SUMMARY
May 25, 2023

2023COA44

No. 21CA0906, *Heights Healthcare v. BCER* — Construction Law — Construction Defect Action Reform Act — Homeowner Protection Act of 2007 — Limitation of Damages

In this construction defect case, a division of the court of appeals reverses a trial court order enforcing a limitation of liability provision in the parties' contract. (The division also rejects defendant's cross-appeal of the trial court's verdict finding it liable for breach of contract.)

In resolving this appeal, the division interprets a provision of the Homeowner Protection Act of 2007 (HPA), section 13-20-806, C.R.S. 2022. The HPA provides that "any express waiver of, or limitation on, the legal rights, remedies, or damages" provided by the CDARA to "claimants asserting claims arising out of residential property" "are void as against public policy." § 13-20-806(7)(a), (c).

Applying the HPA, the trial court determined that a limitation of liability clause in the parties' contract was enforceable by the defendant against the plaintiff because "the property in question in this case was zoned 'commercial' at the time that the parties entered into the contract."

In *Broomfield Senior Living Owner, LLC v. R.G. Brinkmann Co.*, 2017 COA 31, ¶ 20 (*Broomfield Senior Living*), a division of the court of appeals held that the HPA's prohibition against enforcement of limitation on the accrual of claims protected the owners of a senior living facility when the property was located on a parcel zoned "for residential use only." The division in this case addresses a question left open by the division in *Broomfield Senior Living* — namely, whether the residential living quarters of a senior living community located on a parcel that is zoned "commercial" or "mixed use" constitutes "residential property" that is protected by the HPA.

Concluding that it does, the division reverses the trial court's determination that the limitation of liability is valid and enforceable. The division further concludes that the record supports the trial court's finding that defendant breached the parties' contract and that that breach isn't excused by any alleged breach by the plaintiff.

Accordingly, the division reverses the trial court's judgment in part and affirms it in part and remands the case for further proceedings on the issue of damages.

COLORADO COURT OF APPEALS **2023COA44**

Court of Appeals No. 21CA0906
Boulder County District Court No. 19CV31127
Honorable Patrick Butler, Judge

Heights Healthcare Company, LLC, d/b/a The Peaks Care Center, a Tennessee limited liability company,

Plaintiff-Appellant and Cross-Appellee,

v.

BCER Engineering, Inc., a Colorado limited liability company,

Defendant-Appellee and Cross-Appellant.

JUDGMENT AFFIRMED IN PART AND REVERSED IN PART,
AND CASE REMANDED WITH DIRECTIONS

Division III
Opinion by JUDGE WELLING
J. Jones and Schutz, JJ., concur

Announced May 25, 2023

Chipman Glasser, LLC, David S. Chipman, Mark T. Barnes, Denver, Colorado, for Plaintiff-Appellant and Cross-Appellee

Lewis Brisbois Bisgaard & Smith LLP, Adam B. Wiens, Sara H. Kiridly, Denver, Colorado, for Defendant-Appellee and Cross-Appellant

¶ 1 In this construction defect case, plaintiff, Heights Healthcare Company, LLC (Heights Healthcare), appeals the trial court's pretrial order pursuant to C.R.C.P. 56(h) determining that the limitation of liability in its contract with defendant, BCER Engineering, Inc. (BCER), is valid and enforceable. BCER cross-appeals the trial court's verdict following a bench trial entered in favor of Heights Healthcare, which found that BCER is liable to Heights Healthcare for breach of contract.

¶ 2 This case implicates the Homeowner Protection Act of 2007 (HPA), section 13-20-806, C.R.S. 2022.[1] The HPA amends the Construction Defect Action Reform Act (CDARA) and provides that "any express waiver of, or limitation on, the legal rights, remedies, or damages" provided by the CDARA to "claimants asserting claims arising out of residential property" "are void as against public policy." § 13-20-806(7)(a), (c). Applying the HPA, the trial court determined that the limitation of liability clause in the parties'

[1] Although the title "Homeowner Protection Act of 2007" doesn't appear anywhere in the statute, the session law enacting it provides that "[t]his act shall be known and may be cited as the 'Homeowner Protection Act of 2007.'" Ch. 164, sec. 1, 2007 Colo. Sess. Laws 610.

contract was enforceable because "the property in question in this case was zoned 'commercial' at the time that the parties entered into the contract."

¶ 3 In *Broomfield Senior Living Owner, LLC v. R.G. Brinkmann Co.*, 2017 COA 31, ¶ 20, a division of this court held that the HPA's prohibition against limiting the accrual of claims protected the owners of a senior living facility where the property was located on a parcel zoned "for residential uses only." Here we must decide a question left open by the division in *Broomfield Senior Living* — namely, whether the residential living quarters of a senior living community located on a parcel that is zoned "commercial" or "mixed use" constitutes "residential property" that is protected by the HPA. We conclude that it does.

¶ 4 Based on this conclusion, we reverse the trial court's determination that the limitation on liability is valid and enforceable. We further conclude that the record supports the trial court's finding that BCER breached the parties' contract and that that breach isn't excused by any alleged breach by Heights Healthcare. Accordingly, we reverse the trial court's judgment in

part and affirm it in part, and we remand the case for further proceedings on the issue of damages.

I. Background

¶ 5 Heights Healthcare owns a senior living community, Peaks Care Center (the care center). Pursuant to a written contract, BCER agreed to "provide Mechanical and Electrical consulting services to develop a full set of Construction Documents and Contract Administration" for the installation of Packaged Terminal Air Conditioner (PTAC) units in eighty-four residential rooms at the care center. The contract contained a limitation on BCER's liability equivalent to the "total fee for services rendered," which was $22,500.

¶ 6 Following installation, Heights Healthcare discovered that the units didn't operate as expected. Specifically, when the outdoor temperature dropped too low, the electrical system couldn't run more than seven of the eighty-four installed PTAC units at the same time without tripping the breaker and shutting down the entire system.

¶ 7 After discovering the defect, Heights Healthcare filed suit against BCER alleging breach of contract under the CDARA.[2]

¶ 8 Prior to trial, BCER filed a motion to determine a question of law pursuant to C.R.C.P. 56(h), seeking a determination that the limitation of liability is enforceable. Following briefing by the parties, the court granted BCER's motion.

¶ 9 Following a bench trial, the trial court issued an order finding that BCER had breached its contract with Heights Healthcare by failing to design a proper electrical system to support the full heating functionality of the PTAC units. Based on the court's pretrial ruling that the limitation of liability was enforceable, Heights Healthcare was awarded $17,500 in damages, which was the amount stipulated to by the parties, subject to their respective appellate rights.[3]

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[2] Heights Healthcare also asserted a claim of negligence against BCER, but this claim was dismissed after Heights Healthcare decided not to pursue it at trial.

[3] In light of the trial court's determination that the limitation of liability in the contract was enforceable, the parties entered into a pre-trial stipulation as to damages. The parties stipulated that, if the trial court found BCER liable to Heights Healthcare, Heights Healthcare would be entitled to damages in the amount of $22,500

II. Issues on Appeal

¶ 10 Heights Healthcare contends that the trial court's determination of law that the limitation of liability provision in the parties' contract is enforceable, notwithstanding section 13-20-806(7)(a) of the HPA, was erroneous. BCER, on cross-appeal, contends that the trial court erred by finding that Heights Healthcare didn't materially breach the contract first (thereby justifying BCER's breach) and that BCER's liability shouldn't be reduced by Heights Healthcare's pro rata share of the fault.

¶ 11 We address each contention below.

A. Limitation of Liability Clause

1. Additional Facts

¶ 12 The contract between Heights Healthcare and BCER provided that Heights Healthcare would pay BCER $22,500 in exchange for

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— which was the "total fee for services rendered," per the contract. And, because BCER had already paid $5,000 to Heights Healthcare for the mobilization of generators to power Heights Healthcare's PTAC units, Heights Healthcare's potential damages award would be limited to the remaining $17,500. The stipulation also provided that Heights Healthcare would remain entitled to appeal the trial court's orders, including its determination that the limitation on liability was enforceable.

BCER providing it with electrical design plans. The contract also contained the following limitation of liability clause:

> Limitation of liability: In recognition of the relative risks and benefits to both the Client [Heights Healthcare] and the consultant [BCER], the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, that the Consultant's total liability to the Client for any and all claims, losses, costs, injuries, damage, expenses, or claim expenses arising out of this Agreement for any cause or causes, shall not exceed the Consultant's total fee for services rendered. Such causes include, but are not limited to, the Consultant's negligence, errors, omissions, strict liability, breach of contract or breach of warranty.

¶ 13 In its C.R.C.P. 56(h) motion, BCER argued that Heights Healthcare's property is "commercial" as defined by the CDARA, and therefore the limitation on liability provision is enforceable. In response, Heights Healthcare argued that the property is "residential," and therefore the limitation on liability provision is void under section 13-20-806(7)(a). The trial court agreed with BCER, concluding that the care center property isn't "residential property" that falls within the HPA's protections, and therefore the limitation of liability provision is valid and enforceable.

¶ 14 On appeal, Heights Healthcare challenges that determination.

2. Standard of Review

¶ 15 Both contractual interpretation and statutory interpretation present questions of law that we review de novo. *Broomfield Senior Living*, ¶ 12. We review a trial court's order granting a motion for a determination of a question of law de novo, applying the same standard as the trial court. *Henisse v. First Transit, Inc.*, 247 P.3d 577, 579 (Colo. 2011); *Great N. Props., LLLP v. Extraction Oil & Gas, Inc.*, 2022 COA 110, ¶ 12 (*cert. granted* Mar. 20, 2023). "If there is no genuine issue of any material fact necessary for the determination of the question of law, the court may enter an order deciding the question." C.R.C.P. 56(h).

3. Homeowner Protection Act

¶ 16 The HPA is intended to preserve adequate rights and remedies for "residential property" owners who bring construction defect actions under the CDARA. § 13-20-806. It provides that

> [i]n order to preserve Colorado *residential property owners'* legal rights and remedies, in any civil action or arbitration proceeding described in section 13-20-802.5(1), [C.R.S. 2022,] any express waiver of, or limitation on, the legal rights, remedies, or damages provided by the [CDARA] . . . or on the ability to enforce such legal rights, remedies, or damages within the time provided by applicable statutes of

> limitation or repose are void as against public policy.

§ 13-20-806(7)(a) (emphasis added).

¶ 17 If Heights Healthcare is a "residential property owner," the liability limitation in the contract would constitute a limitation on Heights Healthcare's ability to enforce rights, remedies, and damages under the CDARA and would, therefore, be void as against public policy. If, on the other hand, it's not a residential property owner, then the limitation of liability would be valid and enforceable.

4. Application

¶ 18 It is undisputed that the City of Longmont zoned the parcel of land on which the care center is located as "C commercial" at the time the contract was signed and subsequently re-zoned it as a "mixed-use corridor." Longmont defined its "C commercial" zone to include both residential and non-residential uses, stating that "[a] mix of higher-density residential and commercial uses is encouraged in the C district." Longmont Mun. Code § 15.03.040(B)(1) (Jul. 9, 2018). The C commercial district specifically allowed for some "Residences and Other Living

Accommodations," including group care institutions, multi-family dwellings, independent living facilities, and affordable housing, among others. *Id.* Despite the change in the name of the parcel's zoning district to mixed-use corridor, the City of Longmont continued to allow for "residential" uses within the zone. Longmont Mun. Code § 15.03.030(C)(1) (Feb. 4, 2021). Specifically, the mixed-use corridor zone includes multi-family dwellings, single-family attached units, group care facilities, and independent living, among other residential uses, as well as community, cultural, educational, healthcare, recreational, dining, and business uses.

¶ 19 BCER argues that because Heights Healthcare's property was zoned as commercial property under the former zoning designation and mixed-use corridor under the current designation, it satisfies the definition of "commercial property" found in one subsection of the CDARA, and, therefore, section 13-20-806(7)(a) isn't applicable. We aren't persuaded.

a. The Limitation of Liability Clause is Void as Against Public Policy

¶ 20 Section 13-20-806(7)(a) of the HPA applies only to "claimants asserting claims arising out of residential property." § 13-20-

806(7)(c). So we must first determine what constitutes "residential property."

¶ 21 *Broomfield Senior Living* is instructive in this regard. The case involved construction defect claims asserted by the owners of a senior assisted and independent living facility located in an area zoned "for residential uses only." *Broomfield Senior Living*, ¶¶ 1, 20. After discovering construction-related defects on the property, the owners brought a construction defect action against one of the contractors that had performed work on the project. *Id.* at ¶ 9. The parties' contract included a provision limiting the contractor's liability, which provided that, for purposes of applying the statute of limitations, claims would accrue earlier than otherwise provided by the CDARA, thereby shortening the time for bringing construction defect claims. *Id.* at ¶ 4. In response to the suit, the contractor sought summary judgment, arguing that the statute of limitations — as established by the terms of the contract — had run. *Id.* at ¶ 9. The trial court granted the motion, enforcing the limitation of liability. *Id.*

¶ 22 On appeal, the division in *Broomfield Senior Living* had to determine whether the protections of the HPA applied. To do so,

the division considered whether a senior living facility located in an area zoned for residential uses only, but owned by commercial entities, constituted "residential property" under the HPA. In determining the meaning of "residential property" under the HPA, the division looked to the common usage of the word "residential." *Id.* at ¶ 19; *see also Griego v. People*, 19 P.3d 1, 9 (Colo. 2001) ("We consult definitions contained in recognized dictionaries to determine the ordinary meaning of words.").

¶ 23 The division noted that "'[r]esidential' plainly means using or designed for use as a residence." *Broomfield Senior Living*, ¶ 19 ("Residential" is defined as "used, serving, or designed as a residence or for occupation by residents." (quoting Webster's Third New International Dictionary 1931 (2002))). And "[r]esidence," in turn, means "a structure where people live." *Id.* ("[R]esidence" is defined as "[t]he place where one actually lives," a "dwelling," and a "house or other fixed abode." (quoting Black's Law Dictionary 1502 (11th ed. 2019))).

¶ 24 Applying these definitions, the division held that any limitation on the construction company's liability was void under the HPA because the facility was a "residential property" used to house

senior residents and wasn't used for "any purpose other than ordinary living." *Id.* at ¶ 24.

¶ 25 Although we aren't bound by that decision, we are persuaded by its reasoning and conclude that the same outcome is dictated here, notwithstanding the different zoning designation. Heights Healthcare's care center is a continuing care retirement community. The facility offers three tiers of housing: independent living, assisted living, and skilled nursing residences.[4] Heights Healthcare's residents live at the center, and the care center facilitates all tasks of daily living, including sleeping, eating, dressing, bathing, fitness, leisure activities, and receiving mail. As the trial court correctly noted, it's undisputed that "[i]ndividual residents live in the facility" and that "despite the 'commercial' zoning designation, individuals resided on the property."

¶ 26 Just as in *Broomfield Senior Living*, the care center is used as a home for its residents, so it is a "residential property" and Heights Healthcare is a "residential property" owner. Therefore, the trial

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[4] Heights Healthcare also has a small rehabilitative wing that houses residents on a temporary basis. That wing is separate from the portion of the building where the resident rooms are located. The rehabilitative wing was not subject to the parties' agreement.

court erred by enforcing the limitation of liability. Instead, section 13-20-806(7)(a) voids the limitation of liability clause.

¶ 27 And we aren't persuaded otherwise by BCER's reliance on section 13-20-802.5(4), which is where we turn next.

b. Section 13-20-802.5(4) Isn't Applicable Here

¶ 28 But wait, says BCER, the CDARA expressly defines commercial property as "property that is zoned to permit commercial, industrial, or office types of use." Therefore, BCER argues, the limitation of liability provision must be enforced because the care center's current and former zoning classifications permit commercial use. *See* § 13-20-802.5(4). We aren't persuaded.

¶ 29 The definition of "commercial property" that BCER relies on is in section 13-20-802.5(4), which defines "construction professional" as follows:

> "Construction professional" means an architect, contractor, subcontractor, developer, builder, builder vendor, engineer, or inspector performing or furnishing the design, supervision, inspection, construction, or observation of the construction of any improvement to real property. If the improvement to real property is to a commercial property, the term "construction

> professional" shall also include any prior owner of the commercial property, other than the claimant, at the time the work was performed. *As used in this subsection (4), "commercial property" means property that is zoned to permit commercial, industrial, or office types of use.*

§ 13-20-802.5(4) (emphasis added).

¶ 30 This definition doesn't inform the outcome here. First, the relied-on definition of "commercial property" isn't a stand-alone definition; it's a definition within a definition. It explicitly states "[a]s used in this subsection," meaning this definition of "commercial property" applies only to subsection (4) of section 13-20-802.5 — not to the entire CDARA.

¶ 31 Second, if we were to adopt BCER's argument, any residence located on a parcel zoned "to permit commercial, industrial, or office types of use" wouldn't be protected by the HPA solely because the zoning classification *permits* commercial use — even if the subject property is being used as a residence. This isn't the outcome that the legislature could have intended when drafting the subsection defining "construction professional." *See Broomfield Senior Living*, ¶ 17 (When interpreting a statute, our "primary objective is to ascertain and give effect to the intent of the legislature."). Instead,

we conclude that it is of no moment that the parcel where the care center is located is zoned for commercial or mixed use — the HPA was designed to protect actual use, not zoning designation. Therefore, we reject BCER's argument that section 13-20-802.5(4) dictates the outcome here.

¶ 32 Accordingly, because the limitation of liability is void under the HPA, we reverse the trial court's determination of law on the validity and enforceability of the limitation of liability clause, and we remand the case for a trial on damages.

B. BCER's Breach of Contract Claim

¶ 33 Next, we address BCER's cross-appeal. At trial, BCER argued that Heights Healthcare materially breached its obligations under the contract because it failed to supply final formal submittals necessary to complete the electrical design plans. The trial court wasn't persuaded that Heights Healthcare breached the agreement or that BCER's breach was excused, and its findings are supported by the record.

1. Additional Facts

¶ 34 The contract between Heights Healthcare and BCER became effective in April 2018. It contains several provisions regarding the

parties' duties and obligations to one another, including what documentation must be provided. To begin, the contract specifies that "BCER will review the contractor shop drawings, submittals, and RFIs."

¶ 35 The contract also contains the following terms and conditions outlining the interrelationship between the parties, and their resulting duties:

> Team Relationship: The Client [Heights Healthcare] and Consultant [BCER] agree to proceed with their respective obligations on a basis of mutual trust, good faith, and fair dealing, and shall take actions reasonably necessary to enable each other to perform in a timely, efficient, and economical manner.
>
> Construction Work: The Consultant assumes no responsibility (in any manner) for the construction means or methods, schedules or sequences, techniques and/or procedures for or in connection with the Work, nor shall the Consultant have responsibility for safety precautions and programs for or in connection with the Work. Furthermore, the Consultant shall not be responsible for the Contractor's failure to perform the Work in accordance with the Contract Documents.

¶ 36 The term "Contract Documents" isn't defined in the contract.

¶ 37 At trial, BCER argued that the above-quoted provisions created an obligation for Heights Healthcare to "take actions

reasonably necessary to enable [BCER] to perform in a timely, efficient, and economical matter." And, it argued, this obligation incorporated documents that came into existence after the contract was executed. Specifically, BCER contended that Heights Healthcare was bound by the following statement set forth on an electrical design plan dated three weeks after the contract was executed:

> CONTRACTOR SHALL PROVIDE SUBMITTALS ON ITEMS LISTED IN THE ELECTRICAL SCHEDULES AND AS REQUIRED IN EACH SECTION OF SPECIFICATION TO THE ENGINEER FOR REVIEW PRIOR TO THE ORDER, PURCHASE OR INSTALLATION OF THESE SAME ITEMS.

2. Analysis

¶ 38 In its written order, the trial court found that Heights Healthcare didn't materially breach its obligation to provide final formal submittals because Heights Healthcare wasn't obligated under the terms of the contract to provide such submittals. BCER contends this was error. We conclude that the record supports the trial court's finding.

¶ 39 The interpretation of a contract is a question of law that we review de novo. *French v. Centura Health Corp.*, 2022 CO 20, ¶ 24.

However, we review the trial court's factual findings for clear error, "meaning that we won't disturb such findings if there is any evidence in the record supporting them." *Woodbridge Condo. Ass'n v. Lo Viento Blanco, LLC*, 2020 COA 34, ¶ 24 (citing *M.D.C./Wood, Inc. v. Mortimer*, 866 P.2d 1380, 1384 (Colo. 1994)), *aff'd*, 2021 CO 56.

¶ 40 The trial court found that

- Heights Healthcare wasn't obligated to provide submittals to BCER;
- Heights Healthcare was obligated to take reasonably necessary actions to enable BCER to perform;
- Heights Healthcare notified BCER via email regarding which PTAC models would be used;
- even if Heights Healthcare was obligated to provide formal submittals to BCER, the extensive email communications between the parties were the equivalent of submittals;
- Heights Healthcare didn't materially breach its obligations to BCER; and
- BCER's breach isn't excused.

¶ 41 Contrary to BCER's contention, our review of the contract and the record reveals no obligation for Heights Healthcare to provide BCER with formal submittals. In fact, the word "submittals" is mentioned only once in the contract, and not in connection with any duties imposed on Heights Healthcare. The contract states only that "BCER will review the contractor shop drawings, submittals, and RFIs."

¶ 42 BCER contends that the term "Contract Documents" incorporated the electrical design plans and the terms on those plans. "[F]or contract terms outside the four corners of a contract to be incorporated by reference into the contract, the terms to be incorporated generally must be clearly and expressly identified." *French*, ¶ 30. Here, there is no definition of "Contract Documents" in the contract, nor is there a contract term that explicitly incorporates subsequent documents.

¶ 43 The supreme court's decision in *French* is helpful. In *French*, a hospital brought a breach of contract action against a patient to recover an outstanding balance allegedly owed following a surgery. In that case, the hospital contended that the hospital's chargemaster — a list of the costs of each procedure and service

provided by the hospital — dictated the patient's balance. But because the hospital's chargemaster wasn't referenced in any way in any of the forms signed by the patient, the supreme court concluded that it wasn't incorporated by reference and therefore didn't govern what the patient owed to the hospital. *Id.* at ¶ 35.

¶ 44 Here, the electrical design plans and the terms on those plans weren't mentioned in the contract signed by Heights Healthcare, and the contract didn't include a provision for incorporating subsequent documents. Because there is no support in the record for the contention that Heights Healthcare assented to the terms on the electrical plans, we reject the contention that Heights Healthcare breached the contract by failing to abide by any requirement on these unincorporated documents.

¶ 45 All of the trial court's remaining findings regarding BCER's breach of the contract (and Heights Healthcare's compliance with it) have record support, so we won't disturb them.

3. BCER's Liability for Breach of Contract Shouldn't be Reduced

¶ 46 BCER next contends that even if the trial court properly determined that it breached the contract, the trial court's order should have included a determination as to Heights Healthcare's

percentage of fault in causing the claimed damages and reduced the judgment it awarded accordingly. We disagree.

¶ 47 Heights Healthcare initially asserted two claims against BCER under the CDARA for damages caused by the alleged construction defects — breach of contract and negligence. Heights Healthcare didn't pursue the negligence claim at trial and moved forward on the breach of contract claim only. BCER contends that these claims were effectively the same because each turned on the same question — whether BCER breached the applicable standard of care when it performed its services for Heights Healthcare. Building off this asserted similarity between the negligence claim and the breach of contract claims, BCER urges us to apply section 13-21-111.5(1), C.R.S. 2022, to the breach of contract claim.

¶ 48 Section 13-21-111.5(1) allows for fault to be apportioned in tort actions brought for an "injury to a person or property":

> In an action brought as a result of a death or an injury to person or property, no defendant shall be liable for an amount greater than that represented by the degree or percentage of the negligence or fault attributable to such defendant that produced the claimed injury, death, damage, or loss, except as provided in subsection (4) of this section.

§ 13-21-111.5(1).

¶ 49 However, as stated above, Heights Healthcare didn't pursue the negligence claim against BCER at trial. BCER doesn't cite to any case law, and we can find none, that has ever applied section 13-21-111.5(1) to reduce actual damages awarded for breach of contract, rather than for negligence.

¶ 50 Indeed, to the contrary, our supreme court has recognized that a "breach-of-contract claim is clearly not a 'tort action based upon personal injury.'" *Guarantee Tr. Life Ins. Co. v. Est. of Casper*, 2018 CO 43, ¶ 13. And a division of this court has held that awards for breach of contract claims are not to be reduced based on principles of comparative negligence. *Brooktree Vill. Homeowners Ass'n v. Brooktree Vill., LLC*, 2020 COA 165, ¶¶ 55-59 (holding that the plaintiff in construction defect action was entitled to full amount of damages awarded for breach of contract warranty claim, even though judgment on the negligence claim was reduced by percentage of negligence attributable to plaintiff).

¶ 51 Accordingly, we conclude that section 13-21-111.5(1) doesn't apply to breach of contract claims. And because that provision doesn't apply, the trial court did not err by finding that BCER's

liability for breach of contract shouldn't be reduced by apportioning any fault to Heights Healthcare.

III. Disposition

¶ 52 We reverse the trial court's determination of law regarding the validity of the limitation of liability provision in the contract, affirm the trial court's findings on the breach of contract claim, and remand the case for further proceedings on the issue of damages.

JUDGE J. JONES and JUDGE SCHUTZ concur.