2019 IL App (1st) 181643-U

No. 1-18-1643

Order filed September 26, 2019

Fourth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

JAMES NAZAROWSKI,	)	Appeal from the Circuit
	)	Court of Cook County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 16 L 8532
	)	
JUHANI LINNAINMAA, SARI LINNAINMAA,	)	
and MICHAEL ROSENBLUM,	)	Honorable
	)	Thomas R. Mulroy,
Defendants-Appellees.	)	Judge, presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Justices Reyes and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the circuit court's judgment in favor of defendants because it is not against the manifest weight of the evidence. We reject plaintiff's challenge to a local fee-shifting rule because the rule was approved by the Illinois Supreme Court.

¶ 2 James Nazarowski purchased a condominium (condo) unit from Juhani and Sari Linnainmaa. Before closing, the Linnainmaas provided Nazarowski with condo association documents disclosing plans for a multi-million dollar HVAC riser replacement project. After

determining that the project was fully funded, Nazarowski went ahead with the deal, without seeking information about the nature or scope of the project. After moving in, Nazarowski learned that the project would entail four months of construction work in his unit and require several thousand dollars in out-of-pocket expenses. He also learned for the first time that the association was considering a plan to replace the building's windows in the next 10 years.

¶ 3 Nazarowski sued the Linnainmaas and their real estate agent, Michael Rosenblum, alleging that they withheld material facts about the unit. He asserted claims for common law fraud and violations of the Consumer Fraud and Deceptive Business Practices Act (Consumer Fraud Act) (815 ILCS 505/1 *et seq.* (West 2018)), the Residential Real Property Disclosure Act (765 ILCS 77/1 *et seq.* (West 2018)), the Real Estate License Act (225 ILCS 454/1-1 *et seq.* (West 2018)), and the Chicago Municipal Code. Following a bench trial, the circuit court entered judgment for the Linnainmaas and Rosenblum. The court found that Rosenblum did not withhold material facts about the HVAC riser replacement project, and that the Linnainmaas did not actively conceal any such facts or intend to deceive Nazarowski. The court also found that the window replacement plan was too speculative to be deemed material. Finally, the court found no evidence of material defects in the unit's windows or HVAC system that required disclosure. Pursuant to local rule, the court ordered Nazarowski to reimburse the Linnainmaas and Rosenblum for attorney fees incurred in pretrial arbitration.

¶ 4 On appeal, Nazarowski challenges the circuit court's judgments and argues that the local fee-shifting rule is invalid. For the reasons that follow, we affirm.[1]

[1] In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order.

¶ 5 I. BACKGROUND

¶ 6 The Linnainmaas owned and lived in a condo unit in a high-rise building in Chicago. In 2015, the condo association embarked on a project to replace the building's HVAC risers—the vertical pipes that supply water to the heating and cooling units in each residence. On March 1, 2016, the association sent a letter to the owners of units in tier 12, including the Linnainmaas, announcing that work in their units was expected to begin in August 2016 and take nine to 12 weeks to complete. The letter noted that each unit had three risers (and identified their locations on an attached floor plan) and explained that the walls surrounding each riser would need to be opened from floor to ceiling during the replacement process. The letter advised that the association would rebuild the walls when work was complete, but that owners would be responsible for the cost of repainting. The letter also referred to a "history of leaks" in the building. Although not mentioned in the letter, one such leak occurred in the Linnainmaas' unit in December 2013. On March 11, 2016, a building engineer visited each unit in tier 12 to take pictures and discuss the project with unit owners in person. At trial, the building engineer testified that he spoke with Sari on that date. On June 14, 2016, the association sent a second letter to tier 12 unit owners, informing them that work was now expected to begin in mid-July and take four months to complete. The letter also stated that unit owners would be responsible for removing fixtures located near the risers before the walls were opened. Both letters were emailed to tier 12 unit owners and placed at their front doors. Juhani testified that he did not receive either letter; Sari did not testify.

¶ 7 In March 2016, the Linnainmaas hired Rosenblum to list their unit for sale after Juhani accepted a job in California that was to start in mid-June. Between March 20 and May 13, three

prospective buyers signed contracts to purchase the unit but ultimately backed out. During this period, Rosenblum forwarded to at least one prospective buyer an email from the building's assistant property manager that mentioned both the HVAC riser replacement project and a contemplated window replacement plan. The email stated that the riser replacement project was expected to begin in tier 12 units in late August, but it did not provide any additional details about the project, and there was no evidence at trial that Rosenblum was aware of additional details. The email also stated that the association was planning to replace the building's windows in about 10 years, splitting the cost evenly between the association and individual unit owners. One prospective buyer cited concerns about the window replacement plan, among other things, when canceling his contract to purchase the unit. At trial, however, the property manager testified that the association had not made any final decision with respect to the window replacement plan, including whether to charge unit owners for a share of the cost. The property manager also testified that the windows did not currently pose a health or safety risk.

¶ 8 On May 15, 2016, Nazarowski and the Linnainmaas signed a contract for the sale of the unit. In a disclosure report appended to the contract, the Linnainmaas stated that they were not aware of any material defects in the unit's windows or HVAC system. It is undisputed that, before the contract was signed, neither the Linnainmaas nor Rosenblum told Nazarowski about the HVAC riser replacement project or the contemplated window replacement plan. While the contract was under attorney review, however, the Linnainmaas provided Nazarowski with the materials required under section 22.1 of the Condominium Property Act (765 ILCS 605/22.1 (West 2018)), as well as minutes from the past 12 months of condo association board meetings. Both the 22.1 materials and the meeting minutes referred to the ongoing riser replacement

project. The 22.1 materials noted that the association had authorized a capital expenditure of $1.3 million for the replacement of five risers in the 2015-2016 fiscal year and $1.9 million for the replacement of eight risers in the 2016-2017 fiscal year. The documents did not refer to the contemplated window replacement plan.

¶ 9 When Nazarowski learned of the riser replacement project, his primary concern was its cost. He asked his attorney to determine whether he would be responsible for any special assessments to fund the project. Once he was satisfied that the project was fully funded, Nazarowski made no further inquiries. He did not ask his attorney or his real estate agent to request information about the project, nor did he discuss the project with the building's property manager, even though she testified that she was available to answer questions from prospective buyers.

¶ 10 Prior to closing, Nazarowski asked to visit the unit to take measurements for furniture. The Linnainmaas initially agreed, but when Sari became suspicious of Nazarowski's motives, Rosenblum contacted Nazarowski's real estate agent and told him that the visit had to be canceled because Sari was not feeling well. During a final walk-through of the unit on the eve of closing, Nazarowski asked Rosenblum if there was anything "else [he] should * * * know," and Rosenblum told him there was not.

¶ 11 The deal closed on June 16, 2016. Shortly thereafter, when moving in to the unit, Nazarowski learned about the nature and scope of the HVAC riser replacement project, including its imminent start date, its expected duration, and the effect it would have on his unit. He later learned about the association's contemplated window replacement plan.

¶ 12 In August 2016, Nazarowski filed suit against the Linnainmaas and Rosenblum. His complaint alleged that both committed common law fraud and violated section 13-72-030 of the Chicago Municipal Code by failing to disclose material facts about the HVAC riser replacement project and the contemplated window replacement plan. He asserted similar claims against Rosenblum alone for negligent misrepresentation and under the Consumer Fraud Act and the Real Estate License Act. And he alleged that the Linnainmaas violated the Residential Real Property Disclosure Act by failing to disclose material defects in the unit's windows and HVAC system.

¶ 13 The case was referred to arbitration under the Cook County Circuit Court's mandatory arbitration program. The arbitrator entered an award for the Linnainmaas and Rosenblum. Nazarowski rejected the award and the matter proceeded to trial.

¶ 14 At the close of Nazarowski's case, the circuit court entered judgment for Rosenblum. The court found that Rosenblum did not withhold material facts about the HVAC riser replacement project, and that Nazarowski was on notice of the project but failed to investigate. The court did not expressly address the contemplated window replacement plan, but it suggested that the plan was too uncertain to require disclosure. At the end of trial, the court also entered judgment for the Linnainmaas. The court again found that Nazarowski knew of the HVAC riser replacement project but made no attempt to learn of its details. The court further found that the Linnainmaas "did not actively conceal any information about the project." The court found that Nazarowski "failed to prove that [the Linnainmaas] possessed [the March 1 and June 14 letters discussing the project] prior to closing," and that, in any event, Nazarowski had not proved that the Linnainmaas "had any intent to deceive [him]" by withholding information about the project. In

addition, the court concluded that there was no evidence of any material defects in the unit's windows or HVAC system. The court found that, "[a]t the time of sale, there was no evidence of any leak in [the Linnainmaas'] unit" that would indicate a material defect in the HVAC system, and that the riser replacement project itself did not constitute a material defect. The court further determined that the window replacement plan was too speculative to establish a material defect in the unit's windows.

¶ 15 Finally, because Nazarowski rejected the pretrial arbitration award that was entered against him and did not secure a better result at trial, the circuit court ordered him to reimburse the Linnainmaas and Rosenblum for attorney fees incurred in connection with the arbitration, pursuant to Cook County Circuit Court Rule 25.11(d).

¶ 16 II. ANALYSIS

¶ 17 On appeal, Nazarowski challenges the circuit court's judgments for the Linnainmaas and Rosenblum and its award of attorney fees. We start with the underlying judgments. Because the circuit court entered judgment for the Linnainmaas following a bench trial, our standard of review is "whether the judgment is against the manifest weight of the evidence." *Matros v. Commonwealth Edison Co.*, 2019 IL App (1st) 180907, ¶ 153. A judgment is against the manifest weight of the evidence only if "an opposite conclusion is apparent or when [the court's] findings appear to be unreasonable, arbitrary, or not based on [the] evidence." (Internal quotation marks omitted.) *Id.* The same standard applies to our review of the circuit court's judgment for Rosenblum, which it entered at the close of Nazarowski's case. See 735 ILCS 5/2-1110 (West 2018). Because the circuit court's judgment for Rosenblum was based on its determination, after weighing the evidence, that Nazarowski had not satisfied his burden of proof, the manifest

weight of the evidence standard governs our review. See *People ex rel. Sherman v. Cryns*, 203 Ill. 2d 264, 275-76 (2003); *Barnes v. Michalski*, 399 Ill. App. 3d 254, 262-64 (2010).

¶ 18 To prevail on his claims of common law fraud against the Linnainmaas and Rosenblum, Nazarowski was required to prove that they "concealed a material fact under circumstances that created a duty to speak," and that he "justifiably relied upon [their] silence as a representation that the fact did not exist." *Bauer v. Giannis*, 359 Ill. App. 3d 897, 902-03 (2005). Nazarowski failed to establish at trial that the Linnainmaas had a duty to disclose material facts to him. A duty to disclose material facts arises when the parties "are in a fiduciary or confidential relationship," or where the defendant is in "a position of influence and superiority" over the plaintiff "by reason of friendship, agency, or experience." *Connick v. Suzuki Motor Co.*, 174 Ill. 2d 482, 500 (1996). Nazarowski does not argue that he and the Linnainmaas were in a fiduciary or confidential relationship, or that the Linnainmaas occupied a position of influence or superiority over him. Instead, he contends that the Linnainmaas owed him a duty to disclose material facts based on the "buyer-seller relationship" between them. But the cases Nazarowski cites do not stand for this broad proposition. Rather, those decisions recognize that, when a seller affirmatively makes misleading statements about material facts or combines silence concerning material facts with active concealment, he may acquire a duty to speak. For instance, in *Mitchell v. Skubiak*, 248 Ill. App. 3d 1000 (1993), we held that a seller who "actively misled" a buyer about the nature and extent of a property defect had "a duty to speak" and "disclose the entire truth of the matter." *Id.* at 1006; see also *Kinsey v. Scott*, 124 Ill. App. 3d 329, 336-37 (1984) (seller who represented that five-unit apartment building complied with city building code owed duty to buyer to disclose that basement unit was constructed without required permit). *Mitchell*

further held that a seller's "active concealment" of a defect—in that case, covering a structurally unsound porch with permanently affixed carpeting—gave rise to a duty to disclose the defect. 248 Ill. App. 3d at 1007.

¶ 19 These cases do not help Nazarowski. He presented no evidence that the Linnainmaas affirmatively misled him about the HVAC riser replacement project or the contemplated window replacement plan. And the circuit court's finding that the Linnainmaas did not "actively conceal" those projects or their details was not against the manifest weight of the evidence, which established that the Linnainmaas failed to disclose information but took no active steps to prevent Nazarowski from investigating matters himself. Indeed, the evidence at trial showed that the property manager was available to answer Nazarowski's questions about the riser replacement project. And while there was no testimony that she similarly would have answered questions about the contemplated window replacement plan, the assistant property manager freely provided such information to Rosenblum, which Rosenblum then forwarded to another prospective buyer upon request. See *Heider v. Leewards Creative Crafts, Inc.*, 245 Ill. App. 3d 258, 269 (1993) (where seller possessed report revealing presence of asbestos in building, he "had a duty to reveal the existence of the report and the asbestos in the building *upon inquiry* from [the buyer]") (emphasis added). Nazarowski, by contrast, made no such request for information about the windows and thus cannot show that the Linnainmaas' failure to provide such information constituted active concealment rather than mere nondisclosure.[2]

[2] In any event, as we discuss below, the circuit court also reasonably found that details of the potential (but still uncertain) plan to replace the building's windows sometime in the next decade did not constitute a material fact that the Linnainmaas or Rosenblum were required to disclose.

¶ 20 Nazarowski argues that he had no duty to investigate the projects because "one is justified in relying upon the representations of another, without independent investigation, where the person to whom the representations are made does not have the same ability to discover the truth as the person making the representations." *Gerill Corp. v. Jack L. Hargrove Builders, Inc.*, 128 Ill. 2d 179, 195 (1989). *Gerill*, however, involved an affirmative misrepresentation rather than an omission. *Id.* at 193 (seller of business "either misstated or omitted" certain liabilities from list he prepared and then affirmatively represented to buyer that list was complete). There was thus no need for the court to consider, as we must here, whether the seller had a duty to disclose material facts to the buyer. Instead, the court's holding addressed a distinct element of common law fraud—whether the plaintiff justifiably relied on the defendant's misrepresentations or omissions—that we need not reach in light of Nazarowski's failure to demonstrate that the Linnainmaas owed him a duty to speak.

¶ 21 Nazarowski's claim of common law fraud against Rosenblum also fails, but for a different reason. As a real estate agent, Rosenblum owed Nazarowski a duty to disclose material facts, even in the absence of an agency relationship between them. See *Zimmerman v. Northfield Real Estate, Inc.*, 156 Ill. App. 3d 154, 162 (1986). But the circuit court's finding that the facts withheld by Rosenblum were not material is not against the manifest weight of the evidence. See *Napcor Corp. v. JP Morgan Chase Bank*, 406 Ill. App. 3d 146, 154 (2010) ("The materiality of a misrepresentation is a question of fact."). An omitted fact is material if "a buyer would have acted differently knowing the information, or if it concerned the type of information upon which a buyer would be expected to rely in making a decision whether to purchase." *Connick*, 174 Ill. 2d at 505. The only fact about the HVAC riser replacement project that Rosenblum knew but did

not disclose was that (at the time) it was expected to begin in August 2016. Contrary to Nazarowski's contentions on appeal, there was no evidence at trial that Rosenblum had knowledge of any additional details of the project, including its expected duration or the level of disruption it would cause. See *Miller v. William Chevrolet/GEO, Inc.*, 326 Ill. App. 3d 642, 658 (2001) ("an action for fraudulent concealment logically demands that defendants have prior knowledge of the information that they are alleged to have suppressed"). There is no reason to believe that Nazarowski would have acted differently if he had known that the HVAC riser replacement project was expected to begin in August 2016, as Nazarowski was already aware from the 22.1 disclosures that the project existed and was scheduled to take place sometime during the 2016-2017 fiscal year. There is likewise no reason to believe that Nazarowski would have acted differently if he had been aware of the condo association's remote and still uncertain plan to replace the building's windows in approximately 10 years. At the very least, we cannot say that the circuit court's findings were arbitrary or unreasonable, or that the opposite conclusion is apparent from the record. *Matros*, 2019 IL App (1st) 180907, ¶ 153.

¶ 22 As an alternative to his common law fraud claim, Nazarowski's complaint asserted a separate claim of negligent misrepresentation against Rosenblum, based on Rosenblum answering "no" when Nazarowski asked him at the final walk-through if there was anything else he should know. The circuit court did not expressly address this claim, and Nazarowski has forfeited it on appeal. Although Nazarowski alludes to "the inquiry made at the final walk through" in the section of his opening brief discussing his Consumer Fraud Act claim, he does not make any independent argument in support of a distinct negligent misrepresentation claim. See *In re Marriage of Pavlovich*, 2019 IL App (1st) 172859, ¶ 18 (contentions not supported

"with legal argument or authority" are forfeited) (citing Ill. S. Ct. R. 341(h)(7)); see also *Thrall Car Manufacturing Co. v. Lindquist*, 145 Ill. App. 3d 712, 719 (1986) ("A reviewing court is entitled to have the issues on appeal clearly defined with pertinent authority cited and a cohesive legal argument presented."). Even were the claim not forfeited, however, we fail to see (and Nazarowski does not explain) how Rosenblum's alleged comment at the final walk-through constitutes a negligent *misrepresentation* of material facts as opposed to the *omission* of facts. And as discussed above, the circuit court's finding that Rosenblum did not omit any material facts was not against the manifest weight of the evidence.

¶ 23 Nazarowski's failure to prove that Rosenblum withheld any material facts likewise dooms his remaining claims against Rosenblum, each of which required such a showing. To prevail on his claim under the Consumer Fraud Act, Nazarowski was required to prove that Rosenblum committed "a deceptive act or practice," which (as relevant here) may be shown by the "omission or concealment of a material fact." *Connick*, 174 Ill. 2d at 502-04. Likewise, under section 13-72-030 of the Chicago Municipal Code, Nazarowski was required to show that Rosenblum "omitt[ed] [a] material statement" in connection with the sale of the condo unit. *Henderson Square Condominium Association v. LAB Townhomes, LLC*, 2015 IL 118139, ¶ 63 (quoting Chicago Municipal Code § 13-72-030). And to prevail on his claim under the Real Estate License Act, Nazarowski was required to establish that Rosenblum failed to "disclose * * * latent material adverse facts pertaining to the physical condition of the property that [were] actually known by [Rosenblum]." 225 ILCS 454/15-25 (West 2018). As with his common law fraud claim, Nazarowski contends that Rosenblum failed to disclose the expected start date of the riser replacement project and the association's contemplated window

replacement plan. But neither of these facts "pertain[s] to the physical condition of the property," as is necessary to require disclosure under the Real Estate License Act. Nor, as the circuit court found, were they material to Nazarowski's purchase under the Consumer Fraud Act or the Chicago Municipal Code. Because the circuit court's findings were not against the manifest weight of the evidence, we affirm its judgment for Rosenblum on these claims.

¶ 24 Nazarowski's claim against the Linnainmaas under section 13-72-030 of the Chicago Municipal Code likewise fails. In full, that provision provides that "[n]o person shall with the intent that a prospective purchaser rely on such act or omission, advertise, sell or offer for sale any condominium unit by (a) employing any statement or pictorial representation which is false or (b) omitting any material statement or pictorial representation." *Henderson Square*, 2015 IL 118139, ¶ 63 (quoting Chicago Municipal Code § 13-72-030). Nazarowski contends that the Linnainmaas violated this provision by omitting material statements about the condo association's contemplated window replacement plan and material statements and pictorial representations concerning the nature and scope of the riser replacement project. His first contention fails for the same reason that his related claim against Rosenblum failed, namely that the contemplated window replacement plan was too remote and uncertain to be deemed a material statement requiring disclosure.

¶ 25 His second contention, however, requires further discussion. While Rosenblum's knowledge of the riser replacement project was limited to its existence and anticipated start date, Nazarowski presented evidence at trial that the Linnainmaas knew additional details concerning the project. In particular, Nazarowski presented evidence that the Linnainmaas received two letters from the association prior to closing that provided not only the project's anticipated start

date, but also its expected duration and details about what it would entail, such as the opening of walls in the unit, the temporary removal of various fixtures at owner expense, and repainting of the walls at owner expense. One letter included an attached floor plan that identified the location of the risers in the unit. The circuit court found that Nazarowski "failed to prove that [the Linnainmaas] possessed [the letters] prior to closing." We cannot defer to this finding, however, as it is against the manifest weight of the evidence. While it is true that Juhani testified that he did not receive the letters, the building's property manager testified that they were emailed to *both* of the Linnainmaas and placed at their front door. Because Sari did not testify at trial, the evidence does not support a finding that the letters never reached her. In addition, the circuit court ignored the building engineer's uncontradicted testimony that he personally explained the relevant details of the project to Sari during a visit to the Linnainmaas' unit.

¶ 26 Nevertheless, the circuit court's judgment on this claim is supported by its additional finding that the Linnainmaas did not withhold information about the nature and scope of the riser replacement project with the intent that Nazarowski rely on the omission. Although the circuit court found that Nazarowski failed to prove that the Linnainmaas had an "intent to deceive [him]," Nazarowski does not argue that the circuit court applied the wrong legal standard, and he has thus forfeited any such contention. See Ill. S. Ct. R. 341(h)(7) ("Points not argued [in opening brief] are forfeited.").[3] Instead, Nazarowski contends that the circuit court's finding was against the manifest weight of the evidence. He argues that because of Juhani's new job in California, the Linnainmaas faced an imminent deadline to sell their unit, which would have been far more difficult to do while work on the riser replacement project was underway. He also

[3] We note, in any event, that immediately preceding this finding, the circuit court correctly quoted the ordinance, including its intent-to-rely language.

argues that the evidence showed that the Linnainmaas were nervous about the deal with Nazarowski falling through, as three previous contracts to sell the unit had. He contends that the totality of this evidence establishes that the Linnainmaas withheld details about the riser replacement project intending for Nazarowski to rely on the omission. But that is not the only reasonable inference supported by the evidence. While Nazarowski did not know precisely how the riser replacement project would affect the unit, he undoubtedly was aware that it was a major undertaking, as the 22.1 materials revealed that the association had authorized an expenditure of nearly $2 million for the 2016-2017 fiscal year alone. Yet the evidence suggested that Nazarowski's sole concern upon learning about the project was whether he would be responsible for a special assessment to fund it. Although he sought information about the project's funding status, he made no effort to learn any other details about it, even though the property manager was available to discuss the project with prospective purchasers upon request. It is thus not unreasonable to conclude that the Linnainmaas' failure to inform Nazarowski of the details of the project was not intended to induce Nazarowski's reliance, but rather stemmed from the Linnainmaas' belief that Nazarowski was not interested in such information. We must be "mindful that the trial judge" was "in a superior position to observe [the] witnesses, judge their credibility, and determine the weight their testimony should receive." *Matros*, 2019 IL App (1st) 180907, ¶ 153. With that principle in mind, we cannot say that the trial judge's finding that the Linnainmaas did not intend for Nazarowski to rely on their omission was arbitrary or unreasonable, or that the opposite conclusion is apparent from the record. *Id.*

¶ 27 That brings us to Nazarowski's claim against the Linnainmaas under the Residential Real Property Disclosure Act. "The Act requires a seller of residential real property to complete a

disclosure report containing various statements about the condition of the property." *Woods v. Pence*, 303 Ill. App. 3d 573, 576 (1999). Among other things, a seller must state whether he is "aware of material defects in the walls, windows, doors, or floors" of the property, and whether he is "aware of material defects in the [property's] heating, air conditioning, or ventilating systems." 765 ILCS 77/35 (West 2018). For purposes of the Act, a material defect is "a condition that would have a substantial adverse effect on the value of the residential real property or that would significantly impair the health or safety of future occupants of the residential real property." *Id.*

¶ 28 Nazarowski argues that the Linnainmaas violated the Act by failing to disclose a material defect in the unit's windows. He contends that the condo association's contemplated plan to replace the building's windows sometime in the next 10 years demonstrates that, at the time of sale, the windows in the Linnainmaas' unit were materially defective. But the undisputed evidence at trial was that the windows did not currently pose a health or safety risk. In addition, the building's property manager testified that the plan to replace the windows was still unsettled, and that no final decision had been made regarding the allocation of any future costs. In light of its remoteness and uncertainty, the circuit court reasonably concluded that the contemplated window replacement plan did not have "a substantial adverse effect on the value of the [unit]." 765 ILCS 77/35 (West 2018).

¶ 29 Nor did Nazarowski establish that there was an undisclosed material defect in the HVAC system. Nazarowski argues that the Linnainmaas were aware of a history of leaks in the building caused by faulty HVAC risers, and of a leak in their unit in particular in 2013. But Juhani testified, without contradiction, that the 2013 leak was fixed shortly after it occurred, and there

was no evidence of any further leaks affecting their unit. Accordingly, the circuit court's finding that "there was no evidence of any leak in [the Linnainmaas'] unit" at the time of sale was not against the manifest weight of the evidence. And under the Act, a seller "is not liable for any error, inaccuracy, or omission" in a disclosure report if "the error, inaccuracy, or omission was based on a reasonable belief that a material defect or other matter not disclosed had been corrected." 765 ILCS 77/25(a) (West 2018).

¶ 30 Nazarowski also argues that the riser project itself is evidence of a material defect in the HVAC system. But there was no evidence that the condition of the risers "significantly impair[ed] the health or safety of future occupants." 765 ILCS 77/35 (West 2018). Moreover, the undisputed testimony at trial was that the riser replacement project was fully funded prior to the sale. Although Nazarowski was responsible for some out-of-pocket expenses related to the construction work, such as temporarily removing fixtures and repainting walls, we cannot say that the trial court acted arbitrarily or unreasonably in finding that the otherwise fully funded project did not have a substantial adverse effect on the value of the unit.

¶ 31 Nazarowski's final contention is that Cook County Local Rule 25.11(d) is invalid. We review this issue of law *de novo*. See *Jones v. State Farm Mutual Automobile Insurance Co.*, 2018 IL App (1st) 170710, ¶ 20 (citing *Vision Point of Sale, Inc. v. Haas*, 226 Ill. 2d 334, 342 (2007)). Part 25 of the Rules of the Cook County Circuit Court govern that court's mandatory pretrial arbitration program for certain commercial cases. The rules were initially adopted in 2014, after the Illinois Supreme Court authorized the circuit court to implement a two-year pilot program of mandatory arbitration for commercial cases. See *Jones*, 2018 IL App (1st) 170710, ¶¶ 13-14. The rules provide that either party may reject an award entered by the arbitrator and

proceed to trial. But Rule 25.11(d) provides that, "[i]f the party rejecting the award fails to obtain a better result at trial," that party "must pay the other party's reasonable legal fees incurred in connection with the arbitration." Cook Co. Cir. Ct. R. 25.11(d). In 2016, the Illinois Supreme Court approved the mandatory arbitration program on a permanent basis and directed that it "'shall continue to be administered through local rules.'" *Jones*, 2018 IL App (1st) 170710, ¶ 16 (quoting Ill. S. Ct., M.R. 9166 (eff. Oct. 1, 2016)).

¶ 32 Nazarowski contends that Rule 25.11(d) is invalid because it is contrary to the general "American rule" against fee-shifting and conflicts with the Illinois Supreme Court's rules governing mandatory arbitration programs, which do not authorize an award of attorney fees arising from arbitration. See Ill. S. Ct. Rs. 86-95. But we rejected a similar challenge to another aspect of Cook County's mandatory arbitration program in *Jones*. There, the challenger argued that a provision of Local Rule 25.11 allowing a party only seven days to reject an arbitration award could not be enforced because it conflicts with Illinois Supreme Court Rule 93, which allows thirty days for rejecting such awards. See *Jones*, 2018 IL App (1st) 170710, ¶ 22. Although we recognized that the local rule plainly conflicts with the Illinois Supreme Court rule, we held that the local rule was "valid, because the Illinois Supreme Court authorized the Cook County mandatory arbitration program and thus approved any deviations between that program's rules and the supreme court's rules." *Id.* ¶ 2. As we explained, "[t]here is no question that the supreme court has the authority to permit or mandate the implementation of a court program that otherwise would be incompatible with its own rules." *Id.* ¶ 25.

¶ 33 Rule 25.11(d)'s fee-shifting provision is valid for the same reason. Nazarowski does not dispute that Rule 25.11(d) was in effect at the time the Illinois Supreme Court approved Cook

County's mandatory arbitration program and directed that it "'continue to be administered through local rules.'" *Jones*, 2018 IL App (1st) 170710, ¶ 16 (quoting Ill. S. Ct., M.R. 9166 (eff. Oct. 1, 2016)); see also *id.* ¶ 32 (noting that it is the challenger's "burden" to "demonstrat[e] that the supreme court did not approve" the challenged local rule). Nor does he contest the Illinois Supreme Court's authority to implement fee-shifting in mandatory arbitration programs. Rather, he argues that *Jones* should not control here because Rule 25.11(d) impermissibly alters litigants' substantive rights. It is true that local court rules may not "impose * * * substantive burdens upon litigants." *Vision Point of Sale v. Haas*, 226 Ill. 2d 334, 357 (2007). But the propriety of Local Rule 25.11(d) was a question for the supreme court to resolve when deciding whether to approve Cook County's mandatory arbitration program. "If the supreme court had been concerned" that Cook County's mandatory arbitration program conflicted with supreme court rules or exceeded the limits of local court authority, "it defies belief that the court would have passed on the opportunity to say so at that time." *Jones*, 2018 IL App (1st) 170710, ¶ 35. It is not our role to second-guess the supreme court on matters within its supervisory authority. Because the supreme court approved Cook County's mandatory arbitration program, we conclude that Local Rule 25.11(d) is valid and enforceable.

¶ 34 III. CONCLUSION

¶ 35 For the foregoing reasons, we affirm the circuit court's judgments in favor of the Linnainmaas and Rosenblum and its award of attorney fees.

¶ 36 Affirmed.