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**DISTRICT II**

April 5, 2017

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Waukesha County Courthouse  
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You are hereby notified that the Court has entered the following opinion and order:

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2016AP1777-FT

Al Laatsch v. Autumn Woods Condominium Association  
(L.C. # 2014CV2520)

Before Neubauer, C.J., Reilly, P.J., and Hagedorn, J.

Al and Lois Laatsch (Laatsch) appeal from a circuit court order granting summary judgment to Autumn Woods Condominium Association on Laatsch's breach of contract claim. Pursuant to a presubmission conference and this court's order of September 29, 2016, the parties submitted memorandum briefs. Upon review of those memoranda and the record, we affirm.

In his complaint against the Association, Laatsch alleged breach of contract due to defectively designed plumbing that flooded his condominium unit in 2004, 2006 and 2014. Laatsch alleged a diminution in the unit's value as a result of the floods and a risk of future flooding due to the plumbing's allegedly defective design. Laatsch sought compensation for water damage to the unit and for the diminution in the unit's value.

The Association sought summary judgment on Laatsch's breach of contract claim. The circuit court noted the absence of facts in dispute relating to either the plumbing's condition or its allegedly defective design. The court concluded that the contract, if any, was not breached because the plumbing had been repaired. In the absence of disputed facts, the court granted summary judgment to the Association. Laatsch appeals.

We review decisions on summary judgment by applying the same methodology as the circuit court. *M & I First Nat'l Bank v. Episcopal Homes Mgmt., Inc.*, 195 Wis. 2d 485, 496, 536 N.W.2d 175 (Ct. App. 1995). That methodology has been recited often and we need not "repeat it here except to observe that summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Id.* at 496-97.

For purposes of this appeal, we assume without deciding that Laatsch and the Association had a contract requiring that the plumbing be in good order and repair.<sup>1</sup>

We look to the parties' summary judgment proofs to determine whether there are any material facts in dispute which would entitle Laatsch to a trial. *Brownelli v. McCaughtry*, 182 Wis. 2d 367, 372-73, 514 N.W.2d 48 (Ct. App. 1994). The party opposing summary judgment must set forth specific evidentiary facts showing that a genuine factual issue exists for trial. *Helland v. Kurtis A. Froedtert Mem'l Lutheran Hosp.*, 229 Wis. 2d 751, 756, 601 N.W.2d 318 (Ct. App. 1999). The party may not "rely upon unsubstantiated conclusory remarks, speculation, or testimony which is not based upon personal knowledge." *Id.*

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<sup>1</sup> We do not address any appellate issue relating to the existence of the contract, its terms or any argument regarding its alleged ambiguity.

The Association's summary judgment motion asserted the absence of factual disputes relating to the plumbing's design and condition. The Association submitted several affidavits in support of its motion. Camille Sowa, an employee of the Association's property manager, averred that in 2015, the Association engaged and paid Heiden Plumbing to repair the plumbing that caused the 2014 flood, but repairs to Laatsch's unit (including drywall and vinyl replacement) remained outstanding. Plumber Adam Macintosh of Heiden Plumbing Co., Inc. described the 2015 repair of a broken water line (no further leaks) and a modification to the main water line. David Nason, a licensed home inspector, averred that there were no defects in the plumbing system and that the Association made all necessary repairs in 2015.

Laatsch submitted the affidavit of Terry Carrick, an appraiser, who opined that in light of what he understood about the 2015 repair, the plumbing problem was not "positively eliminated,"<sup>2</sup> the same plumbing lines that caused flooding three times remained in proximity to Laatsch's unit, and Laatsch will have to disclose "the plumbing defects"<sup>3</sup> and the damage to the unit when he tries to sell the unit. Carrick opined that the unit's value was reduced by \$70,000 as a result of the Association's "failure to maintain and repair the common plumbing."

Assuming without deciding that the Association had a contractual obligation to fix the leaking pipes and to keep the pipes in good order and repair, Laatsch's summary judgment showing was insufficient to create a factual issue relating to the breach of that contractual

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<sup>2</sup> The basis for this opinion is unclear.

<sup>3</sup> The basis for this opinion is unclear.

obligation. Laatsch did not counter the Association's submissions establishing that the plumbing was repaired in 2015 and the design was not defective.

Laatsch offered nothing on summary judgment to support his claim that pipes had to be relocated to avoid further flooding and damage to his unit.<sup>4</sup> Laatsch did not offer a plumbing expert to opine on the likelihood that the plumbing would flood the unit again, to opine regarding the efficacy of the 2015 repair and modification, to opine that after the 2015 repair, the pipes are not in good order and repair, or to opine that the plumbing design is defective. Therefore, Laatsch's damage claim based on diminution in the value of the unit due to the threat of future flooding from defectively designed plumbing or an ineffective 2015 repair is speculative. No factual dispute exists in the summary judgment record on this question.

Laatsch also sought compensation for water damage to his unit. The Association paid for the plumbing repairs, but repairs to the unit from the most recent flood remained outstanding at the time summary judgment was granted in this case. The record contains no evidence of the projected cost of these forthcoming repairs.<sup>5</sup> The only damage evidence in the record is the appraiser's opinion regarding the unit's value, i.e., as a result of the Association's failure to maintain and repair the common plumbing, the value of Laatsch's unit is diminished by \$70,000. However, the appraiser's opinion is inextricably linked to the threat of future flooding and the allegedly defective plumbing design about which there are no factual disputes in this record. In

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<sup>4</sup> To this end, Laatsch offered the opinion of an appraiser who demonstrated no expertise in plumbing matters.

<sup>5</sup> The record contains email exchanges between Laatsch and appraiser Carrick in which Laatsch generally discusses some of the unit repair costs. This material is neither cited to us nor argued.

addition, Laatsch does not cite any portion of the summary judgment record showing a factual dispute relating to the cost to repair water damage. Therefore, this damage claim is also speculative.<sup>6</sup>

The circuit court did not err in granting summary judgment to the Association because Laatsch did not counter the Association's showing on summary judgment that there were no factual disputes requiring a trial.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is affirmed.

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*

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<sup>6</sup> The measure of damages is either the cost of repairing Laatsch's unit or the diminution in the unit's value, whichever is less. *Laska v. Steinspreis*, 69 Wis. 2d 307, 313-14, 231 N.W.2d 196 (1975).