

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

SALVATORE BALSAMO,	:	CV-23-00632
Plaintiff,	:	
	:	
vs.	:	CIVIL ACTION - LAW
	:	
EPIC CONSTRUCTION SPECIALTIES,	:	
LLC; EPIC CONSTRUCTION	:	
FABRICATIONS, LLC;	:	
MARK SPRINGMAN,	:	
Defendant.	:	Non-jury trial

OPINION AND ORDER

This matter came before the Court for a bench trial on November 26, 2024. Plaintiff attended with counsel. Defendants appeared through Mark Springman, without counsel.

FINDINGS OF FACT:

1. Salvatore Balsamo (hereinafter “Plaintiff”) is the owner of real property situate at 16795 U.S. Route 15, Allenwood, Union County, Pennsylvania (hereinafter the “Premises”).
2. Defendant Mark Springman is an adult individual residing in Lycoming County.
3. Defendant Epic Construction Specialties, LLC, is a limited liability company with a registered office of 519 State Route 87, Montoursville, Lycoming County, Pennsylvania 17754.
4. Defendant Epic Construction Fabrications, LLC, is a limited liability company with a registered office of 519 State Route 87, Montoursville, Lycoming County, Pennsylvania 17754.
5. Neither Defendant Epic Construction Specialties, LLC, nor Defendant Epic Construction Fabrications, LLC, are bona fide independent entities as referred to in the matter of *Sereda v. Center City Acquisitions, LLC*, 222 A.3d 1161, 1168 (Pa. Super. Ct. 2019). The two entities are single member limited liability companies owned and operated by Defendant Mark Springman. Neither entity has any assets beyond its operating checking account. In fact, Defendant Mark Springman advised the Court that Court communications to the Defendants regarding this matter should be sent to him at this home.
6. Defendant Epic Construction Specialties, LLC, entered into a written agreement with Defendant Epic Construction Specialties, LLC, for the construction of a structure in

Allenwood, Lycoming County, Pennsylvania. A copy of that written agreement is attached to the Complaint, marked Exhibit A. That agreement was modified by a subsequent written agreement dated August 20, 2022, attached to the Complaint marked Exhibit B. It appears that the first agreement was executed on August 18, 2022, but bears an erroneous typed date of 2019.

7. The construction of a structure pursuant to the terms of the agreements attached to the Complaint marked Exhibits A and B will hereinafter be referred to as the “Project.”
8. Both Exhibit A and Exhibit B attached to the Complaint contain arbitration provisions, which apparently have been waived by the parties.
9. Both Exhibit A and Exhibit B contain indemnification language to the effect that Epic Construction Specialties, LLC, agrees that “Contractor agrees to indemnify and hold owner harmless from all claims, losses, expenses, fees including attorney fees, costs, and judgments that may be asserted against contractor that result from the acts or omissions of contractor and/or contractor’s employees, agents, or representatives.”
10. Both Exhibit A and Exhibit B contain warranty language to the effect that Epic Construction Specialties, LLC, agrees that “Contractor shall provide its services and meet its obligations under this Contract in a timely and workmanlike manner....” (hereinafter the “Warranty”).
11. Plaintiff made payments to Epic Construction Specialties, LLC, under the written agreements marked Exhibit A and Exhibit B in the total amount of \$20,000.00.
12. Defendants Epic Construction Specialties and Mark Springman undertook excavation on the Project, in the form of digging a trench with an excavator. In the process of that excavation, Mark Springman struck a water line, which halted the Project (hereinafter the “Damaged Water Line”).
13. The Court does not find that Defendant Epic Construction Fabrications, LLC, participated in the Project, nor did that Defendant join in the agreements attached to the Complaint marked Exhibits A and B. Thus, for ease of reference, Defendant Epic Construction Specialties, LLC, and Defendant Mark Springman will hereinafter be referred to collectively as “Defendants,” which is not intended to include Defendant Epic Construction Fabrications, LLC.

14. Neither of the Defendants made any effort to alert utility companies or check on the presence of underground utilities prior to excavation on the Project.
15. The failure of any of the Defendants to alert utility companies or check on the presence of underground utilities prior to excavation on the Project, and the subsequent Damaged Water Line, constituted a breach of the Warranty.
16. As a result of the Damaged Water Line and the breach of the Warranty, the relationship between Plaintiff and the Defendants deteriorated.
17. At some point after the Damaged Water Line, Mark Springman demanded that Plaintiff make more progress payments to Defendants under the terms of the agreements marked Exhibit A and B.
18. Plaintiff made no more progress payments to Defendants beyond the payments in the total amount of \$20,000.00. As a result, Defendants did not return to the project and did not perform the Project.
19. In addition to the payments made by Plaintiff in the total amount of \$20,000.00, Plaintiff was required to pay a bill incurred by Defendants to Axtman Engineering, LLC, for work performed on the Project, in the amount of \$1,111.48.
20. In addition to the payments made by Plaintiff in the total amount of \$20,000.00, and the bill which Plaintiff was required to pay to Axtman Engineering, LLC, in the amount of \$1,111.48, Plaintiff was required to retain Robert Fogelman to perform excavation and other work required to repair the Damaged Water Line, at a total cost of \$5,420.15.
21. Plaintiff received no benefit from the \$20,000.00 paid to Defendants.
22. Plaintiff received no benefit from the \$1,111.48, paid to Axtman Engineering, LLC.
23. The only benefit received by Plaintiff from the \$5,420.15 paid to Robert Fogelman was repair of the Damaged Water Line, which was caused by Defendants.
24. The failure of the Defendants to perform the work required by Exhibits A and B constitutes a breach of those agreements.
25. The failure of the Defendants to refund the \$20,000.00, paid by Plaintiff and the failure of Defendants to reimburse Plaintiff for \$1,111.48, paid to Axtman Engineering, LLC and the failure of Defendants to reimburse Plaintiff for the \$5,420.15 paid to Robert Fogelman, each constitute a breach of the Indemnification language set forth in Exhibits A and B.

26. All acts and omissions of Defendant Epic Construction Specialties, LLC, in connection with the Project was also an act or omission of Mark Springman personally, based upon his personal participation in those acts and omissions.
27. All acts and omissions of Defendant Epic Construction Specialties, LLC, in connection with the Project was also an act or omission of Mark Springman personally, based upon the fact that Defendant Epic Construction Specialties, LLC, is not a bona fide independent entity as referred to in the matter of *Sereda v. Center City Acquisitions, LLC*, 222 A.3d 1161, 1168 (Pa. Super. Ct. 2019). That entity is a single member limited liability company owned and operated by Defendant Mark Springman. The entity has no assets beyond its operating checking account. In fact, Defendant Mark Springman advised the Court that Court communications to the Defendants regarding this matter should be sent to him at this home.
28. The Court finds that the Defendants received payments in the total amount of \$20,000.00, for performing home improvement services and that the Defendants failed to perform those services in violation of the Pennsylvania Home Improvement and Consumer Protection Law.

CONCLUSIONS OF LAW:

1. Within the written agreements attached to the Complaint as Exhibit A and Exhibit B, Epic Construction Specialties, LLC, agreed that “Contractor agrees to indemnify and hold owner harmless from all claims, losses, expenses, fees including attorney fees, costs, and judgments that may be asserted against contractor that result from the acts or omissions of contractor and/or contractor’s employees, agents, or representatives.”
2. Within the written agreements attached to the Complaint as Exhibit A and Exhibit B, Epic Construction Specialties, LLC, agreed to provide Plaintiff with a warranty to the effect that “Contractor shall provide its services and meet its obligations under this Contract in a timely and workmanlike manner....”
3. The failure of any of the Defendants to alert utility companies or check on the presence of underground utilities prior to excavation on the Project, and the subsequent Damaged Water Line, constituted a breach of the Warranty.
4. Neither Defendant Epic Construction Specialties, LLC, nor Defendant Epic Construction Fabrications, LLC, is a bona fide independent entity as referred to in the matter of *Sereda v. Center City Acquisitions, LLC*, 222 A.3d 1161, 1168 (Pa.

Super. Ct. 2019). The two entities are single member limited liability companies owned and operated by Defendant Mark Springman. Neither entity has any assets beyond its operating checking account. In fact, Defendant Mark Springman advised the Court that Court communications to the Defendants regarding this matter should be sent to him at this home.

5. Plaintiff received no benefit from the \$20,000.00 paid to Defendants, and Plaintiff received no benefit from the \$1,111.48, paid to Axtman Engineering, LLC. The only benefit received by Plaintiff from the \$5,420.15 paid to Robert Fogelman was repair of the Damaged Water Line, which was caused by Defendants.
6. Epic Construction Specialties, LLC, breached the terms of the agreements marked Exhibits A and B by failure to perform its obligations under Exhibit A or B, and by failure to alert utility companies or check on the presence of underground utilities prior to excavation on the Project, and by their acts and omissions which resulted in the Damaged Water Line.
7. The failure of the Defendants to reimburse Plaintiff for \$1,111.48, paid to Axtman Engineering, LLC and the failure of Defendants to reimburse Plaintiff for the \$5,420.15 paid to Robert Fogelman is a breach of the Indemnification language set forth in Exhibits A and B.
8. All acts and omissions of the Defendants in connection with the Project were acts and omissions of Mark Springman personally, based upon his personal participation in those acts and omissions.
9. All acts and omissions of the Defendants in connection with the Project were acts and omissions of Mark Springman personally, based upon the fact that neither Defendant Epic Construction Specialties, LLC, nor Defendant Epic Construction Fabrications, LLC, are bona fide independent entities as described in the matter of *Sereda v. Center City Acquisitions, LLC*, 222 A.3d 1161, 1168 (Pa. Super. Ct. 2019).
10. Plaintiff is entitled to recovery under Count II of the Complaint for its payments in the total amount of \$20,000.00, and its payment in the amount of \$1,111.48, paid to Axtman Engineering, LLC, and its payment of \$5,420.15 paid to Robert Fogelman, from both Defendant Epic Construction Specialties, LLC, and Defendant Mark Springman, based upon the contract breaches listed above.

11. The Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-2 provides that “unfair methods of competition” and “unfair or deceptive acts or practices” means any one or more of the following: “failing to comply with the terms of any written guarantee or warranty given to the buyer at, prior to or after a contract for the purchase of goods or services is made[.]”
12. The Pennsylvania Home Improvement and Consumer Protection Law provides, at 73 P.S. § 571.8(a)(2), that a person commits “home improvement fraud” where the person receives “any advance payment for performing home improvement services or providing home improvement materials and fails to perform or provide such services or materials when specified in the contract....”
13. The receipt of payments from the Plaintiff to the Defendants in the total amount of \$20,000.00, for performing home improvement services and the failure of the Defendants to perform those services constituted home improvement fraud in violation of the Pennsylvania Home Improvement and Consumer Protection Law, 73 P.S. § 517.8(a)(2).
14. The Pennsylvania Home Improvement and Consumer Protection Law provides, at 73 P.S. § 517.10, that a violation of the provisions of that Act “shall be deemed a violation of the [Unfair Trade Practices and Consumer Protection Law]....”
15. Plaintiff is not entitled to recovery on Counts III or IV of the Complaint, under the “gist of the action” doctrine. The gist of the action doctrine as articulated by our state appellate courts—as well as federal courts applying Pennsylvania law—“[i]s designed to maintain the conceptual distinction between breach of contract claims and tort claims...[a]s a practical matter, the doctrine precludes plaintiffs from recasting ordinary breach of contract claims into tort claims.” *eToll, Inc. v. Elias/Savion Advertising, Inc.*, 811 A.2d 10, 14 (Pa. Super. Ct. 2002) (citing *Bash v. Bell Telephone Company of Pennsylvania*, 601 A.2d 825, 829 (Pa. Super. Ct. 1992), *superseded on other grounds*, 741 A.2d 808 (Pa. Super. Ct. 1999)); *see Bruno v. Erie Insurance Company*, 106 A.3d 48, 56 (Pa. 2014) (articulating the applicability and viability of the gist of the action doctrine in the Commonwealth); *see also Mirizio v. Joseph*, 4 A.3d 1073, 1085 (Pa. Super. Ct. 2010) (“Each tort claim must be analyzed independently and a determination made as to whether the tort claim is the gist of the action and the contract is collateral to the matter.”). Because Count III of the

Complaint alleges negligence—a claim in tort—and the facts as a whole establish a claim in contract, Count III is squarely governed by the gist of the action doctrine. Similarly, because Count IV of the Complaint alleges conversion—a claim in tort—and the facts as a whole establish a claim in contract, Count IV is also governed by the gist of the action doctrine.

16. The Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-9.2 provides that, where the court finds a violation of that Act, “the court may, in its discretion, award up to three times the actual damages sustained....”
17. The Court finds that the Plaintiff is entitled to double damages as a result of Defendants’ violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, and The Pennsylvania Home Improvement and Consumer Protection Law.

ORDER

AND NOW, this 2nd day of December, 2024, after a bench trial conducted on November 26, 2024 and for the reasons more fully set forth above, decision is entered in favor of Plaintiff and against both Defendant Epic Construction Specialties, LLC, and Defendant Mark Springman, jointly, severally, and separately, as follows:

- | | |
|--|--------------------|
| 1. On Count II of the Complaint, for breach of contract: | \$26,531.63 |
| 2. On Count I of the Complaint, as a result of Defendants’
violations of the Pennsylvania Unfair Trade Practices and
Consumer Protection Law, and the
Pennsylvania Home Improvement and
Consumer Protection Law: | \$26,531.63 |
| Total: | \$53,063.26 |

The Complaint will be dismissed as against Defendant Epic Construction Fabrications, LLC.

Counts III and IV of the Complaint will be dismissed under the gist of the action doctrine.

The parties are reminded of their obligation under Rule 227.1 of the Pennsylvania Rules of Civil Procedure to file any Motion seeking Post-Trial Relief within ten (10) days of the date of filing of this Order.

BY THE COURT,

William P. Carlucci, Judge

WPC/aml

cc: Bret J. Southard, Esq.
Epic Construction Specialties, LLC c/o Mark Springman
Epic Construction Fabrications, LLC c/o Mark Springman
Mark Springman
519 State Route 87 Highway
Montoursville, PA 17754