

Contract law — damages

Trial court correctly awarded plaintiffs damages on the basis that the defendants failed to properly replace the plaintiffs' roof but erroneously awarded the plaintiffs attorney fees and costs.

The Illinois Appellate Court, 5th District, has affirmed in part and vacated in part a ruling by St. Clair County Circuit Judge Vincent J. Lopinot.

Herbert and Jeral Dean Kunkel sued Peter Kofargo and Dependable Roofing and Construction Co. The plaintiffs alleged that on July 25, 2003, they entered into a contract with the defendants for the replacement of the roof on the plaintiffs' residence.

The plaintiffs alleged that the roof the defendants installed was defective and despite numerous demands to comply with the defendants' five-year warranty and numerous attempts by the defendants to repair the problems with the roof, the roof continued to leak and needed to be replaced.

Count 1 of the complaint alleged breach of contract and warranty and Count 2 alleged a violation of sections 2Q(c) and 2Z of the Illinois Consumer Fraud and Deceptive Business Practices Act.

At a bench trial, the plaintiffs testified that they paid the defendants' bill of \$5,623 in full and that the roof project was completed on Aug. 12, 2003. They said that during the first rain after the job was completed, the roof began leaking inside the plaintiffs' house. The plaintiffs said that attempts by the defendants to correct the problems continued over the next three years.

Another roofing contractor testified at the trial that in order to resolve the problem with the leaks, it would be nec-

essary to tear the roof off and start again to see what was underneath the shingles and what was causing the leaks. His estimate of the cost was \$5,250.

The trial court found in favor of the plaintiffs and awarded the plaintiffs \$6,725 in compensatory damages on Count 1 of the complaint. On Count 2, the trial court awarded the plaintiffs attorney fees and costs of \$6,151.

The appeals court affirmed the award of compensatory damages but vacated the trial court's award of attorney fees and costs. The appeals court said there was ample evidence to support the trial court's finding that the problems the plaintiffs experienced with the roof "were a product" of the defendants' defective workmanship.

The appeals court said the compensatory damages reflected the estimate that the plaintiffs received from the roofing contractor who testified in their behalf at trial for replacing the roof and the kitchen ceiling.

"The measure of damages when a contractor has provided defective performance is generally the cost of correcting the defective condition," the appeals court said.

But the appeals court found that the trial court erred in awarding attorney fees and costs under provisions of the consumer fraud statute. The appeals court said that attorney fees can be awarded only pursuant to statutory authority or a contractual agreement.

The appeals court said that the trial court's award of fees and costs was based on the Consumer Fraud Act provision that "any person who knowingly violates the ... Home Repair and Remodeling Act ... commits an unlawful practice...."

The appeals court said the Home Repair and Remodeling Act provides that for any contract over \$1,000, "any person engaged in the business of home repair and remodeling shall

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the tablets — these are priceless treasures.

For others, they may one day be payment for a terrible deed.

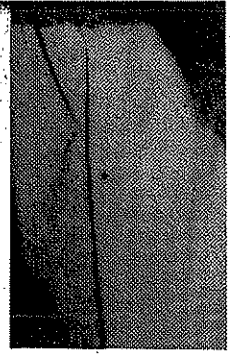
In an extraordinary battle unfolding slowly in federal court here, several survivors of a suicide bombing in Jerusalem in 1997 sued the government of Iran, accusing it of being complicit in the attack. They won a \$412 million default judgment from a judge in Washington, D.C., and when their lawyer began looking for places to collect, he turned to the past.

He decided to try to seize the tablets, along with collections of Persian antiquities at the Oriental Institute and other prominent museums. The goal: sell them, with the proceeds going to the bombing survivors.

His plan, though, has angered many scholars who see it as an attempt to ransom cultural artifacts and fear it could set a dangerous precedent.

"Imagine if the Russians laid claim to the Declaration of Independence, the Constitution and the original draft of the Gettysburg Address because they had a legal case against us," says Gil Stein, director of the Oriental Institute. "How would we feel?"

The fight over the Persepolis tablets



Gil Stein (left), director of the Oriental Institute, and other prominent museums. The goal: sell them, with the proceeds going to the bombing survivors.

spans continents and tures an eclectic cast Jones-type, dirt-on-theologists, and lawyers in the nation's most parties, and haunted su attack. Iran and the U

Add to that Pres was recently asked

\$3.7 million accord for loss of arms in punch press

By John Flynn Rooney
Law Bulletin staff writer

A \$3.7 million settlement has been reached in the case of a downstate man who lost both arms below the elbow in an industrial accident.

All told, Justin Haddix will receive a total of \$5.1 million due to a 2002 settlement with another defendant in the case, said his attorney, Scott D. Lane of Lane & Lane LLC in Chicago.

The more recent settlement came during a pre-trial conference Friday before Cook County Circuit Judge Jennifer Duncan-Brice, Lane said.

Haddix, 19 at the time of the November 1996 accident, was working as a punch press operator at Yetter Manufacturing Co. in the western Illinois town of Colchester. The punch press malfunctioned, causing a part of the machine to come down on his arms, Lane said. Amputations later were performed on both arms.

Seven years ago, Senior U.S. District Judge James B. Moran approved a \$1.4 million settlement involving Yetter Manufacturing.

Haddix' case was then remanded to the Cook County Circuit Court on the remaining product liability claims against

Federa

HOUSTON — lying to investigate retrary in exchange charges alleging he court employee.

U.S. District Ju charged with a sex ly, avoiding possibl

Kent's guilty pl selection for his tr

The jurist, who "hordes of witness whisper as he pleau investigating the s

"Judge Kent bel the best interest DeGuerin, said in embarrassing and

Kent, 59, had b federal sex crimes alone carries a m prison and a fine of

Kent had vigorou had said the judge's al and consensual.

Prosecutors had ing there was noth the two women: Ce and Donna Wilkers

Both women we guilty plea.

Inside

Family Law

H. Joseph Gitlin examines the changes that have occurred in how appeals courts weigh the impact of cohabitation when resolving disputes involving custodial care of children following divorce.

Chilly Reception

Workers may have gained more ammunition for filing job bias claims in federal court recently, but the odds are still long, Nathan Koppel writes.

5 Amicus Curious

3 Carlton R. Marcyan enjoys the relaxation and contact with nature that he experiences when he climbs on his motorcycle, as well as the legal work he gets from fellow riders.

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15 New Suits

Some argue this approach is misguided because it could deprive a nation of its heritage — and have no impact on those responsible for the bombing.

Over the decades, tens of thousands of tablets were returned to Iran after scholars finished studying and cataloguing them.

When the Oriental Institute announced it was delivering more to Iran in 2004, Strachman heard about it.

He had been able to collect just a small part of the judgment from Iranian bank accounts and a house in Texas once owned by the shah of Iran.

This, he realized, could be an opportunity.

No one knows how much the tablets would fetch on the open market. Some academics believe it would be a mere fraction of the enormous judgments; others think no institution would even bid on them considering the legal tug-of-war.

Strachman, however, maintains he has been contacted by interested museums who want to expand their collections and says he has no intention of trying to sell them commercially.

He has sued the Field Museum in Chicago, too, as well as the Harvard museums and the Museum of Fine Arts in Boston for other Persian artifacts. In those cases, lawyers deny the items belong to the government of Iran.

As this case works its way through the courts, Stein, head of the Oriental Institute, worries about broader implications.

"It would have a deadly, chilling effect on any kinds of cultural exchanges in the future," he says.

Antigua-based operation by his 81-year-old father, James, and by another resident of Mexia, Texas, described on the company Web site as an "active investor and cattle rancher."

But that man, O.Y. Goswick, 85, suffered a stroke in 2000 and hasn't been able to speak, according to his son.

A bank's board is supposed to oversee management, but only two board members — Allen Stanford and James Davis, his college roommate — knew how the money was invested, the SEC alleges.

ca massacre so he could get into the United States. The man complained that authorities lied to him to get his confession. *Boskic v. U.S.*, No. 08-941.

• Sided with Rambus Inc., a developer of computer memory technology, in its antitrust fight with the Federal Trade Commission. The FTC said Rambus violated antitrust law, but a federal appeals

The panel said that would simply a restatement of the statutory arguments.

"By doing nothing more than dressing up their claims under the Administrative Procedure Act as constitutional violations, the Ogbolmanis failed to state a claim," Evans wrote, citing *Limestone Development Corp. v. Village of Lemont*,

Hiring

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schools had consistently reported an increase in the number of employers on campus," the survey report said.

In a small bright spot, schools in the Midwest were less likely to report a decrease of 5 percent or more in employers conducting on-campus interviews. Only 34 percent of Midwest schools reported this. Midwest law schools were more likely to report an increase of employers conducting on-campus interviews (41 percent, compared to only 26 percent nationwide).

On the employer side, 39 percent of employers reported visiting fewer schools. About 30 percent visited more schools.

Regarding the number of summer associates in 2008 who got job offers from their employers to become entry-level associates after graduation, NALP

Worker

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Danly Machine Co., the manufacturer of the punch press, along with Cooper Industries Inc., which manufactured component parts, Lane said.

Settlement negotiations stalled until late last year, according to Lane. In November 2008, the Illinois Supreme Court ruled that defendants in negligence suits who settle prior to trial should not be named on jury verdict forms for the purpose of apportioning liability. *Terry E. Ready v. United/Goeddecke Services Inc., et al.*, WL 5046833.

"The *Ready* [decision] was without a doubt the key to getting this case resolved," Lane said Monday.

"I think the *Ready* decision forced some of the insurance carriers involved to reevaluate their settlement positions because, without apportionment, the

Ginsburg

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Ginsburg was appointed in 1993 by President Clinton and is the only woman on the high court. Her health has been a matter of speculation in Washington, where the Senate would have to confirm any new Supreme Court justice.

On Monday, spokesman Randall Samborn said the U.S. attorney's office would see what it could do.

"We are reviewing the decision and will heed the court's urging to consider all options as we proceed," Samborn said.

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said 89.9 percent received such job offers. This was down from 93 percent in 2007 and was the lowest job offer rate since 2003.

Eighty percent of these job offers were accepted, which NALP said is the highest job offer acceptance rate since NALP began compiling the figures in 1993.

Regarding summer associate hiring, an individual law student may get more than one offer of a summer associate job following campus-interviews, so the number of jobs offers employers extend is higher than the number of available jobs.

The median size of actual summer associate programs in U.S. legal employers has ranged from a high of 8.5 summer associates in 2000 to a median of 5 from 2002 to 2004, and back up to 6 from 2005 to 2008.

case was going to be essentially all or nothing," L. Michael Tarpey, a partner with Hall, Prangle & Schoonveld LLC in Chicago, representing Danly Machine Co., said Monday.

Danly settled the matter for \$3.45 million, while Cooper settled for \$245,000, according to Lane. *Justin Haddix v. Danly Manufacturing Co., et al.*, No. 01 L 2814.

James D. Sloan, a partner with Donohue, Brown, Mathewson & Smyth LLC in Chicago, also represented Danly Manufacturing.

"Our contribution to the settlement was merely the cost of future litigation," said Paul Bozych, who along with Todd M. Murphy, both with Clausen, Miller P.C. in Chicago, represented Cooper Industries.

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Ginsburg has "bad cancer. The kind that you don't get better from," the two-term senator said, according to the *Courier-Journal* of Louisville.

"Even though she was operated on, usually, nine months is the longest that anybody would live" with pancreatic can-

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