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2026 IL App (3d) 250162-U

Order filed August 19, 2026

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2026

AMERICAN CLEANING AND RESTORATION SOUTH, LLC,	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiff-Counter Defendant-Appellee,	)	
v.	)	
PASCUAL A. BIBIAN, SOCCORO F. BIBIAN, WELLS FARGO BANK, N.A., FIRST NORTHERN CREDIT UNION, UNKNOWN OWNERS AND NON-RECORD CLAIMANTS,	)	Appeal No. 3-25-0162 Circuit No. 22-CH-50
Defendants	)	
(Pascual A. Bibian and Soccoro F. Bibian, Defendants-Counter Plaintiffs-Appellants).	)	Honorable John C. Anderson Bennett J. Braun, Judges, Presiding.

JUSTICE PETERSON delivered the judgment of the court.
Presiding Justice Hettel and Justice Davenport concurred in the judgment.

ORDER

¶ 1 *Held:* The court erred in admitting an exhibit as a business record but, not considering the exhibit, the judgment on plaintiff's claim was supported by competent evidence and was not against the manifest weight of the evidence. The court's judgment on the counterclaims was not against the manifest weight of the evidence.

¶ 2 Defendants-counter plaintiffs, Pascual A. Bibian and Soccoro F. Bibian (Bibians), appeal the judgment of the Will County Circuit Court, which awarded \$254,000 in *quantum meruit* damages to plaintiff-counter defendant, American Cleaning and Restoration South, LLC, (American) and ruled against the Bibians on their counterclaims. The Bibians argue that American failed to prove its damages with competent admissible evidence as American's exhibit 8 did not qualify as a business record, such that the damages award should be reversed as a matter of law. They also argue that if the damages are not reversed as a matter of law, the amount is against the manifest weight of the evidence. The Bibians further argue that the court's judgment on its counterclaims seeking loss of use/housing costs and the cost of repainting was against the manifest weight of the evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 This matter arises out of a dispute regarding American's repair of the Bibians' home following a fire that occurred on June 27, 2020. The Bibians were insured by State Farm. State Farm produced an estimate for the repair and American started the repair process. Eventually a dispute arose. American did not complete the repairs, and the Bibians hired others to do so. American filed a lien against the property for outstanding amounts it believed were owed for the work that had been completed. American then filed the instant matter seeking to foreclose on the lien and making claims for breach of contract and *quantum meruit*. The Bibians counterclaimed, alleging breach of the repair agreement. The Bibians alleged that they had to pay in excess of \$300,000 to have the repairs completed and lost in excess of \$20,000 from State Farm for loss of use/temporary housing benefits. The matter proceeded to a bench trial.

¶ 5 Michael Hassell, who was the State Farm large loss fire claim representative that handled the Bibians' claim, testified that the Bibians had a replacement cost policy, which means State

Farm would “owe the full cost to replace the particular item.” Essentially, this meant that the insurance company would pay the actual cash value of the repairs, which is the cost of the repairs minus depreciation, upfront and then hold the replacement cost benefits until the repairs are completed. Hassell testified that State Farm does not release the replacement cost benefits until the repair work is substantially complete. State Farm paid the replacement cost benefits in this matter as Hassell was satisfied the repairs were substantially complete.

¶ 6 Hassell was shown a document marked as exhibit 1 and identified the document as the estimate he produced. The estimate was admitted into evidence. Hassell used a software program called Xactimate to generate the estimate. Xactimate is used on all State Farm claims, and most contractors utilize it as well. Hassell testified that Xactimate is a trustworthy, reliable, and an accurate source for preparing estimates. According to the estimate, the net cash value payment was \$655,731.17 and the total maximum additional insured amount available was \$175,226.51, for a total of \$830,957.68. The total replacement cost value of the entire estimate was \$886,586.71. Hassell testified that State Farm paid the Bibians \$899,000 for their claim.

¶ 7 Hassell testified that he had phone conversations with Soccoro. She was not happy with American’s lack of progress and the fact they were not producing receipts for the work they claimed. Hassell did not remember any complaints about workmanship. He further testified that the project manager for American, Travis Alexander, communicated with Hassell. Hassell requested progress updates from Alexander and there were times when he did not respond. The Bibians’ policy provided loss of use benefits for up to a two-year period, but Hassell terminated the Bibians’ loss of use benefits prior to two years. He stated the reason for the termination was partly because it became clear that American would not finish the repairs within the two-year period and partly because there were disputes between the Bibians and American which led to

the delays. State Farm did not owe loss of use benefits for delays caused by conflicts between the contractors and insureds.

¶ 8 Brian Ericksen, the president of American, testified that he was familiar with Xactimate. He stated that it is a reliable, accurate source of monetary values for fire losses. Xactimate is the preferred software for almost everyone in the industry. Ericksen identified exhibit 1 as the repair estimate. He testified that when repairing a house for an insurance claim, the estimate “is basically the bible of that.” He stated that the estimate is what is agreed upon with the insurance carrier and that the repair work is determined by what is in the estimate.

¶ 9 Ericksen was somewhat familiar with the work that American performed on the Bibians’ property. American was hired to board up the house, handle the personal property, provide demolition services, and repair the property. American entered a repair agreement with the Bibians wherein American agreed to repair the house for the amount of the insurance proceeds. Ericksen testified that the contract price was the estimate—exhibit 1— together with supplements, if any. American used on the Bibian project were MET Electric, DL Comfort, and Five Star Painting (Five Star) as subcontractors on the Bibian project. American also performed some of the work. American handled most of the demolition work. Five Star performed most of the general repairs, excluding HVAC and electrical work. DL Comfort handled the HVAC work, and MET Electric handled the electrical work.

¶ 10 Ericksen testified that the COVID-19 pandemic impacted the Bibian project in various ways, including cost of materials and delays in obtaining materials. Ericksen testified that his only interaction with Soccoro was setting up and attending a meeting with her in October 2021. She was concerned with a lack of progress and getting the repairs completed, and Ericksen was concerned with the lack of payments and reestablishing trust so they could finish the project. One

of the main issues causing a standstill was Soccoro insisting on a specific brand of cabinets that had a price that far exceeded the allotted amount for cabinets in the estimate. During the meeting, the parties came to an agreement regarding some progress payments and the completion of certain items. Ericksen testified that American received one progress payment pursuant to this agreement but not the next payment or final payment.

¶ 11 Ericksen does not receive many complaints about American's work. However, when he does, American tries to address the complaint. Most complaints are not about the repair work but instead about the content services. Ericksen testified that he did not receive any complaints from the Bibians regarding workmanship. However, American was eventually fired by the Bibians.

¶ 12 Ericksen was shown exhibit 8, which he identified as a copy of the estimate, but stated that this copy was highlighted with the work that American had completed at the Bibian property. Exhibit 8 consisted of 124 pages and it was identical to the first 124 pages of exhibit 1, except for the highlighting. It was highlighted in his office with the individuals from Five Star, as well as Alexander. The document was highlighted in early 2022. The document was created for the purpose of filing the lien, because American needed to know the correct amount of the lien American was going to put on the Bibians' property once it was clear the Bibians were not going to make any more payments to American. The highlighted items were work that had been completed. This information was verified by Alexander, as well as the other subcontractors. They spent approximately four to five hours discussing the items to determine which items had been completed. The document was prepared prior to the lien being filed.

¶ 13 Ericksen testified that American completed approximately \$800,000 worth of work. He stated that figure consisted of the checks already received (approximately \$505,000), plus the lien amount. He later stated that \$535,000 had been received. The lien indicated that American

was owed \$256,703.31. Ericksen stated that American had received \$535,000 towards the structural repairs, and that the amount owed for the work that had been completed was \$256,703.31. He testified that the subcontractors used by American provide competent work.

¶ 14 The Bibians' counsel objected to exhibit 8 being admitted into evidence. Counsel argued that it was not made in the ordinary course of business, was prepared to file the lien and the lawsuit, was not prepared by Ericksen, and was not a business record. The court admitted the exhibit over counsel's objection and stated, "I'm not sure it makes that much difference in the case anyway."

¶ 15 Alexander testified that he is familiar with Xactimate and that it is an industry standard software for preparing estimates. Alexander had worked with Five Star, DL Comfort, and MET Electric and believed all three do a good job. Alexander answered many questions regarding the Bibian project with "I don't recall" or some variation thereof. Emails from his email address could have come from him or Ericksen, as Ericksen frequently sent emails from other people's email addresses.

¶ 16 Irene Gallegos testified that she is the office manager for American. She testified that the total amount received for repairs on the Bibians' claim was \$535,000. American also received a check for approximately \$95,000, but that was for handling contents, not the reconstruction of the Bibians' home. American paid Five Star \$505,000, MET Electric approximately \$26,000, and DL Comfort approximately \$26,000 for their work on the Bibian property. Gallegos identified various exhibits containing documents evidencing the payments. Gallegos recognized exhibit 8 and testified that the document was highlighted by the managers of Five Star and Alexander. The highlighted items reflected the work completed at the Bibians' property.

Gallegos testified that she totaled the highlighted entries, and that figure amounted to approximately \$789,000.

¶ 17 Nick Carbaugh testified that he was hired by the Bibians in March or April 2022 to coordinate the remainder of the repairs after the Bibians fired American. He started as a laborer in 1988 and started his own company doing general contracting work in 1998. He dissolved the company in 2013 and has not done work as a general contractor since. Carbaugh testified that he has worked as a consultant helping people with projects, and that he is no longer a licensed contractor. Carbaugh inspected the Bibian property. He thought the quality of repairs was poor and that there was a substantial amount of work to be done prior to obtaining an occupancy permit. With respect to the quality of the work, he mentioned chips in the tile floor, “floors not meeting up to other floors,” trim that had not been completed, and numerous items that were unfinished. Carbaugh detailed various items that he testified showed poor quality workmanship, including windows, trim, floors, and painting. Carbaugh reviewed the invoices from the contractors hired to complete repairs and advised the Bibians as to whether or not the amounts were fair and reasonable. Magtek Mechanical replaced a furnace because it was not the correct size. GMJ Decorating (GMJ) completed the painting throughout the house. The drywall was not completely finished as far as taping, and the higher sheen paint that had been used showed the imperfections, so they decided to change the sheen of the paint and repaint the entire house. Carbaugh testified that GMJ was paid to repaint every room and ceiling due to poor workmanship, paint the garage, and paint or stain any new or existing wood trim that needed to be replaced or repaired. Carbaugh never saw the State Farm estimate. The amounts he approved as reasonable for the contractors he oversaw were never cross-referenced with the figures on the State Farm estimate.

¶ 18 James Menard, vice president and secretary of Five Star, testified that American hired Five Star to work on the Bibians' property. Five Star was hired to complete the items in the State Farm estimate, except for demolition, HVAC work, and electrical work. Menard identified exhibit 1 as the State Farm Xactimate estimate, which he described as a blueprint for the project. He stated that they needed to stay in conformance with the document.

¶ 19 Menard testified that Five Star completed the roof and believed they did a competent job. Five Star reframed the property, completed the roofing, rough plumbing, insulation, masonry, stucco, soffit and fascia, and windows in the garage. Menard believed they performed the exterior work in a competent manner. There were no complaints from the Bibians regarding workmanship, other than a soffit or fascia gap that Socorro wanted repaired. Menard testified that it was to be repaired but he was not sure if it was actually repaired because it was something that came up late in the repair process. He stated it was a very small detail and would have been a minor item to fix.

¶ 20 As to the interior, Menard testified that Five Star installed the drywall, installed hardwood flooring and ceramic tile, finished the hardwood flooring to the point it needed one more coating, installed rough plumbing, installed plumbing fixtures like tubs, purchased toilets and other plumbing fixtures, fully painted, and fully provided trim except for plumbing trim. Five Star did not do electrical, HVAC, or cabinets. Menard testified that they had the house ready to put in cabinets and complete the repairs. He believed Five Star did a competent job on the interior work. The Bibians had concerns about the painting. Socorro put tape dots all over the walls to indicate issues with the paint, but when Menard and his partner went to the home, the Bibians could not identify the issue where many of the tape dots were located. Regardless, Menard had painters' tape, mud, and/or patch any of the areas that the Bibians noted and then

repainted. There were no other complaints from the Bibians regarding the interior work by Five Star.

¶ 21 Menard testified that when Five Star stopped work due to American being fired, Five Star had substantially completed the work that it was hired to do. He stated that all they had left to do was the cabinets and items on or above the cabinets. Issues with Soccoro insisting on a specific type of cabinet caused delays on the project. Menard testified that Five Star's work was 90 percent completed. They did not finish the brick cleaning on the exterior and on the interior, they did not finish installation of the cabinets, countertops, sinks, faucets, mirrors, and shower doors. Menard estimated that it would have taken approximately \$50,000 more to complete their work in terms of labor, materials, manpower, and time. Five Star was paid \$505,000 by American.

¶ 22 Menard identified exhibit 8 as a highlighted document that he helped American prepare. He, his partner, and Alexander were called for a meeting by Ericksen. They went line-item by line-item to highlight the items they completed. The highlighted items totaled approximately \$789,000. Menard stands by the work Five Star did on the Bibian property. Five Star purchased all of the light fixtures and MET Electric was installing them. They were on the final steps of the electrical. Five Star did all of the painting, so he did not believe that there was \$29,000 worth of painting for GMJ to have done.

¶ 23 Darrell Magolan, owner of Magtek Mechanical, testified that he had been employed in HVAC since 1999. He inspected the Bibians' HVAC systems and proposed a scope of work. He determined that there were multiple HVAC installation issues. He ultimately replaced both furnaces at the Bibian home. The replacement furnaces were upgraded from the previously installed furnaces.

¶ 24

Mark Thompson, an electrical and mechanical contractor, testified that he was hired by American to work on the Bibian property. He identified exhibit 29 as his estimate for the project. He was hired to do the electrical work in the home and replace items as stated on the estimate. Thompson testified that he substantially completed the items on the estimate. He believed that he did a competent job at the Bibian property, and he did not receive any complaints from the Bibians. Thompson identified exhibit 31 as a document showing extra work that he completed at the Bibian property. He did not complete that work 100 percent because he was told not to come back to the property at some point. One thing he was not able to do was put on the electrical panel label. Additionally, he did not put in ground fault circuit breakers and arc fault circuit breakers. Thompson did not have an opportunity to put in the can lights in the basement. He was not able to do any electrical work for the island because the cabinets were not yet installed. To put the panel label on and put the can lights in, each would have taken approximately 4 hours, maybe less. Thompson testified that he completed 90 percent of the work he was hired to do on the Bibian property. He had installed all of the devices, switches and receptacles. American paid his invoices of \$16,765 and \$9,705, which amounted to payment for all the work he completed. The final waiver of lien that he signed indicated that he was paid \$26,600 by American, and he confirmed he was paid that amount. Thompson stood by his work at the Bibian property and believes he does a good job as an electrician.

¶ 25

Daniel Lagiglia, who owns DL Comfort Control, testified that he had worked in HVAC for 24 years. At the Bibian property, he replaced the two furnaces in the basement and two coils, replaced one of the air conditioners outside, renovated the return ductwork throughout the house, replaced the ductwork for the exhaust fans in the bathroom and kitchen, and installed a garage heater. Lagiglia replaced the furnaces with the same size furnaces that had been in the home. He

did not receive any complaints about his work. There was still more work to be done, but Lagiglia testified that he was paid for the work he completed. He stated that the basement ventilation was not finished and a central return still needed to be installed in the basement. Additionally, he needed to start the equipment. Lagiglia had not completed the work because they were not allowed back to the property. He did not turn the equipment on because there was no gas service to the furnaces. Lagiglia would not advise anyone to operate the furnaces without him first getting them operational. He testified that the evaporator coil tray was level when he installed it. Lagiglia believed he completed the work in a good workmanlike manner and stands behind his work. The equipment he installed had a ten-year parts warranty and a three-year labor warranty. The warranty would have been given to American because American was his customer. He did not believe the work he did needed to be redone. He was paid \$25,682.39 for his work on the Bibian project.

¶ 26 Soccoro testified that she received approximately \$175 per day from State Farm for rent. After the fire, they stayed in different places, including with family some of the time and at properties owned by others. She stated that she paid rent the whole time she was out of her house. However, State Farm only paid the \$175 per day rate until November 1. She was staying with her daughter who did not charge her rent, but since State Farm was giving her money she gave it to her daughter. She was not happy with the work performed by the subcontractors hired by American. She does not dispute that State Farm paid her \$899,000 for the building repair claim. Soccoro testified that not all the money paid to the replacement contractors she hired came from State Farm. She claimed some of it was paid from personal funds, but she could not quantify the amount paid from personal funds. Soccoro admitted she did not pay American the

second payment of \$135,000 or the final payment of \$175,000 that she was supposed to make according to the schedule from Ericksen.

¶ 27 The parties submitted written closing arguments. American argued that it established its *quantum meruit* claim, and that the reasonable value of its services for which it had not been compensated was \$254,000. As to the Bibians' counterclaims, American argued that the Bibians did not offer a single piece of evidence to show any out-of-pocket losses or damages. The Bibians argued that State Farm stopped loss of use payments of \$150 per day on November 1, 2021—when they were entitled to such payments until June 27, 2022—because of American's failure to provide a completion schedule, which resulted in damages of \$35,700.

¶ 28 The court entered a written order. The order noted that it considered the credibility of the witnesses. The court found in favor of American on its *quantum meruit* claim and awarded American \$254,000 in damages, plus costs. The court found against American on its remaining claims and against the Bibians on their counterclaims. The order did not provide specific factual findings or reasoning for the decision. The court found that there was no just reason to delay enforcement or appeal of the judgment.

¶ 29 The Bibians filed a motion to reconsider. The court denied the motion and the Bibians appeal.

¶ 30 II. ANALYSIS¹

¶ 31 The Bibians argue that American failed to provide competent, admissible evidence of damages, and that as a matter of law, the judgment in American's favor should be reversed due to its failure to prove damages. Specifically, the Bibians argue that the court erred by admitting

¹Appellants have filed a motion to cite to the record on appeal and Appellee has filed a response. We deny the motion; however, we note that we have reviewed and considered the record on appeal in reaching our decision.

and considering exhibit 8, the highlighted estimate, because it was not a business record and thus, inadmissible hearsay. The Bibians also argue, alternatively, that the damages awarded by the court are against the manifest weight of the evidence.

¶ 32 A record is not excluded from evidence by the hearsay rule if it was “made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make” the record. Ill. R. Evid. 803(6) (eff. Jan. 25, 2023). “Records prepared in anticipation of litigation are not records made in the regular course of business and thus are not admissible into evidence unless they fall within another exception to the hearsay rule.” *In re A.B.*, 308 Ill. App. 3d 227, 236 (1999). Although the decision to admit evidence is generally reviewed for an abuse of discretion, where the decision is a legal one, not requiring the court to use its discretion regarding fact-finding or assessing the credibility of witnesses, review is *de novo*. *People v. Aguilar*, 265 Ill. App. 3d 105, 109 (1994).

¶ 33 The admittance of exhibit 8 involved a legal question—whether the business record exception applies—as the facts regarding the timing and purpose of making exhibit 8 were undisputed. As such, our review is *de novo*. Here, we conclude that the court erred by admitting exhibit 8, as it did not fall within the business record exception. Specifically, the highlighting to indicate that a particular item on the estimate had been completed was not added at or near the time that the items were completed. Instead, it was done after work on the project had been terminated and American was preparing to file a lien and litigation. The work was completed over a period of time from approximately 2020 through the beginning of 2022, and the document was not completed until approximately March 2022. Thus, the court erred by admitting the document for the truth of the matter asserted therein as a business record. However, as American

argues, even without exhibit 8, American presented sufficient evidence from which the court could calculate damages.

¶ 34 Under a theory of *quantum meruit*, the measure of recovery is the reasonable value of the plaintiff's services. *Fieldcrest Builders, Inc. v. Antonucci*, 311 Ill. App. 3d 597, 606 (1999). "The plaintiff must provide a basis for assessing damages with a 'fair degree of probability,' but need not prove the exact amount of its loss." *Jameson Real Estate, LLC v. Ahmed*, 2018 IL App (1st) 171534, ¶ 64 (quoting *Benford v. Everett Commons, LLC*, 2014 IL App (1st) 130314, ¶ 30). This court will "not reverse a trial court's finding as to the reasonable value of plaintiff's services unless the finding is manifestly erroneous." *Fieldcrest Builders, Inc.*, 311 Ill. App. 3d at 606.

¶ 35 Although the Bibians objected to the admittance of exhibit 8, and we agree the admittance was error, they did not object to testimony by any of the witnesses related to exhibit 8. Notably, Gallegos testified that she added up the value of the highlighted items and came to a total of \$789,000. She additionally testified that American had received \$535,000 in payments for the repair work. Gallegos acknowledged an additional payment of approximately \$95,000 but made clear that was for handling contents and not the repair work. The difference is \$254,000, which is what the court awarded as damages. The court was free to accept Gallegos' testimony that was not objected to by the Bibians. Moreover, the award is supported by the testimony of Menard, Thompson, and Lagiglia who all testified as to the work they completed and what remained to be done. Menard and Thompson testified that they completed approximately 90 percent of the work called for in the estimate, which was admitted as exhibit 1. As to exhibit 1, there was testimony that it was made using Xactimate and was referred to as the blueprint and the bible as far as the scope of work for the Bibian project. Further, there was testimony that Xactimate is an industry standard that is reliable as far as costs. Thus, it would be

proper for the court to utilize the estimate to determine the reasonable value of the services provided by American. Based on the foregoing, we conclude that the court's judgment in favor of American for \$254,000 was not against the manifest weight of the evidence.

¶ 36 The Bibians also argue that the court's judgment against them on their counterclaims regarding the loss of use benefits and damages for hiring a painting contractor is against the manifest weight of the evidence.

¶ 37 "The standard of review in a bench trial is whether the trial court's judgment is against the manifest weight of the evidence." *Diocese of Quincy v. Episcopal Church*, 2014 IL App (4th) 130901, ¶ 38. "A judgment is against the manifest weight of the evidence only if the opposite conclusion is apparent or if it appears to be arbitrary, unreasonable, or not based on the evidence." *Id.* "It is well settled that a reviewing court's function is not to reweigh the evidence or assess witness credibility and set aside the circuit court's decision simply because a different conclusion may have been drawn from the evidence." *Jameson v. Williams*, 2020 IL App (3d) 200048, ¶ 51.

¶ 38 Here, there was conflicting testimony as to the cause of any delays on the project. Ericksen testified that one of the main issues causing a standstill on the project was that Soccoro insisted on specific cabinets that had a price far exceeding the amount allotted in the estimate. Menard also testified that the cabinet issues caused a delay in the project. Hassell testified that he stopped payment for loss of use, in part, because State Farm was not responsible for paying for delays that are caused by disputes between the insured and the contractor, which existed here. There was no definitive testimony that delays were the fault of American. Ericksen testified that there were delays due to supply issues as a result of the pandemic. As such, it was for the court to weigh the evidence, including the credibility of the witnesses. Thus, the court could have simply

determined that the delay was not the fault of American and thus, American was not responsible for any alleged loss of use benefits. Based on the foregoing and our review of the record, we cannot say that the court's judgment regarding the loss of use benefits was against the manifest weight of the evidence.

¶ 39 Similarly, regarding the costs of repainting, there was conflicting testimony regarding the painting, and the court was free to weigh the evidence. Specifically, there was testimony by Menard that the painting was completed by Five Star. He also testified that the interior work, which would include painting, was done in a competent manner. He specifically testified that Five Star went back to the property, in response to complaints from the Bibians, and repaired the painting and drywall. Additionally, although Carbaugh testified to problems with the painting, he also testified that part of the issue with the painting was the sheen that was utilized and that they made the decision to repaint the entire house. The court could weigh this evidence and come to the conclusion that the additional painting was not necessary. Thus, we cannot say that the court's denial of the counterclaim in this regard was against the manifest weight of the evidence.

¶ 40 III. CONCLUSION

¶ 41 The judgment of the circuit court of Will County is affirmed.

¶ 42 Affirmed.