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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-349

Filed 3 December 2024

Mecklenburg County, No. 22CVS1192

WATER DAMAGE MITIGATION, INC. d/b/a AFTERDISASTER-METROLINA,
Plaintiff,

v.

NERFETTI ELLIS JORDAN and JOHN JORDAN, Defendants.

Appeal by plaintiff from order and judgment entered 12 June 2023 and cross-appeal by defendants from order entered 12 June 2023 by Judge Karen Eady-Williams in Mecklenburg County Superior Court. Heard in the Court of Appeals 6 November 2024.

TLG Law, by Sean A. McLeod, Steven A. Lucente, and Austin A. Backus, for plaintiff-appellant.

Devote, Action & Stafford, P.A., by Brittany N. Conner and Rebecca L. Robinson, for defendants-appellants.

GORE, Judge.

John and Nerfetti Jordan (hereinafter the “Jordans” or “defendants”) own a home in Charlotte, North Carolina, which suffered significant fire damage in 2019 due to faulty wiring. At their insurance company’s suggestion, they hired

Afterdisaster (“plaintiff”) to repair their home. Afterdisaster’s representative, Dan Fied, assured the Jordans that their home would be restored to its prior condition, and work began in early 2020. Defects were found in the repairs, however, and disputes over payment, workmanship, and contract terms ensued, leading to legal action. Both parties presented claims, including breach of contract, negligence, and unfair trade practices, which were addressed at trial. The court ultimately dismissed certain claims from both sides, while awarding damages for negligence and unjust enrichment. Plaintiff now appeals the trial court’s rulings on several issues, and defendants have cross-appealed.

I.

A.

In 2019, a fire caused significant damage to the Jordans’ home in Charlotte, North Carolina. Their insurance company recommended Afterdisaster for repairs, and its representative, Dan Fied, assured the Jordans that their home would be restored to its prior condition or better. However, no discussion of the necessary work ever took place before repairs began.

The Jordans were presented with a one-page document, which Afterdisaster claimed was a contract for repairs. The document lacked key details such as the scope of work or pricing and was allegedly signed only by Mr. Jordan. The repair costs were to be determined based on Afterdisaster’s negotiations with the insurance company, but the exact amount claimed by Afterdisaster remained unclear.

In early 2020, Afterdisaster began repairing the home. The Jordans moved back in on 17 July 2021, although no final walkthrough had occurred, and several repairs were found to be defective. Inspections revealed structural deficiencies, poor workmanship, and safety hazards that deviated from the engineered plans. Afterdisaster refused to perform a “punch list” walkthrough, demanded payment beyond insurance policy limits, filed a mechanic’s lien, and initiated legal action.

Regarding the discovery process, the trial court ordered defendants to designate their expert by 14 August 2022, and rebuttal witnesses by 13 September 2022, with discovery concluding on 28 September 2022. Defendants served their first set of interrogatories and requests for production to Afterdisaster on 17 June 2022, seeking various documents, including invoices. Afterdisaster’s responses, provided on 14 August 2022, were incomplete. A deposition of Dan Fied, Afterdisaster’s project manager and expert, occurred on 7 September 2022, where he acknowledged the missing documents. On 14 September 2022, defendants formally notified Afterdisaster of these deficiencies.

On 28 September 2022, defendants filed a motion to compel discovery and for sanctions. Afterdisaster responded by filing a motion for a protective order and a motion to strike the defendants’ expert witnesses. On 2 November 2022, both motions were heard by Judge J. Thomas Davis. The court found that Afterdisaster’s discovery responses were inadequate, but denied the defendants’ motion to compel without prejudice, based on the plaintiff’s representations. Fourteen days before trial,

however, Afterdisaster produced over 300 additional documents, contrary to prior claims. As a result, Afterdisaster was sanctioned, required to pay the Jordans' attorney's fees, and barred from introducing the late documents at trial.

B.

The trial court held a non-jury trial on 20 February 2023 to address a series of claims between plaintiff and defendants. Plaintiff brought claims for breach of contract, unjust enrichment, enforcement of a lien, and breach of contract regarding a promissory note. Defendants counterclaimed, alleging breach of contract, negligence, unfair and deceptive trade practices, and breach of express warranty.

After both parties presented their evidence, each side moved to dismiss the other's claims under Rule 41(b) of the North Carolina Rules of Civil Procedure. The court granted the motions in part, dismissing both parties' breach of contract claims, as well as defendants' claims for unfair and deceptive trade practices and breach of express warranty. The remaining claims at the close of evidence were plaintiff's claims for unjust enrichment, breach of promissory note, and lien enforcement, alongside defendants' negligence claim.

After considering the evidence, the court ruled that plaintiff was entitled to \$46,000 from defendants for unjust enrichment and \$2,000 for the breach of the promissory note. The court also found the lien claimed by plaintiff, amounting to \$149,861.32, to be excessive and invalid, and ordered it extinguished. Additionally, the court determined that plaintiff had been negligent in multiple aspects of the

construction work, including failing to install ridge beams and inadequately framing the attic access. These failures resulted in damages to defendants, for which they were awarded \$34,000.

C.

Plaintiff appeals, raising six key issues. First, plaintiff challenges the trial court's denial of its motion for partial summary judgment. Second, plaintiff contends the court abused its discretion by awarding discovery sanctions, including attorney's fees, against plaintiff. Third, plaintiff disputes the trial court's denial of its motion to set aside Judge Hoover's order imposing sanctions. Fourth, plaintiff argues the court erred in admitting expert opinion testimony from witness Joe DePaulis. Fifth, plaintiff claims the trial court improperly granted defendants' motion to amend their pleadings at the close of all evidence. Finally, plaintiff asserts the court erred in partially granting defendants' Rule 41(b) motion, dismissing both plaintiff's breach of contract claim and defendants' counterclaim for breach of contract. The judgment filed on 12 June 2023 constitutes a final judgment on all issues in this case. This Court has jurisdiction to hear and decide plaintiff's appeal.

Defendants cross-appeal, arguing the trial court erred in partially granting plaintiff's Rule 41(b) motion, which dismissed defendants' counterclaim for unfair and deceptive trade practices. Defendants have not, however, filed a timely appellant's brief as required by Rule 13(a)(1) of the North Carolina Rules of Appellate Procedure. Under Rule 13(c), "[i]f an appellant fails to file and serve a brief within the time

allowed, the appeal may be dismissed . . . on the court’s own initiative.” Additionally, defendants’ notice of cross-appeal from the order “partially granting plaintiffs’ motion for involuntary dismissal” does not properly designate the final judgment on the merits. “[I]n order to properly appeal an interlocutory order, an appellant must designate both the interlocutory order and the final judgment rendering the interlocutory order reviewable in its notice of appeal[.]” *Manley v. Maple Grove Nursing Home*, 267 N.C. App. 37, 41 (2019). Defendants’ cross-notice of appeal does not reasonably indicate that they also intend to appeal the underlying judgment. As stated in *Von Ramm v. Von Ramm*, “[w]ithout proper notice of appeal, this Court acquires no jurisdiction.” 99 N.C. App. 153, 156 (1990). Therefore, we conclude that we lack jurisdiction to hear defendants’ cross-appeal.

II.

Having established jurisdiction, we now turn to the issues raised on appeal. Plaintiff argues the trial court erred in denying its motion for partial summary judgment. Specifically, plaintiff argues defendants’ counterclaims for negligence and unfair and deceptive trade practices should fail because they are essentially claims of breach of contract. The allegations that plaintiff failed to perform the construction work in a “workmanlike manner” and according to “industry standards” are merely breaches of the 19 December 2019 contract. Thus, plaintiff asserts, the negligence claim is barred by the Economic Loss Rule, and the unfair and deceptive trade practice claim lacks any separate aggravating conduct. Therefore, plaintiff contends

the trial court should have granted summary judgment in their favor on these claims.

We disagree.

A.

Summary judgment is proper “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law.” N.C.G.S. § 1A-1, Rule 56(c) (2023). “The party moving for summary judgment has the burden of establishing the lack of any triable issue.” *Boudreau v. Baughman*, 322 N.C. 331, 342 (1988) (citation omitted). The movant can meet their burden by either proving that a key element of the opposing party’s claim does not exist, or by showing that the opposing party cannot provide evidence to support a crucial element of their claim or overcome a defense that would block the claim. *Id.* at 342–43. All factual inferences from the evidence presented at the hearing must be made in favor of the party opposing the motion and against the movant. *Id.* at 343. This Court reviews a trial court’s ruling on a partial motion for summary judgment de novo. *Forbis v. Neal*, 361 N.C. 519, 524 (2007).

B.

To support its argument, plaintiff relies on the economic loss rule. “[T]he economic loss rule prohibits recovery for purely economic loss in tort, as such claims are instead governed by contract law.” *Lord v. Customized Consulting Specialty, Inc.*, 182 N.C. App. 635, 639 (2007) (citation omitted). The rule encourages parties to

allocate risks for economic loss within their contracts, as the promisee is best positioned to negotiate coverage for such risks or faulty workmanship. *Moore v. Coachmen Indus.*, 129 N.C. App. 389, 401–02 (1998). It serves to maintain the distinction between contract law and tort law, ensuring that contracts govern the terms of their relationship, while tort law addresses breaches of duties outside the contract. *See id.*

There are, however, four general exceptions to this rule, including: “The injury, proximately caused by the promisor’s negligent, or willful, act or omission in the performance of his contract, was to property of the promisee other than the property which was the subject of the contract, or was a personal injury to the promisee.” *N.C. State Ports Auth. v. Lloyd A. Fry Roofing Co.*, 294 N.C. 73, 82 (1978). That is to say, the Economic Loss Rule does not apply to bar negligence claims when damage occurs to property which is outside the scope of the alleged contract. *See, e.g., Firemen’s Mut. Ins. Co. v. High Point Sprinkler Co.*, 266 N.C. 134, 141 (1966) (“A carpenter who contracts to repair a house is liable in damages if he performs the repair so unskillfully as to damage other portions of the structure.”). When a contract is made, it can create a relationship between the parties where one has a duty to exercise care to avoid harming the other’s person or property. If that duty is not met and injury occurs, the injured party has the right to bring a tort claim for negligence. *Id.*

Here, defendants argue Afterdisaster caused damages outside the scope of the contract to repair their home. For instance, defendants alleged their master

bathroom jacuzzi, which was functional before construction, no longer worked after Afterdisaster's involvement. Afterdisaster claimed the jacuzzi was outside the contract's scope, making the damage a result of negligence and not subject to the economic loss rule. Similarly, Afterdisaster agreed to move and store the Jordans' personal property, which was also outside the contract. Several items were allegedly damaged or not returned, establishing a duty that Afterdisaster breached. These examples support the denial of plaintiff's summary judgment motion on the negligence claim, and we agree with defendants' argument that the trial court's order, as it pertains to the negligence claim, should be upheld on this basis.

C.

In addressing defendants' counterclaim under North Carolina's unfair and deceptive trade practices statute, it is important to note the legal standards that apply to such claims. "Whether an act found to have occurred is an unfair or deceptive practice which violates N.C.G.S. § 75-1.1 is a question of law for the court." *Nobel v. Foxmoor Grp.*, 380 N.C. 116, 119 (2022) (citation omitted).

Under N.C.G.S. § 75-1.1(a), "[u]nfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are declared unlawful." § 75-1.1(a) (2023). "To recover under the Act, a plaintiff must establish that: '(1) defendant committed an unfair or deceptive act or practice, (2) the action in question was in or affecting commerce, and (3) the act proximately caused injury to the plaintiff.' " *Nobel*, 380 N.C. at 120 (quoting *Dalton v. Camp*, 353 N.C.

647, 656 (2001)). “[C]ommerce’ includes all business activities, however denominated, but does not include professional services rendered by a member of a learned profession.” § 75-1.1(b). Our Supreme Court has explained that “business activities” refer to the regular, day-to-day operations of a business, such as buying and selling goods or other activities for which the business is organized. *Nobel*, 380 N.C. at 120. Although the statutory definition of commerce is broad, the intent of the Act is not to cover every wrong that occurs in a business context. *Id.*

Claims for unfair or deceptive trade practices are separate from breach of contract claims. A simple breach of contract, even if intentional, is not enough to support a claim under N.C.G.S. § 75-1.1 unless there are *substantial aggravating circumstances*. *Mitchell v. Linville*, 148 N.C. App. 71, 75 (2001). Violations of Chapter 75 are unlikely to occur during contractual performance, as these issues are usually resolved by determining if the parties fulfilled their contractual obligations. *Id.* Whether a trade practice is considered unfair or deceptive depends on the specific facts of each case and its effect on the marketplace. *Marshall v. Miller*, 302 N.C. 539, 548 (1981) (citation omitted). A practice is deemed unfair if it violates public policy or “is immoral, unethical, oppressive, unscrupulous,” or harmful to consumers. *Id.* To prove an unfair or deceptive practice, a consumer only needs to show that the act or practice had the potential “to mislead” or create a “likelihood of deception.” *Id.* Additionally, acting in good faith is not a defense to claims under North Carolina’s unfair and deceptive practices law. *Id.*

Plaintiff argues that defendants' claim for unfair and deceptive trade practices is unsupported. They contend there is no evidence that plaintiff falsely stated the property was built to code and assert that defendants failed to identify any specific duty arising beyond the contract itself. Plaintiff acknowledges the contract required the property to be built to code but asserts that breaching this term does not create a separate legal duty. Furthermore, plaintiff argues that even an intentional breach of contract is not enough for an unfair trade practice claim without showing aggravating circumstances like fraud. Plaintiff also notes that defendants did not demonstrate reliance on the alleged misrepresentation, meaning any reliance couldn't have caused damages. Therefore, plaintiff asserts the court should have granted summary judgment in its favor.

In our view, defendants presented sufficient evidence to support their unfair and deceptive trade practices claim at the summary judgment stage of proceedings, which they argued, was based on allegations of fraud related to invoices from Afterdisaster. Defendants argued that these invoices were fraudulently created to inflate the amount owed, citing testimony that the Jordans overpaid by \$14,000. They further asserted the invoices lacked supporting documentation and contained discrepancies in dates and amounts, suggesting fabrication. This created a factual dispute over the fraud claim, which defendants argued, prevented summary judgment on their unfair and deceptive trade practices claim.

To prevail under North Carolina's Unfair and Deceptive Trade Practices Act,

some form of egregious or aggravating circumstances must be alleged and proven. *Dalton*, 353 N.C. at 657. Proof of fraud inherently constitutes “a violation of the prohibition against unfair and deceptive acts.” *Hardy v. Toler*, 288 N.C. 303, 309 (1975). The practice of “systematically overcharging a customer . . . is an unfair trade practice squarely within the purview of G.S. 75-1.1 . . .” *Sampson-Bladen Oil Co. v. Walters*, 86 N.C. App. 173, 177 (1987). As a result, defendants’ claim for unfair and deceptive trade practices could survive partial summary judgment.

III.

The next issue concerns whether the trial court abused its discretion in awarding attorney’s fees as sanctions against plaintiff. Plaintiff contends the court abused its discretion, but sanctions under N.C.G.S. § 1A-1, Rule 37 are generally within the trial court’s broad discretion and are only overturned upon a clear abuse of that discretion. *Roane-Barker v. Se. Hosp. Supply Corp.*, 99 N.C. App. 30, 36 (1990). A ruling is considered an abuse of discretion if it is “manifestly unsupported by reason” or so arbitrary that it could not result from a reasoned decision. *State v. Hennis*, 323 N.C. 279, 285 (1988).

There is no dispute that plaintiff produced 318 pages of new materials, including scopes of work, emails, engineering plans, and permits, after previously assuring the court that such documents did not exist—violating the trial court’s orders. Under North Carolina Rule of Civil Procedure 37(b)(2), courts may impose sanctions when a party fails to comply with a discovery order. The rule allows for

sanctions that are “just,” including prohibiting the disobedient party from introducing evidence and requiring them to pay expenses—including attorney fees. N.C.G.S. § 1A-1, Rule 37(b)(2)(b) (2023).

The trial court, in addressing these issues, noted that as the plaintiff, it was their responsibility to have the necessary information before filing the lawsuit. Plaintiff’s delay in providing requested information until the eve of trial suggested intentional actions to hinder discovery, warranting sanctions. While plaintiff argues the trial court should have considered changes in circumstances or lack of prejudice to defendants, no legal support for this claim was provided. The record does, however, support the reasonableness of the sanctions, including attorney’s fees, as allowed under Rule 37. The court thoroughly evaluated plaintiff’s behavior in determining appropriate sanctions and acted within its discretion in awarding attorney’s fees. We uphold the trial court’s order on this basis.

IV.

The next issue is whether the trial court erred in denying plaintiff’s motion to set aside a prior judge’s order imposing discovery sanctions. Plaintiff argues the trial court applied the wrong legal standard in its Rule 60 Motion for Relief, relying on the North Carolina Superior Court Judge’s Bench Book instead of the statutory authority under Rule 60. Plaintiff contends the court treated the issue as if it were asked to overrule another judge, rather than applying Rule 60, which allows relief from a prior order without overruling it. Citing *Pope v. Pope*, 247 N.C. App. 587 (2016) and *Hoglen*

v. James, 38 N.C. App. 728 (1978), plaintiff asserts the court incorrectly believed it needed to “gain jurisdiction” to review the order, despite this error being raised during the hearing. Plaintiff claims this led to an unreasonable decision, amounting to an abuse of discretion. We disagree.

North Carolina law generally prohibits one judge from modifying or overruling the judgment of another judge in the same case unless specific circumstances are met, such as mistake, fraud, or newly discovered evidence. *See Calloway v. Ford Motor Co.*, 281 N.C. 496, 501 (1972); N.C.G.S. § 1A-1, Rule 60 (2023); *Duplin Cnty. DSS ex rel. Pulley v. Frazier*, 230 N.C. App. 480, 482 (2013). Rule 60(b) only applies, however, to final judgments—it does not permit relief from interlocutory orders. *Sink v. Easter*, 288 N.C. 183, 196 (1975). Generally, “an order for an award of attorney’s fees is interlocutory” *Roark v. Yandle*, 283 N.C. App. 223, 226 (2022) (citation omitted).

In this case, plaintiff did not seek relief from a final judgment or order, but instead attempted to introduce new evidence for the trial court to consider in a request to amend or set aside an interlocutory order. Rule 60 does not provide for this type of relief. *See Kingston v. Lyon Const., Inc.*, 701 S.E.2d 348, 353 (N.C. App. 2010)). Plaintiff admitted that the order was interlocutory, and as a result, failed to demonstrate that Rule 60 applies to this case. We discern no abuse of discretion.

V.

The next issue is whether the trial court erred in admitting expert testimony from defendants’ witness, Joe DePaulis. Plaintiff argues the court improperly

allowed DePaulis to give expert testimony despite a prior order from Judge Davis barring him as an expert due to missed disclosure deadlines. Plaintiff contends that DePaulis offered opinions on work quality and repair costs without being qualified as an expert, violating Judge Davis's order. Plaintiff claims this was an abuse of discretion, as expert testimony requires specialized knowledge under N.C. R. Evid. 702, and DePaulis was limited to fact witness testimony. Since his testimony was the only evidence of damages presented, plaintiff asserts this error impacted the trial's outcome and calls for dismissal of the claims. Thus, plaintiff argues the court abused its discretion by allowing DePaulis to testify as an expert.

Judge Davis's order states that Mr. DePaulis was properly and timely designated as a fact witness but was stricken as an expert witness because he was not timely identified as such. However, the order allows Mr. DePaulis to testify as a fact witness at trial. Crucially, the ruling leaves open the possibility for plaintiff to object if Mr. DePaulis offers expert testimony during trial, with the final decision on such testimony left to the trial judge's discretion.

We determine that the trial court did not "directly contravene a clear court order," as the plaintiff claims. The prior order excluded Mr. DePaulis as an expert witness but left the final decision to the trial judge's discretion. "[T]he trial judge is afforded wide latitude of discretion when making a determination about the admissibility of expert testimony." *State v. Bullard*, 312 N.C. 129, 140 (1984). After hearing Mr. DePaulis's testimony and considering plaintiff's objection, the trial court

“implicitly found” him to be an expert. *State v. Greime*, 97 N.C. App. 409, 413 (1990). Both parties were given the opportunity to question the witness, and defendants laid the foundation for his testimony. While it would have been preferable for the defense to formally offer Mr. DePaulis as an expert, any error in allowing his expert testimony was harmless under the circumstances. *Greime*, 97 N.C. App. at 413.

VI.

The next issue for consideration is whether the trial court erred in granting defendants’ motion to amend their pleadings at the close of all evidence. The standard of review for motions to amend pleadings requires a showing that the trial court abused its discretion. *Fintchre v. Duke Univ.*, 241 N.C. App. 232, 239 (2015).

Plaintiff argues the amendment violated North Carolina Civil Procedure Rule 15(a), which permits amendments only when justice requires and without causing prejudice to the opposing party. See N.C.G.S. § 1A-1, Rule 15(a) (2023). Plaintiff claims that such a late amendment caused undue prejudice, as seen in *Crystal Coast Invs., LLC v. Lafayette SC, LLC*, 244 N.C. App. 177 (2015), where a similar amendment was denied. Plaintiff asserts the trial court’s decision compromised the fairness of the trial.

Defendants counter that plaintiff misrepresents the facts, specifically noting that defendants moved to amend the pleadings under Rule 15(b), not Rule 15(a), as plaintiff claims. The motion was in response to plaintiff’s argument that defendants had made a judicial admission regarding the formation of the alleged contract

through discovery questions. The trial court ultimately ruled that amending the pleadings was unnecessary but stated that if needed, the court would amend them to strike any interpretation suggesting an admission to contract formation. The court further clarified that there was no judicial admission regarding the contract.

Under Rule 15(b), courts may allow pleadings to be amended “to conform to the evidence” presented at trial if doing so would not prejudice the opposing party. N.C.G.S. § 1A-1, Rule 15(b) (2023). “It is fundamental to the concepts embodied in Rules 15(a) and 15(b) of the North Carolina Rules of Civil Procedure that amendments to pleadings and relation back of such amendments should be liberal in their allowance and application. The rule, in fact, encourages liberal amendment of pleadings.” *Roper v. Thomas*, 60 N.C. App. 64, 68 (1982) (citation omitted).

Here, we discern no prejudice, as defendants’ affirmative defenses consistently denied the existence of a contract. The trial court’s decision, based on the evidence presented during the four-day trial, concluded that no admission of contract formation existed, and any amendment would reflect this. The trial court’s ruling was reasonable, within its discretion, so we affirm.

VII.

The final issue is whether the trial court erred in dismissing certain claims under Rule 41(b). The standard of review is whether the trial court’s findings are supported by competent evidence and whether those findings justify its conclusions and judgment. *Dean v. Hill*, 171 N.C. App. 479, 483 (2005). Plaintiff argues the trial

court erred in dismissing their breach of contract claim, as the existence of the contract was already established through a judicial admission where defendants acknowledged entering into a contract on 19 December 2019. Plaintiff contends this admission removed the issue of contract formation from trial.

Defendants counter that the trial court correctly dismissed the claim, as the document lacked key material terms such as price, scope of work, and completion time, making it unenforceable under contract law. *See Boyce v. McMahan*, 285 N.C. 730, 734 (1974) (A contract “leaving material portions open for future agreement is nugatory and void for indefiniteness.”). Testimony confirmed these deficiencies, with plaintiff’s representative admitting the absence of critical details. Defendants consistently denied the existence of a valid contract, asserting a lack of mutual assent.

Although plaintiff argues that defendants admitted to the existence of a contract in their counterclaim, defendants successfully amended their pleadings, as previously discussed, rendering plaintiff’s judicial admission argument moot. The trial court’s dismissal was based on competent evidence, and we affirm its decision.

This Court will not address defendants’ argument regarding the dismissal of their counterclaim for Unfair and Deceptive Trade Practices because defendants’ notice of cross-appeal did not properly designate the final judgment, which is necessary to appeal an interlocutory order. *See Manley*, 267 N.C. App. at 41. Without proper notice of appeal, this Court lacks jurisdiction, and as such, defendants’ cross-

appeal cannot be heard.

VIII.

After thoroughly reviewing the evidence and considering the arguments presented by both parties, we determine that the trial court acted within its discretion in its rulings. The findings of fact are supported by competent evidence, and the conclusions of law are consistent with established legal standards. Accordingly, we affirm the trial court's decisions in granting partial dismissals under Rule 41(b), its evidentiary rulings, and the sanctions imposed. Defendants' cross-appeal is dismissed due to lack of proper jurisdiction. Therefore, the judgment of the trial court is affirmed in its entirety.

AFFIRMED IN PART AND DISMISSED IN PART.

Judges FLOOD and THOMPSON concur.

Report per Rule 30(e).