NO. 4-09-0088 Order Filed 5/9/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

JOHN R. KING, Plaintiff-Appellant, v. CHAD PATTON, Defendant-Appellee.	))))))))	Appeal from Circuit Court of Champaign County No. 07SC2398 Honorable Holly F. Clemons, Judge Presiding.

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

ORDER

Held: The language of the Home Repair and Remodeling Act applies to any homeowner who contracts directly with an individual for home repairs and remodeling, and the trial court erred by finding that the plaintiff could not recover under the theory of *quantum meruit* because the plaintiff had failed to provide the defendant a consumer-rights brochure as required by section 20 of the Act (815 ILCS 513/20 (West 2006)).

In September 2007, plaintiff, John R. King, sued defendant, Chad Patton, in small-claims court, arguing that Patton owed him $2,500 under the terms of a contract the two had entered into to replace the roof on a house that Patton owned. At the July 2008 trial, Patton testified, in pertinent part, that (1) he did not pay King the $2,500--which was an additional amount owed under the parties' contract--because (a) King had taken more than the two weeks required under the contract to replace the roof and (b) the house had sustained water damage from roof leaks due to King's delays, and (2) King did not provide him with any documents other than the contract. Follow-

ing King's case in chief, Patton moved for a directed judgment (735 ILCS 5/2-1110 (West 2008)), arguing that he was not required to pay the additional $2,500 because King had failed to present evidence that he provided Patton a consumer-rights brochure as required by section 20 of the Home Repair and Remodeling Act (815 ILCS 513/20 (West 2006)). The trial court agreed and entered judgment in Patton's favor.

King appealed, arguing that (1) the Act does not apply to Patton because he was a general contractor and, even if the Act did apply, (2) the Act did not prevent recovery in *quantum meruit* or unjust enrichment.

In December 2009, this court affirmed the trial court's judgment, rejecting both of King's contentions. *King v. Patton*, No. 4-09-0088 (December 11, 2009) (unpublished order under Supreme Court Rule 23).

King filed a petition for leave to appeal with the Supreme Court of Illinois. In February 2010, the supreme court denied his petition but also entered the following nonprecedential supervisory order:

> "In the exercise of this court's supervisory authority, the Appellate Court, Fourth District, is directed to vacate its judgment in *King v. Patton*, No. 4-09-0088 (December 11, 2009). The appellate court is directed to reconsider its judgment in light of *K. Miller Construction Co. v. McGinnis*, 238 Ill.

2d 284[, 938 N.E.2d 471] (2010), to determine whether a different result is warranted." *King v. Patton*, 238 Ill. 2d 652, 938 N.E.2d 516 (2010) (nonprecedential supervisory order on denial of petition for leave to appeal).

In accordance with the supreme court's directive, we vacate our earlier decision in this case. Further, after reconsidering this case in light of *K. Miller Construction Co.*, 238 Ill. 2d 284, 938 N.E.2d 471, we conclude that a different result is warranted. Accordingly, we reverse the trial court's judgment and remand for further proceedings not inconsistent with our judgment in this case.

I. BACKGROUND

Sometime in early 2006, King entered into a contract with Patton to replace the roof on a single-family home that Patton had purchased to renovate for resale or rent. The parties' contract required that Patton pay King $3,500 at the time of acceptance and an additional $2,500 when King completed the roofing job. Patton paid King the initial $3,500 but did not pay him the remaining $2,500.

In September 2007, King sued Patton in small-claims court, arguing that Patton owed him $2,500 under the contract terms. At the July 2008 trial, Patton testified, in pertinent part, that (1) he did not pay King the additional $2,500 because (a) King had taken more than the two weeks required under the contract to replace the roof and (b) the house had sustained

water damage from roof leaks due to King's delays, and (2) King did not provide him with any documents other than the contract. Following King's case in chief, Patton moved for a directed judgment (735 ILCS 5/2-1110 (West 2008)), arguing that he was not required to pay the additional $2,500 because King had failed to present evidence that he provided Patton a consumer-rights brochure as required by section 20 of the Act (815 ILCS 513/20 (West 2006)). The trial court agreed and entered judgment in Patton's favor.

This appeal followed.

II. KING'S CLAIM THAT HE IS ENTITLED TO THE REMAINING $2,500 UNDER THE CONTRACT

A. King's Assertion That Patton Forfeited His Affirmative Defense Under the Act

Initially, we note that King asserts that Patton forfeited his affirmative defense under the Act by failing to argue the issue prior to moving for a directed judgment. Specifically, King complains that Patton engaged in "trial ambush" by not providing King notice that he intended to use section 20 of the Act--that is, that King failed to provide Patton a consumer-rights brochure--as an affirmative defense. Because King never presented this issue to the trial court, we deem it forfeited.

Our review of the record reveals that (1) both parties were represented by counsel at the July 2008 trial; (2) following King's presentation of evidence, Patton moved for a directed judgment; and (3) the trial court granted Patton's motion for directed judgment because it found that King had failed to

provide Patton with the consumer-rights brochure required under section 20 of the Act. The record is silent as to whether King made the argument he now presents on appeal--namely, that he was unaware that Patton was relying on section 20 of the Act as an affirmative defense. Because it is well settled that (1) the appellant bears the burden to present a complete record of the proceedings to support his claim of error (*Webster v. Hartman*, 195 Ill. 2d 426, 432, 749 N.E.2d 958, 962 (2001)) and (2) arguments not presented to the trial court may not be raised for the first time on appeal (*Elder v. Bryant*, 324 Ill. App. 3d 526, 529, 755 N.E.2d 515, 519 (2001)), we conclude that King has forfeited this issue.

B. King's Claim That the Act Does Not Apply to Patton

Although King concedes that he did not provide Patton with a consumer-rights brochure as required by section 20 of the Act (815 ILCS 513/20 (West 2006)), King argues that the Act does not apply to Patton because Patton had purchased the home as an investment property, over which Patton acted as the general contractor. King, citing *MD Electrical Contractors, Inc. v. Abrams*, 228 Ill. 2d 281, 888 N.E.2d 54 (2008), contends that because Patton was acting as the general contractor, he was not covered under the Act and, thus, was not protected from subcontractors like King, even though Patton was technically the home's owner. We disagree.

Because the question of whether the legislature intended homeowners such as Patton to be covered under the Act is a

question of statutory interpretation, our review is *de novo*. *Abrams*, 228 Ill. 2d at 286, 888 N.E.2d at 58.

To determine whether the legislature intended homeowners such as Patton to be covered under the Act, we look to the language of the Act, which in this case includes a statement of policy. The policy underlying the Act is to "regulat[e] the communications and business practices of those people who directly solicit and contract with [a] homeowner." *Abrams*, 228 Ill. 2d at 296, 888 N.E.2d at 63; 815 ILCS 513/5 (West 2006). That is, the Act protects homeowners who directly contract to have a contractor repair or remodel their home. See *Abrams*, 228 Ill. 2d at 293, 888 N.E.2d at 61 (holding that the Act did not protect contractor--who did not own the home--in his dealings with subcontractors).

Section 10 of the Act defines the phrase "Home repair and remodeling" and the term "Residence" as follows:

> "'Home repair and remodeling' means the fixing, replacing, altering, converting, modernizing, improving, or making of an addition to any real property primarily designed or used as a residence other than maintenance, service, or repairs under $500. 'Home repair and remodeling' includes the construction, installation, replacement, or improvement of *** roofs ***. ***
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> ***

> 'Residence' means a single-family home or dwelling *** used or intended to be used by occupants as dwelling places. This Act does not apply to original construction of single-family or multi-family residences or repairs to dwellings containing more than [six] apartments or family units." 815 ILCS 513/10 (West 2006).

In this case, King contracted with Patton to replace the roof on a single-family home. That home, under the plain language of the Act, was a residence. That is, the home was "intended to be used *by occupants* as [a] dwelling place[]." (Emphasis added.) 815 ILCS 513/10 (West 2006). Therefore, we conclude that the fact that Patton was purchasing the property as an investment is of no moment.

We find support in our conclusion on multiple fronts. First, the legislature could have limited a "residence" to include a home that was intended to be used by *the homeowner* as a dwelling place. It did not. Instead, the legislature defined a "Residence" as "a single-family home *** intended to be used *by occupants* as [a] dwelling place[]." (Emphasis added.) 815 ILCS 513/10 (West 2006). Second, section 20 of the Act (the consumer-rights-brochure requirement) refers to the individual to be protected as "the homeowner" and "the consumer" (815 ILCS 513/20 (West 2006)), rather than, for example, "the occupant." And finally, the legislature defined "Home repair and remodeling," in

pertinent part, to include replacing the roof of "*any* real property *primarily designed or used* as a residence." (Emphases added.) 815 ILCS 513/10 (West 2006). Had the legislature intended the Act to exclude investors, it could have limited this language to real property used by *the homeowner* for residential purposes. But again, it did not.

Nevertheless, we acknowledge that King makes a strong practical argument. Namely, that because the Act was designed to protect unsuspecting homeowners from nefarious contractors bent on taking them to the proverbial cleaners, business people engaged in "flipping" houses to rent or resell should not be included. However, as previously stated, we read the language of the Act to apply to any homeowner that contracts directly with an individual for home repairs and remodeling. To the extent this interpretation of the Act is inconsistent with the legislature's intent, the legislature may choose to amend it accordingly.

Having rejected King's contention that the Act did not apply to Patton, we turn to King's alternative argument that the Act does not prevent recovery in *quantum meruit* or unjust enrichment.

C. King's Alternative Claim That the Act Does Not Prevent Recovery in *Quantum Meruit* or Unjust Enrichment

King next argues that the Act does not prevent recovery in *quantum meruit* or unjust enrichment. We previously concluded that the Act prevented King from recovering in *quantum meruit* or unjust enrichment. We are now charged with reconsidering our conclusion in light of the supreme court's decision in *K. Miller*

Construction Co.

In compliance with the supreme court's directive, we now analyze its recent decision in *K. Miller Construction Co.* to determine whether a different result in this case is warranted. We begin our analysis with a discussion of the appellate court decision that the supreme court reviewed (*K. Miller Construction Co. v. McGinnis*, 394 Ill. App. 3d 248, 913 N.E.2d 1147 (2009)).

1. *The Appellate Court Decision in K. Miller Construction Co.*

The defendants in *K. Miller Construction Co.* sought out the plaintiff to complete a significant amount of home remodeling work. *K. Miller Construction Co.*, 394 Ill. App. 3d at 251, 913 N.E.2d at 1150. The parties reached an oral agreement, but they never reduced it to writing. *Id.* The plaintiff claimed that the defendants agreed to pay $187,000 for the remodeling work and later expanded the plan, raising the cost to more than $500,000. *Id.* The defendants paid initial invoices totaling $65,000 but refused to pay any more until the project was completed. *Id.* At project completion, the defendants made some additional payments, refusing, however, to pay more than $177,580.33. *Id.*

The plaintiff sued, seeking (1) a lien on the property for the unpaid balance (count I); (2) recovery for breach of oral contract (count II); and (3) compensation for its labor, materials, and services on the theory of *quantum meruit* (count III). *K. Miller Construction Co.*, 394 Ill. App. 3d at 252, 913 N.E.2d at 1150. The trial court later dismissed all three counts pursuant to section 2-615 of the Code of Civil Procedure (735

ILCS 5/2-615 (West 2006)), and the plaintiff appealed. *K. Miller Construction Co.*, 394 Ill. App. 3d at 252, 913 N.E.2d at 1151.

The appellate court affirmed in part and reversed in part, concluding that the plaintiff's claims (1) to foreclose the mechanic's lien (count I) and (2) for breach of contract (count II) were properly dismissed. *K. Miller Construction Co.*, 394 Ill. App. 3d at 265, 913 N.E.2d at 1161. The court reasoned that because the Act imposed a requirement that home remodeling contracts in excess of $1,000 be in writing, the Act barred the enforcement of an oral contract. *K. Miller Construction Co.*, 394 Ill. App. 3d at 265, 913 N.E.2d at 1161. However, as to whether the plaintiff could recover in *quantum meruit* (count III), the court concluded that the plaintiff could proceed. See *K. Miller Construction Co.*, 394 Ill. App. 3d at 265-66, 913 N.E.2d at 1161-62 (the majority agreeing that the Act did not foreclose recovery in *quantum meruit*, but basing that decision on different rationales).

2. *The Supreme Court Decision in K. Miller Construction Co.*

The supreme court granted the defendants' petition for leave to appeal, in which the defendants maintained that the plaintiff was foreclosed from recovering in *quantum meruit* under the Act. *K. Miller Construction Co.*, 238 Ill. 2d at 291-92, 938 N.E.2d at 476-77. The supreme court disagrees, holding, in pertinent part, that relief in *quantum meruit* was available. *K. Miller Construction Co.*, 238 Ill. 2d at 301, 938 N.E.2d at 482.

3. *The Application of the Supreme Court's Decision in K. Miller Construction Co.*

Consistent with the supreme court's directive that we reconsider our decision in this case in light of its opinion in *K. Miller Construction Co.*, we have discussed the earlier decision of the appellate court in that case to demonstrate that we understood the context in which the supreme court rendered its opinion. After reconsidering our decision in this case, we conclude that *K. Miller Construction Co.* warrants a different result.

As previously discussed, following King's case in chief, Patton moved for a directed judgment (735 ILCS 5/2-1110 (West 2008)), arguing that he was not required to pay the additional $2,500 under any theory of recovery--including *quantum meruit*--because King had failed to present evidence that he provided Patton a consumer-rights brochure as required by section 20 of the Act (815 ILCS 513/20 (West 2006)). The trial court agreed and entered judgment in Patton's favor. In light of the supreme court's decision in *K. Miller Construction Co.*, we reverse the court's judgment in that regard and remand for further proceedings to allow King to present evidence to support his claim of recovery under the theory of *quantum meruit* and Patton to present any evidence opposing such recovery.

III. CONCLUSION

For the reasons stated, we reverse the trial court's judgment and remand for further proceedings not inconsistent with our judgment in this case.

Reversed and remanded for further proceedings.