

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-155**

Lester Building Systems, a division
of Butler Manufacturing Company, et al.,
Respondents,

vs.

Louisiana-Pacific Corporation,
Appellant.

**Filed February 5, 2008
Reversed
Willis, Judge**

McLeod County District Court
File No. 43-C6-00-000335

James L. Volling, Faegre & Benson, LLP, 2200 Wells Fargo Center, 90 South Seventh Street, Minneapolis, MN 55402-3901; and Kell M. Damsgaard, Morgan, Lewis & Bockius, LLP, 1701 Market Street, Philadelphia, PA 19103 (for respondents)

James K. Langdon, Michelle S. Grant, Eric R. Sherman, Dorsey & Whitney, LLP, 50 South Sixth Street, Suite 1500, Minneapolis, MN 55402-1498 (for appellant)

Considered and decided by Willis, Presiding Judge; Wright, Judge; and Muehlberg, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

WILLIS, Judge

Appellant-manufacturer claims that the district court should have ruled that, as a matter of law, respondents-sellers were not entitled to recover damages for the cost to repair buildings belonging to respondents' customers when those customers had already settled with the manufacturer. Because Minnesota law does not permit repair-cost damages under these circumstances, we reverse the jury's \$11.2 million repair-cost award.

FACTS

This is an appeal from a construction-materials dispute. Appellant Louisiana-Pacific Corporation (LP) manufactures building materials and wood products for residential and commercial uses. Respondents Lester Building Systems, a division of Butler Manufacturing Company, and Lester's of Minnesota (collectively Lester) manufacture and build livestock barns.

Beginning in the late 1980s, LP manufactured and sold Inner-Seal, which was used by residential and commercial builders nationwide as exterior siding on homes and buildings. Before 1991, Lester used plywood as the exterior siding on its livestock buildings. For nearly five years beginning in 1991, Lester made purchases of Inner-Seal totaling \$3.4 million. Lester then used Inner-Seal on the exteriors of nearly 3,000 livestock barns that it manufactured and sold to its customers. LP provided a 25-year limited warranty for Inner-Seal and LP made numerous statements about the product's durability. But in late 1995 or early 1996, Lester began to receive complaints that Inner-

Seal was failing on some of the buildings that Lester had sold. Soon thereafter, Lester stopped purchasing Inner-Seal and stopped using it on its livestock buildings.

Federal class action in the United States District Court for Oregon

Lester was not the only customer for which Inner-Seal failed to perform. Numerous individual lawsuits were combined into a nationwide class action venued in Oregon federal court. The class included “all Persons who have owned, own, or subsequently acquire Property on which Exterior Inner-Seal Siding has been installed prior to January 1, 1996.” Lester was not a party to the class action or a class member, but Lester’s customers who purchased the buildings were class members.

In late 1995, LP and the class plaintiffs settled the class action. In exchange for LP’s agreement to finance a settlement fund to pay for, among other things, repair costs, the class members released their individual claims against LP. The settlement was binding on all class members, except those who opted out of the class by May 27, 1996. None of Lester’s customers opted out of the class action. From 1996 to 2002, LP paid approximately \$477 million to settle \$771 million in class-member claims.¹

The class settlement required that the class members release not only their claims against LP but also any claims against entities “involved in the distribution, installation, construction, and first time sale of structures with Exterior Inner-Seal Siding.” Lester admits that it is an entity in the chain of distribution. The release, therefore, insulated Lester from claims made by Lester’s class-member customers.

¹ Class members had the option of receiving accelerated payment in exchange for a discounted recovery, so that \$477 million satisfied \$771 million in claims.

Lawsuit in Minnesota state court

In 2000, Lester brought an action against LP in McLeod County District Court, alleging, among other things, claims of breach of contract, breach of warranty, and fraud. Although Lester acknowledged that the class-action settlement precluded new claims by class members, Lester asserted that it was entitled to damages for lost profits, the purchase price it had paid for the siding, and the cost to repair the siding on all of the barns that it had built using Inner-Seal.

Before trial, LP moved for partial summary judgment, arguing that the federal class action precluded Lester's claim for repair-cost damages. The district court denied LP's motion, stating that Lester had raised questions of fact "with regards to the class action settlement" and "with regards to the release contained in the class action settlement."

At trial, Lester offered evidence that it would cost \$13.2 million to repair the Inner-Seal siding on all of the buildings that Lester had built using the product. Lester's evidence did not distinguish between the costs to repair all of the buildings that it had built with Inner-Seal and those buildings that it had built with Inner-Seal but whose owners had settled their repair-cost claims with LP in the class action.

At the conclusion of the trial in October 2002, the district court instructed the jury that Lester could receive repair-cost damages if one of the following circumstances existed: (1) the building was constructed after January 1, 1996 (buildings constructed after this date were excluded from the class action by definition); (2) the building "has or may have a siding performance failure after January 1, 2003"; or (3) the building owner

submitted a claim before January 1, 2003, and the class action settlement was not funded by August 2003. Otherwise, the district court concluded that the federal class action barred Lester's repair-cost damage claims.

The jury found that, among other things, LP had breached its express and implied warranties and defrauded Lester. The jury returned a special verdict in favor of Lester for \$29.6 million, including \$13 million in lost profits and goodwill, \$13.2 million to repair the buildings, and \$3.4 million for Lester's purchase price for the siding. At LP's request, the district court stayed entry of judgment until the court resolved LP's motions for a new trial and for JNOV.

LP's request for an injunction in the Oregon federal court

Three weeks after the jury verdict, LP sought an injunction in the Oregon federal court to prevent the Minnesota state district court from entering judgment on the portion of the jury's verdict awarding Lester damages for its cost to repair the Inner-Seal siding that Lester had sold to its customers. LP argued that the class-action settlement precluded Lester from receiving damages to repair the barns of customers who had already released Lester from any repair obligation. In December 2002, the federal court granted LP's motion and enjoined the state district court from entering judgment on the portion of the damage award (\$11.2 million) that the jury awarded to Lester for the cost to repair buildings constructed before January 1, 1996.

The Minnesota state district court then denied LP's post-trial motions and, recognizing the federal injunction, directed the entry of judgment against LP in the amount awarded by the jury plus interest, less the enjoined repair costs. The judgment

totaled approximately \$20 million. The district court also directed that, in the event that the United States Court of Appeals for the Ninth Circuit vacated the injunction, the judgment would be deemed entered nunc pro tunc in the full amount of the jury verdict with pre-verdict interest.

LP's first appeal to the Minnesota Court of Appeals

After the district court denied LP's post-trial motions, LP appealed to this court, asserting, among other things, that the state district court erred by letting the issue of repair-cost damages go to the jury. *See Lester Bldg. Sys. v. La.-Pac. Corp.*, No. A03-48, 2004 WL 291998, at *8 (Minn. App. Feb. 17, 2004), *review denied* (Minn. Apr. 28, 2004). This court affirmed the district court on all other issues but refused to consider the repair-cost-damages issue because the federal injunction prevented Lester from receiving those damages. *See id.* (noting that, because of the federal injunction, LP was not "aggrieved" and could not assert that error on appeal). But this court stated that "[i]f the [federal] injunction is reversed, the trial court would amend the current judgment to enter the \$11.2 million portion for repair costs, and LP may appeal from the amended judgment at that point." *Id.* The court continued that "LP will, however, be limited to appealing only the issues in the amended judgment." *Id.*

Lester appeals the federal injunction to the United States Court of Appeals for the Ninth Circuit

In January 2003, Lester appealed the Oregon federal court's injunction to the Ninth Circuit. *See Sandpiper Vill. Condo. Ass'n, Inc. v. La.-Pac. Corp.*, 428 F.3d 831

(9th Cir. 2005), *cert. denied*, 126 S. Ct. 2970. The Ninth Circuit reversed the decision of the Oregon federal court and vacated the injunction. *Id.* at 853.

Amended judgment in Minnesota state court

After the Ninth Circuit vacated the federal injunction, Lester returned to state district court. And in December 2006, the district court amended its judgment, stating that Lester was entitled to the balance of the judgment (\$11.2 million), pre-judgment interest (\$101,438), and post-judgment interest (\$2.02 million). The amended judgment, therefore, totaled \$13,321,835. LP now appeals from the amended judgment.

DECISION

This case raises the issue of a reseller's ability to seek damages from a manufacturer for the cost of repairing defective goods sold by the reseller to end users after the reseller has been released from any legal obligation to repair the goods. Whether the Uniform Commercial Code (U.C.C.), as adopted in Minnesota, permits such damages involves a question of statutory construction. Statutory construction is a question of law, which we review *de novo*. *Hibbing Educ. Ass'n v. Pub. Employment Relations Bd.*, 369 N.W.2d 527, 529 (Minn. 1985).

We will address only one of the several arguments that LP makes on appeal because we conclude that it is dispositive. LP argues that the district court erred by instructing the jury that Lester could recover repair costs because, under Minnesota law, a reseller cannot recover repair-cost damages when it has already been released from liability. We agree.

Under Minnesota law, a buyer is entitled to consequential and incidental damages for breach of warranty and breach of contract. Minn. Stat. § 336.2-714(3) (2006). Incidental damages include “expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach.” Minn. Stat. § 336.2-715(1) (2006). Consequential damages include “(a) any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and (b) injury to person or property proximately resulting from any breach of warranty.” Minn. Stat. § 336.2-715(2) (2006).

To support their arguments, both parties cite *DeGidio Oil & Gas Burner Sales & Servs., Inc. v. Ace Eng'g Co.*, 302 Minn. 19, 225 N.W.2d 217 (1974). *DeGidio* is the sole published Minnesota case interpreting the U.C.C. with regard to the issue of whether a reseller may recover damages against a manufacturer for the cost of replacing the reseller's customers' goods.

In *DeGidio*, a heating contractor purchased furnaces from a manufacturer, and the contractor installed those furnaces in its customers' buildings. 302 Minn. at 26, 225 N.W.2d at 222. When the furnaces failed to perform as the manufacturer claimed they would, the contractor sued the manufacturer for the cost of the furnaces, the cost of installing the furnaces, and the cost of replacing one of the furnaces, which did not work at all. *See id.* at 29, 255 N.W.2d at 224. The jury awarded the contractor all of its

requested damages. *Id.* On appeal, the manufacturer argued that the contractor was not entitled to the purchase price of the furnaces or the original installation costs because the contractor's customers had already paid the contractor those sums. *Id.* at 26, 225 N.W.2d at 222. In rejecting the manufacturer's argument, the supreme court stated that the contractor was entitled to those damages "without reference to what profit it may have realized from the [original] sale and installation of the [furnaces] or what other arrangements it may have made to correct the problems the [furnaces] presented due to their faulty design and construction." *Id.* at 27, 225 N.W.2d at 223. Confronted with the "possibility of either double liability on the part of [the manufacturer] or double compensation on the part of [the contractor]," the supreme court permitted the contractor to recover from the manufacturer because the contractor remained liable to its customers to repair the furnaces. *Id.* at 26-27, 225 N.W.2d at 222-23.

In addition to the contractor's original purchase price for the furnaces and the original installation cost, the jury awarded the contractor \$2,100 in damages for the cost of the furnace that had stopped working altogether. *Id.* at 29, 225 N.W.2d at 223-24. Recognizing that the jury had already awarded the contractor \$1,750 (that furnace's cost to the contractor) as part of the original-cost award, the supreme court ordered a remittitur of \$1,750. *Id.*, 225 N.W.2d at 224. The supreme court described this portion of the jury's award as an impermissible duplication of damages. *Id.* Importantly, however, the supreme court upheld the jury's award for the \$350 difference between the full jury award of \$2,100 for replacement of that furnace and the furnace's cost of \$1,750. *Id.* The \$350 difference represented the contractor's expenses for installing the

replacement for that furnace. *See id.* Therefore, we conclude that *DeGidio* stands for the proposition that a reseller of a defective product may receive as damages, in addition to the original purchase price, its costs of repairing or replacing a defective product, but only to the extent that those costs do not include damages that have also been awarded to the reseller as part of the reseller's damages for the original cost of the product to the reseller.

But this does not end our analysis. LP argues that *DeGidio* does not permit a reseller to collect repair-cost damages "to satisfy legal claims from which it has been released." Lester disputes the importance of this distinction to the holding of *DeGidio* and argues that even if liability were important in that case, Lester has a business obligation to repair its customers' barns here. To support its business-obligation argument, Lester cites the Restatement (First) of Restitution § 78 (1937), and *Step-Saver Data Sys., Inc. v. Wyse Tech.*, 912 F.2d 643, 653 (3d Cir. 1990). Although both of these non-binding authorities minimize the significance of the existence of a legal obligation to a business's customers to support a damage award, they are not controlling in the context of repair-cost damages because the Minnesota Supreme Court implicitly rejected this view in *DeGidio*.

We conclude that *DeGidio*, in addition to limiting repair-cost damages to amounts that a reseller has not already received as purchase-price damages, also conditions a manufacturer's liability to a reseller on the reseller's potential liability to end users. First, it is clear that the supreme court in *DeGidio* emphasized the liability of the contractor to its customers in affirming the contractor's repair-cost award. *See DeGidio*, 302 Minn. at

27, 225 N.W.2d at 222-23 (“[C]early DeGidio had a liability to his [customers] to make them whole. This, of course, would involve a liability for reinstalling burners which would operate properly for the purposes intended.”). And the discussion in *DeGidio* of the reseller’s potential liability is superfluous if it is not a limitation on the right of resellers to seek repair-cost damages. Second, Lester cites no case in which a court has permitted a reseller to seek repair costs from a manufacturer when the reseller has been awarded damages from the manufacturer for the original purchase price, the end users have recovered repair costs from the manufacturer, and the end users have released the reseller from any liability. Third, if a reseller is not liable to its customers to repair a product and the reseller is allowed to recover repair-cost damages from the manufacturer, those damages would be a windfall to the reseller. Historically, Minnesota courts have been unwilling to allow for a double recovery of damages. *See Wirig v. Kinney Shoe Corp.*, 461 N.W.2d 374, 379 (Minn. 1990). Linking repair-cost awards to the reseller’s liability to end users is consistent with that unwillingness. Finally, allowing a reseller to recover repair costs when the end user has already released its claims against the reseller would work to undermine settlements between end users and manufacturers of defective products. *See Hentschel v. Smith*, 278 Minn. 86, 92, 153 N.W.2d 199, 204 (1967) (“This court has always supported a strong public policy favoring the settlement of disputed claims without litigation.”). Here, Lester’s customers waived their claims against LP, and LP had a reasonable expectation that it could not be sued on the same claims again.

Because the district court erroneously allowed the issue of Lester’s repair-cost damages to go to the jury even though Lester’s customers had released Lester from any

legal obligation to repair their barns, we reverse the jury's award of \$11.2 million in repair-cost damages and interest.

Reversed.