COURT OF APPEALS
DECISION
DATED AND FILED

February 12, 2015

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2014AP564 **Cir. Ct. No. 2011CV1785**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

MASTERCLEAN INC. D/B/A PUROFIRST OF MILWAUKEE,

PLAINTIFF-APPELLANT-CROSS-RESPONDENT,

V.

DAVID L. BUTLER AND CAROL A. BUTLER,

DEFENDANTS-RESPONDENTS-CROSS-APPELLANTS.

APPEAL and CROSS-APPEAL from a judgment of the circuit court for Waukesha County: PATRICK C. HAUGHNEY, Judge. *Affirmed in part; reversed in part and cause remanded with directions; cross-appeal dismissed.*

Before Blanchard, P.J., Lundsten and Kloppenburg, JJ.

¶1 KLOPPENBURG, J. This dispute concerns a home restoration and remodeling project undertaken for homeowners David and Carol Butler by Masterclean Inc. d/b/a Purofirst of Milwaukee. A jury found that Purofirst

breached an oral contract with the Butlers and violated the Home Improvement Practices Act in a number of respects. In response to a special verdict question on damages, which referred to Purofirst's breach of contract along with Purofirst's specific violation of the Act for failing to put all material terms and conditions of the contract in writing, the jury awarded the Butlers $29,407.37 in damages. The circuit court interpreted the jury's award of damages to include pecuniary loss suffered by the Butlers as a result of that specific violation of the Act, and, therefore, awarded the Butlers attorney's fees and double damages pursuant to WIS. STAT. § 100.20(5) (2013-14).[1]

¶2 Purofirst appeals, arguing that the attorney's fees and double damages award must be reversed because: (1) the circuit court erred in interpreting a jury verdict answer as a jury finding that the Butlers suffered pecuniary loss resulting from Purofirst's failure to put all material terms and conditions of the contract in writing in violation of the Home Improvement Practices Act; and (2) even if the circuit court correctly interpreted the jury's answer, there is insufficient evidence to support the assumed underlying jury

[1] WISCONSIN STAT. § 100.20(5) provides, "Any person suffering pecuniary loss because of a violation by any other person of any order issued under this section may sue for damages … and shall recover twice the amount of such pecuniary loss, together with costs, including a reasonable attorney's fee."

While the statute refers to "pecuniary" loss suffered because of a violation of the Act, the special verdict in this case referred to "monetary" loss caused by a violation of the Act. The parties do not argue that this difference in terminology is significant to the analysis in this case, and we discern no significant difference. *See* ***Mueller v. Harry Kaufmann Motorcars, Inc.***, 2015 WI App 8, ¶¶22, 29, ___ Wis. 2d ___, ___ N.W.2d ___ (concluding that a "pecuniary loss" under the statute includes monetary loss). In this opinion we follow the statute in referring to pecuniary loss, except when quoting the special verdict.

All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

finding that the failure to put all material terms and conditions of the contract in writing caused the Butlers pecuniary loss.

¶3 As explained below, we assume without deciding that the circuit court correctly interpreted the jury's answer. However, the Butlers fail to point to, and our review of the record fails to disclose, any evidence in the record supporting a finding that the Butlers suffered pecuniary loss resulting from Purofirst's failure to put all material terms and conditions of the contract in writing. In the absence of sufficient evidence in the record supporting the jury's finding of pecuniary loss, the finding cannot be sustained, and the Butlers are not entitled to attorney's fees and double damages pursuant to WIS. STAT. § 100.20(5). Therefore, we reverse the circuit court's award of attorney's fees and double damages to the Butlers and remand for entry of a judgment consistent with this opinion.[2]

BACKGROUND

¶4 The pertinent facts adduced at trial are not disputed. On September 7, 2009, the Butlers' home was heavily damaged by fire. A few days later, the Butlers met with Purofirst representatives at the Butlers' home and signed an "Authorization" form provided by Purofirst, which stated that the Butlers "authorize[d] Masterclean Inc d/b/a Purofirst of Milwaukee (Purofirst) to perform restoration and/or construction service" at the Butlers' home. Soon after,

[2] Our reversal of the circuit court's order awarding attorney's fees and double damages disposes of the Butlers' cross-appeal arguments regarding the court's determination of the amount of the jury's damages award to be doubled, and therefore, the cross-appeal is dismissed. *See* ***Maryland Arms Ltd. P'ship v. Connell***, 2010 WI 64, ¶48, 326 Wis. 2d 300, 786 N.W.2d 15 ("Issues that are not dispositive need not be addressed.").

Purofirst started construction work on the Butlers' home. Between December 2009 and March 2010, the Butlers and Purofirst executed five "change orders" to reflect changes to the original project.

¶5 The Butlers moved back into their house in April 2010. Upon Purofirst's request, the Butlers created a "punch list" detailing items that still required repair. Purofirst repaired some items on the list, but contended that others were not within the scope of the project. The relationship between Purofirst and the Butlers deteriorated during this time.

¶6 In May 2011, Purofirst brought a breach of contract claim against the Butlers, alleging that the Butlers owed Purofirst an outstanding balance for the project. The Butlers counterclaimed that Purofirst violated the Home Improvement Practices Act by making "false, deceptive and misleading representations" in order to "induce [the Butlers] into entering a home improvement contract" and to "obtain or keep payments under a home improvement contract." The Butlers sought double damages along with attorney's fees for these violations.

¶7 The case was tried before a jury. During the jury instruction conference, the Butlers requested leave to amend their pleadings to reflect additional Home Improvement Practices Act violations, including the "failure to provide a written contract." In seeking leave to amend, the Butlers asserted that their damage from the violations of the Act was that "they have overpaid for the goods and services that they have received."

¶8 Purofirst moved to dismiss the Butler's Home Improvement Practices Act claims, arguing that "the only damages [the Butlers have] itemized are those damages that deal with construction" which "are not related to … any

type of misrepresentation or [the Home Improvement Practices Act]." The circuit court granted the Butlers' request to amend over Purofirst's objection, and denied Purofirst's motion to dismiss.

¶9 Fifty-four special verdict questions were submitted to the jury. As pertinent to this appeal, the jury found that:

> (1) there was an oral contract between Purofirst and the Butlers, Purofirst breached the oral contract with the Butlers, and that breach caused damage to the Butlers;
>
> (2) Purofirst violated the Act in failing to put all contractual terms and conditions in writing;[3]
>
> (3) $29,407.37 would "fairly and reasonably compensate [the Butlers] for damages suffered because of [Purofirst's] action."

¶10 Again over Purofirst's objection, the circuit court granted the Butlers' post-verdict motion for an award of attorney's fees and double damages, based on its conclusion that the jury's damages award included pecuniary loss to the Butlers resulting from Purofirst's failure to put all material terms and conditions of the contract in writing in violation of the Home Improvement Practices Act.

[3] The jury found that Purofirst also violated the Act in other respects. For each of those violations, the jury was asked whether the Butlers suffered a "monetary loss" as a result of the violation. The jury answered that the Butlers did not suffer any "monetary loss" as a result of each of those violations. The jury was not asked whether the Butlers suffered a "monetary loss" as a result of the violation of failing to put all material terms and conditions of the contract in writing.

DISCUSSION

¶11 "The Wisconsin Department of Agriculture, Trade and Consumer Protection, pursuant to its authority under WIS. STAT. § 100.20(2), has adopted regulations governing home improvement trade practices. WIS. ADMIN. CODE [ch.] ATCP 110 [the Home Improvement Practices Act]." ***Grand View Windows, Inc. v. Brandt***, 2013 WI App 95, ¶¶3, 24, 349 Wis. 2d 759, 837 N.W.2d 611. These regulations "impose[] certain requirements on home improvement contracts between owners of residential property and entities engaged in the business of making or selling home improvements." ***Id.***, ¶24. Under WIS. STAT. § 100.20(5), a claimant suffering pecuniary loss caused by a violation of the Act shall recover double damages along with reasonable attorney's fees and costs.

¶12 The dispute on appeal begins with the circuit court's interpreting the jury verdict answer as a jury finding that the Butlers suffered pecuniary loss resulting from Purofirst's failure to put all material terms and conditions of the contract in writing in violation of the Act.[4] Thus, we first review the relevant

[4] The violation at issue here is of WIS. ADMIN. CODE § ATCP 110.05, which states in pertinent part:

> (1) The following home improvement contracts and all changes in the terms and conditions thereof, shall be in writing:
>
> (a) Contracts requiring any payment of money or other consideration by the buyer prior to completion of the seller's obligation under the contract.
>
> ....
>
> (2) If sub. (1) requires a written home improvement contract or the buyer signs a written contract, the written contract shall be signed by all parties and shall clearly, accurately and legibly set forth all material terms and conditions of the contract, including:

(continued)

portions of the jury's special verdict, and we assume without deciding that the circuit court correctly concluded that those portions of the verdict indicated that the jury found that Purofirst's failure to put all material terms and conditions of the contract in writing in violation of the Act caused the Butlers to suffer pecuniary loss. We then turn to the parties' arguments as to whether sufficient evidence in the record supports the jury's finding.

> (a) The name and address of the seller, including the name and address of the sales representative or agent who solicited or negotiated the contract for the seller.
>
> (b) A description of the work to be done and the principal products and materials to be used or installed in performance of the contract. The description shall include, where applicable, the name, make, size, capacity, model, and model year of principal products or fixtures to be installed, and the type, grade, quality, size, or quantity of principal building or construction materials to be used. Where specific representations are made that certain types of products or materials will be used, or the buyer has specified that certain types of products or materials are to be used, a description of such products or materials shall be clearly set forth in the contract.
>
> (c) The total price or other consideration to be paid by the buyer, including all finance charges. If the contract is one for time and materials the hourly rate for labor and all other terms and conditions of the contract affecting price shall be clearly stated.
>
> (d) The dates or time period on or within which the work is to begin and be completed by the seller.
>
> (e) A description of any mortgage or security interest to be taken in connection with the financing or sale of the home improvement.

A. The Jury's Damages Finding

¶13 It is not disputed that in answering special verdict questions 30(b), 31, and 32, the jury found that Purofirst breached its oral contract with the Butlers and that the Butlers suffered damages as a result of that breach:

> 30(b). Was there an oral contract between the plaintiff and defendant? *Yes*.
>
> 31. If you answered "yes" to Question [30(b)] above, answer this question: Did plaintiff breach its contract with the defendants? *Yes*.
>
> 32. If you answered "yes["] to Question 31 above, then answer this question: Was such a breach of contract a cause of damage to the defendants, David and Carol Butler? *Yes*.

¶14 It is not disputed that in answering special verdict question 51, the jury found that Purofirst violated the Home Improvement Practices Act by not putting all material terms and conditions of the home improvement contract in writing:

> 51. ... Was this home improvement contract, including all changes, in the terms and conditions thereof in writing? *No*.

¶15 The special verdict concluded with question 54, which instructed the jury to determine a "sum of money" that would "fairly and reasonably compensate" the Butlers for damages suffered because of Purofirst's "action," if the jury answered "yes" to certain special verdict questions or answered "no" to others. In particular, question 54 applied if the jury answered "yes" to question 32—whether Purofirst's breach of contract caused the Butlers damages—or "no" to question 51—whether all terms and conditions of the home improvement contract were in writing, as required by the Home Improvement Practices Act:

> 54. If you answered "yes" to Question 32, …, OR If you answered "no" to Question 51 ... above, then answer this question: What sum of money will fairly and reasonably compensate defendants for damages suffered because of plaintiff's action? *$29,407.37*.

¶16 The parties dispute whether the damages awarded by the jury in response to special verdict question 54 ($29,407.37) included pecuniary loss caused by Purofirst's violation of the Act in failing to put all material terms and conditions of the contract in writing. Purofirst suggests that the jury's answers to other special verdict questions—that the Butlers suffered no "monetary loss" from other violations of the Act by Purofirst—together with the jury's finding that the Butlers suffered damages because of Purofirst's breach of contract, support the conclusion that the damages award did not include pecuniary loss caused by Purofirst's failure to put all material terms and conditions of the contract in writing in violation of the Act. As noted, the circuit court concluded to the contrary, even as it acknowledged some ambiguity in the special verdict.

¶17 For the purpose of deciding this appeal, we assume without deciding that the circuit court concluded correctly, that the "action" referred to in special verdict question 54 included both Purofirst's breach of the oral contract and Purofirst's failure to put all material terms and conditions of the contract in writing in violation of the Act, and that the damages award included both damages for the former and pecuniary loss for the latter.[5] Nevertheless, as we explain in the section that follows, even if the jury verdict is properly interpreted as including an

[5] Our assumption might suggest that there is, arguably, a problem with the damages verdict because some portion of it is unsupported by sufficient evidence. But, Purofirst does not make this argument. To the contrary, Purofirst contends that the jury did not mean to award any money relating to the violation of the Act, so that, in Purofirst's view, the damages verdict includes only damages for Purofirst's breach of the oral contract. Therefore, Purofirst seeks only to reverse the circuit court's award of attorney's fees and double damages.

award of damages for Purofirst's failure to put all material terms and conditions of the contract in writing, our review of the record fails to disclose, and the Butlers fail to point to, any evidence that supports a jury finding that pecuniary loss resulted from the absence of a written contract containing all material terms and conditions.

B. Evidence to Support the Jury's Damages Finding

¶18 Purofirst argues that there is insufficient evidence to support a jury finding that Purofirst's failure to put all material terms and conditions of the contract in writing, in violation of the Home Improvement Practices Act, caused the Butlers to suffer pecuniary loss. In particular, Purofirst contends that there is no evidence of a causal connection between Purofirst's Act violation and the Butlers' damages. For the reasons that follow, we agree.[6]

¶19 Generally, "damages should be proven by statements of facts rather than by mere conclusions of the witnesses, and a claimant's mere statement or assumption that he has been damaged to a certain extent without stating any facts on which the estimate is made is too uncertain." ***Plywood Oshkosh, Inc. v. Van's Realty & Constr. of Appleton, Inc.***, 80 Wis. 2d 26, 31-32, 257 N.W.2d 847 (1977). "'[T]he evidence must demonstrate that the injured party has sustained some injury and must establish sufficient data from which the trial court or jury could properly estimate the amount.' Although a party need not prove damages to a mathematical certainty, a party asserting a pecuniary loss for the purposes of

[6] Because this issue is dispositive, we do not address the other arguments made by Purofirst on appeal. *See* ***Maryland Arms Ltd. P'ship v. Connell***, 2010 WI 64, ¶48, 326 Wis. 2d 300, 786 N.W.2d 15.

WIS. STAT. § 100.20(5) must show that there is a causal connection between a prohibited trade practice under WIS. ADMIN. CODE § ATCP Chapter 110 and the damage incurred." ***Grand View Windows***, 349 Wis. 2d 759, ¶21 (citation omitted); *see also* WIS. STAT. § 100.20(5) ("Any person suffering pecuniary loss *because of* a violation by any other person of any order issued under this section may sue for damages …." (emphasis added)).

¶20 We "will sustain a jury verdict if there is any credible evidence to support it. Credible evidence is that evidence which excludes speculation or conjecture. We cannot uphold a judgment based on conjecture, unproved assumptions, or mere possibilities. In reviewing the sufficiency of the evidence on appeal, we view the evidence in the light most favorable to the jury's verdict, and we sustain the jury's verdict if there is any credible evidence to support it." ***Grand View Windows***, 349 Wis. 2d 759, ¶¶22-23 (citations, internal quotation marks, and quoted sources omitted).

¶21 On appeal, the Butlers fail to identify any evidence in support of the jury's finding that they suffered a pecuniary loss resulting from Purofirst's failure to put all material terms and conditions of the contract in writing. As we proceed to explain, the only estimated damages presented by the Butlers and their expert witnesses were associated with remediating a residual smoke odor and repairing punch list items. The Butlers fail to explain how the costs of remediating the smoke odor and repairing the punch list items are connected to Purofirst's failure to put all material terms and conditions of the contract in writing.

¶22 The Butlers' testimony centered on Purofirst's poor workmanship and unprofessional behavior. Neither the Butlers nor their witnesses testified as to how the lack of a written contract containing all material terms and conditions

might have caused the Butlers to suffer a pecuniary loss, or if so, the amount of such loss. Although the Butlers' expert witnesses testified as to the estimated costs of repair for various workmanship defects in the Butlers' home, particularly remediating a smoke odor and repairing punch list items, neither expert witness ever related any of these costs to Purofirst's failure to put all material terms and conditions of the contract in writing in violation of the Act.

¶23 Carol Butler's testimony similarly did not link Purofirst's failure to put all material terms and conditions of the contract in writing to any estimated amount of pecuniary loss. Like the Butlers' expert witnesses, she identified as damages only the costs for "smoke smell remediation and punch list items." There was no line-item indicating any damages caused by Purofirst's failure to put all material terms and conditions of the contract in writing in violation of the Act, and no testimony as to how that violation caused those "smoke smell remediation and punch list items" damages. Moreover, the Butlers admit in their response brief that the jury's award of damages "appears" to reflect the cost of repairs estimated by their expert witnesses, namely repairing punch list items and remediating the smoke smell, reduced slightly due to consideration of the expert witness's testimony that "less expensive methods may work [for remediating the smoke smell] and could be tried first."

¶24 We have "searched the record in vain to find any evidence that connects a specific item of damage to the [Act] violation the jury found." *See* ***Grand View Windows***, 349 Wis. 2d 759, ¶31. We have not found any evidence in the record to support a jury finding that the lack of a written contract containing all material terms and conditions caused the Butlers some pecuniary loss, let alone to establish "'sufficient data from which the [circuit] court or jury could properly estimate the amount [of damage].'" *See* ***id.***, ¶21 (quoted source omitted). Thus,

"[f]inding no evidence in the record before us, we can only regretfully conclude that the jury's [finding of a pecuniary loss caused by Purofirst's violation of the Act] is the result of speculation" and cannot be sustained. *See* ***id.***, ¶33.

¶25 In sum, assuming without deciding that the jury's damages award includes damages attributable to Purofirst's failure to put all material terms and conditions of the contract in writing, the Butlers fail to persuade us that such an award of damages is supported by sufficient evidence in the record.

C. Presumption of Pecuniary Loss

¶26 Taking a different tack, the Butlers argue that there is a presumption of pecuniary loss from the violation at issue here—Purofirst's failure to put all material terms and conditions of the contract in writing—and the amount of pecuniary loss presumed is all of the money they paid to Purofirst. The Butlers base their argument on our decision in ***Kaskin v. John Lynch Chevrolet-Pontiac Sales, Inc.***, 2009 WI App 65, 318 Wis. 2d 802, 767 N.W.2d 394. According to the Butlers, ***Kaskin*** establishes a presumption as to both the existence and the amount of pecuniary loss when motor vehicle repairs are performed without customer authorization. The Butlers argue that the violation and circumstances here are comparable. The Butlers contend that in the absence of a written contract containing all material terms and conditions, which is the violation that the jury found in this case, Purofirst, like the repair shop in ***Kaskin***, performed unauthorized work.

¶27 We conclude that the Butlers' reliance on ***Kaskin*** is flawed. As we explain in more detail below, even if the "authorization" analysis in ***Kaskin*** might apply to the "written contract" violation at issue here, something we do not resolve, the Butlers' comparison with ***Kaskin*** fails because the ***Kaskin*** damages

analysis presupposes a lack of authorization and, in contrast, here there was no finding that Purofirst undertook work without the Butlers' authorization, and the Butlers do not point to evidence that would support such a finding.[7] We first review the ***Kaskin*** decision and then explain why the analysis in that case does not apply here.

¶28 In ***Kaskin*** we determined the meaning of "pecuniary loss" in WIS. STAT. § 100.20(5) in the context of a violation of a consumer protection regulation dealing with unauthorized motor vehicle repairs. 318 Wis. 2d 802, ¶1. The pertinent regulation provided that a motor vehicle repair shop may not "'[d]emand or receive payment for unauthorized repairs.'" ***Id.*** (quoted source omitted). We held that where a motor vehicle repair shop violates that regulation and "receives money from a customer for repairs that the customer did not authorize," the shop causes pecuniary loss to the customer because of the violation, and "the customer's pecuniary loss is the entire amount of the unauthorized charges that the customer paid." ***Id.***, ¶¶24, 28. We explained that the regulation at issue ensured that a consumer has "the power to choose whether to have the repair work performed, in the manner and price suggested by the repair shop," so as to preserve the consumer's "informed consent." ***Id.***, ¶¶16-17, 28.

[7] We acknowledge that in ***Kaskin*** we remanded for factual resolution as to whether there was or was not authorization. *See* ***id.***, ¶28. The difference is that ***Kaskin*** was decided on summary judgment. In that case, the circuit court wrongly assumed that authorization was immaterial. *See* ***id.***, ¶6. After explaining why authorization was a material issue, and the damages that would flow from a lack of authorization, we remanded because whether the plaintiff had provided authorization was a disputed material fact. *See* ***id.*** In ***Kaskin***, then, the plaintiff did not have an opportunity to prove a lack of authorization, whereas in this case the Butlers did.

¶29 A careful reading of the decision in ***Kaskin*** makes it clear that the lynchpin of both the violation and the holding in ***Kaskin*** was the absence of *authorization* for the repairs performed:

- "This case concerns that part of our consumer protection law dealing with *unauthorized* motor vehicle repair ... if the work done here was *unauthorized*, then the harm to the consumer ... was that he was deprived of his prescribed right to be informed and his concomitant right to consent or refuse consent." ***Id.***, ¶1 (emphasis added).

- The issue addressed by the violation at issue was "*authorization*" not whether the work was "faulty." ***Id.***, ¶2 (emphasis added).

- The rules at issue prohibited a shop from "'perform[ing] any repair that *has not been authorized*,'" and "from demanding or receiving payment for *unauthorized* repairs." ***Id.***, ¶¶10-11 (emphasis added).

- "[S]ince the chapter prohibits *unauthorized* repairs, it follows that *unauthorized* repairs make the consumer, 'suffer'" and therefore the pecuniary loss "is clearly the amount suffered to be paid as a result of the violation of the code." ***Id.***, ¶15 (emphasis added).

- Case law recognizes "that a major purpose of WIS. ADMIN. CODE ch. ATCP 132 is to prevent repair shops from performing *uncommissioned*, or *unauthorized*, repairs." ***Id.***, ¶16 (alteration in original).

- "The purpose of the code is to prevent *unauthorized* repairs. If the repairs are *unauthorized*, they violate the code." ***Id.***, ¶18 (emphasis added).

- "[I]f the customer does not admit to authorizing the repairs and the trial court finds that the customer did not authorize the repairs as a matter of fact, then the shop *may never collect for the unauthorized repairs under any legal theory*. The lack of customer authorization is never a technical violation." ***Id.***, ¶24 n.6 (alteration in original).

- "Because of our holding, whether [the consumer] can ultimately prevail depends on whether he *authorized* the repairs." ***Id.***, ¶28 (emphasis added).

¶30 To sum up thus far, in ***Kaskin*** we explained why, under a regulation prohibiting the receipt or retention of payment for repairs performed without written or oral authorization, the damages for a violation is "in the amount that was wrongfully retained or received." *See* ***id.***, ¶¶24, 28; *see also* ***id.***, ¶4 (noting that whether Kaskin orally authorized the repairs was a disputed fact to be

addressed on remand). The Butlers' attempt to apply ***Kaskin*** to this case fails because a comparable lack of authorization underpinning is absent here. Assuming without deciding that a violation of the "written contract" requirement at issue here might similarly implicate the "authorization" concerns at the heart of ***Kaskin***, a "written contract" violation does not inherently involve a lack of authorization. That is, so far as we can tell, a consumer might authorize home repairs, but the contractor could nonetheless violate the "written contract" requirement by, for example, failing to provide in writing a description of any security interest or a statement of any warranty. *See* WIS. ADMIN. CODE § ATCP 110.05(2)(e) and (f).

¶31 To get to square one with a ***Kaskin***-based theory of recovery, it seems necessary to seek factual resolution of whether Purofirst performed unauthorized work. However, the Butlers point to nothing in the record showing that they presented evidence establishing, or that they asked the jury to find, that Purofirst performed work without their authorization.[8] Rather, when the Butlers first raised their ***Kaskin***-based argument after the verdict, they were in effect asking the circuit court, as they now ask us on appeal, to speculate about whether *in fact* there was an authorization problem. We decline to do so.

¶32 In sum, the jury here found that Purofirst violated a regulation requiring that all material terms and conditions of the contract be put in writing, but the jury did not make any finding that Purofirst performed work that the

[8] Even then, under a ***Kaskin*** approach, only the portion paid for unauthorized work would be damages, not the entire amount paid under the contract, which is what the Butlers here assert they are entitled to. And, we note, the evidence the parties discuss seems to suggest there was authorization for significant portions of the work performed by Purofirst.

Butlers did not authorize, nor do the Butlers point to evidence that would support such a jury finding. Accordingly, the Butlers provide no basis for applying here the approach we applied in ***Kaskin***.

CONCLUSION

¶33 For the reasons set forth above, we reverse the circuit court's grant of attorney's fees and double damages to the Butlers and remand for entry of a judgment consistent with this opinion.

By the Court.—Judgment affirmed in part; reversed in part and cause remanded with directions; cross-appeal dismissed.

Not recommended for publication in the official reports.