**IN THE COURT OF APPEALS OF IOWA**

No. 8-941 / 08-0761
Filed February 4, 2009

**GEROLD W. BLAZEK,**
Plaintiff-Appellee/Cross-Appellant,

**vs.**

**EASTERN IOWA CONSTRUCTION, L.L.C.,**
Defendant-Appellant/Cross-Appellee.

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Appeal from the Iowa District Court for Linn County, Marsha M. Beckelman, Judge.

Eastern Iowa Construction (EIC) appeals from the district court's order finding a breach of contract and awarding damages to Gerold Blazek. **AFFIRMED IN PART, REVERSED IN PART.**

David A. O'Brien, P.C. of Willey & O'Brien, L.C., Cedar Rapids, for appellant.

Brad J. Brady of Brady & O'Shea, P.C., Cedar Rapids, for appellee.

Considered by Vogel, P.J., and Mahan and Miller, JJ.

**VOGEL, P.J.**

Eastern Iowa Construction (EIC) appeals from the district court's order finding a breach of contract and awarding damages to Gerold Blazek. Blazek cross-appeals.

While renovating a property, Blazek hired EIC to replace a portion of the roof. A rainstorm began, and with no protection for the exposed area of the roof, a substantial amount of water poured into the building. The district court found EIC liable for the resulting water damage. EIC asserts that the rainstorm was unforeseen and the property was already in disrepair, therefore they are not liable for much of the damage or lost value to Blazek's property. Blazek cross-appeals, asserting that he pled this action in tort; therefore it was an error for the district court to limit damages to breach of contract. He also claims that he is entitled to additional items of damage. Our review of this action tried at law is for the correction of errors of law. Iowa R. App. P. 6.4.

We agree with the district court that "EIC breached the contract with Blazek by not having tarps readily available to cover the roof in the event that there was precipitation while roofing work was taking place." It then found damages based on this breach. While Blazek argues the court should have found its claims to be sounding in tort rather than breach of contract, the damages the court found as to the required repair were appropriately based on the breach of contract. *See R.E.T. Corp. v. Frank Paxton Co., Inc.*, 329 N.W.2d 416, 418 (Iowa 1983).

Even if the district court would have determined this breach was actionable in tort, the additional damages Blazek sought to recover were

specifically addressed by the court and found to lack evidentiary support. For example: Blazek argued below and now cross-appeals, seeking additional damages for "removal of HVAC pipes, electrical units, lead paint and carpet, loss of use of the building, and for Blazek's own labor." The district court reviewed each item of claimed damage and repair, and set aside those expenses not directly caused by EIC's failure to protect the exposed areas of the building from the onslaught of rain. The different stages and purposes of the repair work were difficult to sort out, as the building was in poor condition before the rain damage occurred. The district court painstakingly examined each repair bill and awarded only those expenses necessary to remediate the damage specifically caused by EIC's breach of contract by its faulty work, which had allowed the rain to permeate the building. The district court, citing *Midland Mut. Life Ins. Co. v. Mercy Clinics*, *Inc.*, 579 N.W.2d. 823, 831 (Iowa 1998) allowed those damages which put Blazek in "as good a position as he or she would have occupied had the contract been performed." *See also* Am. Jur. 2d *Damages* § 45, at 85 (2003). We agree with the district court's award of damages resulting from the breach of contract. Additional claims lacked evidentiary support as noted by the district court.

However, the district court also allowed $25,000 for diminution in value. In May 2006, prior to Blazek purchasing the building, George R. Davis, of the Appraisal Resources Company, appraised the building at $210,000. In February 2007, following the rain damage and repair work, Davis re-appraised the property for $185,000, which was the purchase price agreed to by the subsequent buyer, John Mangold in December 2006. Davis gave no testimony that would indicate

the reduced appraisal was based on unremediated rain damage. The district court gave no findings to support why the value was lower, other than citing the purchase price by Mangold. On appeal, EIC seeks to have the loss in value award stricken, as not supported by substantial evidence and because it is a duplication of the specific repair work awarded. Blazek, on cross-appeal, seeks to have the loss of value award increased. Neither party points us to any testimony to aid our resolution of the issue. While we have searched the record for the relevant testimony, we have found none, and advocacy for either party is not our role on appeal. *Inghram v. Dairyland Mut. Ins. Co.*, 215 N.W.2d 239, 240 (Iowa 1974) ("To reach the merits of this case would require us to assume a partisan role and undertake the appellant's research and advocacy. This role is one we refuse to assume."); *see* Iowa R. App. P. 6.14(7) (requiring references in briefs to the record). Finding no substantial evidence in the record to support a loss in value in addition to the award of remediation repairs, we reverse the loss in value award by striking the $25,000.

Upon our review of the record we find that the district court carefully found all other specific damages in the correct amount. We therefore affirm the award of damages to Blazek, but strike the award for loss of value.

**AFFIRMED IN PART, REVERSED IN PART.**