IN THE COURT OF APPEALS OF IOWA

No. 23-0369
Filed March 27, 2024

TIMOTHY DOYLE,
Plaintiff-Appellant,

vs.

JOHNNY B'S CONSTRUCTION, INC., d/b/a ABSOLUTE CABINETS AND CUSTOM CABINETRY and JONATHAN BRUNDRETT,
Defendants-Appellees.

JOHNNY B'S CONSTRUCTION, INC.,
Counterclaim Plaintiff-Appellee,

vs.

TIMOTHY DOYLE,
Counterclaim Defendant-Appellant.

Appeal from the Iowa District Court for Clayton County, John J. Sullivan, Judge.

A plaintiff appeals the dismissal of his breach-of-contract claims and the judgment against him on a breach-of-contract counterclaim following a bench trial.

AFFIRMED.

Jeremy B. Hahn of Roberts & Eddy, P.C., Independence, for appellant.

Christopher S. Wendland of Clark, Butler, Walsh & Hamann, Waterloo, for appellees.

Considered by Bower, C.J., and Buller and Langholz, JJ.

LANGHOLZ, Judge.

"We are seeing the worst material shortage I've seen in my construction career which has led to delays on multiple ends." So said Jonathan Brundrett—the president of Johnny B's Construction, Inc., the general contractor that Timothy Doyle hired to remodel his hunting cabin—six months into the global COVID-19 pandemic. Two months later, Doyle terminated his contract with Johnny B's because of its delay in completing its work. And then Doyle sued Johnny B's and Brundrett for breach of contract and related claims.[1] Johnny B's counterclaimed for breach of contract based on Doyle's failure to pay for work already performed.

After a bench trial, the district court ruled for Johnny B's on all claims. It found that Johnny B's delay in performance was excused by the pandemic. The court also found that Doyle's allegations of defective workmanship were not credible. And it found that Doyle breached the contract by failing to pay for some of the work Johnny B's performed.

Doyle appeals, arguing that all three of these findings are wrong. But such a factual challenge is a heavy lift under substantial-evidence review. We do not get to try the case again on appeal, reassessing the credibility of the witnesses or weighing the evidence anew. Because the evidence before the district court was sufficient for the court to reach its findings, we affirm the court's judgment.

---

[1] At trial, Doyle voluntarily dismissed his claims against Brundrett, which were based on a theory of piercing Johnny B's corporate veil to obtain a judgment against Brundrett individually. *See Briggs Transp. Co. v. Starr Sales Co.*, 262 N.W.2d 805, 810 (Iowa 1978). And the district court dismissed Doyle's claims for unjust enrichment and promissory estoppel because of the written contract between the parties—a decision Doyle does not challenge on appeal.

I. Background Facts and Proceedings

In 2019, a broken pipe extensively damaged Doyle's hunting cabin in rural Clayton County. His insurer agreed to cover the damage and pay for repairs. And Doyle decided to hire Johnny B's to repair the cabin at the suggestion of his friend, Matthew Harms, who worked as a carpenter for Johnny B's.

The parties signed a written contract in January 2020. It incorporates an August 2019 repair estimate that describes the services and materials to be provided and gives a cost estimate of $97,864.80. And it requires an initial deposit of $20,000, which Doyle paid from his insurance proceeds. The contract does not set a completion date. But Brundrett testified he originally expected the job to be completed that spring.

The contract also includes three other relevant provisions. First, it contains a clause—often referred to as a force-majeure clause—excusing Johnny B's delays for certain serious circumstances outside Johnny B's control:

> The performance of [Johnny B's] and its subcontractors and suppliers is subject to "Unavoidable Delays", which for purposes of this Agreement means any act of God, adverse weather conditions that could not be reasonably anticipated and that had an adverse effect on scheduled construction, casualties, war, embargo, riots, strikes, unavailability of materials (but not failure of a party to pay for such materials), litigation commenced by third persons (including litigation seeking to enjoin the ability of a party to act), and all other acts or omissions, causes or events which are beyond the performing party's reasonable control.

Second, the contract emphasizes the importance of Doyle inspecting Johnny B's work and deems all work accepted if Doyle does not report concerns within the week following the work being performed:

> Regular and frequent inspection of the Project work by [Doyle] is essential to ensure that the Project is completed as timely as

> possible and according to [Doyle]'s expectations as indicated by the plans, the Estimate, this Agreement, and change orders hereto. [Doyle] will be responsible to inspect the work and report any concerns to [Johnny B's] no later than Wednesday of each week for any items completed since the preceding Wednesday. [Doyle]'s failure to report concerns within the allowed period shall be deemed to constitute an acceptance of the work performed and materials installed in the preceding week, and [Johnny B's] will have no liability therefor except for bona fide claims for defective workmanship.

And third, it authorizes the award of attorney fees and annual interest of ten percent for any efforts necessary to collect payments due to Johnny B's under the contract.

Harms began work on Doyle's cabin the same day the contract was signed. And later, a second Johnny B's employee often worked on the project too. But delays soon slowed the repair work.

Sometime around late February 2020, Johnny B's laid off five of its seven employees. And around the same time, the COVID-19 pandemic swept across the nation and into Iowa. *See Riley Drive Ent. I, Inc. v. Reynolds*, 970 N.W.2d 289, 291–93 (Iowa 2022) (describing the Iowa Governor's use of "emergency powers to issue orders aimed at slowing the spread of the virus," beginning with "her initial public health disaster proclamation on March 9, 2020"). According to Brundrett's testimony at trial, Johnny B's had "multiple delays" obtaining materials, including "greater than normal" lead time for ordering windows and delays in finding siding. A major subcontractor "had a lot of illnesses" during the project and all contractors were "fighting their own battles with delays."

Delays may have also been caused in part by the process for releasing Doyle's insurance proceeds. The proceeds were originally paid to the bank holding the mortgage on the cabin and only released for payment to Johnny B's in parts as the bank's inspectors certified that the work progressed to certain benchmarks.

This process caused cash-flow difficulties for the project since funds were needed to buy materials and pay subcontractors to make the required progress to receive more funds.

Text messages between Doyle and Brundrett show that they communicated well at the start. But by July, Brundrett regularly failed to respond to Doyle. On September 10, Doyle asked for an update and expressed his hope that repairs would be complete by October 17 for the start of the muzzleloader hunting season. Brundrett responded:

> Yes, my goal is finished in the next 3–4 weeks as [Harms] said you would [be] going hunting. I'll believe that we will be up there by the end of next week to get windows in and trim finished. Sorry for such a delay as I'm sure you get it. I've never seen such a weird market as we have going. We are seeing the worst material shortage I've seen in my construction which has led to delays on multiple ends.

Yet Johnny B's employees worked on the cabin for the last time on September 21. In total, they had spent about twenty days working on the project, including about four days in January, two days in February, four days in March, four days in April, one day in May, two days in June, two days in July, and the one day in September. By this point, Doyle had paid $53,331.28 to Johnny B's. Brundrett estimated Johnny B's needed about eighty hours of employee time to finish the project. And Harms estimated the project was about 90% complete.

Sometime in the late summer or early fall, the main subcontractor reached out directly to tell Doyle that it had not been paid and would be putting a lien on the cabin and pausing any further work unless it got paid. Doyle paid the subcontractor a total of $12,000 in July and October and promised to pay more. Doyle took out a home equity line of credit to cover this and other expenses.

Beginning October 6, Doyle sent Brundrett increasingly exasperated text messages expressing his displeasure over the delays. On November 4, after a rancorous exchange with Brundrett, Doyle texted Harms notice that he changed the locks on his cabin. Harms apologized "for anything that's happening" and said, "Hope you are happy with what work we were able to get done for you." Doyle responded, "Im super happy with how things look!!!! just not happy with [Brundrett]."

The next day, Doyle texted Brundrett to inform him of the lock change too:

> I am the one in charge of the timeline, you are 7 months past estimated completion date. ALL work will be completed 100% to my satisfaction by 5:00 pm 12/4/2020. You need to provide me with 24 hours advance notice of any work that is going to be done on the project. I pulled the keypad and . . . changed the locks yesterday. You or a representative of your company can come and pick up the key every morning and return it every evening with a full report of what's been done on it.

The same day, Johnny B's sent Doyle what would be a final invoice for $8205.40. In it, Johnny B's started with the original contract estimate, credited Doyle with payments already made to Johnny B's or the subcontractor, subtracted work and materials not yet provided, and assumed that Doyle would pay the remaining amount due to the subcontractor

On November 20—with two weeks still to go to his December 4 deadline—Doyle sent Johnny B's a letter through his attorney terminating the contract "effective immediately." Doyle then carried on with repairs himself and redid work with which he was dissatisfied. He estimated that he spent about 300 hours doing so. And as of the time of trial, he thought the project was about 95% complete. Doyle did not pay Johnny B's any more money.

Doyle sued Johnny B's in January 2021, alleging—among other claims not at issue in this appeal—that it breached the contract by failing to complete the contracted repairs. Johnny B's counterclaimed that Doyle breached the contract by failing to pay the contracted amount for repairs that were completed. At the start of the two-day bench trial in September 2022, Doyle orally amended his petition to add a claim that Johnny B's also breached the contract's implied warranty of workmanship through the repairs it did provide.

The district court heard testimony at trial from Doyle, Brundrett, and Harms and received the parties' documentary evidence. The court ultimately rejected Doyle's claims, finding that Johnny B's nonperformance was excused by the COVID-19 pandemic and that Doyle failed to prove Johnny B's work was defective. The court expressly found that Doyle's testimony about the quality of workmanship was not credible because of his November text to Harms that he was "super happy with how things look!!!!" and his failure to raise any concerns while the work was being performed.

On Johnny B's counterclaim, the court found that Doyle had failed to pay $8205.40 for services and materials that Johnny B's performed under the contract. And so it awarded judgment to Johnny B's in that amount plus interest and $3000 in attorney fees as permitted under the contract. Doyle now appeals.

II. Doyle's Breach-of-Contract Claims

The parties agree the contract claims were tried at law. So we review the district court for correction of errors at law. *Iowa Mortg. Ctr., L.L.C. v. Baccam*, 841 N.W.2d 107, 110 (Iowa 2013). "If substantial evidence in the record supports a district court's finding of fact, we are bound by its finding." *Id.* When engaging in

this review, we ask "whether substantial evidence supports the finding actually made by the trial court, not whether substantial evidence would have supported a different finding." *Van Oort Constr. Co. v. Nuckoll's Concrete Serv., Inc.*, 599 N.W.2d 684, 691 (Iowa 1999). But "a district court's conclusions of law or its application of legal principles do not bind us." *Iowa Mortg.*, 841 N.W.2d at 110.

> To establish a breach of contract, a party must prove:
>
> (1) the existence of a contract; (2) the terms and conditions of the contract; (3) that it has performed all the terms and conditions required under the contract; (4) the defendant's breach of the contract in some particular way; and (5) that plaintiff has suffered damages as a result of the breach.

Id. at 110–11 (quoting *Molo Oil Co. v. River City Ford Truck Sales, Inc.*, 578 N.W.2d 222, 224 (Iowa 1998)). Both a party raising the breach-of-contract claim and a party raising an affirmative defense to breach of contract must prove their claim or defense by a preponderance of the evidence. *See Holliday v. Rain & Hail L.L.C.*, 690 N.W.2d 59, 64–65 (Iowa 2004). If we must interpret the parties' contract, we determine the parties' intent at the time they entered the contract based on the words used in the contract. *Pillsbury Co. v. Wells Dairy, Inc.*, 752 N.W.2d 430, 435–36 (Iowa 2008).

Doyle claimed that Johnny B's breached the contract in two distinct ways: through its delays in completing the project and through defective workmanship in the repairs it did perform. The district court dismissed the first claim because it found that Johnny B's delayed performance was excused by the COVID-19 pandemic under the force-majeure clause in the parties' contract. That clause made Johnny B's performance "subject to 'Unavoidable Delays,' including—among other causes— "unavailability of materials" and "all other acts or omissions,

causes or events which are beyond the performing party's reasonable control." *See generally Pillsbury*, 752 N.W.2d at 440 (discussing common-law meaning of force-majeure clauses while applying Minnesota contract law).

On appeal, Doyle does not challenge that delays caused by the COVID-19 pandemic would fall within the scope of this clause. Indeed, Doyle concedes that the pandemic resulted in "shipment delays, production shortages, and largely unknowns for contractors." But Doyle maintains that Johnny B's did not carry its burden to prove that its delays in performance were caused by the pandemic.

The district court's contrary finding is supported by substantial evidence. Brundrett testified to "multiple delays" obtaining materials, including the "greater than normal" lead time for ordering windows and delays in finding siding. He communicated these delays to Doyle during the project, informing Doyle of the "weird market" with "the worst material shortage [he has] seen." Harms also testified it was "hard to get some materials" during the project. And Brundrett testified a major subcontractor "had a lot of illnesses" during the project and all contractors were "fighting their own battles with delays." He added that all these delays "played a large part in" Johnny B's nonperformance. And even Doyle agreed in his trial testimony that the pandemic "may have led to some sort of delays to this project."

To be sure, the record contains evidence Johnny B's may have failed to perform for reasons other than the COVID-19 pandemic. It seems the lay-off of employees occurred in February 2020 before the pandemic had disrupted Iowa. Johnny B's progress on the cabin was slow even in January and February. And Brundrett also pointed to cash-flow difficulties arising from the process of releasing

the insurance proceeds that prevented ordering materials as another source of delay.[2]

But at most, this evidence supports a contrary finding. And that is the wrong question. Our concern in substantial-evidence review is whether the evidence supports the finding actually made. *See Van Oort Constr.*, 599 N.W.2d at 691. The testimony and text messages about delays because of the COVID-19 pandemic are substantial evidence to support finding Johnny B's nonperformance was excused by "unavoidable delays" under the force-majeure clause in the parties' contract. We thus affirm the district court's dismissal of Doyle's claim that Johnny B's breached the contract through its delays.

On Doyle's second claim—that Johnny B's breached the contract's implied warranty of workmanlike construction—the district court found that Doyle had failed to prove any defective workmanship, mainly because his testimony was not credible. To succeed on such a claim, Doyle must prove the repairs were not done "in a reasonably good and workmanlike manner."[3] *Fry v. Blauvelt*, 818 N.W.2d 123, 134 (Iowa 2012) (cleaned up).

---

[2] Brundrett faulted Doyle for causing the cash-flow difficulties by failing to work with his bank to release the insurance proceeds. Because we affirm on the force-majeure issue, we do not decide if this funding issue also excused its performance.

[3] Contrary to Johnny B's argument, it "has long been the law of this state" that "[i]n *construction* contracts there is an implied warranty that the building will be built in a reasonably good and workmanlike manner." *Kirk v. Ridgway*, 373 N.W.2d 491, 493 (Iowa 1985). And because Doyle is a party to the contract with Johnny B's—not a subsequent purchaser of a repaired property—this case does not implicate any expansion of the implied-warranty doctrine into new contexts. *Cf. id.* at 493–96 (recognizing implied warranty in the sale of a home by a builder-vendor); *Speight v. Walters Dev. Co.*, 744 N.W.2d 108, 110 (Iowa 2008) (expanding doctrine to subsequent purchasers of such homes); *Luana Sav. Bank v. Pro-Build Holdings, Inc.*, 856 N.W.2d 892, 902 (Iowa 2014) (declining to extend it "to a lender acquiring apartment buildings by a deed in lieu of foreclosure").

Doyle spent significant time at trial describing Johnny B's allegedly defective work. But the district court found Doyle's complaints at trial not credible. And as "[t]he trier of fact," that court—not us— "has the prerogative to determine which evidence is entitled to belief." *Tim O'Neill Chevrolet, Inc. v. Forristall*, 551 N.W.2d 611, 614 (Iowa 1996). The district court's finding is supported by substantial evidence too. In November 2020—after Johnny B's was done performing any work and the relationship had completely broken down—Doyle responded to a text from Harms asking if Doyle was "happy with what work we were able to get done for you" by saying that Doyle was "super happy with how things look!!!! just not happy with [Brundrett]." And Brundrett testified that Doyle did not complain about the work quality with him during the project even though the contract required Doyle to "report any concerns to [Johnny B's] no later than Wednesday of each week for any items completed since the preceding Wednesday." What's more, many of the complaints raised at trial were issues that Johnny B's would have addressed if it had been able to complete performance under the contract.

In sum, substantial evidence supports the district court's findings that Johnny B's did not breach the implied warranty of workmanlike construction and its delay in performance was excused by the COVID-19 pandemic. So we affirm the district court's dismissal of Doyle's breach-of-contract claims.

III. Johnny B's Breach-of-Contract Claim

Doyle also challenges the district court's finding that he breached the contract by not paying for some repairs performed by Johnny B's. But Doyle does not dispute that he failed to pay for all services and materials provided under the

parties' contract or the amount that the court found he still owed to Johnny B's. Rather, he argues that Johnny B's nonperformance relieves him of his obligation to pay under the contract. *See Iowa Mortg.*, 841 N.W.2d at 110–11. Yet this just relitigates Doyle's own contract claim. And we have already affirmed that substantial evidence supports the district court's finding that the COVID-19 pandemic excused Johnny B's nonperformance. For the same reason, Johnny B's is not prevented from pursuing its breach-of-contract claim for nonpayment on services that it did provide to Doyle under the contract.

Doyle also summarily argues that the award of damages conflicts in some manner with the inspection process used to release his insurance proceeds for payment to Johnny B's. But Doyle does not flesh out the argument on appeal with any reasoning or citation to legal authority. *See* Iowa R. App. P. 6.903(2)(g)(3). And in any event, no provision in the parties' contract makes Doyle's payment obligation conditional on any inspection process or the release of his insurance proceeds.

Therefore, the district court did not err in finding that Doyle breached the contract and owes Johnny B's $8,205.40 in damages, $3,000 in attorney fees, and interest as provided under the contract. We thus affirm the judgment against Doyle on Johnny B's counterclaim.

AFFIRMED.