

IN THE IOWA DISTRICT COURT IN AND FOR SCOTT COUNTY

H.L. CONSTRUCTION, LLC,	)	
aka H.L. HOMEBUILDER, LLC, and)	)	
QUAD CITY ROOTER &	)	
PLUMBING, INC.	)	
	)	
Plaintiffs,	)	CASE NO. LACE130366
	)	
vs.	)	
	)	RULING ON DEFENDANT/ COUNTERCLAIM PLAINTIFFS' MOTION FOR NEW TRIAL ON COUNTERCLAIMS
JONATHAN UHL and	)	
JUSTINE UHL,	)	
	)	
Defendants.	)	
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JONATHAN UHL and	)	
JUSTINE UHL	)	
	)	
Counterclaim Plaintiffs,	)	
	)	
vs.	)	
	)	
H.L. CONSTRUCTION, LLC,	)	
aka H.L. HOMEBUILDER, LLC,	)	
	)	
Counterclaim Defendants.	)	

This is a case in which Plaintiffs H.L. Construction, LLC, et al, agreed to construct a home for Defendants Jonathan Uhl and Justine Uhl pursuant to a written contract for \$230,690. The parties orally modified the contract by adding various additional items to the scope of work. Plaintiffs constructed the home and were not paid their final draw due under the contract of \$52,360.89 and brought suit seeking that amount plus interest at 12 percent due under the contract. Defendants were not happy with various aspects of the home which they believed

constituted shoddy or substandard construction. A punch list of items Defendants wanted remedied was prepared, but never ultimately completed. There was evidence introduced from which the jury could have concluded the punch list items were never completed due to the fact that the defendants had not paid the final draw. The contract provides that if a draw is unpaid, the builder may stop work until such time as the payments to the builder are paid. Defendants brought a counterclaim for breach of express and implied warranties and claimed extensive damages. Defendants presented evidence that the cost of repairing all of the alleged defects in their home exceeded \$100,000. In fact, the Court recalls that in closing arguments counsel for Defendants/Counterclaim Plaintiffs asserted their damages were \$300,000. In the Court's view, Defendants claimed damages were exaggerated.

The evidence was received and the jury instructed. There were no objections by either party to the Court's instructions. The jury began their deliberations at approximately noon on July 30 and reached its verdict at approximately 1:30 p.m. the next day. The jury found that the defendants had breached the parties' contract (Count 1) and Defendants had been unjustly enriched (Count 2) and awarded zero damages to Plaintiffs. With respect to Defendants' counterclaim, the jury found that Plaintiffs had breached the parties' contract (Count 1 of

counterclaim); Plaintiffs had breached the express warranty (Count 2 of counterclaim); and Plaintiffs had breached the implied warranty (Count 3 of counterclaim) and awarded zero damages.

The Court recalls very clearly that, while counsel for the parties had agreed to a sealed verdict, the Court had required counsel to either remain present at the Scott County Courthouse or immediately available by telephone in the event the jury had any questions or in the event there was a verdict. At approximately 1:30 p.m. the court attendant, Alex Ogden, informed the Court that the jury had reached its verdict, and Ms. Ogden handed the verdict to the Court. Counterclaim Plaintiffs' attorneys, Aaron Miers and Peter Wenker<sup>1</sup> were physically present. Plaintiffs' counsel Kristina Lyon was reached by telephone. With Ms. Lyon on speakerphone, the Court read the verdict to all counsel and specifically asked counsel for both parties if the verdicts were inconsistent and whether there was any reason why the Court should not accept the verdict. Counsel for both parties answered that there was no reason why the verdict could not be accepted by the Court. Neither party raised any inconsistencies with the verdict. Only after that did the Court discharge the jury.

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<sup>1</sup> Not present counsel.

The Court entered judgment on the jury's verdict dismissing Plaintiffs' Petition and Defendants' Counterclaim at each party's cost.

The above proceedings regarding what occurred immediately after the verdict was rendered was the subject of the Court's Order Regarding Bill of Exceptions filed September 3, 2021. The Court entered that Order after realizing that the Court's discussion with counsel regarding the verdict had not been on the record. Plaintiffs' Counsel Kristina Lyon filed an affidavit agreeing with the Court's recollection. Counsel for Defendants/Counterclaim Plaintiffs did not dispute the Court's recitation of events, and the Court therefore concludes there was no disagreement that the Court's order accurately set forth what occurred.

Counterclaim Plaintiffs' Motion for New Trial on Counterclaims asserts the verdicts were inconsistent because, based on the instructions, if the jury found all of the elements of Counterclaim Plaintiffs' express warranty claim (Instruction No. 25) and found for Counterclaim Plaintiffs on all elements of the implied warranty claim (Instruction No. 28), they were instructed that "Defendants were entitled to damages in some amount." Counterclaim Plaintiffs also note that the jury was instructed per Instruction 34 that they were not to offset damages awarded to Plaintiffs against damages awarded to

Defendants/Counterclaim Plaintiffs. So, Counterclaim Plaintiffs assert that the verdict must be set aside as inconsistent. The jury also found for Plaintiffs, finding that the defendants did breach their contract with Plaintiffs, Defendants were unjustly enriched, and awarding zero damages.

Defendants/Counterclaim Plaintiffs' Have Waived Any Alleged  
Inconsistencies in the Verdict

"When a party raises a complaint about the consistency of a jury verdict for the first time in a Motion for New Trial, that party robs the Court of the most efficient and convenient corrective action: requesting the jury continue deliberation in order to correct any inconsistency." *McGinnis v. Vischering, LLC*, 808 N.W.2d 756 (Iowa Ct. App. 2011). "Under our error preservation rules a party must raise an objection 'at the earliest opportunity in the progress of the case.'" As noted above, while the parties had initially agreed to a sealed verdict, that is not what occurred because the Court instructed that counsel for both parties needed to be available for questions or in the event a verdict was reached. The Court specifically asked counsel for both parties if they believed the verdicts were inconsistent and they replied that they did not. Had an objection been raised, the Court would have been able to consider the matter and determine whether it would be appropriate to require the jury to resume deliberations to

correct the alleged inconsistency. That was not done, and the Court was therefore robbed of the most efficient and convenient corrective action, requesting the jury continue to deliberate in order to correct any inconsistency.

The Jury's Verdict Effectuated Substantial Justice Between  
the Parties

As an initial matter, the Court notes that most of the cases cited by Defendant/Counterclaim Plaintiffs in support of their Motion for New Trial are personal injury cases involving a fairly familiar scenario in which a jury finds liability but awarding zero damages. They are not particularly helpful. Further, none of the cases cited by Defendant/Counterclaim Plaintiffs involve a counterclaim.

Here we have a situation in which Defendants clearly did not pay the final draw due under the contract of \$52,360.89 and the contract calls for interest at 12 percent. The jury found Defendants had breached the contract but awarded zero damages. Likewise, the jury found in favor of Defendant/Counterclaim Plaintiffs on their claims, but awarded zero damages. While these verdicts are perhaps somewhat surprising, they could be supported by a jury's conclusion that each side had failed to prove their damages with sufficient specificity. To the extent the jury determined that each side suffered damages but that they offset each other, that is seemingly in violation of the

Court's Instruction 34 that they were to not offset damages awarded to Plaintiffs against damages awarded to Defendant/Counterclaim Plaintiffs. However, the Court does not know that they violated the instructions of the Court. One thing the Court is confident about and that is that the verdicts did substantial justice between the parties. There was not any suggestion whatsoever that the jury was influenced by any passion or prejudice for or against either party.

Mr. Hong, the primary witness to testify on behalf of Plaintiff, was a very likeable Vietnamese fellow who came across at least to the Court as very honest and eager to build a good home for his customers. He, in fact, admitted at trial that there were some deficiencies that he would still be willing to fix to this day. While there certainly was some deficiencies identified by Defendant, overall the numerous photographs of the home seemed to show a home of suitable quality.

Jonathan Uhl was one of the primary witnesses for Defendants. While he had a fairly nice demeanor on the witness stand, at least in the Court's view he tended to exaggerate the severity of various alleged defects, most of which appeared quite cosmetic and an easy fix. Defendants' Motion for New Trial suggest that Defendants sought damages in excess of \$100,000. While that is true, it vastly understates their claims as in closing arguments counsel for the Uhls asked for

damages in excess of \$300,000. In the Court's view, this was a wild exaggeration. The practical effect of this request is that the Uhls asked the jury to award them their new home for free.

One of Counterclaim Plaintiffs' expert witnesses was a gentleman working in the home repair business who prepared an estimate at the request of the Uhls. This witness did not testify to whether there were any defects, simply to the fact that he had prepared an estimate at the request of the Uhls. Many of the items which were the subject of his estimate seemed to have fairly little to do with the alleged defects. A number of the items appeared to be, in essence, modifications to the home as opposed to work necessary to modify alleged defects. The jury might well have, in essence, thrown up their hands when attempting to determine exactly what was necessary to remedy the alleged defects claim.

Plaintiffs had damages for breach of contract in the form of clear evidence of the defendants' failure to pay the last draw. Counterclaim Plaintiffs certainly did introduce some evidence of faulty workmanship, but it certainly would have been very difficult to precisely quantify the damages from the allegedly faulty workmanship. While the Court obviously was not in the jury room, perhaps they did determine that the value of the respective claims offset each other, leading to a zero verdict for both parties. If that is what occurred, does that

violate the Court's instruction regarding not offsetting damages? Yes, it does. But did the verdict result in substantial justice between the parties? The Court is confident that it does.

"It is fundamental that a jury's verdicts are to be liberally construed to give effect to the intention of the jury and to harmonize the verdicts if it is possible to do so." Hoffman v. National Medical Enterprises, Inc. 442 N.W.2d 123, 126 (Iowa 1989) (*citing* Granger v. Gruehauf Corp., 412 N.W.2d 199, 203 (Mich. 1987)). "The test is whether the verdicts can be reconciled in any reasonable manner consistent with the evidence and its fair inferences, and in light of the instructions of the court." Hoffman, 442 N.W.2d at 126-27.

As the Court is confident that the jury's verdict effectuated substantial justice, Counterclaim Plaintiffs' Motion for New Trial on Counterclaims is denied.

IT IS ORDERED that Counterclaim Plaintiffs' Motion for New Trial on Counterclaims is DENIED.




State of Iowa Courts

**Case Number**  
LACE130366  
**Type:**

**Case Title**  
HL CONSTRUCTION, LLC V. JOHNATHAN UHL & JUSTINE  
OTHER ORDER

So Ordered



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John Telleen, District Court Judge,  
Seventh Judicial District of Iowa

Electronically signed on 2021-11-30 11:31:16