even one of the complaints Homeowners made was invalid, the jury would have been within their authority to deny Homeowners' claim in its entirety on that category of damages.

following this opinion, we therefore deny Homeowners' Motion for Post-Trial Relief.

BY THE COURT:

P.J.

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA

CIVIL ACTION

MICHAEL CATALDO, t/d/b/a CATALDO BUILDERS, Plaintiff	:	
v.	:	No: 05-0732
KAREN ALTOBELLI and STEPHEN JAMES, Defendants	:	

Carole J. Walbert, Esquire — Counsel for Plaintiff
David Alan Klein, Esquire — Counsel for Defendants

VERDICT SLIP

QUESTION 1:

Do you find that the Defendants breached their contract with Cataldo?

Yes X No ____

If you answer Question 1 "Yes," please proceed to Question 2. If you answer Question 1 "No," please proceed to Question 4.

QUESTION 2:

Do you find that the Defendants' breach of contract caused a loss for which Cataldo is entitled to recover monetary damages?

Yes X No ____

If you answer Question 2 "Yes," please proceed to Question 3. If you answer Question 2 "No," Cataldo cannot recover and you should proceed to Question 4.

QUESTION 3:

State the amount of damages you award to Cataldo.

$ 12,631.95

QUESTION 3 CONTINUED:

With respect to the amount stated in your answer to this interrogatory, please state what portion of this amount is allocated to each of the following claims made by Cataldo:

1.	The claim for extras identified In Exhibits P-16 and D-7 (lines 1 and 2)	$ 6,615.00
2.	Excavation costs in excess of the claimed $14,000.00 allowance	$ 4,919.50
3.	Lumber costs in excess of the claimed $22,000.00 allowance	$
4.	For additional gas lines, connections and parts	$ 1,097.45
5.	For additional hardwood flooring	$
	Total	$ 12,631.95

This total should equal the total amount of damages you have awarded under Question 3.

QUESTION 4:

Do you find that Cataldo breached his contract with the Defendants?

Yes X No

If you answer Question 4 "Yes," please proceed to Question 5. If you answer Question 4 "No," please proceed to Question 7.

QUESTION 5:

Do you find that Cataldo's breach of contract caused a loss for which Defendants are entitled to recover monetary damages?

Yes X No

If you answer Question 5 "Yes," please proceed to Question 6. If you answer Question 5 "No," please proceed to Question 7.

QUESTION 6:

State the amount of damages you award to the Defendants for Cataldo's breach of contract.

$ 12,631.95

QUESTION 7:

Do you find that Cataldo committed any unfair, fraudulent, or deceptive acts or practices as those terms were defined for you by the Court with respect to the services it agreed to provide to the Defendants in this matter?

Yes X **No** _____

If you answer Question 7 "Yes," please proceed to Question 8. If you answer Question 7 "No," please return to the Courtroom.

QUESTION 8:

Did the Defendants suffer any ascertainable loss of money or property as a result of any unfair, fraudulent, or deceptive act or practice committed by Cataldo?

Yes _____ **No** X

If you answer Question 8 "Yes," please proceed to Question 9. If you answer Question 8 "No," please return to the Courtroom.

QUESTION 9:

State the amount of actual damages you award to the Defendants as a result of any unfair, fraudulent, or deceptive act or practice committed by Cataldo.

If you answer Question 9 "Yes," please proceed to Question 10. If you answer Question 9 "No," please return to the Courtroom.

$ _____

QUESTION 10:

If you have awarded actual damages to the Defendants in your answer to Question 9, state what dollar amount of this loss, if any, is included in any damages awarded in your answer to Question 6.

$ _____

Date: February 14, 2010[11] **Foreperson:** /s/ Chris

[11] **Although the verdict slip is dated February 14, 2010, the verdict was rendered on February 15, 2010.**

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA

CIVIL ACTION

MICHAEL CATALDO, t/d/b/a CATALDO BUILDERS, Plaintiff	:	
v.	:	**No. 05-0732**
KAREN ALTOBELLI AND STEPHEN JAMES, Defendants	:	

Michael Cataldo	**Pro se**
David A. Klein, Esquire	**Counsel for Defendants**

ORDER OF COURT

AND NOW, this 27th day of December, 2011, upon consideration of the Motion for Post-Trial Relief filed by the Defendants, Karen Altobelli and Stephen James, Plaintiffs' response thereto, after argument thereon, and in accordance with our Memorandum Opinion of this same date, it is hereby

ORDERED and DECREED that the Motion is denied and dismissed, and judgment is hereby entered in favor of the Plaintiff, Michael Cataldo, t/d/b/a Cataldo Builders, and against Defendants, Karen Altobelli and Stephen James, in the sum of $12,631.95 on Plaintiffs' complaint. Judgment is further entered in favor of the Defendants, Karen Altobelli and Stephen James, and against the Plaintiff, Michael Cataldo, t/d/b/a Cataldo Builders, in the sum of $12,631.95 on Defendants' counterclaim.

BY THE COURT:

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P.J.