

# Building BLOCKS

March, 2023

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## Single-family construction is shifting away from large urban areas

**Homebuilders are now targeting micro and non-metro/  
micro counties**

Article by Brooklee Han – March 8, 2023



As the housing market cooled further during the fourth quarter of 2022, homebuilders also continued to pull back on single-family construction. In Q4 2022, the year over year growth rate for single family construction fell across all geographic areas, according to the National Association of Home Builder's (NAHB) Home Builder's Geography Index published last Tuesday.

The COVID-19 pandemic pushed the annual growth rates in most counties for single-family building from mid-single digit annual growth rates to yearly rates in the teens and even high-30% range. However, growth began to slow drastically in the second quarter of 2022 as the Federal Reserve began raising interest rates to combat inflation.

"Due to aggressive federal reserve monetary policy and high mortgage rates, all submarkets in the HBGI posted lower single-family growth rates in the fourth quarter of 2022 than a year earlier," Robert Dietz, the NAHB's chief economist said in a statement.

*(Cover Story – Continued on page 2)*

## In This Issue ...

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CHANCE TO REGISTER**

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& Importance of Salary  
Continuation Documentation**

**Sedgwick Seminar Series**

**Parade of Homes Update**

**How Remote Work Affects Real  
Estate Values & More**





(Cover Story - Single-Family Construction Shifting - Continued)

The HBGI is a quarterly measurement of building conditions across the county. It uses county-level data for single and multi-family permits to gauge housing construction growth in both urban and rural metros.

Large metro outlying counties again recorded the largest 12-month decline in single-family construction, dropping from 23.6% in Q4 2021 to -12.1% in Q4 2022. Small metro outlying counties also took a sizable hit, falling from a growth rate of 19.6% a year ago to -11.7%.

Both large and small core counties and suburban counties took a hit as well, dropping to growth rates in the low to mid-teens to posting yearly declines in the mid-teens.

Despite the decreases and negative yearly growth rates, metro core counties and metro suburban counties still account for the largest market shares of single-family homebuilding, with 28.5% of projects occurring in small metro core counties, 24.7% in large metro suburban counties and 16.0% in large metro core counties. However, these market shares are down compared to pre-pandemic levels.

Single family building also slowed in micro counties and non metro/micro counties dropping from 19.6% and 26.5% in Q4 2021 to 6.8% and -1.0%, respectively. Of all the geographic areas analyzed, micro counties were the only the type to post a yearly positive growth rate in Q4 2022.

"While the largest single-family market continues to be core counties of large and small metropolitan areas, the urban core market share has fallen compared to pre-Covid levels," Alicia Huey, the NAHB chairman, said in a statement. "During the fourth quarter of 2019, urban core markets of small and large metro areas represented

(Cover Story - Concluded on page 6)

Ken Cleveland	1,082.5*
John Sumodi	356*
Andy Leach	148.5*
Bob Knight	97.5*
Mike Hudak	59*
Mark Zollinger	47*
Doug Leohr	34.5*
Russ Sturgess	29*
Dave LeHotan	10.5
Mark McClaine	9
Jake Lewis	6
Rex Gasser	4
Tom Rafferty	3.5
Charlie Ash	3
Rob Root	2
Ryan Suppes	2
Ray DiYanni	1.5
Paul Spenthoff	1
Sean Smith	1
Mark Strouse	1
Jeff Stuart	1

Above list has been updated via the most current NAHB Spike Club Roster Report

\*Current Life Spike status



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## From the MCHBA Office ...

Members and Friends:

And here we thought winter was done - I'm surprised this didn't happen on April Fool's Day.

At any rate, please get your reservations in this week for Topgolf. **WE NEED YOU!** It will be a super fun member event, the food will be great and the networking even better!

See below for our calendar of events this year - so far. We will look to add more events as we go. Something you want to see? Let me know.

Check out our Member News page this month. Two new builder members - yay - and a bunch of renewals. That's great news for your association.

OHBA wanted us to include a few of the cases that affect our industry - you will find those at the end of this newsletter. Hope to see all of you next week. Have a great March! (Sorry for the delay on Building Blocks.)

*Susan Bloch*

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## 2023 Save The Dates

**March 23, 2023**

**MCHBA Topgolf Event**

*The perfect employee,  
vendor and client warm-up  
for the 2023 golf season!*

**August 24, 2023**

**MCHBA's Annual Golf  
Outing** Watch for more

*information on this not-to-  
be-missed annual event!*

**Sept. 30-Oct. 15, 2023**

**MCHBA's Fall Parade of  
Homes**

**October 4, 2023**

**MCHBA's Hill-N-Dale  
Shootout** Cost & more  
*information to follow.*



# From the Executive Director

Members and Friends:

I encourage you to attend next week's March 23rd Topgolf event. It is the perfect opportunity to network and have fun with your fellow members and even bring potential members (they get a reduced rate to participate). Delicious BBQ fare will be served! Time is running out so get your reservations in today! The great thing about Topgolf is that you don't even have to be a golfer to enjoy it.

Our annual Golf Outing will be held this summer at Shale Creek on Thursday, August 24th. We plan to make a few fun changes to this outing so watch for more details and be sure to attend.

For the first time, this fall we have scheduled a Hill-N-Dale Shootout outing for our sports enthusiasts. This outstanding venue has a 9 year waiting list so this will be an excellent opportunity to check this place out and have a great time, as well as relieve stress and join your friends.

We are also looking at a Clam Bake or Bourbon Barbecue later in October so be sure to keep an eye on our calendar, mark yours and plan to attend and support your association.

As always, we appreciate and value your membership. Let me know if there is anything I can do to help!

Respectfully:

Dave LeHotan  
Volunteer Executive Director



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Association

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## **LOTS & ACREAGE BOSTON HEIGHTS**

**VL 6327 Old Eight Rd.**- approx. 1.92 acres. **\$179,000** & **VL Olde Eight Rd.**, approx. 2.05 acres, **\$179,000**. If you've been looking to build the home of your dreams in the Boston Heights area, this is it! These beautiful, lightly wooded lots sit in a more rural setting yet are located in the highly desired Hudson School District and just minutes from Route 8, I-271, I-480 and the Turnpike. It's the best of both worlds. Purchase both lots together for **\$350,000** (3.97 acres) and expand your dream. **Gary Stouffer 330-805-6900 & Sharon Holderbaum 330-349-2599**.

## **CUYAHOGA FALLS**

**3068 State Rd.** - Available is approximately 11 acres of vacant land for sale, zoned MU-3 which is Cuyahoga Falls' Sub-Urban Center and is intended for walkable commercial and mixed-use areas on a large scale in a sub-urban setting. Great for shopping centers, strip malls and commercial corridors. Mixed Use 3, balances significant pedestrian connections to adjacent areas with the need to accommodate traffic and parking. This property sits in West Cuyahoga Falls and is close to the Portage Crossing Shopping District. The land is mostly wooded. The property rises from the front and then levels out before coming to a beautiful ravine overlooking Mud Brook. A century home and barn are the only structures on the property. More land available. **\$895,000**. **Gary Stouffer 330-805-6900 & Matt Stouffer 330-814-4616**.

## **FRANKLIN TWP.**

**VL Summit Rd.**- Approx 40 acres, made up of 5 parcels, zoned Residential R-1 & R-3. Partially wooded & partially farmland. Fairly flat along Summit Rd and slightly rolling topography along Cline Rd. Call agent for approx. frontage info. Approx 8.5 acres of additional land available. One parcel in Brimfield Township, 3 parcels in Franklin Township. Public water & sewer in area, buyer to confirm availability & capacity. **\$2,254,000**. **Gary Stouffer 330-805-6900 & Tara Kleckner 330-289-1315**.

## **NORTH CANTON**

**8215 Arlington Ave NW:** Approx 61.61 acres in Jackson Twp w/approx. 1,975' of frontage (on Arlington Ave) and 1,377' deep on the North Side. Large house on property built in 1861 offering

more than 5,500 sq.ft. of living space, 5 bedrooms. Connected to the house is an office building with six separate office spaces and half bathroom. 4 car detached garage and storage outbuilding on property. **\$1,740,000**. **Gary Stouffer 330-805-6900, Sarah Halsey 330-268-0102**.

## **NORTON**

**3516 & 3536 Little Blvd:** Here's your chance to build the home of your dreams at the end of a cul-de-sac on approximately 4.85 acres (3516 Little Blvd - **\$69,900**) of heavily wooded land or approximately 4.55 acres (3536 Little Blvd - **\$89,900**). Privacy and serenity abound! Close to local shopping and easy access to highways I-76, Rts 224 and 21. Combining these two would give you a total of approximately 9.40 acres for a total of **\$159,800**. **Gary Stouffer 330-805-6900 & Gina Luisi 330-814-4747**.

## **RICHFIELD**

### **Revere Schools**

**VL 4243 Brecksville Rd. \$149,900 & VL-4253 Brecksville Rd. \$159,900** - Almost 1 ac lot in highly sought-after Village of Richfield, situated within the top-ranked Revere Schools! Lot has pub water and sewer. Prime location off of Brecksville Rd. w/excellent interstate & turnpike access, minutes from Ski Resorts, Metroparks and more. Buyer must use Petros Homes to build their home on this lot. Buyer can customize or modify one of builder's many home designs, utilize builder's architect to design their own, or bring their own floor plan. New home contract and lot contract to be executed simultaneously. Restrictions and architectural requirements may apply. **Gary Stouffer 330-805-6900 & Gina Luisi 330-814-4747**.

**2706 Boston Mills Rd.** - 4.190 acres. Richfield Township. Revere Schools. 2 parcels available for purchase separate or together: possibility of over 8 acres together. All builders welcome! **\$481,850**. **Robin Pickett 330-322-3181**.

**2708 Boston Mills Rd.** - 4.480 acres. Richfield Township. Revere Schools. Wooded, Private, Pond. Bring your builder to this fantastic setting. 2 parcels available to total over 8 acres. **\$515,200**. **Robin Pickett 330-322-3181**.

**2884 Boston Mills Rd.** - 5.12 acres. Wooded private setting with no deed restriction or HOA. Richfield Township. Revere Schools. Wooded, Private, Walkout basement homesite. **\$481,280**. **Robin Pickett 330-322-3181**.

## **SHARON TOWNSHIP**

**V/L 2279 Hearth Hill Ln:** LAST LOT AVAILABLE! This is a beautiful lot at the end of a cul-de-sac. The culvert has already been installed that crosses a natural creek and a group of trees that approaches the building site which is very private. Surrounding homes are magnificent and a wonderful neighborhood feel. Property line dissects the middle of culvert/driveway. THIS IS NOT A SHARED DRIVEWAY. **\$111,000**. **Gary Stouffer 330-805-6900 & Sharon Holderbaum 330-349-2599**.

## **OLON**

**V/L Aurora Rd:** Commercial land for sale near the heart of Solon with a thru-way to Giant Eagle parking lot. 1.32 clear acres ready for the right build. Half of the parking lot to the southeast comes with property. Driveway on the back of the lot can possibly be moved to make more room for construction. Currently zoned Office/Medical. Possible rezoning available for retail or restaurant. **\$1,500,000**. **Gary Stouffer 330-805-6900 & Matt Stouffer 330-814-4616**.

## **STREETSBORO**

**SR 43 Kennedy Rd:** Approx 43 acres just waiting for you! This is the perfect location for an estate property or horse farm/facility. Currently zoned Rural Residential and located just north of Sugar Bush Knolls neighborhood, there are a lot of possibilities for this land. There is a producing oil/gas well on the property, in which all mineral rights would transfer to the new owner. Minutes away from shopping, restaurants and the Toll Road/Rt 480 interchange. **\$399,500**. **Gary Stouffer 330-805-6900 & Sharon Holderbaum 330-349-2599**.

## **UNIONTOWN**

**V/L 2512 Jomar St.** - Approximately 1 acre of land at the end of a quiet street holds the potential for your dream home. This secluded lot is filled with beautiful, tall trees & slopes to the back, ideal for a walk-out basement. It has been soil tested and septic approved for a 4-bedroom home. **\$65,000**. **Gary Stouffer 330-805-6900 & Sharon Holderbaum 330-349-2599**.



# Member News



**MEDINA  
COUNTY**  
Home Builders  
Association

## New Builder Member

### **Capron Construction, Inc.**

6754 Beach Road  
Medina, OH 44256  
Contact: Jim Capron, Owner  
Phone: (330) 239-2894  
Web: jimcapronconstruction.com  
Sponsor: Rob Root  
Business: Residential builder & general contractor

### **Prestige Builder Group**

778 McCauley Road, Suite 140  
Stow, OH 44224  
Contact: Jon Russell, President  
Phone: (330) 983-4548  
Web: prestigebuildergroup.com  
Sponsor: Sean Smith  
Business: Custom home builder

## Renewed Associates

Clement Construction, Inc. – Brunswick  
Floorz – Medina  
Lodi Lumber Company – Lodi  
Lumen Nation – North Canton  
MPW Construction Services – Wellington  
Sedgwick Claims Management Services, Inc. – Dublin  
Yorktown Heating & A/C, Inc. – Medina

**A warm welcome to our two newest builder members - Capron Construction & Prestige Builder Group. We're thrilled to have you as members. Thank you to our renewing Associate and Builder members - your membership is sincerely valued. Sorry to see two of our members go, but we wish you the best.**

## Renewed Builders

Aspen Building Company, LLC – Wooster  
Decor Design Construction – Seville  
DiYanni Custom Homes – Reynoldsburg  
Fred Olivieri Construction Co. – North Canton  
Gasser Builders, Inc. – Rittman  
Gatliff Custom Builders – Wadsworth  
Landmark Homes, Inc. – Medina  
Legacy Homes of Medina – Medina  
Mason Builders – Valley City  
Old World Classics, LLC – North Canton  
SWM - Steven W. Moore Building Corp. LTD – Bath  
Schrock Custom Homes, Inc. – Orrville  
Sturgess Construction, Inc. – Medina  
W. J. Bailey Homes – Medina

## Dropped Members

Graves Lumber Company - Copley  
Sandra Kersey's Divine Designs – Medina

*(Cover Story - Single-Family Construction Shifting - Continued from page 2)*

47.2% of the single-family market. This share declined to 44.5% in the fourth quarter of 2022, representing a persistent shift in buyer preferences to live outside of densely populated areas.”

In comparison, single family market share grew from 9.4% in Q4 2019 to 11.8% in Q4 2022 for rural markets (micro counties and non-metro/micro counties).

In the multifamily construction sector, however, things look a bit different. Annual growth rates for multi-family construction all remained positive in Q4 2022, with six out of the seven submarkets analyzed experiencing growth rates about 15%, with the yearly growth rate for micro counties rising from 14.8% in Q4 2021 to 17.9% in Q4 2022. The notable exception, however, was large metro core counties, which registered a growth rate of just 1.5% in Q4 2022. This suggests that not just single-family construction, but all residential construction is declining in large metro core markets.

Regardless of location, this slowdown in construction is bad news for the housing market, which is 6.5 million single-family housing units short, according to a recent study from Realtor.com. ■

## Support Your Association

Remember, whenever possible, always try to do business with and patronize our Parade Sponsors, your Fellow Members and support your Medina County HBA & local community!

Working with someone who is not a member? Let us know and we'll reach out and invite them!



## REMODELING CSPA SLIPPERY SLOPE EXPANDS TO FIFTH DISTRICT

In addition to the recent opinion by the Eleventh District Court of Appeals, another case even further expanding this decision was decided last week in the 5th District Court of Appeals. The Fifth District decision cites the Beder Case, by stating, “the 11th District found the CSPA and not the HSCCA applies to a home remodeling contract as the CSPA applies to transactions involving an already-existing construction and the HSCCA applies to new constructions. The 5th District goes on to say, “the addition of the swimming pool and improvement of the existing concrete deck at Tomlinson’s home was an improvement to an already-existing home. Accordingly, we find the transaction covered by the CSPA and not the HSCCA.”

The Fifth District presides over Ashland, Coshocton, Delaware, Fairfield, Guernsey, Holmes, Knox, Licking, Morgan, Morrow, Muskingum, Perry, Richland, Stark and Tuscarawas counties in Ohio.

Any decision coming out of the 11th District would be binding on those counties: Ashtabula, Geauga, Lake, Portage and Trumbull.

The builder/remodeler in the Beder case has appealed to the Ohio Supreme Court, and OHBA submitted a Memorandum in Support of Jurisdiction asking the Court to take the case.

Both the most recent Fifth District Court of Appeals case and OHBA

Amicus have been attached. The cases will be discussed in detail at the upcoming OHBA Spring Board of Trustees Meeting. See end of newsletter.

## BOARD OF BUILDING STANDARDS APPROVES OHBA PETITION FOR CHANGES TO OHIO PLUMBING CODE

After working with the Central Ohio BIA and several concerned builders and plumbers, OHBA submitted an official petition to the BBS urging a change to the Ohio Plumbing Code requirements currently mandating disinfection by chlorination in every new 1,2,3 family dwelling. While the provisions had been in the OPC for years, only recently, local health departments indicated the provisions would be mandated for both commercial and residential construction. As a result, OHBA petitioned the BBS to modify the OPC requirements as applied to 1, 2, 3. The Residential Construction Advisory Committee gave the petition unanimous support, and the BBS voted to approve the changes at its January meeting.

While the changes to the OPC will take time to go into effect, the action of the Board is likely to prevent jurisdictions from enforcing the OPC 610 provisions in residential dwellings.

**SB 76 Landlords Blessing, L. Antonio, N.** To levy a tax on certain high-volume landlords.

The bill imposes a new tax on certain high-volume landlords, beginning in

the first full calendar year after the tax’s effective date. The tax, referred to as the “housing market impact tax,” is imposed on any person or combined taxpayer group that owns 50 or more “taxable houses” in a single county. A taxable house is any single-family, two-family, or three-family dwelling. When a county auditor is aware that a landlord owns the requisite number of houses, the auditor must provide notice on the landlord’s tax bill. SB 76 has been introduced and received its first hearing in the Senate Ways and Means Committee earlier this week. The bill analysis can be viewed at the link below.

<https://www.legislature.ohio.gov/download?key=20517&format=pdf>

**SB 1 Department Of Education Reineke, B.** To rename the Department of Education as the Department of Education and Workforce, to create the position of Director of Education and Workforce and to reform the functions and responsibilities of the State Board of Education and the Superintendent of Public Instruction. SB 1 passed the Senate 26-7 last week, and will now begin hearings in the House committee. OHBA continues to follow SB 1 to ensure emphasis on career tech aspects remain a priority.

**HB 33 Operating Budget Edwards, J.** To make operating appropriations for the biennium beginning July 1, 2023, and ending June 30, 2025, to levy taxes, and to provide authorization and conditions for the operation of state programs. OHBA continues to focus on the housing provisions in the Governor’s budget proposal for both the state LIHTC and single-family tax credit. While supportive of both, OHBA continues to emphasize the need to spur all types of housing, and look at additional measures to help the production of workforce housing. There are several proposals under discussion, and OHBA will be meeting with legislators, and the Governor’s office to work through all of the housing proposals.

Please feel free to contact OHBA with any questions at (614)228-6647. ■





# *everyone's*

# GAME



Thursday,  
March 23,  
2023

# LAST CHANCE!

We encourage our members to attend and to include one builder and one vendor in your team. This event is a great opportunity to have potential members attend and learn more about our organization.

## GO GET 'EM!

Join us at Topgolf and enjoy their Backyard BBQ including:

Nashville hot fried chicken, slow smoked beef brisket with bbq sauce, mack 'n' cheese, house baked beans with bacon, house salad, buttermilk biscuit and chocolate chip cookies!

Yum! Come for the food, come for the fun, get warmed up for 2023 golf outings. More info on the next page.

### TOPGOLF CLEVELAND

5820 Rockside Woods Blvd N.  
Independence, OH 44131

LEARN MORE AT

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**Thursday,  
March 23, 2023**

## **MCHBA Topgolf Event**

5820 Rockside Woods Blvd. N.  
Independence, OH 44131

### **Schedule of Events:**

- 11:45 am Arrive / Pre-Registration  
12:00 pm Registration / Mingle / Warmup  
12:20 pm Team Captains Gather w/Pro  
12:25 pm Welcome / Tournament Host  
Greeting & Explanation  
12:30 pm Shotgun Start / Tournament  
Begins / Lunch Served Buffet-  
style Behind Bays  
2:00 pm Tournament Concludes / Freeplay  
Begins  
3:00 pm Event Concludes



### **Topgolf Team (Members \$145 ea. / Guests & Friends \$125 ea.):**

Names {required}	Email {required}	Phone # {required}
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**Please place me with a team \_\_\_\_\_ I want to Sponsor a Bay for \$100 \_\_\_\_\_**

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PLEASE NOTE: All fees are nonrefundable and no shows will be billed.

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**BY MARCH 20, 2023 to: MCHBA, P.O. Box #233, Valley City, OH 44280,**

**by Phone: 330.725.2371 or 330.483.0076 or Email: [susanb@medinacountyhba.com](mailto:susanb@medinacountyhba.com)**

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## Electrical safety

Electricity sure has made life easier for us over the years. From simply lighting a room to cooking meals to heating our homes even to powering our cars. As great as it is to have electricity in our lives it can be dangerous. Not only can it cause burns to the body or electrocution it can sometimes result in death if we are not careful.

In this month's article we are going to talk about potential electrical hazards in the workplace and how we can identify and avoid dangerous situations. Below is a list of potential electrical hazards you may find in the workplace. If you come across any of these, be sure to report them to management.

- 1) Overloaded circuits such as too many plugs or daisy chaining multiple power strips.
- 2) Blocked electrical boxes.
- 3) Electrical equipment that is hot to the touch.
- 4) Electrical equipment that is not properly grounded.
- 5) Switches that feel warm or cause a shock or tingling sensation.
- 6) Smell of burning wires, smoking equipment, crackling sounds.
- 7) Loose connections or exposed wires from outlets, switches or other equipment.
- 8) Damaged plugs, cords, or receptacles.
- 9) Water on or near electrical equipment.
- 10) Metal ladders or tools near electrical sources.
- 11) Flammable or combustible materials near electrical sources.
- 12) Frequently tripped circuit breakers or blown fuses.
- 13) Electrical cords laying across walkways.

Although the list above is not all inclusive you may want to consider performing electrical safety audits on a regular basis. Safety audits will help identify areas where dangers exist. Not all electrical safety audits are the same, so be sure you create one that is specific to your facility. Also, whenever you install new electrical equipment, devices, outlets or electrical panels, be sure to update your safety audit checklist to reflect the changes.

Finally, if you see a dangerous situation, take immediate action. Ignoring it may result in an injury or a fire. Consider safely cutting the power to the equipment or receptacle then, report to your supervisor. Leave the repair work to the qualified professionals. Inexperienced work on electrical equipment can result in serious injury or death.

To learn more about electrical safety, familiarize yourself (or someone within your organization) with the electrical rules and regulations. You can find these outlined by the Occupational Safety and Health Administration (OSHA) or the National Fire Prevention Association (NFPA). The OSHA standards are outlined in 29 CFR 1910 .137, Electrical Protective Equipment, 29 CFR 1910 .269, Electric Power Generation, Transmission and Distribution, 29 CFR 1915.181, Electrical Circuits and Distribution Boards, and 29 CFR 1910.157, Battery Charging and Changing. The National Electrical Code is found under NFPA 70, , and includes NFPA 70E, the Standard for Electrical Safety in the Workplace. Don't forget to check with your state and local regulations as they may differ.

For more information, please contact Sedgwick's Andy Sawan at 330.819.4728 or [andrew.sawan@sedgwick.com](mailto:andrew.sawan@sedgwick.com)



# HBA REBATES



## WANT TO START GETTING MONEY BACK FOR PRODUCTS YOU ALREADY USE?

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- 3 RECEIVE A REBATE CHECK

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BUILDER / REMODELER COMPANY  
WHO PARTICIPATED IN 2021 WAS:

# \$1,582.20

### PARTICIPATING MANUFACTURERS



### HBA REBATES

Builders Average Rebate 2021





## A CALL TO ACTION

We just completed our Spring Meeting; aka the OHBA Organizational Meeting, where all officers and trustees are properly seated as we begin another year serving the home construction industry. This is yet another CALL TO ACTION as serious issues continue which require your attention.

Top of the list is the issue of the Consumer Sales Protection Act. As you will recall, OHBA attained passage of an enactment bringing badly needed relief from mindless claims which led to massive treble damages and attorney fees being imposed where no real harm or damage occurred. The law specifically created reasonable remedies for all home construction and remodeling over \$25,000.

However, an errant court of appeals ruling found the original CSPA still allies to ALL home remodeling. Another court of appeals also cited that finding holding against a remodeler. What does it mean? If you conduct remodeling business in those areas of the state, you are at risk. Likewise, that ruling will likely be cited in cases outside of those two appellate court jurisdictions.

OHBA is working with attorneys of the builder who was cited and found liable.



Our first goal is to request the State Supreme Court to take the case. If so, we would then request the errant holding of all remodeling not being covered by the amended law be reversed or at least clarified. All this is currently in the works.

After decades of depressed housing starts in Ohio some of our leaders are beginning to notice. Granted, this inspiration was occasioned by the Intel plant locating here. Intels (and others wanting to locate in Ohio) analysis found that Ohio is underhoused and spurred the state to do something about it. Initial reactions of some were to increase subsidized housing. Were ok with that but it is NOT the workforce housing needed.

We are working away on these issues. First, if you are a remodeler and not a member, after reading this you should call your local HBA/BIA and join as this is your issue to fight for.

All residential builders, remodelers and developers are involved as well. We need your membership as well as all your subs to support all these and many other issues which will impact you in many ways today and in the future.

# Parade of Homes Update

At our last Board Meeting, we discussed both our typical Spring and Fall Parade of Homes events. Due to the volatility and uncertainty of the economy at this point, we are going to hold off on the Spring Parade and put all our efforts into the Fall Event.

The event dates discussed will be Saturday, September 30, 2023 through Sunday, October 15, 2023. It is our understanding that the Cleveland HBA is also postponing their Spring/Summer Parade and holding a Fall event as well. Our dates will coincide, however, the Medina County HBA always has that third weekend whereas Cleveland and Akron/Summit hold their events for two weekends.

Builders - please keep this in mind during the building season this year. If you are unable to have your home available during the event, consider putting your home in as a virtual Parade entry. The fee is half the price and other than the location and the consumer walking through your model, you get everything else that those models get on the website during the Parade.

We expect the market will somewhat settle and be a bit more stable at that time.

Any questions, concerns, feedback or other information - please direct to [susanb@medinacountyhba.com](mailto:susanb@medinacountyhba.com). We appreciate your understanding and believe this will help us in holding a more successful and profitable for our builders event.



# Importance of salary continuation documentation

Salary continuation is a cost savings tool available to Ohio employers. When an injured worker misses eight or more days due to the allowed conditions in the claim, the Bureau of Workers' Compensation will pay temporary total compensation to replace lost wages. As the employer you have the option of offering salary continuation in lieu of temporary total compensation. By paying wages directly to the injured worker you are preventing the cost affiliated with temporary total, as well as reserves from being added to the claim. This can have a positive impact on your annual BWC premiums.

There are a few steps that you will need to take to meet the BWC's guidelines for salary continuation:

1. Complete the Salary Continuation Agreement (C-55) form and file it with the BWC or alert the BWC that you are paying salary continuation. This will put the BWC on notice that you intend to pay wages in lieu of temporary total.
2. Your beginning and end payment dates must be specific and align with the injured workers' medical disability documentation.
3. You must begin payment of the salary continuation with the **next scheduled pay date** after the injury. Employers are not permitted to wait until a claim allowance is decided and if payment does not commence on the next available pay date, you forfeit your right to offer salary continuation. The only exception to this guideline is if you have a collective bargaining contract that deals with salary continuation.
4. Salary continuation is a voluntary program. The injured worker is not required to accept salary continuation, unless there is a collective bargaining agreement that states otherwise.
5. You must pay the injured worker their **full wages and benefits** under a salary continuation agreement. If the BWC discovers that full wages are not being paid, they can approve temporary total compensation.
6. Payment of salary continuation may follow a period of temporary total compensation once temporary total compensation benefits have stopped. This new addition was added in early 2023.
7. If your injured worker leaves the company, you are no longer permitted to pay salary continuation and you must notify the BWC of this change to employment status.
8. Likewise, if you determine that salary continuation is no longer beneficial and you wish for the BWC to pick up payment of lost wages, you must notify the BWC within 72 hours of the last salary continuation payment.

By notifying and filing the appropriate salary continuation documentation with the BWC, you are ensuring that the BWC does not pay temporary total compensation. The BWC will monitor the salary continuation and will build a payment plan into the BWC system. This is beneficial as it allows you to participate in other cost saving initiatives offered by the BWC, such as handicap reimbursement.

If you have any questions, contact our Sedgwick program manager, Bob Nicoll, at 330-418-1824 or [robert.nicoll@sedgwick.com](mailto:robert.nicoll@sedgwick.com).



# 2023 *Seminar Series*

*Sedgwick is proud to deliver workers' compensation claims management and cost containment strategies to nearly 60,000 hard-working Ohio employers and have the endorsement of more than 340 associations, chambers of commerce, governmental agencies and public-sector organizations.*

## Seminar topics

### Safety gap analysis

This session will provide employers with a high-level overview of the safety gap analysis process including the different types that can be conducted, why they are important and how to interpret the results. We will also discuss ideas on how to close any gaps identified in an employer's safety program along with available resources.

### Claims management: panel discussion with TPA & MCO

Our panel of experts will engage in a discussion of best practices that focus on how to manage the more difficult claims. We will discuss strategies for working with "challenging" providers and review best practices for managing injured employees with work restrictions as well as those who are not able to return to work. We will include a discussion on how and when to utilize vocational rehabilitation and identify the benefits to both the injured employee and the employer. Finally, we will touch on claim defense, cost mitigation and claim resolution.

### Controlling unemployment costs

How your organization manages its unemployment process can have a direct impact on the bottom line since an employer has the ability to influence workforce agency decisions. Typically, setting up a process to respond to claims filed is seen as the essential best practice, however, it is only a small piece of the overall puzzle. This session explores the other critical aspects that are required to effectively manage unemployment risk. We will give you tools to assess and improve your organization's current process along with strategic concepts that can be utilized to ensure compliance, increase win rates, and reduce assigned rates and account benefit charges.

### How to stay connected with an aging and remote workforce

Two of the biggest questions in the workplace today are remote work and the aging workforce. These two realities are shaping how work is done and what employees value, need, and want in an employer. In this session we will explore these two topics and look at what an aging workforce needs, values and what a remote workforce will look like for your organization and how these realities intersect in the workplace.

## Locations & dates

Sedgwick will be holding the seminars in four convenient locations across the state. The locations and dates are:

- April 12 - Perrysburg, Hilton Garden Inn
- April 13 - Independence, Embassy Suites
- April 25 - Dublin, Embassy Suites
- April 27 - West Chester, Marriott Cincinnati North

## Registration

Registration fees are \$75 per person for Sedgwick clients. Tuition, educational materials, continental breakfast and a refreshment break are included in the registration costs. These sessions qualify for the two-hour safety credit through the Ohio Bureau of Workers' Compensation. Be sure to register early as space is limited. For additional information and to register, go to <https://app.certain.com/profile/web/index.cfm?PKwebID=0x1277941abcd&varPage=home> We look forward to seeing you at one of our locations!



# How Remote Work Has Affected Real Estate Values

*By: Adi Gaskell, Contributor – Forbes Magazine*

The remote work boom that was seen during the pandemic has undoubtedly changed how we work in a fundamental way. For instance, a survey conducted in 2021 found that over 75% of workers would gladly sacrifice a pay raise if they could work flexibly more often than before Covid.

Indeed, the recent Workmonitor from HR services provider Randstad found that the current macroeconomic circumstances are not changing employee demands which started

working has affected not just the commercial real estate market but even the housing market itself, with suburban rents rising alongside house prices in comparison to urban locations.

“The pandemic and its aftershocks have changed the real estate investment landscape both for the short- and for the long-run,” the researcher explains. “One of the pandemic’s longest-lasting impacts will be wider adoption of remote work.”



during the pandemic: workers still want flexibility, value alignment, and a good work-life balance, with 61% of workers not accepting a job if it impacts work-life balance.

## Impact on real estate

As this trend was unfolding there was considerable concern about its potential impact on cities, with people concerned that if we can work from anywhere then we might choose to leave the city and find somewhere cheaper and quieter to live. While I never really thought that was a realistic concern, not least as there is a lot more that draws us to cities than just work, the trend towards more remote work, or hybrid work is having an impact on corporate real estate.

Research from Columbia Business School suggests that the shift to hybrid

## Lasting impact

In a recent article, I explored whether remote working might have an impact on inflation, the Columbia research suggest it could have a similarly significant impact on the equity and debt markets.

They explain that for the entirety of human history there has been an intrinsic connection between the places we live and the places we work. The rise in remote working has severed that relationship, and they believe this will impact not only the real estate market but society more broadly.

The researcher reviewed data from both the three years before the pandemic and the three years from the start of the pandemic until now, while also examining data from both the 20th and 21st centuries to try and understand the possible implications working from home might have on everything from real estate valuations to the structure of cities.

This data included national remote work policies, rent changes in 30 metropolitan areas, the share of remote job postings on the jobs website Indeed, and migration patterns both globally and specifically for New York City.

## Drop in usage

The analysis shows that during the pandemic, there was a considerable decline in office usage, which is understandable. What is interesting, however, is that this decline has lasted far longer than was initially expected, and it shows precious little sign of reversing.

The author highlights that pre-Covid, around 250 million square feet of new office leases were signed per year, but this fell to just 100 million in the first half of 2022.

This has had an understandable impact on office values, which fell considerably and remain below 2019. The author believes these valuations will remain below those levels for the next decade.

Simulations of office values, that took into account remote work rates, show that the value of all NYC office properties dropped by more than 40% in 2020. Predictions for 10 years after the shift to working from home suggest that office values in 2029 will remain an average of 39% lower than they were in 2019.

This coincided with a rise in both house prices and rents in the suburbs. The pandemic-induced migration from urban areas led to a significant rise in house prices and rents in suburban areas, while city centers saw the opposite trend with a decrease in prices and rents.

As companies attempt to bring employees back to the office, the real estate market and attitudes toward work are likely to change. It will take more time and data to understand the full impact of the remote work trend on society more broadly and on the real estate sector more specifically. This is a story that still has some way to play out yet.





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COURT OF APPEALS  
DELAWARE COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

ESTATE OF KATHERINE TOMLINSON :

Plaintiff-Appellee :

-vs- :

MEGA POOL WAREHOUSE, INC. :  
STEPHEN GOLD :

Defendant-Appellant :

JUDGES:

Hon. Earle E. Wise, Jr., P.J.

Hon. William B. Hoffman, J.

Hon. Patricia A. Delaney, J.

Case No. 22 CAE 03 0020

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Court of Common  
Pleas, Case No. 18 CV H 06 0317

JUDGMENT:

Affirmed in Part, Reversed in Part and  
Remanded

DATE OF JUDGMENT:

January 26, 2023

APPEARANCES:

For Plaintiff-Appellee

MICHAEL E. REED  
MARC J. KESSLER  
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*Wise, Earle, P.J.*

{¶ 1} Defendants-Appellants Mega Pool Warehouse Inc., et al appeal four judgments of the Delaware County Court of Common Pleas, specifically the August 6, 2020 judgment entry denying appellants motion to hold a jury trial in January 2021, the November 19, 2021 Findings of Fact, Conclusions of Law and Entry of Verdict, the January 7, 2022 Judgment Entry Granting Plaintiff's Application for Attorney Fees and Awarding Damages, and the February 18, 2022 Judgment Entry Denying Defendant's Motion for New Trial. Plaintiff-Appellee is the Estate of Katherine Tomlinson.

#### STATEMENT OF FACTS AND PROCEDURAL HISTORY

{¶ 2} Mega Pool does not dispute the underlying facts. The general facts are as follow.

{¶ 3} In 2016, Mega Pool and its sole shareholder Stephen Gold contracted with appellee Katherine Tomlinson to install a pool, remove an existing deck, and install a new deck at Tomlinson's home. The contract price was \$75,000 payable as a \$7,500 deposit, \$33,250 on delivery of the pool, \$33,250 on installation of the liner, and \$1,000 retainage due upon completion. The contract provided for liquidated damages and attorney fees in the event of a breach by Tomlinson, but no reciprocal provision in the event of a breach by Mega Pool. The contract additionally contained a mutual waiver of a right to a jury trial.

{¶ 4} The contract at issue covered only the pool and the concrete deck. Mega Pool, however, performed additional work outside the contract without a cost estimate and without reducing the change orders to writing. Mega Pool accepted a \$10,000 advance payment from Tomlinson for the extra work. In later communications Mega Pool asked for further payment, indicated it would accept an additional payment of \$15,000 as



payment in full for total payments of \$99,000, but then later kept changing the amount owed.

{¶ 5} When Tomlinson refused to make further payment, Mega Pool refused to complete the work. Gold told Tomlinson none of his subcontractors would complete any additional work, and stated he would withhold any warranty work until he was paid. Tomlinson had to hire another contractor to clean up debris left on her property by Mega Pool. Additionally, the pool installed by appellant was defective in many regards. Because the cost to repair the defects was greater than the replacement cost of the pool, the pool had to be replaced.

{¶ 6} On June 18, 2018, Tomlinson filed a complaint against Mega Pool alleging breach of contract, breach of warranty, negligent workmanship, and violations of the Consumer Sales Practices Act (herein CSPA). Tomlinson made a jury demand and on July 25, 2019, paid a jury deposit as required by the Local Rules of Practice of the Delaware County Court of Common Pleas (Loc.R.) 25.04. The rule requires a jury deposit be made at least 60 days before the scheduled trial date.

{¶ 7} Following numerous continuances and an unsuccessful court-ordered mediation, a jury trial was scheduled for September 8, 2020. Mega Pool moved the trial court to again continue the matter to January of 2021. Because this would constitute the sixth continuance, and further due to scheduling difficulties, the magistrate conducted a telephone conference with the parties to determine if they would be amenable to a bench trial which could take place on the scheduled date. Tomlinson chose to abandon her jury deposit and agreed to a bench trial. Mega Pool, however, refused to consent to a bench

trial, and filed a written objection. On August 6, 2020, the trial court overruled Mega Pool's objection based on its failure to pay the jury deposit required by Loc.R. 25.04.

{¶ 8} The matter proceeded to a bench trial on September 8-9, 2020. The parties submitted proposed findings of fact and conclusions of law. Mega Pool argued in part that the CSPA was inapplicable to the installation of an in-ground swimming pool and that they were unjustly denied a jury trial. On November 19, 2021, the trial court issued its Findings of Fact, Conclusions of Law, and Entry of Verdict. The trial court found in favor of Tomlinson on her claims for breach of contract, breach of warranty, and violations of the CSPA. The trial court found in favor of Mega Pool on the negligence claim. The court awarded damages and compensation to Tomlinson along with treble damages under the CSPA.

{¶ 9} On December 20, 2021, Tomlinson's estate<sup>1</sup> submitted an application for attorney fees. Mega Pool did not file a response before the trial court's January 7, 2022 decision granted the estate's application in full, awarded damages, and noted its judgment constituted a final appealable order.

{¶ 10} On February 3, 2022, Mega Pool filed a motion for a new trial. The motion raised the same issues appellant raises here on appeal. On February 18, 2022, the trial court denied Mega Pool's motion.

{¶ 11} Mega Pool filed an appeal and the matter is now before this court for consideration. It raises three assignments of error as follow:

---

<sup>1</sup> Tomlinson passed away shortly after trial.



## I

{¶ 12} "THE TRIAL COURT COMMITTED AN ERROR OF LAW BY FINDING THE CSPA APPLICABLE TO THE UNDERLYING DISPUTE REGARDING THE INSTALLATION OF A DECK AND IN-GROUND POOL."

## II

{¶ 13} "THE TRIAL COURT COMMITTED AN ERROR OF LAW BY AWARDING LITIGATION COSTS, EXPERT WITNESS FEES, PARALEGAL FEES, AND NON-CSPA ATTORNEY FEES UNDER THE CSPA."

## III

{¶ 14} "THE TRIAL COURT DENIED APPELLEES [SIC] THEIR CONSTITUTIONAL RIGHT TO A JURY TRIAL WHERE APPELLEE'S JURY DEMAND WAS PERFECTED UNDER THE LOCAL AND CIVIL RULES AND APPELLANTS OBJECTED TO THE WITHDRAWAL OF IT."

## I

{¶ 15} In its first assignment of error, Mega Pool argues the trial court committed an error of law by finding the CSPA applicable to the installation of a swimming pool and deck. We disagree.

### Standard of Review

{¶ 16} Appellant's motion for a new trial was raised pursuant to Civ.R. 59(A)(1) and (9). A motion for a new trial premised upon "error of law occurring at the trial and brought to the attention of the trial court" under Civ.R. 59(A)(9), is reviewed under a de novo

standard. *Sully v. Joyce*, 10th Dist. No. 10AP-1148, 2011-Ohio-3825, ¶ 8, citing *Ferguson v. Dyer*, 149 Ohio App.3d 380, 383, 2002-Ohio-1442, 777 N.E.2d. 850.

#### Applicability of the CSPA

{¶ 17} The CSPA applies to consumer transactions and prohibits unfair, deceptive, or unconscionable acts or practices by suppliers in consumer transactions whether they occur before, during, or after the transaction. R.C. 1345.02(A). A "consumer transaction" is defined by R.C. 1345.01(A) as:

A sale, lease, assignment, award by chance, or other transfer of an item of goods, a service, a franchise, or an intangible, to an individual for purposes that are primarily personal, family, or household, or solicitation to supply any of these things. "Consumer transaction" does not include transactions between persons, defined in sections 4905.03 [companies subject to the public utilities commission] and 5725.01 [financial institutions, stock brokers, insurance companies] of the Revised Code, and their customers, except for transactions involving a loan made pursuant to sections 1321.35 to 1321.48 of the Revised Code and transactions in connection with residential mortgages between loan officers, mortgage brokers, or nonbank mortgage lenders and their customers; transactions involving a home construction service contract as defined in section 4722.01 of the Revised Code;

\* \* \*

{¶ 18} R.C. 4722.01 et seq. contains The Home Construction Services Suppliers Act (HCSSA). Enacted in August of 2012, the HCSSA also prohibits certain deceptive acts in home construction service and seeks to protect individual homeowners entering into such contracts.

{¶ 19} Mega Pool argues the installation of the pool and deck in this matter was not subject to the CSPA, but rather the HCSSC. According to Mega Pool, the construction of a deck and swimming pool is specifically exempt from the definition of a consumer transaction under the CSPA as a transaction "involving a home construction service contract."

{¶ 20} R.C. 4722.01(C) defines "home construction service contract" as "a contract between an owner and a supplier to perform home construction services, including services rendered based on a cost-plus contract, for an amount exceeding twenty-five thousand dollars." R.C. 4722.01(B) defines "home construction service" as "[T]he construction of a residential building." R.C. 4722.01(F) defines "residential building" as "a one-, two-, or three-family dwelling and any accessory construction incidental to the dwelling."

{¶ 21} Mega Pool argues the CSPA does not apply to the transaction at issue because a swimming pool is "an accessory construction incidental to the dwelling" and therefore covered by R.C. 4722.01(F). As noted by the parties herein, "accessory construction" is not defined in R.C. 4722.01.

{¶ 22} Both parties direct this court to several cases in support of their respective positions regarding the status of a swimming pool as an "accessory construction." None of the cited cases, however, address the question of whether or not a pool is an



"accessory construction" pursuant to R.C. 4722.01. But we do not believe the question is relevant to the matter at hand. R.C. 4722.01 applies to the construction of a residential building *and* any accessory construction incidental to the construction of that building.

{¶ 23} Recently, in *Beder, et al v. Cerha Kitchen and Bath Designs Studio, LLC, et al*, 11th Dist. Geauga No. 2022-G-0008, 2022-Ohio-4463, Judge Westcott Rice dissenting, the 11th District found the CSPA and not the HSCCA applies to a home remodeling contract as the CSPA applies to transactions involving an already-existing construction and the HSCCA applies to new constructions. In arriving at its decision, the court noted:

The Supreme Court of Ohio has previously defined "construct" as " 'to *build*; put together; make ready for use" and "construction" as " '[t]he *creation of something new*, as distinguished from the repair or improvement of something already existing.' " (Emphasis sic.) *State ex rel. Celebrezze v. Natl. Lime & Stone Co.*, 68 Ohio St.3d 377, 382 627 N.E.2d 538 (1994), quoting Black's Law Dictionary 312 (6th Ed.1990); see also *United States v. Narragansett Improvement Co.*, 571 F.Supp. 688, 693 (D.R.I. 1983) ("The uniform conclusion is that 'construction' imports the creation of something new and original that did not exist before").

{¶ 24} *Id.*, ¶ 13.

{¶ 25} We find the addition of the swimming pool and improvement of the existing concrete deck at Tomlinson's home was an improvement to an already-existing home. Accordingly, we find the transaction covered by the CSPA and not the HSCCA.

{¶ 26} The first assignment of error is overruled.

## II

{¶ 27} In its next assignment of error, Mega Pool argues the trial court erred in awarding unreasonably high attorney fees, litigation expenses, expert witness fees, and paralegal fees under the CSPA. We disagree in part and agree in part.

### Waiver

{¶ 28} We first address the estate's argument that Mega Pool has waived this argument for failure to challenge the award of attorney fees in the trial court. The estate supports its argument with reference to *L.A. & D., Inc v. Bd. of Lake Cty. Comm'rs*, 67 Ohio St.2d 384, 387, 423 N.E.2d 1109 (1981). That matter involved a question of waiver where appellants appealed from a denial of a motion for a new trial when there had been no trial. Rather, the trial court had granted appellee's motion for summary judgment. *Id.* 384. Because a trial did take place in this matter and because Mega Pool did challenge the award of attorney fees in its February 3, 2022 motion for a new trial, we find the argument preserved for appeal.

### Standard of Review

{¶ 29} Mega Pool argues this matter is subject to de novo review. However, the only attorney fees awarded by the trial court were pursuant to appellee's CSPA claims. Judgment Entry Granting Plaintiff's Application for Attorney Fees and Awarding Damages filed January 7, 2022 at 4. R.C. 1345.09(F)(2) permits an award of reasonable attorney fees to the prevailing party where the supplier has knowingly committed an act or practice that violates the CSPA.<sup>2</sup> "[W]here a court is empowered to award attorney fees by statute, the amount of such fees is within the sound discretion of the trial court. Unless the amount of fees determined is so high or so low as to shock the conscience, an appellate court will not interfere." *Bittner v. Tri-County Toyota, Inc.*, 58 Ohio St.3d 143, 146, 569 N.E.2d 464 (1991). We therefore review the award of attorney fees for an abuse of discretion. The term abuse of discretion implies that the court's attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

#### Determination of Attorney Fees Under the CSPA

{¶ 30} An award of attorney fees pursuant to R.C. 1345.09(F)(2) is calculated by the reasonable hourly rate multiplied by the number of hours reasonably expended on the case, a calculation sometimes referred to as the "lodestar." *Bittner v. Tri-County Toyota, Inc.*, 58 Ohio St.3d 143, 146, 569 N.E.2d 464 (1991), syllabus. There is a strong presumption that the amount arrived at using this formula is the proper amount for an attorney-fee award. *Phoenix Lighting Group, L.L.C. v. Genlyte Thomas Group, L.L.C.*, 160 Ohio St.3d 32, 2020-Ohio-1056, 153 N.E.3d 30 ¶ 19.

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<sup>2</sup> Whether Mega Pool knowingly violated the CSPA is not at issue here.



{¶ 31} Mega Pool first argues the award of \$230,840.50 in attorney fees in this matter is excessive in comparison to the \$84,000 in actual damages and shocks the conscience. The Supreme Court of Ohio, however, has rejected "the contention that the amount of attorney fees awarded pursuant to R.C. 1345.09(F) must bear a direct relationship to the dollar amount of the settlement, between the consumer and the supplier." *Bittner v. Tri-County Toyota, Inc.*, 58 Ohio St.3d 143, 144, 569 N.E.2d 464 (1991). The court went on to explain that "[a] rule of proportionality would make it difficult, if not impossible, for individuals with meritorious \* \* \* claims but relatively small potential damages to obtain redress from the courts." *Id.*, quoting *Riverside v. Rivera*, 477 U.S. 561, 578, 106 S.Ct. 2686, 2696, 91 L.Ed.2d 466 (1986).

{¶ 32} Mega Pool does not argue the hourly rate used by the trial court is unreasonable, but rather that the entire award is unreasonable. Mega Pool characterizes the award as unreasonably high while ignoring the fact that the handling of this matter was lengthy and labor intensive. Beginning in July 2017, before a complaint was filed, counsel for the estate attempted to negotiate with and obtain a settlement with Mega Pool. Litigation in this matter followed and went on for more than two years; from June 2018 when the complaint was filed until September 2020. Further, as noted in the estate's December 20, 2021 application for attorney's fees, Mega Pool was initially represented by two separate firms, one defending against appellee's claims and the other pursuing Mega Pool's counterclaim until the counterclaim was dismissed in February 2019. The matter was also continued several times for mediation, ongoing discovery, and at the request of the parties. We therefore reject the argument that an attorney-fee award which exceeds the actual damages figure is excessive.

{¶ 33} Mega Pool also argues the trial court abused its discretion by awarding litigation costs, expert fees, paralegal fees, and non-CSPA related attorney fees. Mega Pool cites *Bryant v. Walt Sweeny Auto*, 1st Dist. Hamilton Nos. C-010395, C-010404, 2002-Ohio-2577 to support its argument that these fees are not recoverable under the CSPA. The *Bryant* court noted the Supreme Court of Ohio has found "litigation expenses cannot be taxed as costs, unless specifically provided for by statute." *Id.* at ¶ 42 citing *Centennial Ins. Co. v. Liberty Mutual Ins. Co.*, 69 Ohio St.2d 50, 430 N.E.2d 925 (1982) and *Cunningham v. Goodyear Tire & Rubber Co.*, 104 Ohio App.3d 385, 662 N.E.2d 73 (1995).

{¶ 34} Appellee counters citing *Hamilton v. Ball*, 2014-Ohio-1118, 7 N.E.3d 1241 wherein the court noted an award of attorney fees under the CSPA may include "fees at a lower rate \* \* \* for work done by law clerks, legal interns, and paralegals." *Id.* at ¶ 81. T

{¶ 35} In *Jarmon v. Friendship Auto Sales Co, Inc*, 8th Dist. Cuyahoga No. 86589, 2006-Ohio-1587 the Eighth District noted:

This court and other courts have held, that, legal fees incurred as a result of work performed by law clerks or legal interns should be taken into account when awarding attorney fees. As we stated in *Jackson v. Brown*, the use of law clerks may decrease litigation expenses since they are charged at a lower rate; therefore, their use should not be discouraged.

{¶ 36} *Id.* at 10 citing *Jackson v. Brown*, 83 Ohio App.3d 230, 232 (1992); *Non-Employees of Chateau Estates Resident Ass'n v. Chateau Estates, Ltd.*, 2d Dist. No. 2004 CA 19, 2003, CA 20, 2004-Ohio-3781; *Ron Scheiderer & Associates v. City of London* (Aug. 5, 1996), 12th Dist. No. CA95-08-022, CA95-08-024.

{¶ 37} Therefore, while paralegal fees may be included in attorney's fees, they should be charged at a lower rate.

#### Attorney Fees in This Matter

{¶ 38} First, when making the fee award under R.C. 1345.09(F)(2), the trial court must state the basis for the fee determination in order to aid appellate review of the award. Here, the trial court stated it "accepts Plaintiff's application and the hourly rates charged by counsel as evidence of the prevailing market rate for legal representation of this nature in connection with similar cases." We note, however, neither the application nor the affidavit attached to appellee's application for attorney fees provide an hourly rate. Additionally, the application indicates work was performed in this matter by both attorneys and paralegals but provides no indication as to which tasks were performed by paralegals and would be subject to a lower hourly rate. Without clarification as to who performed the work at which hourly rates we are unable to properly review the appropriateness of the awarded fees. We remand the matter of attorney fees to the trial court for such clarification and recalculation if appropriate.

{¶ 39} Second, the application requests compensation for expert witness fees and litigation costs. While the above outlined authority supports a finding of an award of attorney fees for work performed by paralegals, it does not support a finding that expert fees and litigation costs are recoverable under the CSPA claim. The trial court in this



instance awarded both under the estate's CSPA claim. We find an award which is not provided for by the CSPA is an abuse of discretion. We therefore vacate the award of litigation costs and expert fees under the estate's CSPA claim.

{¶ 40} The second assignment of error is sustained in part and overruled in part.

### III

{¶ 41} In its final assignment of error, Mega Pool argues it was denied its constitutional right to a jury trial. We disagree.

{¶ 42} "There is a clear constitutional right to a jury trial in civil law suits. See Section 5, Article I, Ohio Constitution; Seventh Amendment to the United States Constitution. The right to a jury trial may not be impaired, but it 'may be subject to moderate and reasonable regulation.' " *Skiadas v. Finkbeiner*, 6th Dist. No. L-05-1094, 2007-Ohio-3956, ¶ 23, quoting *Walters v. Griffith*, 38 Ohio St.2d 132, 133, 311 N.E.2d 14 (1974).

{¶ 43} It is undisputed that Mega Pool failed to comply with Delaware County Loc.R. 25.04 which requires a party desiring a jury trial to make a jury deposit at least 60 days before trial. The rule further states failure of a party to make a jury deposit shall be deemed as a waiver of the jury. Even so, according to Mega Pool the trial court violated its constitutional right to a jury trial because Tomlinson had made the required jury deposit and Mega Pool did not consent to Tomlinson's withdraw of her jury demand as required by Civ.R. 38(D).

{¶ 44} In *Walters v. Griffith*, 38 Ohio St.2d 132, 311 N.E.2d 14 (1974), the Supreme Court of Ohio held that "[l]ocal court rules, requiring an advance deposit as security for the costs of a jury trial and providing that the failure of a party to advance such deposit

constitutes a waiver of the right to a trial by jury, are moderate and reasonable regulations of the right of trial by jury, and are constitutional and valid." *Id.* at syllabus. The court found that the local rule was supplementary to Civ.R. 38(B). *Id.* at 133-134, 311 N.E.2d 14.

{¶ 45} While Mega Pool cites matters from other courts wherein a party that did not make a jury demand was permitted to rely on a party that did, the language of the Delaware County local rule at issue controls our analysis.

{¶ 46} Per the language of Delaware County Loc.R. 25.04, "if a *party* is seeking a jury trial in a civil case, *the party* must submit a \$500 jury deposit \* \* " Emphasis added. As noted by the trial court, this language "places the burden to pay the jury deposit on any party that 'is seeking a jury trial.' " Judgment Entry Denying Defendant's July 29, 2020 Motion to Hold Jury Trial in January 2021, August 6, 2020 at 3. The trial court went on to note a defendant cannot "simply "piggyback" on a plaintiff's deposit, but rather must also make a jury deposit if the defendant wants a jury trial too." *Id.* We agree.

{¶ 47} The third assignment of error is overruled.

{¶ 48} The judgment of the Delaware County Court of Common Pleas is affirmed in part, reversed in part and remanded for further proceedings consistent with this opinion.

By Wise, Earle, P.J.

Hoffman, J. and

Delaney, J. concur.

EEW/rw

**IN THE SUPREME COURT OF OHIO**

ILIA BEDER, et al.	:	CASE NO: 2023-0109
	:	
	:	
APPELLEES,	:	
	:	
vs.	:	ON APPEAL FROM THE GEAUGA
	:	COUNTY COURT OF APPEALS,
	:	ELEVENTH APPELLATE DISTRICT
CERHA KITCHEN AND BATH DESIGN STUDIO, LLC, et al.	:	
	:	COURT OF APPEALS
	:	CASE NO. 2022-G-0008
	:	
APPELLANTS.	:	
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**MEMORANDUM OF *AMICUS CURIAE* OHIO HOME BUILDERS ASSOCIATION, INC.  
IN SUPPORT OF JURISDICTION**

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## **EXPLANATION OF WHY THIS IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST**

This case undeniably is of public or great general interest: it presents crucial questions for the future enforcement of the Ohio Home Construction Service Supplier Act (“HCSSA”), as it applies to remodeling construction services throughout the State of Ohio. On December 12, 2022, the Geauga County Court of Appeals, Eleventh Appellate District (“Court of Appeals”), wrongly found the HCSSA does not apply to residential remodeling services, as it is not considered home construction service. The strong reliance on the interpretation of the definition of ‘construction’ is misguided and resulted in an illogical conclusion by the Court of Appeals.

This appeal presents an issue of first impression of public and great general interest. Does the HCSSA, rather than the Ohio Consumer Sales Practices Act (“CSPA”), apply to a transaction involving the remodeling of an existing residential building? Unless the decision below is reversed, and this question answered in the affirmative, the Court of Appeals decision will undermine the adoption of the HCSSA for remodeling construction, and adversely impact the entire statewide home construction industry.

The potential impact of the Eleventh District’s decision is overwhelming to the industry. All home remodeling contracts, regardless of the size or dollar amount, will be governed by the CSPA, subjecting those contractors to all the provisions under the CSPA, including, but not limited to treble damages and the public inspection file. *Amicus* Ohio Home Builders Association asks this Court to accept jurisdiction over this appeal.

## **STATEMENT OF THE CASE AND FACTS**

The Amicus hereby incorporates by reference the statement of the case and facts asserted by the Appellant, Cerha Kitchen and Bath Design, LLC, et al.

## **STATEMENT OF INTEREST OF AMICUS CURIAE**

*Amicus curiae* Ohio Home Builders Association, Inc. (“OHBA”) is a 4,000-member trade association representing home builders, remodelers, land developers and their associate vendors in a legislative and regulatory capacity on a statewide basis. OHBA serves its membership by taking a proactive approach to state issues and legislation to promote the residential construction business. As Ohio’s premier home building industry representative, OHBA represents an industry that creates significant economic growth in Ohio while also advocating for statewide policies that foster the public’s ability to obtain affordable housing.

As the only statewide association representing the residential construction and land development industry, OHBA has unique insight into the practical reality of the home building industry. Further, OHBA can offer valuable perspective on the level of impact promoting fairness, certainty and predictability in the building process can have on its membership and their ability to provide affordable housing opportunities in Ohio, as well as, the vital role the residential construction industry plays in the Ohio economy. The goal of our membership is to provide safe, quality, affordable housing to all of the citizens of this state. OHBA has experience examining the history and application of the CSPA and HCSSA and recognizes the critical need for a predictable and consistent approach.

Subjecting all remodeling residential construction to the CSPA would have a significant adverse impact on the Ohio home building industry and on Ohio homeowners.

### **ARGUMENT**

- I. Both the HCSSA and the practical nature of residential construction contemplate a transaction involving remodeling an existing residential building be considered ‘home construction service’ under the Ohio Home Construction Service Supplier Act.**



OHBA is greatly concerned by the Court of Appeals reliance on an impractical definition of ‘construction’ and lack of consideration for both the practical aspects of remodeling, and the areas of the HCSSA which clearly indicate the intent to include remodeling services by the legislature.

After the adoption of the HCSSA, transactions involving a “home construction service contract” under the HCSSA do not constitute a “consumer transaction” for purposes of CSPA. R.C. 4722.01(C) defines a “home construction service contract” as “a contract between an owner and a supplier to perform home construction services, including services rendered based on a cost-plus contract, *for an amount exceeding twenty-five thousand dollars.*” (emphasis added)

Further, the definitions found in R.C. 4722.01 also include, “Home construction service” defined as, “the construction of a residential building...”, while it also goes on to explicitly define what is not included by stating, ““Home construction service” does not include construction performed on a structure that contains four or more dwelling units, except for work on an individual dwelling unit within that structure, or construction performed on the common area of a condominium property.’

While the definition of “Home construction service” found in 4722.01(B) specifically defines what is NOT included, remodeling is not listed. In fact, nowhere in 4722.01(B) does it state construction services must be performed on a “new” residential building to be considered “home construction services” for purposes on the HCSSA. Further, the explicit contemplation by R.C. 4722.01(C) of contracts “for an amount exceeding twenty-five thousand dollars” to be considered a “Home construction service contract” under the HCSSA, indicates the law is clear on the intention to apply to all home construction services contracted for a dollar amount from twenty-five thousand one dollar up to multi-million-dollar transactions. It is imperative to contemplate

every definition found in R.C. 4722.01 when reaching a conclusion as to whether remodeling contacts are subject to the HCSSA.

In the homebuilding industry, there is no practical difference in the means and methods for construction of a new residential dwelling versus a remodel to an existing structure, however, the Court of Appeals finding would categorize only one of these projects as “home construction services”.

Finally, while not specifically defined in R.C. 4722, when taking the word ‘construction’ for its plain meaning, one should ask themselves what the practical difference is between an owner contracting to construct or build a \$250,000 remodeling addition/building/structure to their existing home, versus, the owner contracting to construct or build a \$250,000 new residential building/structure? It is clear the legislature intended the HCSSA to apply to both scenarios, and a finding to the contrary would be devastating to the residential construction industry.

### **CONCLUSION**

For the reasons discussed above, this case involves matters of public and great general interest. *Amicus* Ohio Home Builders Association requests this court accept jurisdiction in this case so that the important issues presented will be reviewed on the merits.

Respectfully Submitted,

\_\_\_\_\_/s Kristen L Sours\_\_\_\_\_  
Kristen L. Sours (0082212), *Attorney for Amicus*

## CERTIFICATE OF SERVICE

I certify that on January 27, 2023 a copy of the foregoing *Amicus Curiae* Memorandum in Support of Jurisdiction was served on Thomas C. Holmes, and Daniel J. Meyers via email pursuant to Civ.R. 5(B)(2)(f) at [tcholmes@holmeslegalservices.com](mailto:tcholmes@holmeslegalservices.com) and [dmeyers@meyerslawllc.com](mailto:dmeyers@meyerslawllc.com)

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