

STATE OF MICHIGAN
IN THE SUPREME COURT

On appeal from the Court of Appeals, Gleicher, P.J., and Sawyer and Fort Hood, JJ.

DANNY EPPS and JOYCE EPPS,

Plaintiffs-Appellees/Cross-
Appellants,

v

4 QUARTERS RESTORATION, L.L.C.,
DENAGLEN CORP., d/b/a MBM CHECK
CASHING, EMERGENCY INSURANCE
SERVICES, and TROY WILLIS,

Defendants-Appellants/Cross-
Appellees,

Supreme Court No. 147727

Court of Appeals No. 305731

Wayne County Circuit Court
LC No. 09-018323-NO

**SUPPLEMENTAL BRIEF OF DEFENDANTS-APPELLANTS/CROSS-APPELLEES
PURSUANT TO MICHIGAN SUPREME COURT'S ORDER OF JUNE 13, 2014**

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STATEMENT OF QUESTIONS PRESENTED IN SUPPLEMENTAL BRIEF

- I. Were the Contract Documents and Insurance Power of Attorney Executed by Plaintiff Homeowners with the Contractor Defendants Void *Ab Initio*?

Defendants-Appellants/Cross-Appellees answer this question "No."

- II. Were Plaintiffs Entitled to Relief under a Breach of Contract Claim, a Fraud/Misrepresentation Claim, or Other Theory Without Proving Actual Damages in a Trial?

Defendants-Appellants/Cross-Appellees answer this question "No."

BACKGROUND

Defendants-Appellants/Cross-Appellees, TROY WILLIS; 4 QUARTERS RESTORATION, LLC; EMERGENCY INSURANCE SERVICES; and DENAGLEN CORP. d/b/a MBM CHECK CASHING (collectively "Defendants") submit this Supplemental Brief relating to their application for leave to appeal. The opposing parties in this appeal are Plaintiffs-Appellees/Cross-Appellants DANNY EPPS and JOYCE EPPS ("Plaintiffs").

Facts and Proceedings

This case involves extensive flood cleanup and home repair work that Defendants Troy Willis and his companies 4 Quarters Restoration, LLC and Emergency Insurance Services (the "Willis Defendants") performed for Plaintiffs from July through October of 2006 on their home in Detroit. The residential builder's license of Defendant Willis had been revoked by the State of Michigan on January 31, 2006 and neither he nor his companies were licensed at the time that the work was performed. However, the cleanup and repairs were performed satisfactorily by the Willis Defendants, fully passed an inspection by Plaintiffs' mortgage lender, and the work was fully paid for through checks from insurance claims adjusted by Plaintiffs' insurance company, Auto-Owners Insurance. See Paragraphs 12-15 of the Affidavit of Troy Willis submitted in support of motion of Defendant Denaglen to set aside default of Denaglen.

Under the written agreements that the Willis Defendants had with Plaintiffs, Willis's companies agreed to do the work for the amount of the adjusted insurance claim and the proceeds of the insurance claim were assigned to Willis's companies to assure that the companies would receive payment of the insurance moneys directly. The repair agreement, misdenominated Fire Repair Agreement (Exhibit 1 hereto), covered the repairs to the real estate. The Work Authorization document (Exhibit 2 hereto) covered the removal of water and debris from the basement and the restoration of the personal property located in Plaintiffs' basement. In

addition, Plaintiffs executed an Insurance Power of Attorney (Exhibit 3 hereto) in favor of Defendant Troy Willis giving Willis the power to sign all documents pertaining to settling the insurance claims and restoring the damage to Plaintiffs' property.

By the end of October of 2006, the work had been completed to the apparent satisfaction of Plaintiffs and the Willis Defendants had collected the sum of \$128,047.23 through the insurance claim checks. The checks had come directly to Defendant Willis bearing the names of Plaintiffs or the names of Plaintiffs and Troy Willis as payees. All of the checks related to work for cleaning and repairs from the flooding incident of July 26, 2006, except for one check in the amount of \$20,682.28 received October 23, 2006. The October check for \$20,682.28 paid for some additional insurance work that the Willis Defendants say that they carried out with respect to damage to the roof of Plaintiffs' home occurring in September of 2006.

Troy Willis obtained the funds on the insurance claim checks by indorsing the names of Mr. and Mrs. Epps pursuant to the Insurance Power of Attorney and cashing the checks at a check-cashing company, Defendant-Appellant Denaglen Corp. d/b/a MBM Check Cashing Company ("Denaglen"), which charged a fee of 3% of the amount of the checks and paid out to Troy Willis the remainder of the funds. Defendant Denaglen reviewed the Insurance Power of Attorney documentation to verify Troy Willis' authority to cash the assigned checks and, according to Denaglen's employee Rose Manino, Denaglen was told by Mrs. Epps in the phone call that it was OK for Troy Willis to cash the checks (although the Plaintiffs dispute that the phone call took place.) Affidavit of Denaglen's employee, Rose Manino, submitted in support of motion of Defendant Denaglen to set aside default of Denaglen.

Plaintiffs knew that the Willis Defendants would receive, and were receiving, the insurance moneys directly from the insurance company and mortgage company and Plaintiffs raised no objection at the time to the Willis Defendants' receiving the funds. Plaintiff Danny

Epps testified in his deposition that he knew that Defendant Troy Willis was going to be paid from the insurance proceeds.

In their affidavits in support of their motion for summary disposition, Plaintiffs said that the checks should have been brought to them for their indorsements in order for Defendant Willis to receive the funds. They pointed to the following language of the Work Authorization document: “**Endorsement** of the insurance draft(s) to 4 Quarters Restoration, LLC, will be **payment in full** for all cleaning and or restoration.” [Emphasis added.] The language about endorsement **to 4 Quarters Restoration** made it clear that the funds from the checks were all supposed to be realized by the Willis Defendants. Plaintiffs never asserted that they were supposed to receive any of the actual funds from the checks, only that the Willis Defendants should have obtained Plaintiffs’ indorsements in the process of the Willis Defendants’ realizing the funds from the checks.

In their affidavits supporting their motion for summary disposition, Plaintiffs admitted that the Willis Defendants “did some work” but say that the Willis Defendants never completed the work. In interrogatory answers, Plaintiffs indicated that 60-75% of the work was completed. However, Plaintiffs had no evidence supporting their suggestion that any of the work was incomplete.

The mortgagee Countrywide Home Loans obtained an independent inspection report, completed by an objective third party inspection company, which further corroborated Defendant Willis’s testimony that the work was completed. (The two inspection reports were attached as Exhibit F to Defendants’ motion for partial summary disposition.) This work that passed inspection accounted for \$53,000.00 of the monies that the Willis Defendants received for their work.

A significant part of the work for cleaning and restoring personal property was paid for in a check in the amount of \$46,443.34 issued by Auto-Owners Insurance. In his deposition, Plaintiff Danny Epps admitted that this check received by the Willis Defendants had been earned by removing, cleaning and returning personal property, mainly clothing.

It can be said that the Willis Defendants essentially completed the work that they were engaged to perform by Plaintiffs and obtained payment in the manner that was contemplated by the parties, i.e., having the insurance checks cashed by the Willis Defendants. There can be no doubt that a great deal of valuable cleaning and restoration work was performed by the Willis Defendants for Plaintiffs and that the amount of payment was appropriate.

Although Plaintiffs had indicated satisfaction with the cleanup and repair work by the Willis Defendants in 2006, Plaintiffs brought his lawsuit in 2009 with the thought of using the unlicensed status of the Willis Defendants as a ground for claiming all of the \$128,047.23 in insurance money that the Willis Defendants had received for their work. Plaintiffs also dragged Defendant Denaglen d/b/a MBM Check Cashing into the matter by contending that Denaglen and its bank, Comerica, were liable to them in conversion for paying insurance checks that supposedly had unauthorized and forged indorsements of Plaintiffs' names. Plaintiffs asserted that the unlicensed status of the Willis Defendants, and the fact that Plaintiffs were not aware of the unlicensed status, meant that the documents assigning the insurance proceeds to Willis' companies, and the Insurance Power of Attorney, were all invalid and deprived Willis of any authority to cash the insurance claim checks relating to cleaning and restoration work.

Plaintiffs' suing Comerica Bank in this case caused Comerica to remove all of the amount in issue, i.e., \$128,047.23, from Denaglen's bank account and to pay Denaglen's money into the trial court in return for an order which dismissed Comerica from the case with prejudice upon its making that payment. Accordingly, since an early date in the case, Denaglen has been

without its \$128,047.23 that now sits in a so-called interpleader fund held by the court. Under the interpleader order, Denaglen's funds have served as security for any liability determined against Denaglen in the case although there can be no doubt that the moneys would belong to Denaglen if Denaglen were ultimately determined to have no liability to Plaintiffs in this case.

Early in the case, Plaintiffs' attorney defaulted Defendant Denaglen on the 22nd day after Denaglen was served. Plaintiffs' attorney purported to withdraw an extension of time granted to Denaglen's attorney and took the default the next day. However, Denaglen's attorney was unsuccessful in his motion to the trial court to have the default set aside.

Subsequently, in an order of July 11, 2011, the trial judge granted summary disposition against the Willis Defendants as to their liability for all of the insurance checks that were cashed with Defendant Denaglen as though that result was required by virtue of the statutory prohibition of MCL 339.2412(1) on the filing or maintenance of any court actions by unlicensed residential builders for compensation. In the same summary disposition order, the trial judge (1) denied the Willis Defendants' motion for partial summary disposition, which contended that MCL 339.2412(1) provided no cause of action against unlicensed residential builders, and (2) granted Plaintiffs' additional motion for summary disposition which contended that Plaintiffs were entitled to all of funds which had been paid into court in the case. All Defendants, including Denaglen, contended that there had to be a jury trial on damages before a money judgment could be entered against any of Defendants. In Defendants' view, Plaintiffs clearly had not sustained damages of \$128,047.23 as result of their dealing with the Willis Defendants since Plaintiffs had the substantial benefit of having valuable cleaning, repairs and restoration to their property. (A jury trial was required since Plaintiffs had demanded a jury trial when they filed their complaint.) Thereafter, in a Judgment and Order for Distribution of Funds Held in Escrow dated July 29, 2011 the trial judge (1) granted judgment against all Defendants-

Appellants in the amount of \$128,047.23, plus statutory interest and \$565.00 in costs; (2) ordered that the funds held in the escrow by the Court in the amount of \$128,047.23, plus interest earned on the funds, be distributed to Plaintiffs and their counsel, subject to being stayed by timely motion for stay upon appeal; and (3) granted any additional judgment for Plaintiffs against the Willis Defendants for additional damages of \$256,094.46 pursuant to the treble damages for statutory conversion provision of MCL 600.2919a, plus actual costs and reasonable attorney fees to be determined upon the motion of Plaintiffs.

On August 18, 2011, Defendants filed a timely claim of appeal with the Michigan Court of Appeals with respect to the final order in the case, i.e., the Judgment and Order for Distribution of Funds Held in Escrow entered on July 29, 2011. In their appeal brief in the Court of Appeals, Defendants raised the following arguments, among others:

(1) the trial court erred in holding that the statutory provision of MCL 339.2412(1) (prohibiting an action by an unlicensed builder for compensation) created a cause of action in favor of Plaintiffs and right to restitution in favor of Plaintiffs for all funds paid to unlicensed residential builders, such as the Willis Defendants, with respect to work done by said unlicensed builders;

(2) the trial court erred in holding that an unlicensed residential builder did not have a right to defend a breach of contract claim by a homeowner on the merits by showing that the amounts paid to the unlicensed builder were appropriate under the terms of the parties' contract;

(3) that Plaintiffs were not entitled to any recovery against Defendants on a theory of conversion of the insurance checks because the insurance proceeds had been assigned to the Willis Defendants in the contract documents, Plaintiffs had executed a power of attorney allowing Troy Willis to sign their names to documents relating to the insurance claims, and Defendants permitted the Willis Defendants to receive the insurance proceeds;

(4) the trial court erred in holding that the appropriate amount of damages against Defendants was in the face amount of all of the insurance checks and that the Willis Defendants were liable for additional damages for statutory conversion under MCL 600.2919a; and

(5) the trial court erred in denying to Defendant Denaglen a jury trial on the matter of damages in violation of its procedural due process rights and Michigan law.

The Court of Appeals issued an opinion of June 6, 2013 on the appeal of Defendants. The appellate panel ruled that the trial judge had erred in holding that MCL 339.2412(1) created a cause of action in favor of Plaintiffs and a right to restitution of the insurance moneys received the Willis Defendants in the case. However, the Court of Appeals then ruled that the judgments rendered by the trial judge should be affirmed upon an alternate ground. The Court of Appeals held that, on basis of the alleged fraud of the Willis Defendants in representing to Plaintiffs that they were licensed builders, Plaintiffs were entitled to restitution from all of the Defendants for the total amount of the insurance checks that the Willis Defendants cashed with Denaglen, i.e., \$128,047.23. The Court of Appeals ruled that the fraud of the Willis Defendants in making a misrepresentation to Plaintiffs that they were licensed residential builders had the effect of rendering void *ab initio* the various contracts that Plaintiffs had with the contractor defendants and meant that the insurance power of attorney was never valid. The opinion went on to say that Willis therefore lacked authority to indorse the insurance checks on behalf of Mr. and Mrs. Epps and that all of the insurance proceeds had to be returned to Mr. and Mrs. Epps. The opinion indicated that the Defendants were liable to Plaintiffs for conversion of the checks and that the contractor defendants were liable for treble damages for statutory conversion under MCL 600.2919a.

Defendants filed an application for leave to appeal with this Court on September 17, 2013 contending that the ruling of the Court of Appeals that the contract documents were void *ab*

initio is clearly erroneous and would cause material injustice to Defendants and that said ruling conflicts with existing precedents of the Supreme Court on the matter of when instruments are regarded as void *ab initio*, rather than merely voidable. Likewise, Defendants also challenged as clearly erroneous the following rulings of the Court of Appeals: (1) that Plaintiffs' damages are in a sum certain and no trial on the issue of damages is necessary; (2) that the trial court did not abuse its discretion in denying Denaglen's motion to set aside its default; and (3) that the contractor defendants were properly held to be liable for statutory conversion under MCL 600.2919a. Plaintiffs also filed a cross-application for leave to appeal requesting that, if Defendants' application should be granted, the Court also review and reverse the ruling of the Court of Appeals that the trial court erred in finding Defendants liable under MCL 339.2412(1).

In this proceeding, this Court issued an order of June 13, 2014 calling for the parties to submit supplemental briefs addressing the following issues: (1) whether the contracts and limited power of attorney at issue are void or merely voidable and (2) whether the plaintiffs are required to establish actual damages to recover on their breach of contract and fraud/misrepresentation claims. In this Supplemental Brief, Defendants have addressed those issues.

ARGUMENT

I. THE CONTRACTS AND INSURANCE POWER OF ATTORNEY IN THIS CASE WERE MERELY VOIDABLE AND WERE NOT VOID FROM THEIR INCEPTION EVEN IF PLAINTIFFS WERE INDUCED TO SIGN THE DOCUMENTS BY FRAUDULENT REPRESENTATIONS AND DESPITE THE ILLEGALITY OF PERFORMING RESIDENTIAL BUILDER SERVICES WITHOUT A LICENSE.

The decision of the Court of Appeals in this matter rests upon the legal conclusion that the contract documents, including the insurance power of attorney, signed by Plaintiffs with the Willis Defendants were void from their inception because the Willis Defendants had induced

Plaintiffs to sign the documents by fraudulently representing that they were licensed residential contractors. That legal conclusion of the Court of Appeals was erroneous because, under established legal precedents, the alleged fraud would have made the contract documents merely voidable and not absolutely void *ab initio*. Furthermore, the fact that the Willis Defendants did not have a required license to act as a residential builder did not make the contract documents void *ab initio* or a nullity under Michigan law.

Issue of Void or Merely Voidable

Where litigation involves assertions that signing of a contract document was obtained by fraud or that a transaction involves illegality, one will encounter statements about whether the contract is void or voidable. A contract is voidable where fraud or impropriety by one party to a transaction provides grounds for the other party to avoid or modify his obligations under the contract. A contract or instrument is absolutely void in certain uncommon situations, where the document is treated as being a nullity from its very inception and as creating no rights or obligations whatsoever.

According to legal commentators, most of the time that a case opinion refers to a contract or document as being "void," the opinion is referring to a contract which is voidable, as opposed to being absolutely void or void *ab initio*. Perillo, Calamari and Perillo on Contracts (6th ed), §9.22, p 308. A situation where the distinction between a void instrument and a voidable instrument is important is where a subsequent transfer of property is made to a good faith purchaser for value. In the situation of an absolutely void instrument transferring property, the original owner can still recover his property even though a subsequent sale has been made to a good faith purchaser because the original transfer instrument creates no rights in the original transferee and the subsequent transfer document creates no rights in the good faith purchaser. Where the original contract or instrument is merely voidable, the contract or instrument creates

legal rights in the original transferee and gives that transferee the power to convey valid title to property to a good faith purchaser for value. Where transfer rights are created under a voidable instrument, a subsequent transfer to a good faith purchaser cuts off any right of the original owner to recover property transferred under a voidable instrument. Legally, the situations where a contract or instrument is absolutely void are rare. Those situations have to be rare so that good faith transferees of rights are not subject to loss of their property, except in truly exceptional circumstances.

A. The Contract Documents and Power of Attorney Obtained through Alleged Fraud in the Inducement Are Merely Voidable.

In this case, the Court of Appeals ruled that the insurance power of attorney and other contracts were obtained by the Willis Defendants through fraudulently misrepresenting that they were licensed residential contractors. That type of fraud inducing another party to enter into a contract is known as “fraud in the inducement.” Legally, fraud in the inducement makes a contract voidable or actionable by the deceived party but does not render the contract or instrument void *ab initio* or result in the contract being treated as a nullity.

In this case, the opinion of the Court of Appeals acknowledged the rule that fraud in the inducement does **not** render a contract void but merely voidable. The cases of *Whitcraft v Wolfe*, 148 Mich App 40, 52; 384 NW2d 400 (1985), and *Dunn v Goebel Brewing Co*, 357 Mich 693, 697; 99 NW2d 380 (1959), cited in the Court of Appeals opinion, both hold that fraud inducing a party to execute a contract only renders the contract voidable and not void.

In *Whitcraft v Wolfe*, *supra*, the plaintiff was trying to recover an automobile sold under a sale contract allegedly induced by fraudulent representations of the purchaser. The appellate court held that the automobile title transfer to the defendant purchaser was not void,

notwithstanding any fraudulent representations leading to the execution of the sale documents, stating as follows:

Fraud in the inducement to enter into a contract does not render the instrument void but **merely voidable**. *Dunn v. Goebel Brewing Co.*, 357 Mich. 693, 697, 99 N.W.2d 380 (1959). [Emphasis added.]

Uniformly in jurisdictions in the United States, the only type of fraud which renders a contract or instrument void is “fraud in the factum,” also known as “fraud in the execution.” Fraud in the factum occurs when a person is tricked into signing a document whose nature is materially different from that which the signer was told he was signing, such as where one party believes that he giving out an autograph when he is in fact signing a contract or property transfer. In *Resolution Trust Corp v Kennelly*, 57 F3d 819, 822 (CA 9, 1995), the Ninth Circuit explained why the defendants’ allegations of fraud in a lending transaction did not provide a basis for treating the loan documents as void, stating as follows:

The Kennellys claim only that they were “fraudulently induced” into entering the loan transaction, not that they were unaware of the nature of the documents they were signing. Indeed, the Kennellys acknowledged that they signed promissory notes to finance their investment and in fact made several payments on the note before defaulting, demonstrating their awareness of the nature and character of the obligation. They have not alleged, nor have they offered any evidence which if established would prove, fraud in the factum.

Accordingly, the appellate court in *Kennelly* rejected the defendants’ contention that fraudulent representations by the lender made the loan documents “absolutely void.”

The concept of whether a contract is voidable, rather than void *ab initio*, is particularly important where the rights of an innocent third party, such as Defendant Denaglen, are involved. A voidable instrument is effective to create rights to transfer property and the transfer of rights to an innocent third party under a voidable instrument cuts off the rights of the original owner to recover the property. See Perillo, Calamari and Perillo on Contracts (6th ed), § 9.22, p 308, which states as follows:

§ 9.22 Fraud in the Factum or Fraud in the Inducement

In the great majority of cases, actionable misrepresentation renders a transaction **voidable rather than void**. These are cases of *fraud in the inducement*. There is some loose language in the cases, for seldom is the distinction between void and voidable of importance. However, the distinction becomes of crucial importance if property has been transferred by virtue of the misrepresentation. If the property has been subsequently transferred to a bona fide purchaser for value, the defrauded party may recover the property only if the initial transaction is void. ... [Boldface emphasis added. Italics in original.]

The treatise explains that a party asserting that a written contract is void must have signed an instrument that is radically different from what he or she was led to believe, in addition to being free from negligence in failing to study the document more closely. Only when those circumstance exist can the complaining party properly assert “*non est factum*: it is not my deed.” Perillo, *supra*,

See also *Barclae v Zarb*, 300 Mich App 455, 482; 834 NW2d 100 (2013), which endorses the rule of the Restatement Contracts, 2d, § 164, that a contract induced by fraudulent representations is voidable, stating as follows:

The Restatement 2nd of Contracts explains that if, “a party's manifestation of assent is induced by either a fraudulent or a material misrepresentation by the other party upon which the recipient is justified in relying, the contract is **voidable** by the recipient.” Rest.2d Contr. § 164. [Emphasis added.]

In this case, Plaintiffs have never contended that they did not know what they were signing when they executed the power of attorney or the work authorization documents containing the assignments of the insurance proceeds. Instead, Plaintiffs allege that they were induced to sign the documents by misrepresentations as to whether the Willis Defendants were licensed. Accordingly, the alleged fraud constituted fraud in the inducement, not fraud in the factum, and the contracts documents were not void *ab initio* but merely voidable.

However, the Court of Appeals panel held that, where the fraud in the inducement involved a misrepresentation as to whether a party held a required professional license, a

different rule applied which made the contract documents void *ab initio*. That ruling was completely unprecedented and was clearly in error. The law relating to voidness and fraud in the inducement does **not** distinguish among various kinds of fraud in the inducement and apply a different rule for fraud in the inducement relating to the licensure status of a party. Where contracting parties knew the terms of the documents they were signing (as the Plaintiffs did in this case), there exists no basis for treating the contract documents as void *ab initio*.

In its ruling here on voidness and fraudulent representations, the Court of Appeals relied on the cases of *Wedgewood v Jorgens*, 190 Mich 620, 622; 157 NW 360 (1916), and *Bilt-More Homes, Inc v French*, 373 Mich 693, 699; 130 NW2d 907 (1964), as supporting its ruling that fraud as to licensure status made the contract documents void *ab initio*. That reliance by the Court of Appeals was misplaced because neither case involved the issue of whether a misrepresentation as to a party's licensure status made the contract documents void *ab initio*. *Wedgewood* and *Bilt-More Homes* are merely cases containing statements in *dictum* that contracts of unlicensed professionals are void. The actual holding in each case is simply that an unlicensed professional cannot sue to collect amounts owing on his contract. Neither case held that the contract of the unlicensed professional was void *ab initio* or a nullity from its inception.

The reasoning of the Court of Appeals on the fraudulent inducement issue was inconsistent with the earlier ruling in the opinion that the statutory provision on unlicensed residential contractors, MCL 339.2412(1), does not create a right of action by the homeowner against the unlicensed contractor. As explained in the next section of this Supplemental Brief, under Michigan law, an unlicensed builder is simply barred from bringing suit to collect compensation for his work. The contract of the unlicensed builder is **not** regarded as a legal nullity or as void *ab initio*.

Since the contract documents in this case were merely voidable, there existed effective assignments of all proceeds of the insurance claims to the Willis Defendants and an effective power of attorney authorizing the Willis Defendants to sign the checks in name of Plaintiffs. As a result, the Willis Defendants were entitled to realize the funds from the insurance checks and there was no conversion of the insurance checks by either the Willis Defendants or Defendant Denaglen. It is appropriate that this Court grant leave to appeal or take other action so that the erroneous legal ruling of the Court of Appeals (treating the contract documents and power of attorney as void) can be corrected by this Court.

B. The Unlicensed Status of the Willis Defendants Did Not Render the Contract Documents and Power of Attorney Void *Ab Initio*.

In this case, Plaintiffs have argued that the contract documents and power of attorney obtained by the Willis Defendants were void *ab initio* because the Willis Defendants were in violation of state licensing laws by doing residential building work on Plaintiffs' house. Plaintiffs' arguments are incorrect. Pursuant to MCL 339.2412(1), the unlicensed residential builder is barred from bringing a suit to collect any balance claimed to be owing to him for his unlicensed work. However, under Michigan law, the contract of an unlicensed builder is not treated as a nullity from its inception. Actions taken by an unlicensed builder pursuant to the terms of his contract with a homeowner are not treated as unauthorized or ineffective. Accordingly, the contract documents assigning the insurance proceeds to the Willis Defendants and the insurance power of attorney were not void *ab initio*.

Plaintiffs assert that MCL 339.2412(1), providing a specific sanction against unlicensed residential builders, has the effect of making the contracts of the Willis Defendants void *ab initio* and making Defendants subject to conversion liability for cashing the insurance checks. Plaintiffs' legal theory does not hold up to scrutiny.

MCL 339.2412(1)—Section 2412(1) of the Michigan Occupational Code—simply disqualifies a residential builder who did not have a builder’s license throughout the period of his contract work from bringing or maintaining an action against his customer to collect compensation. That statutory provision reads as follows

(1) A person or qualifying officer for a corporation or member of a residential builder or residential maintenance and alteration contractor **shall not bring or maintain an action in a court of this state for the collection of compensation** for the performance of an act or contract for which a license is required by this article without alleging and proving that the person was licensed under this article during the performance of the act or contract. [Emphasis added.]

This provision does not create any cause of action in favor of the homeowner/customer against the unlicensed residential builder. On that basis, a summary judgment requiring a return to the homeowner of monies previously paid to an unlicensed builder was reversed in *Parker v McQuade Plumbing & Heating, Inc*, 124 Mich App 469, 471; 335 NW2d 7 (1983), (applying the very similar wording of the predecessor statute to MCL 339.2412(1)). The opinion stated as follows:

[T]he statute nowhere prohibits an unlicensed contractor from defending a breach of contract suit on its merits. The statute removes an unlicensed contractor’s power to *sue*, not the power to defend. **It was intended to protect the public as a shield, not a sword.** [Boldface emphasis added.]

Because Plaintiffs cannot use MCL 339.2412(1) offensively as the basis for a cause of action, Plaintiffs’ theory of conversion liability against Defendants fails. The statutory provision does not provide for the contract documents of the Willis Defendants to be invalidated or rendered void. Accordingly, there exists no legal basis for Plaintiffs’ theory that the contract documents and the power of attorney were void *ab initio*.

Plaintiffs would treat the contract documents of the Willis Defendants as a nullity from the inception based on the recitation in some cases that the contract of an unlicensed residential contractor is “void” or that it is “not only voidable but void.” Plaintiffs’ theory of retroactive

voidness is based on a misapplication of labels and does not come from holdings in actual cases. There is **absolutely no Michigan case** which endorses the concept that the contract of the unlicensed builder (or other unlicensed person) creates no legal rights from its inception and that acts carried out by the builder pursuant to the contract should be viewed retroactively as being unauthorized and improper.

It is true that precedents exist in Michigan where the contract of the unlicensed builder is referred to as being “void.” However, in **every one** of those cases, the only legal significance of the lack of the required license was (1) that the builder could not pursue a complaint or counterclaim in court to recover monies or damages alleged to be owing to the builder and (2) that no lien placed on premises could be enforced. Michigan’s present-day case law dealing with unlicensed builders can be traced back to *Alexander v Neal*, 364 Mich 485, 487; 110 NW2d 797 (1961), involving a predecessor statute very similar to MCL 339.2412(1). The opinion indicated that there was no doubt that the contractor’s lack of a license required the denial of recovery to the contractor in his lawsuit, pointing out that the statute provided that no lawsuit for collection of compensation could be brought or maintained without the contractor’s pleading and proving that he was duly licensed during the performance of the contract. The Court then remarked that, even in the absence of such an express prohibition on recovery by the unlicensed contractor, “the courts frequently deny recovery on the ground that a contract made in violation of a police statute enacted for public protection is void and there can be no recovery thereon.” The statement about the void nature of an unlicensed person’s contract was merely *obiter dictum* and did not form any part of the Court’s holding in the case. The **actual holding** was simply that no collection lawsuit could be maintained by the unlicensed contractor in view of the express prohibition in the statute on such a lawsuit.

Subsequently, *Bilt-More Homes, Inc v French*, 373 Mich 693, 699; 130 NW2d 907 (1964), quoting from the lower court's opinion, inaccurately stated that *Alexander v Neal* stood for the following proposition: “[C]ontracts by a residential builder not duly licensed are not only voidable but void[.]” That inaccurate view of *Alexander v Neal* did not, however, figure into the holding in *Bilt-More Homes*. The ultimate decision in *Bilt-More Homes* was simply that the unlicensed builder was barred by the express terms of the applicable statute from maintaining its action for lien foreclosure or for debt collection because the builder had not been duly licensed at all times during the performance of the work.

In *Bilt-More Homes*, the builder was simply unable to pursue collection of the moneys claimed to be due at the time of filing suit. There was no ruling that the homeowners could recover any moneys previously paid to the unlicensed builder. Labeling the builder's contract as “void” did not cause any different outcome in the lawsuit beyond what the statute specifically required. There was no indication that the “voidness” of the contract meant that any activities previously conducted by the builder, such as receiving payments or entering the homeowner's property, could be viewed retroactively as unauthorized or as creating liability in damages against the builder.

Thirty-eight years later, *Stokes v Millen Roofing Co*, 466 Mich 660, 672; 649 NW2d 371 (2002), used the following quotation from *Bilt-More Homes* that included the “not only voidable but void” language:

Contracts by a residential builder not duly licensed are not only voidable but void- and it is not for a trial court to begin the process of attrition whereby, in appealing cases, the statutory bite is made more gentle, until eventually the statute is made practically innocuous and the teeth of the strong legislative policy effectively pulled. If cases of such strong equities eventually arise that the statute does more harm than good the legislature may amend it”

However, the quoted passage was used solely for its exhortation to avoid creating judge-made exceptions to the statutory mandate of barring compensation suits. *Stokes* contained no holding that any contract was void and did not provide for any remedy to the homeowner beyond barring the unlicensed contractor's money judgment and construction lien claims, as expressly called for in the applicable statute. The only propositions for which *Stokes* stands are the following: (1) equitable remedies may not be used to provide an affirmative monetary recovery to the unlicensed contractor and (2) where a contract charges an all-inclusive price for services requiring a license and those not requiring a license, the agreement cannot be bifurcated into separate contracts to allow the contractor to recover moneys claimed to be due for the work not requiring a license.

Although Plaintiffs relied heavily on *Stokes* in the trial court and Court of Appeals, that case opinion actually contains no support whatever for Plaintiffs' theory (1) that the unlicensed builder's contract can be treated retroactively as though it never existed and (2) that liability of the unlicensed builder can be created retroactively by withdrawing any authorizations granted in the contract. Essentially, the case involves, once again, simply barring the unlicensed builder's attempt to recover compensation in a lawsuit for the unlicensed work. Although a concurring opinion in *Stokes* mentions that the contractor received a partial payment of \$51,934 for the roofing job in question¹, there was no refund to the homeowner of those moneys paid under the contract. The actions of the roofer in accepting payments for its unlicensed work were not regarded as void or ineffective or subject to reversal.

In their answer in opposition to Defendants' application for leave, Plaintiffs cited several cases for the proposition that the contract of an unlicensed contractor is void *ab initio*. In reality, none of those cases stand for the proposition put forth by Plaintiffs. *In re Reidy's Estate*

¹ *Stokes, supra*, at 466 Mich 677, fn 4.

(Shattuck v Wilson), 164 Mich 167, 173; 129 NW 196 (1910), involved the rejection of a person's claim for compensation for selling prescription drugs without a pharmacist's license. While the case contained the statement that an unlicensed person's contract is void, the Court did not rule that the contract was void *ab initio* or a nullity. The opinion simply held that the unlicensed claimant could not recover in court on his contract to perform unlicensed work, stating as follows: "[H]e was engaged in performing acts prohibited by this statute, and **he cannot recover.**" [Emphasis added.]

Likewise, *Brummel v Whelpley*, 46 Mich App 93; 207 NW2d 399 (1973), cited by Plaintiffs, does not hold that the contract of an unlicensed builder is void *ab initio*. The case involved a contract by the plaintiff to build a house on land owned by him and to sell the land and completed house to the defendants. Because the plaintiff seller lacked the required builder's license, the appellate court simply held that the plaintiff could not enforce the sale contract against the buyers, either under a specific performance count or a count for contract damages.

Maciak v Olejniczak, 79 F Supp 817 (ED Mich, 1948), cited by Plaintiffs, also does not hold that an unlicensed builder's contract is void *ab initio*. Even though the real estate owner in that case had made payments to the unlicensed builder, there was no ruling that those money transfers were ineffective. Because the builder had made fraudulent representations to induce the real estate owner to hire him and later abandoned the job, the result in the case was the entry of a money judgment in fraud for the amount necessary to complete the job properly. In that case, the parties had agreed as to the amount of the plaintiff's damages and the United States District Court was merely called upon to determine whether the judgment would be in fraud (and presumably nondischargeable in any future bankruptcy proceeding.)

All of the unpublished cases cited by Plaintiffs in their answer to Defendants' application also merely stand for the proposition that the unlicensed builder may not sue to recover amounts

owing on the builder's contract with a homeowner. Those cases do not hold that the builder's contract documents are a nullity from their inception or are void *ab initio*.

Treatise writers warn that the result in a case should not be controlled by labels, such as "illegal" or "void," which have sometimes been used in discussing contracts involving a statutory violation. See Restatement Restitution and Unjust Enrichment, 3d, § 32, Illegality, Comment *a*, which states:

The fact that a particular contract is described by statute or regulation as "illegal," "unenforceable," or "void" is **merely the beginning, not the conclusion, of the inquiry** under this section [i.e., § 32, Illegality].
[Emphasis added.]

Plaintiffs have taken an incorrect approach when they assign their meaning to the word "void" found in certain cases and ignore the fact that the word has varying meanings. The word "void" is used with great inexactness in American law. See Levin, *The Varying Meaning and Legal Effect of the Word "Void,"* 32 Mich L Rev 1088, 1089 (1933). In the article, the commentator indicated that inexactness in the use of the word "void" has been a problem in law for a long time, quoting *Land, Log Lumber Co v McIntyre*, 100 Wis 245, 252; 75 NW 964 (1898):

So it is manifest, as has been remarked often by text writers and oftener by courts, that few, if any, words are more inaccurately used in the books than the word "void."

The problem continues to the present day, as indicated in the recent law review article, Schaefer, *Beyond a Definition: Understanding the Nature of Void and Voidable Contracts*, 33 Campbell L Rev 193, 194 (2010), which states: "The law is littered with confusion when it comes to the concept of voidness."

When a court is applying a past precedent in which a contract was said to be "void," it is important to examine carefully the sense in which the prior court used the term and to consider

the degree to which the contract was held to be void. As stated in *Way v Root*, 174 Mich 418, 424; 140 NW 577 (1913), the word “void” in legal opinions is **rarely used to imply a complete nullity**. The word is usually used to imply some *degree* of weakness or unenforceability, less than being a complete nullity. Levin, *supra*, at 1094. In *Way v Root*, a husband was sued on a contract he alone had made to sell real estate held in tenancy by the entirety with his wife. In seeking to have the breach of contract claim against him dismissed, the husband relied on precedents stating that a land sale contract executed by only one of two tenants by the entirety is “void.” The court held that the precedents used the term “void” in the sense of meaning that the contract would not support a claim for specific performance to force the conveyance of the entireties property. However, the contract was not a nullity and would support the purchaser’s claim against the husband for damages for breach of contract.

In Michigan cases where an unlicensed builder’s contract is said to be “void” for lack of a license, the **only** effect of being “void” is that the builder may not recover any compensation in the court proceeding. The contract is only “void” **to that limited degree**. Thus, there is no legal basis for the view of Plaintiffs and the Court of Appeals that the contracts of the Willis Defendants must be treated in this case as being nullities from their very inception. Plaintiffs have used an approach of (1) noting that some cases, such as *Bilt-More Homes*, refer to the unlicensed builder’s contract as void and (2) then assigning an extreme meaning to the word “void” that does not come from cases involving unlicensed builders or other unlicensed artisans. Plaintiffs jump to the conclusion that the “void” contract of a builder is a contract which was a nullity from its very inception and which must be treated as though it never existed. That approach of taking a general statement out of context and using it in a manner not warranted by the holding in the original case was criticized in *Terpstra v Grand Mobile Trailer Sales*, 352 Mich 546, 551; 90 NW2d 504 (1958), as follows:

Such general statements are indeed found in great number, faithfully fully reprinted in long columns of digest paragraphs; they **render only a wearisome disservice** when repeated with no reference to the facts of the cases in which they have been made.

[Quoting from 6 Corbin on Contracts, § 1378. Emphasis added.]

Looking at the actual facts and holdings of the cases cited by Plaintiffs, it can be seen that the only effect of a contract of an unlicensed builder or other unlicensed artisan being called “void” is that the artisan cannot maintain a lawsuit to recover compensation for work done under the contract. See, for example, *Wedgewood v Jorgens*, 190 Mich 620, 621; 157 NW 360 (1916), where the only effect of an unlicensed architect’s contract being “void” was that the architect’s suit for compensation was barred.

Michigan case authorities demonstrate that a contract made with an unlicensed builder has a legal existence and is not a nullity. Clearly, the builder’s contract has continued existence because the homeowner is permitted to bring a breach of contract claim based on failure of the builder to provide all work required by the contract and the unlicensed builder can rely on the provisions of the contract in defending such a claim. In *HA Smith Lumber & Hardware Co v Decina*, 258 Mich App 419, 437; 670 NW2d 729 (2003), *reversed in part on other grounds*, 471 Mich 925 (2004), the homeowner pursued a breach of contract claim against the builder, in addition to using the builder’s unlicensed status to bar any recovery of compensation by the builder. The opinion pointed out that the unlicensed builder was entitled to defend the breach of contract claim on the merits and that MCL 339.2412(1) did not affect the builder’s defense.

Parker v McQuade Plumbing & Heating, Inc, supra, also held that a statute barring collection actions by an unlicensed contractor (1) did not prevent the contractor from defending a breach of contract suit on its merits and (2) did not give rise to a cause of action against the builder. A breach of contract claim can be brought by the homeowner because the contract

continues to exist, even though the builder cannot recover in court on the contract. Furthermore, one of the cases relied upon by Plaintiffs in their answer to the application, *Roberson Builders, Inc v Larson*, unpublished per curiam opinion of the Michigan Court of Appeals, issued September 19, 2006 (Docket No. 260039), treated the unlicensed builder's contract as continuing to exist, with the homeowner successfully pursuing a damages claim for breach of contract against the builder. Those cases demonstrate the error in Plaintiffs' theory that the unlicensed builder's contract is a nullity from its inception.

Michigan follows the traditional rule that a contractor acting in violation of a statute cannot recover in court on his contract. See 5 Williston on Contracts (4th ed), §12:4, which states as follows:

It is commonly said that illegal bargains are void. This statement, however, is **not entirely correct**. Rather, the traditional rule, embodied in the First Restatement [of Contracts § 598], is that "A party to an illegal bargain can neither recover damages for breach thereof, nor, by rescinding the bargain, recover the performance ... thereunder or its value[.]" [Emphasis added. Footnotes omitted.]

The reference to a builder's contract as "void," as found in some cases, only means that the builder cannot sue to enforce the contract and does not mean that the contract has no legal existence. That label of "void" has not caused any Michigan court to diverge from the traditional result of simply denying any recovery in litigation to the unlicensed builder. Plaintiffs' theory that the contract is a nullity is based on taking the label "void" out of the context and using that label to argue for a result that is totally without support in Michigan law.

The foregoing analysis shows that the Court of Appeals erred in holding that the contract documents and power of attorney signed by Plaintiffs were void *ab initio* because the Willis Defendants lacked a builder's license. The unlicensed status of the Willis Defendants did not cause the contract documents relied upon by the Defendants to become a nullity. No case applying MCL 339.2412(1), or its predecessor statute, has ever held that the builder's contract is

a nullity from its inception or has ever extended the effect of the statute beyond simply barring any action by the unlicensed builder seeking to enforce his contract or to collect compensation for his work.

C. With the Assignment Documents and Power of Attorney Being Merely Voidable and Not Void, Plaintiffs Have No Conversion Causes of Action against Defendants Since the Willis Defendants (1) Owned the Insurance Proceeds Checks and (2) Had the Authority to Sign Plaintiffs' Names to the Checks.

Since the contract documents in this case were merely voidable, there existed (1) effective assignments of all proceeds of the insurance claims to the Willis Defendants and (2) an effective power of attorney authorizing the Willis Defendants to sign the checks in name of Plaintiffs. As a result, the Willis Defendants were entitled to realize the funds from the insurance checks and there was no conversion of the insurance checks by either the Willis Defendants or Defendant Denaglen when Denaglen cashed the insurance checks.

In re Bartoni-Corsi Produce, Inc., 130 F3d 857, 860 (CA 9, 1997), established that a party who has assigned its rights to anticipated payments does not have a claim for conversion of checks when the assignee later cashes the checks for the payments without obtaining the assignor's indorsement. In that case, Bartoni-Corsi Produce, Inc. had assigned all of its accounts receivable from customers to another corporation. Subsequently, the customers sent checks to pay the assigned receivables made out to the assignor as payee and the assignee of the receivables deposited the checks into its own bank account without obtaining any indorsement from the assignor. Later, a claim for conversion was brought against the bank under UCC 3-420 (conversion of instruments) on the theory that the checks were converted by paying them without obtaining the indorsement of the payee-assignor. The Ninth Circuit Court of Appeals held that there was no viable claim for conversion of the checks because Bartoni-Corsi Produce had no property interest in the checks at the time of the alleged conversion by reason of the assignment,

stating that “a party can only maintain a conversion action for property that it owns at the time of the alleged conversion.” The case also holds that there is no cause of action for conversion of a check if the payee gave express or implied authority for another party to indorse the check or to deposit the check without indorsement.

In this current proceeding, the existence of the effective assignments and the effective power of attorney means that Plaintiffs had no viable conversion cause of action against the Willis Defendants or against Defendant Denaglen. It would be appropriate for this Court (1) to reverse the trial court judgments against the Willis Defendants and Denaglen as based on an unsupportable conversion theory of liability and (2) to dismiss Plaintiffs’ conversion claims as to all Defendants. Even though Defendant Denaglen was defaulted in this matter for failure to answer the complaint within 21 days after service, the continued challenge by the Willis Defendants of the claim for conversion liability has demonstrated that Plaintiffs do not have a viable cause of action for conversion of checks against any Defendants.

Under established Michigan law, the defeating of a joint and/or several liability claim by non-defaulted defendants means that the liability claim must also be dismissed against a defaulted defendant alleged to be jointly or severally liable. See *Akron Contracting Co v Oakland Cnty*, 108 Mich App 767, 773-74; 310 NW2d 874 (1981), which deals with the situation where non-defaulted defendants demonstrate the lack of merit of a claim brought against those defendants and a defaulted defendant. The opinion states as follows:

[I]f the suit should be decided against the complainant on the merits, the bill will be **dismissed as to all** the defendants alike **the defaulter as well as the others**.
[Emphasis added; citation omitted.]

Where a liability claim has been shown to have no merit, it would be manifestly unjust to allow the claim to be continued against a defaulted defendant. *Yenglin v Mazur*, 121 Mich App 218, 226; 328 NW2d 624 (1982).

It is appropriate that this Court grant leave to appeal or take other action to correct the erroneous legal rulings of the Court of Appeals determining that the contract documents of the Willis Defendants were void *ab initio* and affirming the trial court's judgments against Defendants for conversion based on that void *ab initio* ruling.

II. PLAINTIFFS WERE REQUIRED TO ESTABLISH ACTUAL DAMAGES IN ORDER TO RECOVER FOR BREACH OF CONTRACT, FOR FRAUD/MISREPRESENTATION, OR ANY OTHER THEORY OF LIABILITY.

In its order of June 13, 2014 in this appeal, this Court requested the parties to submit supplemental briefs on the issue of whether Plaintiffs are required to establish actual damages to recover on their breach of contract and fraud/misrepresentation claims. As explained in this Supplemental Brief, Plaintiffs were required to establish actual damages in order to recover on any of their claims in the case. Because the existence or extent of the actual damages claimed by Plaintiffs was not established in the trial court proceedings leading to the entry of judgment against Defendants, the trial court erred in granting judgment against Defendants pursuant to Plaintiffs' motions for summary disposition and the Court of Appeals erred in failing to reverse the judgment entered against Defendants for the amount of all insurance checks cashed by the Willis Defendants with Defendant Denaglen and against the Willis Defendants for additional damages under MCL 600.2919a.

A. Plaintiffs Are Required to Establish Actual Damages to Recover on a Breach of Contract Claim.

In this case, the essence of Plaintiffs' breach of contract claim appears to be stated in paragraph 34 of the complaint, which reads as follows:

34. That defendant contractors Troy Willis, 4 Quarters, EIC and Charles Willis, failed to completely and properly perform the work on plaintiffs' home and to restore or replace their personal property, and failed to return plaintiffs' personal property which they took from plaintiffs' home.

Plaintiffs are saying that they had a contract with the Willis Defendants to do a proper job of repairing Plaintiffs' home and of restoring or replacing Plaintiffs' damaged personal property for the amounts which the insurance company committed to pay as part of adjustment of the insurance claims.

In general, an owner's damages for breach of a construction contract would be the cost of remedying any deficiencies in the performance by the contractor. Perillo, Calamari and Perillo on Contracts (6th ed), § 14.29, pp 525 and 528, states as follows regarding the measure of damages:

As a general rule, an owner whose building contract is defectively performed is entitled to damages measured by the **cost of remedying the defect**.

If the builder abandons the construction prior to completion, the measure of damages normally is the **reasonable cost of completion**, plus any damages suffered by the consequent delay in completion.

[Emphasis added. Footnotes omitted.]

Patek, McLain, Granzotto & Stockmeyer, 1 Michigan Law of Damages and Other Remedies (ICLE), §15.2, also indicates that the damages for a builder's breach of a construction contract is generally the cost of correcting any defect or omission by builder in carrying out the construction. That treatise states as follows:

If a construction contract is substantially complied with and the defects can be remedied at a reasonable cost, the **measure of damages** for defective construction is the **cost necessary to make the building conform to the contract—the cost of correction**. The cost of correction is, therefore, a good measure of damages when the construction defect involves something less than a structural defect and involves work that can be redone without substantial reconstruction

[Emphasis added.]

Clearly, proving the amount of the owner's damages would involve proving the actual costs of remedying any defects and the actual cost of completing any undone work. To be

entitled to collect damages for breach of contract, Plaintiffs would have to establish by satisfactory proofs at trial (1) the defects or missing items in the work performed by the Willis Defendants and (2) what the costs were to remedy the defects or missing items.

Recovering damages for breach of contract in this case would definitely require Plaintiffs to establish their actual damages. There is no liquidated damages provision in the parties' contract or other available shortcut to establishing damages that would allow Plaintiffs to recover damages for breach of contract without proving their actual damages. Those actual damages involve issues of fact that would have to be determined at a trial. In this case, the trial court erred in awarding damages without conducting a trial to establish the existence of any defects in the construction work or personal property restoration work and the cost of remedying the defects. The award of damages in the amount of all insurance checks cashed by the Willis Defendants with Denaglen was clearly erroneous and the judgment entered by the trial court should have been reversed by the Court of Appeals.

B. Plaintiffs Are Required to Establish Actual Damages to Recover on Their Fraud/Misrepresentation Claims.

In addition, it is necessary in this case for Plaintiffs to establish actual damages to be entitled to recover on any claims that they are asserting for fraud or misrepresentation. One commonly used measure of damages for fraud calls for the plaintiff to receive the benefit of the bargain that was made with the defrauding party. In regard to the measure of damages, 37 Am Jur 2d Fraud and Deceit § 376, states as follows:

The proper method to determine the amount of damages in a fraud case is the benefit-of-the-bargain approach. Under the benefit-of-the-bargain measure of damages, a plaintiff may recover the difference between the actual value of the property received and the value it would have had if there had been no false representation, or, in other words, the actual value received and the value the defrauded party would have received had the value actually been as represented, or the difference between the value as represented and the value received.

D'Alessandro v Hooning, 365 Mich 66, 75-76; 112 NW2d 114 (1961), follows the same benefit-of-the-bargain approach in assessing damages for fraud, stating as follows:

[A] purchaser who has been defrauded may recover the difference between the value of the property received by him and what that value would have been had the fraudulent statements made to induce the purchase been true.

In this case, Plaintiffs are asserting that they entered into contract documents for the repairing of the damage to their house and personal property which carried an implied representation that was false, i.e., the representation that the Willis Defendants were licensed residential contractors. Plaintiffs are indicating that because of Defendants' false representation as to their licensure status Plaintiffs were diverted from hiring a licensed contractor who would have completed the job satisfactorily and received instead lower quality construction and restoration work. Accordingly, under a fraud theory, Plaintiffs would have damages equal to the difference between (1) the value of the work that they would have received if the restoration job had been completed in the manner the Willis Defendants promised to Plaintiffs and (2) the value of the work that Plaintiffs actually received from the Willis Defendants. Practically speaking, the measure of damages would be the same as Plaintiff's measure of damages for breach of contract, i.e., the cost of remedying the alleged defects or omissions in the work performed by the Willis Defendants.

For Plaintiffs to recover under the aforesaid measure of damages, they would have to prove actual damages by demonstrating what defects or omissions existed in the construction and restoration job carried out by the Willis Defendants and what the reasonable cost would have been to remedy each of the defects or omissions. The only appropriate way of establishing Plaintiffs' damages would be through a trial establishing the defects and the costs of remedying the defects. Accordingly, the damages award made by the trial court, and affirmed by the Court of Appeals, in this case cannot be justified as being an award which Plaintiffs were entitled to

receive on a cause of action for fraud/misrepresentation without conducting a trial on the issue of damages.

C. A Claim for Rescission Would Not Provide Relief to Plaintiffs Without Proving Actual Damages (1) Because Plaintiffs Will Not and Cannot Satisfy the Requirement for Restoring the Consideration Provided by the Willis Defendants and (2) Because Granting a Rescissionary Remedy Would Require Extensive Factual Proofs as to Actual Damages and Appropriate Restitution.

In appropriate circumstances, a party fraudulently induced into entering into a contract can pursue a claim for rescission of the contract and for restitution of consideration provided by him under the contract. According to Plaintiffs, their rescission claim allows them to recover all insurance moneys received by the Willis Defendants without proving the actual damages suffered by them. However, legal analysis shows that Plaintiffs cannot pursue such a rescission claim because (1) Plaintiffs cannot satisfy the requirement for restoring the consideration provided by the Willis Defendants and (2) Plaintiffs would have to prove actual damages as part of obtaining any rescissionary remedy.

Rescission is an equitable remedy and is governed by the maxim that he who seeks equity must do equity. *Grabendike v Adix*, 335 Mich 128, 140; 55 NW2d 761 (1952). The goal of the rescission remedy is to unwind the transaction and to attempt to restore the plaintiff and defendant to the position they occupied before the contract was entered into. In order to pursue a claim for rescission, a plaintiff seeking to recover the consideration he has provided in the transaction must be willing and able to restore to the defendant the consideration provided by the defendant in the transaction. *Grabendike v Adix, supra*, at 140-142.

A plaintiff homeowner pursuing an equitable remedy against an unlicensed builder must adhere to the requirements for receiving an equitable remedy. *Kirkendall v Heckinger*, 403 Mich 371, 374; 269 NW2d 184 (1978). If the plaintiff will not or cannot restore the consideration provided by the defendant, the plaintiff may not pursue a claim seeking rescission of the contract

and restitution of the property provided by the plaintiff. *McMullen v Joldersma*, 174 Mich App 207, 218-19; 435 NW2d 428 (1988). When a plaintiff was fraudulently induced to enter into a contract but cannot restore the consideration provided by the defendant, the remedy of rescission is not available and the plaintiff must pursue an action seeking to establish his money damages caused by the fraud.

The requirement of restoration of the consideration provided by the defendant is well-rooted in the law relating to the remedy of rescission. See Restatement Restitution, § 54, Comment g, which states as follows:

Rescission is not forfeiture, and the fact that the basis of rescission may be the defendant's fraud or other wrongdoing **does not permit the claimant to recover what has been given without restoring what has been received.** [Emphasis added.]

2 Dobbs, Law of Remedies (2d ed), §9.3(3), p 584, confirms the existence of a requirement for restoration of what the defendant has provided in order for a plaintiff to pursue a claim for rescission, stating as follows:

The plaintiff who seeks restitution must ordinarily make restitution himself, restoring to defendant whatever the plaintiff has received in the transaction. In many cases this rule will require that the plaintiff make restoration *in specie*. If he cannot do so, restitution will be denied and the plaintiff will be remitted to some other remedy.

In general, the plaintiff who **seeks to rescind for misrepresentation**, like the plaintiff who seeks rescission on other grounds, will be required ultimately to **restore what he received in the transaction.** [Emphasis added.]

Clearly, Michigan follows the rule of requiring a satisfactory restoration of what has been provided by the defendant in a transaction in order to permit a plaintiff to pursue a rescission cause of action for recovery of the consideration the plaintiff parted with. *Grabendike v Adix*, *supra*, states as follows at 140:

The plaintiff is generally required to restore, or offer to restore, the benefits he has received, not as a condition of acquiring the right to sue, but because of the equitable maxim that he who seeks equity must do equity. Certainly the plaintiff will not be allowed to derive any unconscionable advantage from the cancellation, and **usually he will be denied relief when it is not possible substantially to restore the defendant to the status quo.** The mere inability of the plaintiff to make restoration does not relieve him of his obligation to do so, or permit the court to grant him relief. [Quotations marks omitted; emphasis added.]

See also *McMullen v Joldersma*, *supra*, at 291, indicating that, where plaintiffs could not restore defendants to the status quo, they were not entitled to rescission. Likewise, *Adams v Edward M Burke Homes, Inc*, 14 Mich App 578, 595; 166 NW2d 34, 42 (1968), states as follows:

One who desires to rescind is required to put the other party in statu quo.

‘Rescission, whether legal or equitable, is governed by equitable principles, one of which is that an **essential prerequisite** to the receipt of such relief is the return of what has been received, or its equivalent, by him who seeks the remedy.’
Kundel v. Portz (1942), 301 Mich. 195, 210, 3 N.W.2d 61, 67. [Emphasis added.]

The above quote from *Kundel v Portz* indicates that a plaintiff might be able to proceed with a rescission claim if he returns money that is the equivalent of what he received from the defendant in the transaction.

In this case, the award to Plaintiffs of all of the insurance proceeds received by the Willis Defendants cannot be justified as a permissible award under the law of rescission and restitution. In the judgment award affirmed by the Court of Appeals, there was absolutely no provision for making any return to the Willis Defendants of the value of the work they performed for Plaintiffs in renovating their damaged house and in restoring Plaintiffs’ damaged personal property. Such an award cannot stand as a permissible award against Defendants on a motion for summary disposition because issues of fact exist as to what restoration should be made to the Willis Defendants that would be the equivalent of (1) the work performed by them for Plaintiffs and (2) the materials provided by them to Plaintiffs.

Furthermore, the ability of Plaintiffs to bring a rescission action to recover the insurance checks or the value of the insurance checks was cut off by the transfer of the checks to Defendant Denaglen for value. Where parties such as the Willis Defendants hold voidable rights in property (such as the insurance checks), the transfer of the property to a bona fide purchaser terminates the right of the complaining party to avoid the transaction through a rescission action. See *Carpenter v Mumby*, 86 Mich App 739, 743; 273 NW2d 605 (1978), applying that rule relating to transfer to a bona fide purchaser in case involving a voidable deed to real estate. In this case, Defendant Denaglen was definitely a bona fide purchaser for value with respect to the checks having no knowledge or notice of the alleged fraud inducing Plaintiffs to sign contracts with the Willis Defendants.

In addition, the pursuit of the remedy of rescission in this matter would require an intensive factual inquiry as to the services and materials that the Willis Defendants provided to Plaintiffs in return for the insurance proceeds the Willis Defendants received. Since it is not possible to return to the Willis Defendants the work and materials that were provided to Plaintiffs in restoring their house and personal property, there would have to be a determination of the value provided by the Willis Defendants in terms of labor and materials in order to determine the monetary equivalent of those items that should be restored to the Willis Defendants as part of any rescissionary remedy. Essentially, there would have to be factual proofs that would be the equivalent of Plaintiffs' proving their alleged actual damages in the case. With regard to each item as to which the Willis Defendants asserted that a certain amount of value was provided to Plaintiffs, Plaintiffs would be attempting to prove a lower value figure by claiming that the work was not properly done. That factual inquiry is essentially the same thing as proving one's actual damages for breach of contract.

Restatement Restitution, § 54, indicates that the matter of “unwinding performance” to fashion a rescissory remedy is very similar to determining damages in a case seeking money damages. That treatise states as follows:

As a further requirement, the proponent of rescission must show that the unwinding of performance (as opposed to a remedy by money judgment) is both feasible and equitable on the facts of the case.

To the extent that the court must determine the money value of nonreturnable benefits, a remedy that attempts to unwind the transaction may be **no more equitable (or administratively efficient) than enforcement by an award of damages.** [Emphasis added.]

Because of the proofs of values and alleged deficiencies or damages that would be necessary before a trial court could grant a rescission remedy in a case involving a completed construction and restoration job, it can be confidently stated that, in this case, a judgment for rescission could not be granted without a trial and without proofs of actual damages and of actual values. Thus, the judgment award made in this case could not be justified as being a permissible or proper granting of the remedy of rescission pursuant to a motion for summary disposition. A trial deciding issues of fact would have to be conducted before any award under a theory of rescission could be rendered in this case.

D. Relief Could Not Properly Be Granted to Plaintiffs in This Case on a Claim for Conversion Without Taking Proofs at Trial on the Issue of Benefit Obtained by Defendants in the Transaction Where the Willis Defendants Received the Insurance Checks and the Willis Defendants Performed Valuable Services for Plaintiffs.

In this case, the trial court and Court of Appeals made the unwarranted assumption that the amount of damages on a claim for conversion of checks is automatically the face amount of all of the checks. The trial court ignored the fact that, under MCL 440.3420(2), the damages recoverable by the payee of a converted check may not exceed the amount of the payee’s interest

in the check. In this case, Defendants argued that Plaintiffs had little or no interest in the checks because the check proceeds were supposed to go to the Willis Defendants to fund the cleanup and restoration work on the house. Clearly, a factual issue existed as the amount of Plaintiffs' interest in the checks and a jury trial was necessary to resolve that issue. Relief could not properly be granted to Plaintiffs on a theory of conversion under MCL 440.3420(2) without taking proofs as to how much of the money was properly retained by the Willis Defendants to cover the benefits that they provided to Plaintiffs under the contracts for renovation of the house and restoration of personal property.

MCL 440.3420(2) (added to the Michigan UCC effective September 30, 1993) governs the matter of damages available for conversion of a negotiable instrument. That subsection reads as follows:

(2) In an action under subsection (1) [for conversion of an instrument], the measure of liability is presumed to be the amount payable on the instrument, but recovery may not exceed the amount of the plaintiff's interest in the instrument. [Emphasis added.]

This provision has greatly changed the prior rule (under the superseded UCC 3-419) of automatically awarding conversion damages in the face amount of the converted instrument. Now, if the monies from a check end up going for the purpose that was intended, no damages may be awarded simply because an indorsement to a check was unauthorized or missing.

A leading treatise on the UCC explains that UCC 3-420(b) [MCL 440.3420(2)] has the laudable effect of avoiding a windfall for a payee of a check when the proceeds of the check end up in the hands of the person for whom they were intended (even though the check was paid over an inadequate or unauthorized indorsement.) White, Summers & Hillman state as follows regarding UCC 3-420(b):

We [e]ndorse judicial adoption of the proposition that there should normally be no recovery when the check proceeds come into the hands of the person for whom

they are intended. A number of cases stand for the proposition that neither the drawer nor an intended payee of a check paid over a forged or inadequate indorsement may maintain a conversion action **when the funds ultimately reach or benefit the intended payee.** [2 White, Summers & Hillman, Uniform Commercial Code: Practitioner Treatise Series (6th ed), § 19:9, p. 356. Emphasis added.]

The authors indicate that the implication of UCC 3-420(b) is that a plaintiff-payee should not receive as damages more than his actual injury.

A case demonstrating the proper application of UCC 3-420(b) is *Edwards v Allied Home Mortg Capital Corp*, 962 So 2d 194, 205-06 (Ala 2007). In *Edwards*, the defendant received checks payable to her employer on which the employer was supposed to (1) receive the funds from each check, (2) retain a percentage of the funds as a fee, and (3) send the balance of funds back to the defendant as compensation for her operating a branch office of the employer's mortgage business. The defendant admitted that she had converted several checks by depositing them into her own bank account rather than forwarding them to the employer. The plaintiff employer asserted that its damages for conversion of the checks were in the face amount of all of the checks. The defendant contended that, since the employer was only entitled to retain a percentage of each check, the amount of the employer's interest in the checks was only the amount of those percentage fees. The *Edwards* court held that the plaintiff-employer's interest in the checks was only the portion of the funds which it was entitled to retain and that, under UCC 3-420(b), the defendant's liability for conversion was limited to that portion of the funds. Accordingly, a conversion judgment for the face amount of the checks was reversed and the case remanded for a jury trial on the damages issue.

Edwards was cited with approval in *Saxon Mortgage Services v Harrison*, 186 Md App 228, 274-276; 973 A2d 841 (2009), which also held that evidence may be introduced to show that a payee's damages are less than the face amount of the check(s). Also limiting a plaintiff's

conversion damages under UCC 3-420(b) to the portion of the checks the plaintiff was entitled to retain is *Aces A/C Supply N v Security Bank*, 2010 Okl Civ App 35; 231 P3d 761, 764 (2010).

The New York case of *Mouradian v Astoria Federal Sav and Loan*, 236 AD2d 451; 653 NYS2d 654 (1997), also demonstrates that, under UCC 3-420(b) [MCL 440.3420(2)], it is inappropriate to award damages in the face amount of a converted check where proceeds of the check were applied to the purpose for which the check was issued and the payee received benefit from that application of the proceeds. *Mouradian* involved three checks paid to the co-payee's estranged husband from an insurance settlement for home damage and used for the purpose of making repairs on the home jointly owned by the payee and her husband. The majority opinion rejected the dissent's view that the husband's liability should be eliminated or reduced because the funds went to the purpose for which the checks were originally issued and went into a joint asset of the parties—because New York has not adopted the revised conversion provision in UCC 3-420 and still has its predecessor, UCC 3-419. However, both the majority and the dissent agreed that the damages in that case would not have been in the face amount of the checks if New York had adopted the revised conversion provision of UCC 3-420(b) (as Michigan has) providing that the recovery for conversion of an instrument may not exceed the plaintiff's interest in the instrument.

Even if the checks are viewed as having been converted, Plaintiffs sustained little or no damages since the monies all went for the purposes and to the persons that the parties intended when Plaintiffs hired the Willis Defendants to perform the cleanup and restoration work for a price equal to the amount of the insurance proceeds. No damages were sustained by Plaintiffs because they received the services that they requested for the amount of the adjusted insurance claims without Plaintiffs paying any moneys out-of-pocket, as the Willis Defendants agreed.

All proceeds of the insurance checks were intended to go the Willis Defendants to fund

their cleanup and construction work relating to Plaintiffs' home and the damaged contents. Since Plaintiffs were never supposed to retain any of the insurance proceeds for themselves, the amount of Plaintiffs' interest in the checks was zero. Moreover, Plaintiffs benefited from having the monies go to the Willis Defendants to fund the work on the house. Because (1) the insurance proceeds were supposed to go to the Willis Defendants to fund the cleaning and restoration work and (2) Plaintiffs obtained substantial benefit from the services paid for with the funds, the damages recoverable for the alleged conversion of insurance proceeds checks would not be in the face amount of the checks that Defendant Willis cashed at Defendant Denaglen.

Factual issues existed as to the amount of the benefit that Plaintiffs received from the monies that went to the Willis Defendants and how much money the Willis Defendants were entitled to receive under their agreements with Plaintiffs. In view of the factual issue as to the amount of damages recoverable by Plaintiffs, it was improper for the trial court to award judgment to Plaintiffs without a trial on the issue of damages. See *American State Bank v Union Planters Bank, NA*, 332 F3d 533, 538 (CA 8, 2003), applying UCC 3-420(b) and holding that summary judgment was inappropriate in a check conversion case where a factual issue existed as to the amount of actual harm suffered by the payee as a result of the conversion of checks.

Since Defendants were claiming that Plaintiffs' interest in the insurance checks was reduced to the extent of the value of the services rendered and materials provided by the Willis Defendants, a proper award of moneys to Plaintiffs on a theory of conversion under the UCC could not be made without a determination of whether Plaintiffs had actual damages, i.e., whether Plaintiffs received all of the services and all of the value that they bargained for or whether deficiencies in the performance of the Willis Defendants caused actual damages to Plaintiffs. A proper damages determination under a UCC conversion theory could not be made without a trial in the case.

With respect to assessment of damages, Plaintiffs argue that recognizing the value of the services and materials provided by the Willis Defendants amounts to allowing Defendants to pursue an action to collect for those services and materials contrary to MCL 339.2412(1). Plaintiffs regard themselves as automatically entitled to recover all of the insurance proceeds received by the Willis Defendants and they view any attempt to reduce the damages amount as though it were a separate counterclaim seeking a recovery for unlicensed work. Plaintiff's contentions are totally incorrect.

Michigan and other states with similar statutes relating to unlicensed builders do not recognize a right of a homeowner to get back the monies paid to an unlicensed builder with respect to a completed home construction or repair engagement. Where an unlicensed contractor has been paid for a completed job, it is inequitable to provide a windfall to a homeowner by allowing him to have the benefit of the completed work and return of the monies paid out for the work. See *Fausnight v Perkins*, 994 So2d 912, 921 (Ala 2008) (denying recovery of payments made to unlicensed builder, explaining that "we do not believe that creating an inequitable situation where one does not already exist is a proper use of the courts"). Accord *Parker v McQuade Plumbing & Heating, Inc, supra*, (statute relating to unlicensed builders can only be used by the homeowner as a shield against an action by the builder, not as a sword).

Plaintiffs are the parties asserting a claim for conversion in this case and they must prove the existence and amount of damages in accordance with the requirements of MCL 440.3420(2). Defendants are entitled to defend that claim fully; their defending on the damages issue does not constitute maintaining an action by an unlicensed builder to collect compensation.

In this matter, Plaintiffs rely on *Roberson Builders, Inc v Larson*, 482 Mich 1138; 758 NW2d 284 (2008), for the proposition that any attempt to reduce a homeowner's damage claim by showing the value of work done by the unlicensed builder is an impermissible

pursuit of an action for compensation. First of all, the opinion in question did not make a blanket disallowance of any attempt to show the value of services rendered in defending a damages action against an unlicensed builder. The concurring opinion of Justice Marilyn Kelly (joined by Justice Young) in that case merely disallowed the use of a claim arising out of the unlicensed builder's **separate oral contract** for extra work as a setoff against the homeowner's claim against the builder for breach of the main construction contract. The case recognized in general the right of the unlicensed builder to defend a damages claim brought against him by a homeowner. Furthermore, the opinion has no precedential value since it was an opinion issued in regard to denial of an application for leave to appeal. Plaintiffs' view of *Roberson Builders* is not the law in Michigan and it is clear that the trial court erred in failing to hold a jury trial in which Defendants could present evidence bearing on Plaintiffs' lack of damages.

In addition, it is very clear in this case that Defendant Denaglen was entitled to a jury trial on the issue of damages. While a default is treated as establishing the fact of liability under a well-pleaded complaint, it does not waive the defendant's right to a jury trial on damages where factual issues exist as to the amount of damages and where the plaintiff or defendant has demanded a jury trial. *Zaiter v Riverfront Complex, Ltd*, 463 Mich 544, 554; 620 NW2d 646 (2001). *Wood v Detroit Auto Inter-Ins Exch*, 413 Mich 573, 583; 321 NW2d 653 (1982). In this case, Defendant Denaglen was ready to prove at trial that Plaintiffs did not have substantial damages arising from the cashing of the checks because the checks funded the providing of valuable restoration services to Plaintiffs by the Willis Defendants.

Even though Plaintiffs contend that MCL 339.2412(1) bars the unlicensed builder from raising the matter of the value of the unlicensed services, that argument clearly has **no application to Defendant Denaglen**. Denaglen had committed no licensing violation and was

not aware of the revocation of Defendant Willis's license as a builder when it cashed the insurance settlement checks. However harshly Plaintiffs contend that the Willis Defendants should be treated, there is no logical reason why Denaglen should have been barred from showing at a trial that Plaintiffs had little or no actual damages from the cashing of the checks after the benefits received by Plaintiffs from the cleanup and restoration services were taken into account. Legally, it would make no sense to allow Plaintiffs to recover from Denaglen the full amount of the insurance checks cashed by Denaglen (\$128,047.23) if it is demonstrated the check cashing paid for services and materials provided by the Willis Defendants having a value equal to the amount of the checks. Denying Denaglen the opportunity to show that Plaintiffs suffered little or no damages because of the check cashing would be providing to Plaintiffs a windfall of \$128,047.23 at the expense of Denaglen, an innocent party. Under MCL 440.3420(2), Denaglen was entitled to show that Plaintiffs had little or no interest in the checks because the monies went where they were intended to go and Plaintiffs received benefits equal to the face amount of the checks.

Clearly, the trial court and Court of Appeals erred in holding that Plaintiffs were entitled to recover judgment against Denaglen and the Willis Defendants for the face amount of the checks and that no trial was necessary on the issue of damages.

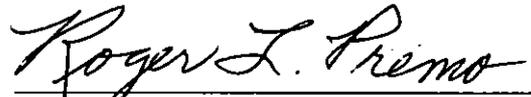
CONCLUSION

As indicated above, the contracts and power of attorney signed by Plaintiffs were not void *ab initio* but were merely voidable. Accordingly, those documents were effective and provided appropriate legal authorization for the cashing of the insurance proceeds checks by the Willis Defendants and indorsing the checks over to Defendant Denaglen.

Furthermore, there exists no viable remedy that would entitle Plaintiffs to recover the amount of the insurance proceeds checks cashed by the Willis Defendants or any other amount

of damages without Plaintiffs' proving the amount of their actual damages in the matter by demonstrating the alleged deficiencies in the work of the Willis Defendants and the expenditures that were necessary to remedy the deficiencies.

Respectfully submitted,



Roger L. Premo (P-19083)
Attorney for Defendants-Appellants,
Denaglen Corp., Troy Willis, 4 Quarters
Restoration, LLC and Emergency
Insurance Services
30300 Northwestern Hwy., Ste. 110
Farmington Hills, MI 48334
(248) 566-3237

Date: August 15, 2014

Emergency Insurance Services
General Contractors and Fire Repair Specialist
34841 Moand Rd. #362 - Sterling Height, Michigan 48310
(313) 617-6251, (800) 485-8654
FIRE REPAIR AGREEMENT

To the Insurance Companies, their agents, or to Whom it may Concern:

I/We, DANNY EPPS & JOYCE EPPS the undersigned, hereby irrevocably engages the Emergency Insurance Services, to make all necessary repairs caused by fire occurring on the 26th day of JULY 2006 at 5:30 p.m. To property owned by the undersigned located at 5503 PENNSYLVANIA City Detroit, State Michigan.

The undersigned to insure payment, assigns the proceeds of the adjusted claim to the Emergency Insurance Services, as full payment for the fire repairs.

IT IS UNDERSTOOD THAT THE PROPERTY DAMAGE BY FIRE IS TO BE RESTORED TO AS GOOD A CONDITION OR BETTER THAN EXISTED BEFORE THE FIRE, FOR THE AMOUNT OF THE ADJUSTED CLAIM.

THE OWNER, THE UNDERSIGNED, IS NOT LIABLE FOR ANYTHING IN EXCESS OF THE INSURANCE CHECK. THE OWNER IS TO APPROVE SPECIFICATIONS BEFORE WORK IS STARTED, ENDORSEMENT OF THE FIRE DRAFT(S) TO EMERGENCY INSURANCE SERVICES, WILL BE PAYMENT IN FULL FOR THE FIRE REPAIRS.

(In the event the insurance company determines the fire damage to be in excess of the total amount of insurance carried and Emergency Insurance Services, is unable to repair the fire damage for the amount of the insurance carried, or that it is determined that there is no insurance, this Agreement is automatically canceled and terminated without any cost to owner except for temporary repairs.)

EMERGENCY INSURANCE SERVICES, does not represent any insurance company. This agreement includes both temporary and permanent repairs.

Emergency Insurance Services

By Troy Willis

Danny Epps
Owner
Joyce Epps
Owner

THE ABOVE AGREEMENT IS HONORED BY ALL INSURANCE COMPANIES

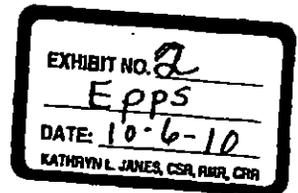


EXHIBIT 1

TO SUPPLEMENTAL BRIEF

PROPERTY CLAIMS

139166513

PROPERTY CLAIMS

4 Quarters Restoration L.L.C. SEP 21 2006

17308 Grand River
Detroit, Michigan 48227

(313) 273-6700
(313) 273-6701 Fax

SEP 21 2006

RECEIVED

RECEIVED

- | | | | |
|---|--|---|--|
| <input checked="" type="checkbox"/> Clothing | <input type="checkbox"/> Furs | <input checked="" type="checkbox"/> Purses | <input checked="" type="checkbox"/> Shoes/Boots |
| <input checked="" type="checkbox"/> Furniture | <input checked="" type="checkbox"/> Leathers/Suede | <input type="checkbox"/> Textile | <input checked="" type="checkbox"/> Linen |
| <input checked="" type="checkbox"/> Electronics | <input type="checkbox"/> Mold | <input checked="" type="checkbox"/> Draperies | <input checked="" type="checkbox"/> Construction |

Work Authorization

Name of Insured Danny Epps & Joyce Epps Insurance Company Auto Owners

Insured Address 5503 PENNSYLVANIA Adjustor Michael Anderson

City, State, Zip Detroit, Mich 48213 Adjustor's phone# (248) 374-5023

Insured Phone# (313) 924-6264 Claim/Policy# 004-0002997-2806

To the Insurance Companies, their agents, or to Whom it may Concern:

I/We, Danny & Joyce Epps, the undersigned, hereby irrevocably engage 4 Quarters Restoration LLC., to make all necessary restoration and or clean damage property caused by your loss occurring on the 26th day of July 2006. To the property owned by the undersigned located at 5503 Pennsylvania City Detroit, State Michigan.

The undersigned to insure payment, assigns the proceeds of the adjusted claim to 4 Quarters Restoration LLC., as full payment for cleaning and or restoration.

IT IS UNDERSTOOD THAT YOUR CONTENTS PROPERTY DAMAGE BY YOUR LOSS IS TO BE RESTORED TO AS GOOD A CONDITION OR BETTER THAN EXISTED BEFORE THE LOSS, FOR THE AMOUNT OF THE ADJUSTED CLAIM. IF IT IS DETERMINED THAT THERE IS NO INSURANCE, THIS AGREEMENT IS AUTOMATICALLY CANCELED AND TERMINATED WITHOUT ANY COST TO OWNER EXCEPT FOR TEMPORARY SERVICES.

THE OWNER, THE UNDERSIGNED, IS NOT LIABLE FOR ANYTHING IN EXCESS OF THE INSURANCE CHECK. ENDORSEMENT OF THE INSURANCE DRAFT(S) TO 4 QUARTERS RESTORATION LLC., WILL BE PAYMENT IN FULL FOR ALL CLEANING AND OR RESTORATION.

By [Signature]

Danny Epps Sr.
Owner [Signature]
Joyce Epps
Owner [Signature]

THE ABOVE AGREEMENT IS HONORED BY ALL INSURANCE COMPANIES

Loan # 139166513

EXHIBIT NO. 7
Epps
DATE: 10-6-10
KATHRYN L. JAMES, CSR, FRIP, CSR

EXHIBIT 2
TO SUPPLEMENTAL BRIEF

Emergency Insurance Services LLC
34841 Mound Rd. #362
Sterling Heights, Michigan 48310
(313) 617-6251
Licensed Residential Builders #2101157151
Insurance Repair Specialist

Insurance Power of Attorney

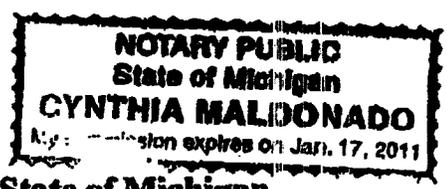
**To: The Insurance Companies
Their Agents
All Concerned Parties**

**I Danny Epps & Joyce Epps , hereby give my (Contractor), Troy Willis
Power Of Attorney, to sign my name to all documents pertaining to
settling the insurance claim and restoring the damage to my property
located at 5503 Pennsylvania, Detroit, Michigan.**

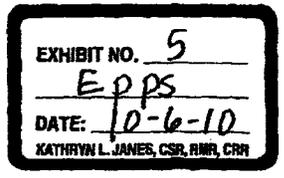
Cynthia Maldonado
Notary

Danny Epps
Danny Epps

Joyce Epps
Joyce Epps



State of Michigan
County of Macomb
Subscribed and sworn to me this 8th day of August 2006.
Notary Commission expires: 01/17/2011



**EXHIBIT 3
TO SUPPLEMENTAL BRIEF**

STATE OF MICHIGAN
IN THE SUPREME COURT

On appeal from the Court of Appeals, Gleicher, P.J., and Sawyer and Fort Hood, JJ.

DANNY EPPS and JOYCE EPPS,

Plaintiffs-Appellees/Cross-
Appellants,

v

4 QUARTERS RESTORATION, L.L.C.,
DENAGLEN CORP., d/b/a MBM CHECK
CASHING, EMERGENCY INSURANCE
SERVICES, and TROY WILLIS,

Defendants-Appellants/Cross-
Appellees,

Supreme Court No. 147727

Court of Appeals No. 305731

Wayne County Circuit Court
LC No. 09-018323-NO

PROOF OF SERVICE

ROGER L. PREMO, attorney for Defendants-Appellants/Cross-Appellees, hereby certifies that on August 15, 2014 he served a copy of the Supplemental Brief of Defendants-Appellants/Cross-Appellees Pursuant to Michigan Supreme Court's Order of June 13, 2014 and a copy of this Proof of Service upon Gerald F. Posner, Esq., attorney for Plaintiffs-Appellees/Cross-Appellees, by first-class mail directed to his office address at 1400 Penobscot Building, Detroit, MI 48226.



Roger L. Premo

Date: August 15, 2014