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2012 IL App (4th) 110615-U

Filed 2/27/12

NO. 4-11-0615

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

DENNIS EVANS and SHELLIE EVANS,	)	Appeal from
Plaintiffs-Appellants,	)	Circuit Court of
v.	)	Vermilion County
KEVIN KIRK, d/b/a SMOOT CONSTRUCTION	)	No. 09LM279
COMPANY,	)	
Defendant-Appellee.	)	Honorable
	)	Derek J. Girton,
	)	Judge Presiding.

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JUSTICE POPE delivered the judgment of the court.  
Justices Appleton and McCullough concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* (1) The trial court erred in dismissing count I of plaintiffs' complaint as it applied to the driveway and garage floor allegations but correctly found for defendant on count I with respect to the excessive moisture allegation.
- (2) The trial court erred in finding plaintiffs were not entitled to be reimbursed pursuant to section XI of the contract for any of the work done to correct the excessive moisture problem in the house.
- (3) Plaintiffs forfeited their argument regarding the trial court's dismissal of count III of their complaint.
- ¶ 2 In May 2009, plaintiffs, Dennis and Shellie Evans, filed a three-count complaint against defendant, Kevin Kirk, d/b/a Smoot Construction Company. The complaint arose out of alleged defects in a home constructed for plaintiffs by defendant. Count I alleged defendant breached section II of the contract by failing to construct the home in a professional and workmanlike manner. Count II alleged defendant breached an express warranty found in section

XI of the contract. Count III alleged defendant breached an implied warranty of good workmanship by failing to construct the home in a good and workmanlike manner. In May 2011, the trial court dismissed counts I and III of plaintiffs' complaint. The court awarded plaintiffs \$450 on count II of their complaint for failure to properly install the front porch columns and bases. However, the trial court denied plaintiffs' other requests for damages in count II.

¶ 3 Plaintiffs appeal, arguing the trial court erred in dismissing counts I and III of their complaint and in finding they were not entitled to damages for the excessive moisture problem in the house. We affirm in part and reverse and remand in part.

¶ 4 I. BACKGROUND

¶ 5 In May 2009, plaintiffs filed their three-count complaint against defendant, alleging breach of contract, breach of express warranty, and breach of implied warranty. The complaint alleged plaintiffs and defendant entered into a written contract for the construction of a home in Danville, Illinois. In count I of the complaint, plaintiffs alleged defendant breached the contract, specifically section II of the contract, in 17 different ways. Plaintiffs alleged they brought these deficiencies to the defendant's attention but he failed to cure the breach.

¶ 6 In count II, plaintiffs pointed to the following language in the contract: "Contractor warrants and guarantees to the Owners all workmanship for one year and manufacturer's warranties as implied, with the exception of all concrete work." Plaintiffs alleged the same 17 defects in this count. Plaintiffs stated defendant was notified of these defects within one year of defendant's last day on the job.

¶ 7 In count III, plaintiffs alleged defendant breached an implied warranty. According to this count, defendant "impliedly warranted that all work performed would be performed in a

good and workmanlike manner" when he entered into the construction contract with plaintiffs.

Plaintiffs again alleged the same 17 defects included in counts I and II. Again, plaintiff alleged defendant was notified of the defects but "chose not to attempt to cure" the same.

¶ 8 On February 15, 2011, plaintiffs asked for leave to amend their complaint. According to their motion, after their complaint was filed, a problem with the driveway appeared. The complaint alleged the driveway was chipping away. Plaintiffs alleged defendant would not be prejudiced by the amendment because both defendant and his attorney had known of plaintiffs' concern over the condition of the driveway for more than 10 months. The trial court allowed the amendment.

¶ 9 A bench trial began in April 2011. Plaintiff Dennis Evans testified the house was finished on December 12, 2007. He and his family moved into the house prior to Christmas 2007. He testified he noticed problems with the house within the first 12 months he lived there. He brought these problems to defendant's attention. Defendant corrected some of the small issues, but most of the problems were not resolved. As a result, Dennis contacted an attorney, Bill Young, who sent a letter to defendant notifying him of certain things needing to be done at plaintiffs' house. Dennis testified he did not hear anything from Kirk in response to this letter.

¶ 10 After attorney Young retired, plaintiffs retained another attorney, Bill Townsley. Attorney Townsley sent defendant a letter about the situation on February 3, 2009. Dennis testified he did not hear anything from defendant or anyone else at Smoot Construction regarding this second letter.

¶ 11 Dennis testified he first started noticing problems with the windows in January 2008, shortly after they moved into the house. He testified the windows were very foggy and a

lot of condensation was present on the windows. According to his testimony, a puddle would sometimes form on the hardwood floor by the front door because of excessive condensation forming on the window running alongside the front door. He testified other windows would sometimes become so foggy you could not see outside.

¶ 12 Dennis stated he called defendant to tell him about the windows during the first part of 2008. Kirk sent Andy Gold to check on the issues at the house. Gold told plaintiffs the house would likely have moisture and condensation during the first winter because everything was wet during the construction process. Gold did not do anything to the windows. Defendant told Dennis to try cracking a window and running the exhaust fan to try to help with the window moisture problem. Dennis testified he and his wife followed defendant's suggestion but nothing seemed to help. The problems worsened. Neither defendant nor any employee of Smoot Construction did anything about the windows installed in the home.

¶ 13 Dennis testified he eventually contacted Freeman Construction and Jacob Freeman laid down heavy plastic to create a moisture barrier and sealed off all visible signs of any holes or vents in the crawl space. Freeman also wrapped all the ductwork in the basement. Dennis testified he paid Freeman Construction \$987.54 for the vapor barrier and \$1,277.82 to insulate the ductwork. Freeman Construction's work greatly improved the moisture problem. Freeman Construction did this work in either January 2009 or January 2010.

¶ 14 Dennis testified the crawl space was extremely wet. He first observed this in the winter of 2009-10. This problem was corrected by the work of Freeman Construction.

¶ 15 In addition, Dennis testified he noticed problems with the garage floor just before they moved into the house. He testified the garage floor was very rough, especially on the south

side. He stated he discussed this issue with defendant before he moved into the house. Defendant told him he did not think it was that bad and said it would not get any worse. According to Dennis, defendant said he would be back in the summertime to thoroughly clean and spray more sealant on the garage floor, which he never did. Dennis also testified about a hole in the concrete where the garage floor meets the driveway.

¶ 16 According to Dennis's testimony, after he determined defendant was not going to return to do anything with respect to the garage floor, he called Neil Roach, who Dennis testified was a concrete specialist, to look at the garage floor. He was given an estimate to fix the floor but did not proceed with the repairs because it was too costly.

¶ 17 Dennis also testified the driveway was pitting and flaking badly. Defendant testified the condition of the driveway deteriorated since he first noticed the issue in the winter of 2008-09. This problem was brought to Kirk's attention in the spring of 2010.

¶ 18 On cross-examination, Dennis admitted the building contract did not call for the ductwork in the crawl space to be insulated. Dennis testified the window condensation problems occur in the winter when it is cold outside and warm inside. He testified he received a bid to fix the garage floor in March 2010. He testified the problems stated in the letter from attorney Townsley dated February 3, 2009, were present within the first 12 months of moving into the house.

¶ 19 Defendant, called as an adverse witness, testified he is the sole owner of Smoot Construction. He also testified he presented the contract at issue to plaintiffs. Defendant testified he felt a moisture problem existed in the home, which was causing moisture to develop on the windows inside the house. Defendant stated he had seen this happen before but not with

every house. He testified Dennis Evans made him aware of the moisture problem during the first winter they were in the house. Kirk stated he was unable to determine on his own what was causing the moisture issue. However, he testified the windows were correctly installed. He also testified the garage floor constituted acceptable workmanship. According to his testimony, he did not see any spalling on the garage floor during the first year after the house was turned over to plaintiffs. However, he later testified the last time he saw the garage floor during that first year was in June 2008. Kirk testified, assuming the homeowner did not use any kind of chemical or salt on the driveway, he could not explain why the concrete was spalling.

¶ 20 Neil Roach, president and chief executive officer of Creative Construction by Design, testified his company does residential, industrial, and commercial concrete installation. Dennis Evans contacted him sometime during 2008 to evaluate the condition of the concrete floor in his garage. When he looked at the floor it was "in a less than desirable condition." According to Roach, the concrete was improperly finished because it did not have a smooth surface. He also testified he noticed some spalling issues at the garage door location.

¶ 21 Roach testified the condition of the garage floor was not an acceptable result for residential construction. According to his testimony, it was an example of work not being done in a workmanlike manner. After looking at pictures of the garage floor, Roach testified it appeared the garage floor had continued to deteriorate. Roach stated he went back to the house in the spring of 2010 and saw spalling over a large area of the concrete driveway. Roach testified he assumed the spalling was caused by the concrete not being worked well enough before it was broom finished. He testified the driveway could be fixed by resurfacing. It was his opinion the concrete was improperly finished. He estimated it would cost \$4,968 as of March 30, 2010, to

fix the garage floor and \$7,500 to fix the driveway.

¶ 22 Jacob Freeman testified he is the co-owner of Freeman Custom Homes and General Contracting. He came to plaintiffs' house in January 2010. The crawl space was seemingly dry at that time but quite humid. He observed the window condensation problem but could not say the windows were improperly installed. He testified he replaced the vapor barrier but was not sure this was necessary. He also testified running a dehumidifier might have solved the humidity problem. The uninsulated ductwork in the crawl space was emitting extra heat into the crawl space. Because the foundation wall was uninsulated, the cold air entering the crawl space combined with the heat being emitted from the ductwork to cause the condensation problem. Freeman testified he insulated all of the ductwork and blocked off the vents. After this work was done, the condensation problems with the windows stopped. Freeman testified he charged plaintiffs \$987.54 to install the vapor barrier and block the vents and \$1,277.82 to insulate the ductwork. Freeman testified he believed insulating the ductwork lowered the levels of condensation on the waterlines in the crawl space.

¶ 23 Defendant testified a moisture barrier was installed in the crawl space in a professional and workmanlike manner. It was installed after the footings were poured, prior to the installation of the block, and tile was put down around the perimeter of the crawl space to the sump pump. The purpose of the tile was to collect moisture that might penetrate the foundation.

¶ 24 Defendant also testified he worked on the installation of the garage floor. He testified a spot in the center of the concrete floor pad started setting up faster than the rest of the concrete pad. It flashed over, which resulted in some trowel marks and swirls. However, it was still structurally sound. He conceded the spot does not look as good as the rest of the floor but

stated it was neither too high nor too low. Defendant testified he put a light sealer coat on the concrete and then a heavy coat within the same hour. He testified the garage floor was placed, vibrated, finished, sealed, and saw cut in a workmanlike manner.

¶ 25 As for the driveway, defendant testified the installation was done in a workmanlike manner. Defendant acknowledged the driveway now did have spalling. However, based on his knowledge of how the concrete was finished and the makeup of the concrete, he believed the spalling had to be caused by an outside factor. He testified this driveway was finished in the exact same manner as he finishes all exterior concrete. According to defendant's testimony, he had never seen a situation like this one.

¶ 26 Defendant testified the driveway was poured on October 4, 2007. He was on the jobsite through December and did not see any problems or defects in the concrete. He testified the following fall he was working next door to plaintiffs' home. He did not notice any problems with spalling or any other difficulties with the driveway. Further, defendant stated no mention was made of the driveway in the letters he received from either attorney Townsley or attorney Young. The initial complaint in the case also did not mention the driveway.

¶ 27 Defendant testified the cost of removing and replacing the driveway would be approximately \$5,400.

¶ 28 At the end of the case, the trial court asked for, and the parties agreed to submit, written closing arguments. The court stated: "I think there's a couple of legal questions that you might want an opportunity to quote or cite some case law. If you're opposed to doing that I'm happy to let you make oral arguments, but I do think that there is—especially with the issue of the warranty clause, I would find it helpful to have some case law cited to me."



¶ 29 The parties submitted written closing arguments. Plaintiffs first pointed to section II of the contract in support of count I of their complaint:

“Contractor shall construct the structure in conformance with the plans, specifications, and proposal, dated 6/06/07, and submitted by Contractor and will do so in a professional and workmanlike manner.”

Plaintiffs argued this undertaking by Kirk was not limited as to time and did not except any part of the work. In the alternative, plaintiffs argued defendant breached an express warranty in the contract. Plaintiffs point to section XI of the contract, which states:

“Contractor warrants and guarantees to the Owners all workmanship for one year and manufacturer’s warranties as implied, with the exception of all concrete work.”

Plaintiffs argued the defects did not have to be brought to defendant’s attention during the first year. They also argued this language does not “limit or otherwise water down the other promises made in the contract, such as those relied upon in count I. Neither the warranty language, nor any other language of the contract limits the effect of any other rights or remedies available to the Plaintiffs.” According to plaintiffs, “This is important to keep in mind in discussing Count III of the Complaint.” Count III alleged Kirk breached an implied warranty to perform all work in a good and workmanlike manner.

¶ 30 In May 2011, the trial court issued a written order. The court found counts I and II of plaintiffs’ complaint were essentially the same under the circumstances of this case.

According to the court, any violations of the section XI warranty provisions would also constitute

a breach of contract. In addition, the court found the express warranty addressed all the issues raised by plaintiffs and no additional implied warranties existed in light of the express warranty. As a result, the court dismissed counts I and III. As to count II, the court made the following findings pertinent to this appeal. First, the court stated no evidence was presented showing the moisture problem in the house was caused by a failure to properly install the windows in the house. The court found the evidence presented established the moisture problem was cured by Freeman's work in the crawl space. The court noted Freeman testified he believed insulating the ductwork in the crawl space solved the moisture problem. According to the court:

“Based on Mr. Freeman's testimony, the question becomes whether the installation of the duct work [*sic*] in the crawl space was done in a workman like manner. There was no testimony given that the duct work [*sic*] itself was installed incorrectly. The issue is: Was it reasonable to install duct work [*sic*] in a crawl space, or even specifically this crawl space, without the duct work [*sic*] being insulated.

No testimony was presented, from Mr. Freeman or any other witness, that it is unreasonable or always required, that duct work [*sic*] in a crawl space be insulated.”

In addition, the court noted the contract did not specify the ductwork in the crawl space would be insulated. The court stated it could not find the ductwork in the crawl space was not installed in a workmanlike manner.

¶ 31 As to the garage floor and driveway, the trial court relied on the express warranty

provision, which specifically excluded all concrete work. The court stated, “As there is no ambiguity as to the language, the Parties' agreement should be enforced. In addition, as there is an express warranty there can be no implied warranty.”

¶ 32 In May 2011, plaintiffs filed a motion to reconsider. In June 2011, the trial court denied plaintiffs' motion.

¶ 33 This appeal followed.

¶ 34 II. ANALYSIS

¶ 35 At issue in this case is the trial court's decisions after a bench trial (1) to dismiss counts I and III of plaintiffs' complaint and (2) to find defendant did not breach its express warranty as alleged in count II of plaintiffs' complaint with regard to plaintiff's excessive moisture allegation.

¶ 36 Plaintiffs' complaint included three counts. Count I alleged defendant breached the contract by failing to construct the structure in a professional and workmanlike manner. Count II alleged defendant breached a contractual express warranty. Count III alleged defendant breached an implied warranty of good workmanship. While plaintiffs alleged numerous deficiencies in the home in each of the three counts, plaintiffs only ask this court to address the alleged problems with the garage floor, driveway, and excessive moisture in the house.

¶ 37 A. Contract Construction

¶ 38 Plaintiffs' arguments require us to examine the plain language of this contract to determine the parties' intent when they entered into this construction agreement. We review questions regarding the construction of contracts *de novo*. *K's Merchandise Mart, Inc. v. Northgate Limited Partnership*, 359 Ill. App. 3d 1137, 1142, 835 N.E.2d 965, 970 (2005). Our

supreme court recently stated:

"The basic rules of contract interpretation are well settled. In construing a contract, the primary objective is to give effect to the intention of the parties. [Citation.] A court will first look to the language of the contract itself to determine the parties' intent. [Citation.] A contract must be construed as a whole, viewing each provision in light of the other provisions. [Citation.] The parties' intent is not determined by viewing a clause or provision in isolation, or in looking at detached portions of the contract. [Citation.]

If the words in the contract are clear and unambiguous, they must be given their plain, ordinary and popular meaning. [Citation.] However, if the language of the contract is susceptible to more than one meaning, it is ambiguous. [Citation.] If the contract language is ambiguous, a court can consider extrinsic evidence to determine the parties' intent." *Thompson v. Gordon*, 241 Ill. 2d 428, 441, 948 N.E.2d 39, 47 (2011).

With these rules of contract construction in mind, we review the contract at issue in this case.

We note the parties did not provide any specific definitions for terms used in this contract. As a result, we apply the plain and ordinary meaning to the terms used.

¶ 39 We agree with plaintiffs the trial court erred in concluding the express warranty found in section XI of the contract made irrelevant defendant's promise in section II to construct

the structure in a professional and workmanlike manner. Defendant's promise to construct the structure in a professional and workmanlike manner and his guarantee of all workmanship, with the exception of concrete work, during the first year after construction should be read to complement each other.

¶ 40 Reading this contract as a whole, section II and section XI provided separate promises. Section XI of the contract states: "Contractor warrants and guarantees to the Owners all *workmanship* for one year and manufacturers warranties as implied, with the exception of concrete work." The word "workmanship" is a noun. The first definition for "workmanship" provided in Merriam-Webster's Collegiate Dictionary is: "something effected, made, or produced: WORK." Merriam-Webster's Collegiate Dictionary 1359 (10th ed. 2000). In this case, the workmanship would be the home itself. As a result, we read section XI as guaranteeing not just the quality of his work but also the quality of the home itself (with the concrete work excepted) during the first year after construction was completed.

¶ 41 On the other hand, section II did not provide any guarantees as to the home itself but provided a promise defendant would perform his work constructing the home in a workmanlike manner. Section II of the contract states in relevant part for purposes of this discussion: "Contractor *shall construct* the structure in conformance with the plans, specifications, and proposal, dated 6/06/07, and submitted by Contractor and *will do so in a professional and workmanlike manner.*" (Emphases added.) The phrase "will do so in a professional and workmanlike manner" modifies the verb phrase "shall construct." This section concerns how the defendant would perform the work he agreed to do, including constructing the home and installing the garage floor and driveway.

¶ 42

## B. Trial Court's Findings

¶ 43

With regard to the concrete, the trial court found "there can be little disagreement that at the very least there were esthetic [*sic*] problems with the garage floor, and deterioration to both the driveway and the garage floor where the floor and driveway meet." However, the court made no findings regarding whether the driveway and floor were properly installed because it found the express warranty provision in section XI of the contract excluded concrete work.

¶ 44

With regard to the allegation of excessive moisture, the court found as follows:

"The testimony at trial was clear from the parties as well as witness Freeman that there was a moisture problem in the house. To this I believe there can be no dispute. \*\*\*

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As to the evidence of what caused the moisture problem there was the testimony of the Defendant and Mr. Freeman. The Defendant testified that he agreed there was a problem with moisture in the house but he could never really determine why. He did make some suggestions on how to help the problem such as using a dehumidifier and opening and closing vents in the crawl space depending on the time of year.

The Plaintiffs hired Mr. Freeman, who is himself a contractor, to look at the house to see if he could determine why there was a moisture problem. Mr. Freeman testified that he went to the Plaintiffs' home sometime in January 2010. He observed the

moisture in the house and specifically on the insides of the windows. Mr. Freeman testified that moisture on windows is not uncommon, but in this case it did seem extreme. As stated above, Mr. Freeman could not see any fault in the windows themselves or their installation.

Mr. Freeman continued to look for a cause for the moisture, and eventually was drawn to the crawl space as the source of the problem. He observed a "high level of moisture" in the crawl space. Mr. Freeman observed a vapor barrier already installed in the crawl space but, in an attempt to cure the problem, installed a new vapor barrier. Freeman's testimony was that he did not believe that this helped at all in solving the moisture problem either in the crawl space or on the windows.

While in the crawl space, Mr. Freeman observed that the space was unusually warm for January. He further observed that the heat system duct work [*sic*] in the crawl space was not insulated and where the duct work [*sic*] was near cold water lines, condensation was forming on the pipes. Based on this observation, Mr. Freeman felt that one possible solution to the moisture problem would be insulating the duct work [*sic*] in the crawl space, which he did.

Mr. Freeman described the search for the cause of the

moisture to be 'very challenging.' In addition, he was not sure at the time if insulating the duct work [sic] would solve the problem, but if it has been solved he believes that is what did it. He also testified that the second vapor barrier may not have been necessary and that running a dehumidifier may have helped but he has no real way of knowing. He felt confident that the solution was the insulation.

Based on Mr. Freeman's testimony, the question becomes whether the installation of the duct work [sic] in the crawl space was done in a workman like [sic] manner. There was no testimony given that the duct work [sic] itself was installed incorrectly. The issue is: Was it reasonable to install the duct work [sic] in a crawl space, or even specifically this crawl space, without the duct work [sic] being insulated.

No testimony was presented, from Mr. Freeman or any other witness, that it is unreasonable or always required, that duct work [sic] in a crawl space be insulated. In addition, the Defendant points out that the specifications (Plaintiffs' Exhibit One) contain a provision at page four which reads: 'All supply and return duct work [sic] installed. All registers and grills supplied. Return duct work [sic] in attic to be insulated.' There is no mention of crawl space duct work [sic] being insulated in the 'specs.'



Based on the above, the Court cannot find that the duct work [sic] in the crawl space was not installed in a workman like [sic] manner. In addition, based on Mr. Freeman's testimony that he tried several things to solve the problems and was not sure at the time that any would work, it was only after the problem was solved that he came to the opinion that the insulation of the duct work [sic] solved the problem; the Court can not find Defendant's failure to fix the moisture himself was a failure on his part."

We will not disturb a trial court's factual findings after a bench trial unless they are against the manifest weight of the evidence. *Lozman v. Putnam*, 379 Ill. App. 3d 807, 820, 884 N.E.2d 756, 768 (2008).

¶ 45 C. Dismissal of Count I (Breach of Contract)

¶ 46 We first address plaintiffs' argument the trial court erred in dismissing count I of their complaint alleging a breach of contract based on defendant's failure to perform in a professional and workmanlike manner. The court dismissed count I because it found count I was essentially the same as count II of plaintiffs' complaint, which alleged a breach of an express warranty. According to the court, any violations of the section XI warranty provisions would also constitute a breach of contract. Plaintiffs argue section XI of the contract was not meant to make defendant's promise to construct the structure in a professional and workmanlike manner found in section II meaningless. We agree based on our earlier analysis of the contract itself.

¶ 47 The trial court erred in dismissing count I of plaintiffs' complaint. Sections II and XI of the contract offered different levels of protection for plaintiffs. Plaintiffs' basis for relief in

count I of their complaint was defendant's alleged failure to perform his work in a professional and workmanlike manner. Defendant's failure to guarantee the driveway and garage floor would be defect-free for one year pursuant to section XI of the contract does not negate his responsibility for defects in the concrete caused by his unworkmanlike performance.

¶ 48           The trial court should have determined whether defendant installed the concrete driveway and garage floor in a professional and workmanlike manner, and if not, whether defendant's work caused the damage in question. We reverse the trial court's dismissal of count I of plaintiff's complaint and remand for further factual findings.

¶ 49           With regard to the moisture problem, the trial court found plaintiffs failed to establish defendant's work on the windows and ductwork was done in an unprofessional or unworkmanlike manner. Based on the evidence in this case, we do not hold that finding was against the manifest weight of the evidence. As a result, plaintiffs are not entitled to damages for the moisture problem pursuant to count I of their complaint.

¶ 50                                   D. Count II (Breach of Express Warranty)

¶ 51           Based on our interpretation of the plain meaning of section XI of the contract in this case and the trial court's own factual findings in this case, the court erred in denying plaintiffs any relief for the money they expended in fixing the moisture problem in the home. As is clear from the court's findings in its written order, the house did have a moisture problem. The court noted even defendant agreed the house had a moisture problem but he could not determine the cause. Defendant does not dispute this moisture problem was brought to his attention during the one-year period covered by the express warranty. He also does not dispute he failed to fix the problem. The trial court noted the moisture problem ended after Freeman insulated the



*United Development Co.*, 88 Ill. App. 3d 581, 590, 410 N.E.2d 902, 910 (1980), for the proposition Illinois courts have stated an express warranty covering the same subject matter as an implied warranty does not render the implied warranty nonactionable. However, *Tassan* does not establish the trial court erred in dismissing count III in this case. The court in *Tassan* was not dealing with an implied warranty of workmanship, but rather an implied warranty of habitability. *Tassan*, 88 Ill. App. 3d at 589, 410 N.E.2d at 909. Plaintiffs do not cite any authority why we should apply the court's reasoning in *Tassan* to an implied warranty of reasonable workmanship.

¶ 57 Further, it is unclear from plaintiffs' brief what the scope of this “implied warranty of reasonable workmanship” even is.

"A reviewing court is entitled to have the issues clearly defined and supported by pertinent authority and cohesive arguments; it is not merely a repository into which an appellant may 'dump the burden of argument and research,' nor is it the obligation of this court to act as an advocate or seek error in the record. *Obert v. Saville*, 253 Ill. App. 3d 677, 682 (1993); 210 Ill. 2d R. 341(h)(7). Supreme Court Rule 341 requires that the appellant clearly set out the issues raised and the legal support therefor with relevant authority.

*Willaby v. Bendersky*, 383 Ill. App. 3d 853, 861 (2008). The consequence of not complying with Supreme Court Rule 341 is waiver of those issues on appeal. *Universal Casualty Co. v. Lopez*, 376 Ill. App. 3d 459, 465 (2007) (holding that arguments not supported by relevant authority and coherent legal argument are

waived)." *U.S. Bank v. Lindsey*, 397 Ill. App. 3d 437, 459, 920 N.E.2d 515, 535 (2009).

Because plaintiffs failed to present this court with sufficient pertinent authority and cogent argument the trial court erred, plaintiffs forfeited this argument.

¶ 58

### III. CONCLUSION

¶ 59 For the reasons stated, we affirm the trial court's dismissal of count III of plaintiffs' complaint. We reverse the trial court's dismissal of count I and direct the court to determine whether defendant installed the concrete in the driveway and garage floor in a professional and workmanlike manner and, if not, whether his conduct caused the damage to the driveway and garage floor. Finally, with regard to count II of plaintiff's complaint, we direct the trial court to determine the damages to which plaintiffs are entitled as reimbursement for Freeman's work correcting the excessive moisture problem in the house.

¶ 60

Affirmed in part; reversed in part; and cause remanded with directions.