COMMONWEALTH OF MASSACHUSETTS
APPELLATE DIVISION OF THE DISTRICT COURT DEPARTMENT
NORTHERN DISTRICT

DENISE PETERSEN

V.

DININGROOM SHOWCASE, INC. and another[1]

NO. 18-ADCV-44NO

In the WALTHAM DIVISION:

Justice: Caulo, J.
Docket No. 1551CV0336
Date of Decision Appealed: December 20, 2017
Date of Entry in the Appellate Division: March 26, 2018

In the APPELLATE DIVISION:

Justices: Coven, P.J., Nestor & Karstetter, JJ.
Sitting in: Boston, Massachusetts
Date of Hearing: July 13, 2018
Date Opinion Certified: October 12, 2018

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OPINION

KARSTETTER, J. This case was tried before a judge who awarded the plaintiff damages for negligent misrepresentation and breach of contract. The defendants claim error in the amount of damages awarded for negligent misrepresentation as well as in the denial of their consequent motion to

[1] Ali Roozbehani.

amend the judgment. We affirm.

Background facts. The defendants, Ali Roozbehani and Diningroom Showcase, Inc. (collectively, "Roozbehani"), are in the business of buying, selling, and restoring antique furniture and rugs. Roozbehani told the plaintiff, Denise Petersen ("Petersen"), that the settee in which she expressed an interest was an 18th century French museum piece whose provenance included a Christie's auction house sale to its previous owner. As it turned out, the settee was not an 18th century French museum piece that had previously been sold by Christie's auction house, but an American machine-made turn-of-the-last-century piece.

The trial judge found that Petersen relied upon Roozbehani's negligent misrepresentations.[2] **Roozbehani agreed to restore the settee for Petersen, and they agreed on a price of $4,500.00 for the settee, including that restoration. Petersen purchased fabric and gimp separately for use in the restoration at a cost of $300.00. Petersen paid a total of $4,800.00 for the settee, including materials and restoration. The restoration was time consuming, and Roozbehani spent $600.00 for gold leaf that he applied to the settee. Once Roozbehani finished the restoration, he delivered it to Petersen sometime in September, 2014.**

The judge found that the plaintiff's insurance appraiser assessed the settee's replacement value "as restored" in November of 2014 at $2,500.00. The judge found that "[p]rior to the restoration, the value of the settee in its original condition on the open market was approximately $200.00."

Roozbehani restored the settee poorly. Sometime between Thanksgiving (after the appraisal) and Christmas, pieces of decorative scrolling had fallen off, flecks of gold leaf were on the black velvet upholstery, the gold leaf was blistered and flaked, and sections of the gimp had

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[2] Roozbehani acknowledges that the judge's findings were supported by the evidence and does not challenge the liability finding on appeal.

come unglued. Petersen told Roozbehani that she wanted her money back. He offered to repair the settee, the cost of which, the

trial judge found, "was approximately $600.00." Roozbehani also offered to resell the settee and give Petersen her money back. Petersen declined his offers. It is apparent from the trial judge's findings that Petersen wanted to keep the settee, whatever its condition. The judge awarded $4,600.00 on the negligent misrepresentation count and $600.00 on the breach of contract (for poor restoration) count for a total of $5,200.00 in damages.

The trial judge's award of $4,600.00 appears to be based on the difference between what Petersen paid ($4,800.00) and $200.00, which may be the value of the settee in its original condition or it may be what the judge believed its value to be after restoration (see below). The breach of contract damages, which are not a part of this appeal, appear to be based on the trial judge's finding that the cost to repair the poor restoration would be, albeit "approximately," $600.00.

***Discussion*. In an action for negligent misrepresentation, the measure of damages is the difference between the purchase price and the value of what the plaintiff received, plus any other pecuniary loss suffered as a consequence of reliance on the misrepresentation. *Danca v. Taunton Sav. Bank*, 385 Mass. 1, 8-10 (1982); *Lawton v. Dracousis*, 14 Mass. App. Ct. 164, 171 (1982). The value of what was received is defined as the price at which the property could be resold if its true quality were known. *Danca*, *supra* at 9. Consequential damages include those that might reasonably be expected to result from reliance upon the misrepresentation. *Id*.**

Roozbehani posits that because the court found that Petersen's appraiser assessed the replacement value of the settee as restored at $2,500.00, the calculation of the damages should have been the price paid for the settee ($4,500.00), plus the cost of fabric and gimp ($300.00), less the replacement value of the settee ($2,500.00) for a total of $2,300.00. Roozbehani does not contest the $600.00 in contract damages. The total damages, he argues, should therefore have been

$2,900.00. Roozbehani urges a method of calculation that assumes that the judge credited the appraiser's replacement value at $2,500.00, which is not explicitly stated in the judge's findings, however.

Petersen posits that the trial judge "chose not to use" the appraiser's replacement value of $2,500.00 in finding that the value of what was received by her was $200.00. Petersen goes on to argue that "it is just as likely that the trial judge declined to use the $2,500.00 insurance appraisal replacement value after restoration because the promised restoration was not done." And further, "[b]ecause the settee was not restored properly, the trial court appropriately chose not to use $2,500 as the proper measure of value of what the plaintiff received."

This argument ignores the fact that the judge awarded $600.00 for breach of contract, however. The contract damages were awarded to make Petersen whole for the unworkmanlike restoration. Said another way, by the award of contract damages, Petersen received the monetary equivalent of a restored settee, although not the 18th century French museum piece she thought she was getting.[3] **Petersen urges a method of calculation that assumes that the trial judge found that the value of the settee, even after restoration, was $200.00, which is also not explicitly stated in the judge's findings. Indeed, the judge's findings are not explicit with respect to what she found the value of the settee to be after the poor restoration.**

We uphold the trial court's award of damages unless it was based on an error of law or an abuse of discretion. *Bartley v. Phillips*, 317 Mass. 35, 43 (1944). The trial judge did not write her calculation of the damages explicitly, but she gave *some* indications of how she came to the amount awarded. In addition to the deference we must give to those findings of fact, we "may consider any ground apparent on the record that supports the result reached in the lower court."

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[3] We note that the judge did explicitly find that it was "[p]rior to the restoration" that the value of the settee was approximately $200.00.

Gabbidon v. King, 414 Mass. 685, 686 (1993).[4] Thus, an inexplicit basis for a result, _so long as it is apparent_, may be considered.

If the trial judge found the settee's value was only $200.00, even taking into account the $600.00

worth of damages awarded representing the cost of repair, then the judgment could stand (assuming there was a factual basis for it), despite the apparent windfall to Petersen (she would have both the settee and damages amounting to more than she paid for it). A calculation of fair market value can include depreciation, and there are certainly times when things are worth less than the cost to repair them, even once repaired. Indeed, it is generally well understood that repairs can actually decrease the value of some art or antiques.

If the trial judge found the appraiser's replacement value represented the value of the settee as restored (which the $600.00 worth of repair damages would make it, theoretically at least), then the judgment would have to be reversed because no damages awarded for negligent misrepresentation may duplicate damages awarded under a breach of contract claim. _Fox v. F & J Gattozzi, Corp._, 41 Mass. App. Ct. 581, 592 (1996).

If the trial judge employed some other calculus based upon the evidence adduced at trial (as noted, the complete record is not before us), that calculus might withstand scrutiny, but it is neither explicit nor apparent.

While no calculus was made _explicit_ by the trial judge, there is a rational, _apparent_ basis on the record before us for us to conclude that the trial judge valued the settee at $200.00, even after the poor restoration and after the award for the cost of repairing the restoration. She could have credited the settee's value before restoration as being $200.00 and discredited the evidence

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[4] The only record of the facts before us is the judge's written findings; the trial record is not, as this was an appeal brought pursuant to Dist./Mun. Cts. R. A. D. A. 8A.

that its replacement value after restoration was $2,500.00.[5] **It is apparent that she believed that even with $600.00 worth of repairs to the restoration, the settee's value remained at $200.00. Because there is an apparent basis for the damages award set forth in her written findings, we see no reason to disturb the judgment.**

Judgment affirmed.

So ordered.

HON. MARK S. COVEN, Presiding Justice
HON. MATTHEW J. NESTOR, Justice
HON. EMILY A. KARSTETTER, Justice

This certifies that this is the Opinion of the Appellate Division in this case.
A True Copy, Attest:

Brien M. Cooper, Clerk

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5 A fact finder may credit all, some, or none of a witness's testimony. *Commonwealth v. Fitzgerald*, 376 Mass. 402, 411 (1978).