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February, 2023

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US housing market shows early signs of recovery as demand rises

Pending home sales increased for the first time in more than a year

Megan Henney, FOXBusiness

The housing market is showing early signs of recovery with pending sales of U.S. homes climbing for the first time in a year, according to new data from Redfin.

Pending home sales rose 3% in December, the first month-over-month increase since October 2021, Redfin said in a report Wednesday.

There are other indicators that demand is stirring back to life, including bidding wars, more requests for home tours and a growing number of people contacting the brokerage firm to start the home buying process.

“I’ve seen more homes go under contract this month than in the entire fourth quarter,” said San Jose, Calif., Redfin agent Angela Langone. “Listings that were stagnant in November and December are suddenly getting one to two offers.”

The interest rate-sensitive housing market has borne the brunt of the Federal Reserve’s aggressive campaign to tighten policy and slow the economy.



In This Issue ...

**Financial Forecast & Survival
Guide - Wed., Feb. 18**

**Topgolf Event - Rescheduled
for Thurs., March 23 - Details**

Legislative News

HBA Rebates

**Sedgwick Stress in the
Workplace & Ohio Safety
Congress & Expo**

**Ohio Builder Elected to NAHB
Leadership & Much More!**

(Cover Story - Continued on page 2)

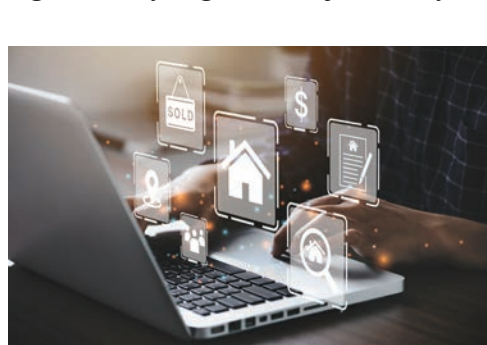


(Cover Story – Early Signs of Recovery – Continued)

Policymakers already lifted the benchmark federal funds rate seven consecutive times in 2022 and have indicated they plan to continue raising rates higher this year as they try to crush inflation that is still running abnormally high.

Still, demand has shown early signs of returning as mortgage rates continue to fall from a record high of 7.08% in November.

The average rate for a 30-year fixed mortgage dropped to 6.15% this week, according to data from mortgage lender Freddie Mac. However, that remains significantly higher than just one year ago, when rates hovered around 3.56%.



Mortgage applications are up 28% from early November, according to Redfin, which has sent the typical homebuyer's mortgage payment down about 10% – or roughly \$180 – since the fall.

Even with higher interest rates putting homeownership out of reach for millions of Americans, prices are still steeper than just one year ago.

The median price of an existing home sold in December was \$372,700, a 2% increase from the same time a year ago, according to a report released last week by the National Association of Realtors.

This marks the 130th consecutive month of year-over-year home price increases, the longest-running streak on record. ■

Ken Cleveland	1,082.5*
John Sumodi	356
Andy Leach	148.5
Bob Knight	97.5
Mike Hudak	58.5
Mark Zollinger	47
Doug Leohr	34.5
Russ Sturgess	29
Dave LeHotan	10.5
Mark McClaine	9.0
Jake Lewis	6
Rex Gasser	4
Tom Rafferty	3.5
Charlie Ash	3
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:

Be sure to register for our upcoming Financial Forecast on Wednesday, February 15. This will be held at Amy's Arbors Rustic Event Center, where our Bourbon Tasting BBQ Dinner was last October. We are anticipating 2023 will be a tough year so we are providing our members with a Survival Guide and tips on weathering the storm. Members - I hope you will please consider sponsoring this event - Major Event Sponsor is \$250 and our Patron Sponsors are \$100. Thank you!

Get ready and get warmed up for the 2023 golf season with our Topgolf event scheduled for March 23rd. Mark your calendars and register for this soon.

Builders - interested in having a Parade of Homes this spring? Let me know asap if you are interested. If we have enough homes, we will hold an event. Virtual homes are also welcome.

See everyone at the Financial Forecast - don't forget to register!

Susan Bloch

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2023 Save The Dates

February 15, 2023

**Financial Forecast /
Survival Tactics Don't
miss this 'must attend' event
at Amy's Arbors Rustic
Event Center, Valley City.**

March 23, 2023

MCHBA Topgolf Event
*The perfect employee,
vendor and client warm-up
for the 2023 golf season!
Get your reservations in!*

October 4, 2023

**MCHBA's Hill-N-Dale
Shootout Watch for more**

From the Executive Director

Members and Friends:

Your Board of Directors has been working hard to bring meaningful, educational, helpful and fun events to our members. Here's the line-up so far ...

The Financial Forecast & Survival Guide meeting on February 15 is truly a must-attend event to be prepare yourself and your business to survive and thrive this year.

Our March 23rd Topgolf event 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!

If we have enough interest and participation, we will look at holding a Spring Parade April/May. Builders - let us know if you are interested.

As always, we will have our annual Golf Outing this summer (date TBD) and this fall (October 4th), we've scheduled a Hill-N-Dale Shootout outing for our sports enthusiasts.

We are also looking at a Clam Bake 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



**MEDINA
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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**.



Pompeo Stands Tall with Home Builders

Article provided by NAHB

Former CIA Director and Secretary of State Mike Pompeo began his address to the NAHB Leadership Council recently by thanking local home builders in Kansas who supported him earlier in his career when he ran for Congress, and he went on to express solidarity to home builders for all they do to strengthen America.

"The folks who are here from Wichita gave me some incredibly important support back when I first ran for Congress and that's something I'll always be grateful to them for," said Pompeo.

He noted that housing and homeownership are critical to a prosperous and powerful American economy and that the strength of the nation's economy lies with its small businesses.

"You as home builders know this and work every day to provide the American dream to our citizens."

Despite global threats from China, Russia and North Korea, Pompeo projected strong confidence in the strength of America and the ideals that make this the greatest nation on earth.

"I am deeply confident we will get another 250 good years in America," Pompeo said. "Our foundational institutions matter. It's our churches, synagogues and little league teams, our chambers of commerce, local school boards and small businesses. These are the things that make America unique — and home building and homeownership are an important part of that equation."

Renewed Financial

Third Federal Savings & Loan Association – Medina

Dropped Members

Windridge Homes – Wadsworth

Support Your Association

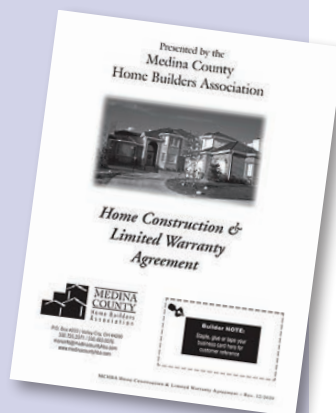
Remember, whenever possible, always try to do business with and patronize our Parade Sponsors, your Fellow Members and support your Medina County HBA & local community! Working with someone who is not a member? Let us know and we'll reach out to them!

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and you just need the Limited Warranty Agreement, the warranty with presentation folder are available for just \$25 each. We encourage you to use these tools for your protection, peace of mind, credibility in your home buyer's mind, plus they're a great resource tool for your customer to keep all their pertinent construction paperwork all in one handy location. Call the HBA today and order your professional home buyer warranty tools. Just one of your advantages of being a member.



Stress in the workplace

Now that the Holiday season is over its time to get back into the swing of things. We may have taken some time off to spend with family and friends, forgetting about those stressors at work. But just as every calendar year comes to an end, so do the Holiday's and it's time to get back to work. Whether we work at home, in an office or out in the field we will re-encounter those stressors. Stress can affect us in many ways, so it is important we identify them.

Below is a short list of stressors that might occur in your workplace.

1. Not being able to identify what the stressors are.
2. Continually bringing work home effecting our relationship with family and friends.
3. Spending too much time at work and not giving yourself enough personal time.
4. Poor relationships with coworkers or your supervisor.
5. Not having clear and concise expectations.

Some of those stressors at work can contribute to physical or mental issues. Physical problems include migraines, high blood pressure, stomach issues, obesity, poor sleep and even a weakened immune system. Mental problems would include anxiety, difficulty concentrating, depression, low morale, poor attitude and lack of self-confidence. In addition, these stressors may affect our eating habits and contribute to alcohol and drug abuse. Either way, identifying these signs of stress is key to dealing with them.

Regardless of the type of stressors you deal with, let's look at some tips that may help.

- Track your stressor – It is key to find out which of those stressors are affecting you most. Keep an eye on your mental reactions when stressors occur and make note of it. That will help identify them.
- Work and home balance – Try to create boundaries between work and home. You may want to minimize accessing emails at home or not checking the phone during certain hours. Remember, the world will still exist if you don't reply to an email or answer the phone. Your home should be a place of relaxation.
- Take time to recharge – Taking time to recharge is one key to performing well. Be sure you take time away from work to unwind, use up your vacation days, get a good night's rest or focus on non-work-engaging activities. Recharging gives you the boost to tackle the next day.
- Learn how to relax – Relaxation techniques come in a variety of styles. Maybe you like to exercise, take a walk, read a book, perform yoga or listen to music. There are many relaxation options, so choose what works best for you.
- Talk with your supervisor – Having a good relationship with your supervisor makes for a good work environment. Open conversations, project updates and discussing challenging issues will help minimize some of those stressors and build a stronger relationship. This relationship is key to getting the necessary support for success in the workplace.

Everyone deals with some form of stress whether at home, in the office or out in the field. The key is how we handle those situations. Even though we may never eliminate stress, there are many ways to handle it. The

Stress in the workplace

key is to find out which stress reliever (or combination of) works best for you. Remember, the way you handle stress will affect your quality of life at home and at work.

For more information, please contact Sedgwick's Andy Sawan at 330.819.4728 or andrew.sawan@sedgwick.com



11TH DISTRICT APPEALS COURT DECISION SUBJECTS ALL REMODELING TO CSPA

In a recent decision coming out of the 11th District Court of Appeals, the Court concluded that “home construction service,” i.e., the “construction of a residential building,” encompasses the building of (1) one-, two-, or three-family dwellings, (2) accessory structures incidental to those dwellings, and (3) individual dwelling units within structures that contain four or more dwelling units. Accordingly, “home construction service” does not encompass remodeling. Therefore, remodeling contracts are subject to the laws of the Consumer Sales Practices Act (CSPA), including treble damages, and not the laws of the Home Construction Service Supplier Act (HCSSA).

While the original case was filed in the Geauga County Court of Common Pleas, the Plaintiffs (the customer) appealed the decision of the court of common pleas granting summary judgement in favor of the defendant (builder/remodeler). When the plaintiffs appealed, the case went before the 11th District Court of Appeals which covers multiple counties. Any decision coming out of the 11th District would be binding on those counties: Ashtabula, Geauga, Lake, Portage and Trumbull.

The deadline to ask the Ohio Supreme Court to take up the case is later this week, and it is expected the builder/remodeler will ask the Supreme Court to take the case.

Both the Appeals Court and Common Pleas decision are attached at the end of this newsletter for your review and information.

Please contact OHBA with any questions. 

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THE AVERAGE REBATE PER
BUILDER / REMODELER COMPANY
WHO PARTICIPATED IN 2021 WAS:

\$1,582.20

PARTICIPATING MANUFACTURERS



HBA REBATES

Builders Average Rebate 2021



Big Savings for NAHB Members in 2022, and More to Come in 2023

The NAHB Member Savings Program continues to make a big impact in boosting members' bottom lines. Through the exclusive discounts from a variety of leading companies, NAHB members saved an estimated total of \$37 million in 2022.

Much of that savings can be attributed to the program's growing list of participating companies. During the past year, two new savings programs were added: Goodyear Tires and Voyager Fuel & Fleet Management Mastercard, giving members the chance to save thousands on automobile expenses.

And the Member Savings Program will add even more value in 2023 with new opportunities for members to save money on personal and business-related items. Within the first quarter of 2023, new member-exclusive discounts will be available through T-Mobile and Farmers Insurance.

In addition to the four newest programs, the Member Savings Program will continue to feature 14 other prominent companies in 2023, including:

Avis
Budget
ConstructionJobs.com
Dell
Heartland
HotelPlanner
HouzzPro
Lowe's
MemberDeals
Nissan
ODP Business Solutions
Ring Central
UPS
YRC Freight

Notable changes include the American Express program, which ended last fall, and General Motors, which will be pausing its member savings program after Jan. 3, 2023. However, NAHB's member savings team is continually pursuing new partnership opportunities to bring as much value as possible to NAHB members.

If you have any questions or suggestions for new programs, please contact Amanda Scharff at ascharff@nahb.org. ■



Be sure to keep an eye out for your NAHB Savings info sheet included in your membership renewal packet. Another one of your benefits of being a member!

Remember ... your membership in the Medina County Home Builders Association also gives you membership in the Ohio Home Builders Association and the National Association of Home Builders - it's a 3 for 1 membership!



GET INVOLVED!

We ask that you please consider supporting your organization through sponsoring one of our upcoming events. Here are some opportunities ...

**Financial Forecast
Major Event Sponsor - \$250***

**Financial Forecast Meeting
Sponsor - \$100***

**Noted in Building Blocks and your name/logo on our welcome sign at the event!*

Topgolf - Bay Sponsor - \$100**

***Your company name in one of the Topgolf bays / announced at the event*

Ohio Builder Elected to Leadership of NAHB

Bill Owens, a Worthington, Ohio-based, remodeler and home builder with more than 40 years of experience in the residential construction industry, today was elected as the 2023 third vice chairman of the National Association of Home Builders (NAHB) during the association's International Builders' Show in Las Vegas.

Owens is president of Owens Construction, a leading residential design/build firm in central Ohio that he established in 1982. The company completes 30 to 40 projects a year with a focus on integrating seamless appearance, energy efficient technology and creating welcoming home environments.

"This year we will work closely with the White House and Congress to ease supply chain production disruptions and reduce burdensome regulations that are harming housing affordability by raising housing costs," said Owens. "We will also urge Congress to adopt practical workforce development and immigration policy that will help our industry fill open jobs and reduce the cost of remodeling and home construction."

For decades, Owens has been an active participant in the NAHB leadership structure at the local, state and national levels. He currently serves as a senior life delegate of the NAHB Leadership Council and has been a member of the NAHB Board of Directors for more than 20 years.

Demonstrating outstanding leadership at the national level, Owens has served as Chairman of the NAHB Remodelers Council, the Home Builders Institute and the NAHB Leading Suppliers Council. He also served as Vice Chairman of the Home Innovation Research Labs, as an NAHB State Representative and as NAHB National Area 6 Chairman.

At the national level, Owens also previously served as the Chairman of The New American Home and The New American Remodel Task Forces, and also led the following the committees: Public Affairs and Communications; Environmental Issues; Education; and the Construction Liability, Risk

Management and Building Materials.

Active locally in the leadership of the Building Industry Association of Central Ohio, Owens served on its Board of Trustees from 1998 to 2005. He was named the association's Remodeler of the Year in 1999, 2000 and 2003 and recognized as Builder of the Year in 2009.

On the state level, Owens has been a member of the Ohio Home Builders Association's Board of Trustees since 1999 and is a life director. He was also president of the Ohio HBA in 2011.

A member of Harvard University's Joint Center for Housing Studies, Owens has worked with non-profits such as the Better Living Design Institute and Partners for Community. He holds designations as a Certified Graduate Remodeler, Certified Aging-in-Place Specialist and Certified Green Professional™.

Believing education is a cornerstone of the future, Owens devotes time to professional development, workforce development and the International Builders' Show. His educational pursuits led to his leadership at the Home Builders Institute, where he served as Chairman of its 2010 Board of Trustees.

Owens and his wife, Betsy, enjoy working together in their business and serving their community.

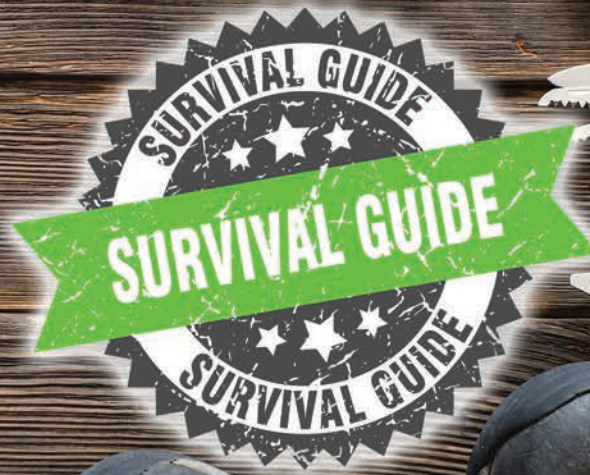
NAHB's newly elected senior officers serve on a multi-year leadership ladder. Owens will become chairman of NAHB's Board of Directors in 2026.





Wednesday, February 15, 2023

2023 Financial Forecast &



KEEP IN MIND

**A GOAL
WITHOUT
A PLAN
IS JUST
A WISH**
——>>

Most of you are aware – 2023 is going to be a tough year. Our financial experts will not only provide attendees a financial picture of what to expect in 2023, but also bring their tool box of strategies and creative ideas to help our members and their businesses reduce the risks during what is now considered to be a recession. **This is truly a NOT-TO-BE-MISSED member event.** RSVP Today!

Speakers: Bob Giacomo, Senior Vice President
Westfield Bank
Jim Owen
Fifth Third Bank

Time: 12 Noon to 1:30pm

Cost: \$30 per member (includes lunch)
\$40 per non-member (includes lunch)
Builders - No Charge but must register

Location: Amy's Arbors Rustic Event Center
6735 Center Rd., Valley City

Register: **Deadline for Registration February 8th**
susanb@medinacountyhba.com
No shows will be billed

Ohio Safety Congress & Expo

The Ohio Bureau of Workers' Compensation (BWC) will host their Ohio Safety Congress & Expo March 8-10, 2023, live and in-person at the Greater Columbus Convention Center. This year, a select number of sessions will also be live streamed.

With over 100 educational sessions and continuing education, there is something for everyone at OSC23. Choose between 10 educational tracks:

- Business strategies
- Construction safety
- Governance and regulatory
- Government employee safety
- Leadership and professional development
- Manufacturing safety
- Safety management systems
- Technology and innovations
- Total Worker Health
- Workers' compensation

New for 2023 – The Knowledge Hub located on the South side of the Expo marketplace. Participate in live demonstrations and experience workshops on a new level.

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12:25 pm Welcome / Tournament Host
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Begins / Lunch Served Buffet-
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HOW TO EARN A REPUTATION AS A QUALITY BUILDER

DON'T SLEEP ON THE INITIAL MEETING BETWEEN YOUR SITE SUPERVISOR AND NEW HOMEOWNERS

By Andrew Shipp

As a home builder, you control your reputation in the market, and valuable word of mouth depends on how well you execute a handful of items to foster positive customer perceptions and great reviews.

The no-brainer basics are relatively easy but impactful, such as keeping your jobsites clean, delivering a completed product on time, and responding promptly to post-closing service requests.

But there's one, less tangible, thing that can make or break everything else you do right: effective communication –specifically, the relationship between your jobsite

supervisor and the homebuyers during their initial (or pre-) construction meeting.

That meeting is the first and best opportunity during the production phase to start building mutual trust between the customer and the person who will be overseeing their home's construction. It effectively lays the groundwork for a great relationship throughout the build and after closing.

THE INITIAL CONSTRUCTION MEETING LAYS THE GROUNDWORK FOR A GREAT RELATIONSHIP THROUGHOUT THE BUILD

Doing it well isn't difficult. As a former supervisor for a Denver-area production builder, I found that not all of my peers were blessed with the greatest of interpersonal skills, but if they followed a few simple guidelines,

an initial customer meeting could be executed quite well and give the homeowners a positive feeling about you, your company and the job ahead.

Get to Know Your Client

First, and most important, establish a baseline relationship by spending the first few minutes of the meeting getting to know the customer: what they do for a living,, where they're from. Ask about their family life, hobbies, and other interests. Listen for shared interests or background, and briefly tell them about yourself, too.

While this step may seem obvious (or maybe unnecessary or uncomfortable), I can't overstate its importance. People trust people with whom they have a connection, and that only happens when you take the time to show a genuine interest beyond their wallet.



During construction, site supervisors need to be the 'eyes and ears' of your homebuyers, providing updates, assurances, and specifics – good and bad – to maintain trust, alleviate frustration, and reduce stress.



The first meeting between your site supervisor and a homebuyer should focus on gaining mutual trust through listening and sharing experiences, as well as setting realistic expectations for the construction process and ongoing communication.

Set Expectations

From there, the super needs to set realistic expectations about each phase of the build. Consider the buyer who stops by to look at the house weeks before closing and is shocked to see drywall damage, then immediately seeks to get it repaired.

But if you educate buyers early on about your punch list and touch-up process, they'll know that cosmetic damage is normal and will be fixed prior to close.

The initial construction meeting also is the time to set expectations for future communications. Like a passenger whose flight is delayed but

gets no information from the airline, homebuyers can become irritated quickly (and rightfully so) if they are surprised by missed deadlines or vague excuses – no matter the cause.

On the flip side, a delayed airline passenger who knows how long it will be until their flight takes off can adjust. And in these uncertain times of supply chain delays, it's critical to be proactive about issues that may alarm or frustrate buyers.

With that, lay out the schedule for future meetings, such as pre-drywall, pre-close, and the closing walk-through. Buying a house is a huge commitment and it can be

stressful, so make sure customers know when they will receive updates to help alleviate some of their uncertainty and worry.

How well this meeting goes is key to a buyer's perception of your company as a quality home builders. Unfortunately, a lot of builders don't think about how critical this early-stage rapport is to their reputations and referral businesses. But those that make it a priority to establish a meaningful relationship at the start are the same home builders whose customers love their work.



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**IN THE COURT OF COMMON PLEAS
GEAUGA COUNTY, OHIO**

ILIA BEDER	:	CASE NO. 19P000605
	:	
Plaintiff(s)	:	JUDGE DAVID M. ONDREY
	:	
-vs-	:	<u>ORDER</u>
	:	
CERHA KITCHEN AND BATH	:	
DESIGN STUDIO LLC	:	
Defendant(s)	:	

This matter comes on for consideration upon the Motion of the Defendants for Summary Judgment, both as to Plaintiffs complaint against the Defendants on all Counts and also as to Defendants counterclaim against Plaintiffs.

As a preliminary matter, the Court notes the Plaintiffs purport to dismiss their claims against Defendant Laura Cera at footnote 2, page 3, of Plaintiffs Brief In Opposition to the Motion for Summary Judgment. While such method does not comply with the requirements of Civil Rule 41 for the voluntary dismissal of claims, this Court acknowledges such Dismissal in any event and Laura Cera is dismissed, with prejudice.

The Court next concludes that even after construing the evidence most strongly in Plaintiffs favor, as required under Civil Rule 56, there are no material questions of fact as to Plaintiffs claims set forth in Count III of the Complaint and that Defendant is entitled to judgment on such Count as a matter of law. Simply put, the Court agrees with Defendants that OCSA does not apply to the contract at issue in this case, but instead the OHCSSA applies. Since the allegations set forth in Count III all arise out of statutory and administrative regulations emanating from the OCSA, the Defendants cannot be held liable for not complying with such regulations.

Summary Judgment is also granted the Defendants as to Count II of Plaintiffs complaint which sets forth a claim of unjust enrichment. Since there is no doubt that a contract existed between the parties, no claim for unjust enrichment can survive. The Court cannot accept Plaintiffs contention that no contract existed because the Defendant or its subcontractors had not registered with the city of Mentor thereby, Plaintiffs argue, making the entire contract “illegal.” Plaintiffs have not demonstrated to this Court’s satisfaction that such a result is appropriate in cases where tradesmen fail to register. Moreover, Plaintiffs have failed to provide any evidence creating an issue of fact concerning Defendants sworn testimony that a city official informed Defendants that such registration was unnecessary.

As to Plaintiffs claims against the Defendants set forth in Count IV of the Complaint arising out of allegedly unfulfilled requirements imposed on home construction service suppliers under OHCSSA, summary judgment is likewise granted to Defendants. Even after construing the evidence most strongly in Plaintiffs favor, there are no material questions of fact that (a) the excess costs involved in this project did not exceed the \$5,000 threshold required before such costs could be charged Plaintiffs without prior approval, that (b) the work was performed in a workmanlike manner despite Plaintiffs vague and unsupported claims to the contrary, and that (c) the Defendants “failure” to provide Plaintiffs a full refund for work that was not delivered was justifiable in light of Plaintiffs unilateral decision to stop Defendants from completing the project as established by the contract. As to the three items that should have been set forth in the contract, but were not (namely, Defendants tax ID, the anticipated start-completion date, and proof of insurance), Plaintiffs have provided no evidence of damages resulting from the omission of these items.

Lastly, as to Count IV, Plaintiffs allege the Defendants illegally made the performance of the home remodeling services contingent upon Plaintiffs waiving their rights under the OHCSSA. However, the record makes clear, even after construing it most favorably in Plaintiffs favor, that such a request for “waiver” (actually a mutual release) occurred after Plaintiffs terminated Defendants from the project and, what’s more, occurred as part of a proposed settlement of all claims (and therefore inadmissible as evidence in any event). Accordingly, summary judgement as to this particular allegation is likewise appropriate.

Having addressed Counts II, III, and IV of Plaintiffs Complaint, the Court will address Defendants Motion for Summary Judgment as to Count I of the Complaint, namely for breach of contract. The Plaintiffs assert the contract was breached in a myriad of ways. As to those allegations for breach which arise from statutory or administrative requirements imposed by either the OCSA or the OHCSSA, this Court has previously addressed them. As to those allegations for breach arising out of Plaintiffs claims the Defendants either failed to obtain necessary permits or to register with the city, this decision has likewise already addressed them and does not find they constitute a breach of the contract. As to allegations of untimely performance, there are no material issues of fact surrounding that issue which would prevent summary judgment in Defendants favor. The contract did not specify a time period for performance; the Plaintiffs own requests for custom features and design changes contributed to any delays, the time period actually used by the Defendants was not unreasonable in light of discussions between the parties around the time of the execution of the contract, and lastly, the Plaintiffs have failed to demonstrate any damages arising from the length of time the project actually took.

In addition, there are no material questions of fact surrounding whether or not the Defendants substantially complied with the terms of the contract. But for complaints about one ceiling paint job, a 4” scratch on one wall, and the finish on some baseboards in one room, the Plaintiffs have not articulated with specificity what the Defendants have otherwise failed to do, or done improperly. Clearly Plaintiff Ilia Beder has expressed general dissatisfaction in his sworn testimony, but when presented the opportunity to specifically describe any issues, his sworn testimony reveals him unable to do so other than as noted above. Moreover, Plaintiffs have submitted no expert testimony establishing actual deficiencies in Defendants work, even though in Mr. Cerha’s sworn testimony he indicates his company satisfactorily addressed the Plaintiffs few complaints. Nor have Plaintiffs submitted any credible reasonable evidence of any damages arising from the (relatively insignificant) work that Plaintiffs claim was improperly performed. And, even if, as Plaintiffs assert, several weeks might pass before Defendants returned to this job, or that Defendants might occasionally leave the Beder residence job for other jobs, Plaintiffs fail to establish how these inconveniences constitute a breach of the contract, even if annoying to Plaintiffs. Moreover, Plaintiff Ilia Beder’s allegations that Defendants yelled at him and made him stay in his room might, if actually true, constitute a tort claim, but this action is for breach of contract, not tort. This contract does not speak to appropriate personal behaviors by anyone on the job site. Lastly, this Court has evaluated Mr. Cerha’s affidavit testimony in comparison to his prior deposition testimony and it cannot agree with Plaintiffs contentions that the two are so inconsistent with each other that a question of fact is thereby raised.

Accordingly, Summary Judgment is also granted to Defendants on Count 1 of the Complaint for breach of contract.

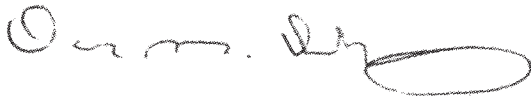
Defendants Motion for Summary Judgment also seeks judgment as a matter of law on the Counterclaim. Given this Court’s analysis set forth above, it is impossible to conclude Plaintiffs were legally justified in terminating Defendants from finishing the last room without any consequences. Plaintiffs purported rationale for doing so consists solely of being convinced Defendants were not up to the tasks remaining. Certainly, Plaintiffs retained the right to terminate Defendants, but Plaintiffs needed sufficient legal justification for then avoiding the financial consequences to Defendants arising from such termination. Thus, Defendants are granted Summary Judgment against Plaintiffs on Defendants claim for breach of contract. However, the Court also concludes there are questions of fact remaining as to (1) whether Raimonda Beder was a party to this contract and (2) the amount of damages Defendants suffered resulting from such breach by Mr. Beder. Plaintiffs alleged in their complaint that Ilia and Raimonda entered into a contract with Cerha. In the Defendants Answer to the Complaint, Defendants denied such allegation and asserted that the contract was with Ilia Beder. In fact, Raimonda Beder did not sign the contract, yet Mr. Cerha claims she agreed to it also. It appears both parties position have

switched on this question since the initial pleadings were filed. Thus, questions of fact remain as to Raimonda's role.

Likewise, the testimony regarding Defendants alleged lost profits arising from the termination is confusing and seemingly conflicting. Accordingly, Summary Judgment on the counterclaim is to the liability of Mr. Beder only and the Defendants Motion for Summary Judgement as to damages is denied.

In light of Summary Judgment being granted to all Defendants as set forth hereinabove, the Court will not address Defendants dismissals as to individuals and separate companies as argued by the Defendants. Those arguments are moot since the claims against all Defendants have been dismissed.

In conclusion: Summary Judgment is granted in favor of Defendants on Plaintiffs Complaint. Summary Judgment is granted in favor of Defendants on their counterclaim against Plaintiff Ilia Beder as to liability, but not as to damages.

A handwritten signature in black ink, appearing to read "David M. Ondrey", with a large, stylized loop at the end.

JUDGE DAVID M. ONDREY

**IN THE COURT OF APPEALS OF OHIO
ELEVENTH APPELLATE DISTRICT
GEAUGA COUNTY**

ILIA BEDER, et al.,

Plaintiffs-Appellants,

- v -

CERHA KITCHEN AND BATH
DESIGN STUDIO, LLC, et al.,

Defendants-Appellees.

CASE NO. 2022-G-0008

Civil Appeal from the
Court of Common Pleas

Trial Court No. 2019 P 000605

OPINION

Decided: December 12, 2022

Judgment: Affirmed in part, reversed in part, and remanded

Daniel J. Myers, Myers Law, LLC, 600 East Granger Road, Second Floor, Cleveland, OH 44131 (For Plaintiffs-Appellants).

Thomas C. Holmes, Holmes Legal Services, LLC, 34194 Aurora Road, Suite 295, Solon, OH 44139 (For Defendants-Appellees).

JOHN J. EKLUND, P.J.

{¶1} Appellants, Ilia Beder and Raimonda Beder, appeal the February 2, 2021 and January 24, 2022 judgments of the Geauga County Court of Common Pleas, respectively, granting summary judgment in favor of Appellees, Cerha Kitchen and Bath Design Studio, LLC, Custom Remodeling and Design, LLC, Jim Cerha, and Laura Cerha.

{¶2} This case originated as a consumer lawsuit Appellants filed against Appellees, the contractors remodeling their house. Appellants' complaint alleged four counts: (1) Breach of Contract; (2) Unjust Enrichment; (3) violations of the Consumer

Sales Practices Act (“CSPA”); and, alternatively, (4) violations of the Home Construction Service Suppliers Act (“HCSSA”). Appellees filed an answer and counterclaim against Appellants for defamation and breach of contract claiming that Appellants had unexpectedly terminated the contract without cause.

{¶3} The court granted summary judgment in Appellants’ favor on the defamation counter claim after Appellees failed to oppose or present evidence of defamation. Laura Cerha was then dismissed from the litigation. Appellees sought summary judgment on their breach of contract counterclaim and the claims in Appellants’ complaint. The court granted summary judgment on all issues except: (1) Raimonda Beder’s liability for breach of contract, and (2) damages for the Beder’s breach of contract. The case proceeded to a bench trial on the remaining issues. At trial, appellees stipulated that Raimonda was not liable for the breach of contract. The trial court awarded Appellee Cerha Kitchen and Bath Design Studio, LLC \$1,297 in damages and \$1,011.66 in interest for damages on its breach of contract counterclaim.

{¶4} Appellants timely appealed and raise three assignments of error.

{¶5} First assignment of error: “The trial court committed prejudicial error when it granted summary judgment in favor of Appellees on Appellants’ CSPA claims, and/or later refused to reconsider that grant. (T.d. 94, p. 1-2; T.d. 106).”

{¶6} Summary judgment is appropriate when “there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law,” i.e., when “reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party’s favor.”

Civ.R. 56(C). An appellate court reviews a summary-judgment ruling de novo. *Fradette v. Gold*, 157 Ohio St.3d 13, 2019-Ohio-1959, 131 N.E.3d 12, ¶6.

{¶7} Under their first assignment, Appellants assert that the trial court erred in ruling that the HCSSA and not the CSPA applied because the transaction involved the remodel of an existing home, not the building of a new home.

{¶8} “The Consumer Sales Practices Act prohibits unfair or deceptive acts and unconscionable acts or practices by suppliers in consumer transactions.” *Einhorn v. Ford Motor Co.*, 48 Ohio St.3d 27, 29, 548 N.E.2d 933 (1990); R.C. 1345.02; R.C. 1345.03. The HCSSA, similarly, prohibits certain deceptive acts in connection with work relating to home construction service and seeks to protect individual homeowners entering into such contracts. See R.C. 4722.01 et seq.

{¶9} Prior to the enactment of the HCSSA on August 31, 2012, agreements between remodelers and homeowners were “consumer transactions” within R.C. Chapter 1345. See *Danley v. Bialko*, 9th Dist. Lorain No. 91CA005024, 1991 WL 199910, *1 (Oct. 2, 1991); *Collins v. Kingsmen Ents., Inc.*, 8th Dist. Cuyahoga No. 66433, 1995 WL 23345, *2 (Jan. 19, 1995). However, with the enactment of the HCSSA, the definition of “consumer transaction” was amended to exclude “transactions involving a home construction service contract as defined in section 4722.01 of the Revised Code * * *.” R.C. 1345.01(A).

{¶10} A “home construction service contract” is “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.) R.C. 4722.01(C). “Home construction service” means “*the construction of a*

residential building. ‘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.” (Emphasis added.) R.C. 4722.01(B). “Residential building” means a “one-, two-, or three-family dwelling and any accessory construction incidental to the dwelling.” R.C. 4722.01(F).

{¶11} At issue is whether “home construction service,” i.e., the “construction of a residential building,” includes remodeling. We conclude that it does not.

{¶12} Our paramount concern in examining a statute is the legislature’s intent in enacting the statute. *Gabbard v. Madison Local School Dist. Bd. of Edn.*, 165 Ohio St.3d 390, 2021-Ohio-2067, 1793 N.E.3d 1169, ¶ 13. To discern that intent, we first consider the statutory language, reading all words and phrases in context and in accordance with the rules of grammar and common usage. *Id.*; see R.C. 1.42. When the statutory language is unambiguous, we apply it as written without resorting to rules of statutory interpretation or considerations of public policy. *Gabbard* at ¶ 13.

{¶13} R.C. 4722.01 does not define “construction.” 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”).

{¶14} We acknowledge that the current definition of “construction” in Black’s Law Dictionary no longer expressly distinguishes between “new” and “existing.” However, this does not mean that the *Celebrezze* court’s interpretation is invalid. “The Legislature is presumed to know the decisions of [the Supreme Court of Ohio], and, where it uses words or phrases that have been defined or construed by th[e] court, it is presumed have used them in the sense that they have been so defined or construed.” *Tax Comm. of Ohio v. Sec. Sav. Bank & Trust Co. of Toledo*, 117 Ohio St. 443, 450, 159 N.E. 570 (1927). Therefore, we must presume that the legislature intended the term “construction” to have the meaning set forth in *Celebrezze*.

{¶15} The dissent relies on Merriam Webster to discern the “ordinary meaning” of “construction.” The problem with this is, and always has been, that what the “ordinary meaning” of a word is in a particular walk of life, profession or business often varies wildly. For example, to an art teacher, “construction” may connote a type of paper. To a grammarian, it may mean a learned pairing of linguistic patterns with meanings. To a lawyer or judge, it may refer to the “art of seeking the intention of the legislature” in writing a statute or other enactment and applying it to a given set of facts. And, to a contractor, what it means may depend on the kind of work they contract to do. In each case, what is the “plain and ordinary” meaning of the word to some may mean nothing (or at least something else) to others. Dictionary definitions are blunt tools, at best.

{¶16} Appellees contend that the legislature intended “construction” to have a broader meaning, noting that the initial version of H.B. 383 defined “home construction services” as “the construction of a *new* residential building or the substantial rehabilitation of a residential building,” while the final version eliminated the word “new” and the

“substantial rehabilitation” phrase. (Emphasis added.) However, a court may only consider legislative history to determine the meaning of an *ambiguous* statute. See R.C. 1.49(C). A court may not resort to legislative history to alter the clear wording of the legislative enactment. *DIRECTV, Inc. v. Levin*, 181 Ohio App.3d 92, 2009-Ohio-636, ¶ 33 (10th Dist.).

{¶17} When construed in context, we conclude that “home construction service,” i.e., the “construction of a residential building,” encompasses the building of (1) one-, two-, or three-family dwellings, (2) accessory structures incidental to those dwellings, and (3) individual dwelling units within structures that contain four or more dwelling units. Accordingly, “home construction service” does not encompass remodeling. Therefore, the trial court erred as a matter of law in determining that the HCSSA applied rather than the CSPA.

{¶18} Appellants’ first assignment of error has merit. We reverse this aspect of the trial court’s judgment and remand for further proceedings.

{¶19} Appellant’s second assignment of error states:

{¶20} If the CSPA does not apply to the transaction, the trial court committed prejudicial error when it granted summary judgment in favor of Appellees on Appellants’ HCSSA claims.

{¶21} This assigned error is rendered moot based on our disposition of Appellant’s first assignment of error.

{¶22} Appellant’s third assignment of error states:

{¶23} The trial court committed prejudicial error when it granted summary judgment in favor of Appellees as to liability on their breach of contract claims against Ilia Beder and Ilia Beders’ breach of contract and unjust enrichment claims against Appellees.

{¶24} Under this assigned error, appellants argue that the trial court erred in determining Ilia Beder's removal of appellees from the project was a breach of contract. In support, appellants argue that appellees lacked the legally necessary contractor registration, unreasonably delayed their work, performed defective work, and were abusive to appellants. Appellants also argue that the trial court erred in determining that no question of fact remained concerning the performance of work or initial, material breach by appellees. We address each contention in turn.

{¶25} In holding that appellees' failure to obtain permits or register with the City of Mentor, the trial court stated:

{¶26} The Court cannot accept Plaintiff's contention that no contract existed because the Defendant or its subcontractors had not registered with the city of Mentor thereby, Plaintiff's argue, making the entire contract "illegal." Plaintiffs have not demonstrated to this Court's satisfaction that such a result is appropriate in cases where tradesmen fail to register. Moreover, Plaintiffs have failed to provide any evidence creating an issue of fact concerning Defendants sworn testimony that a city official informed Defendants that such registration was unnecessary.

{¶27} "In summary judgment proceedings, a court may not weigh the evidence or judge the credibility of sworn statements, properly filed in support of or in opposition to a summary judgment motion, and must construe the evidence in favor of the nonmoving party." *Telecom Acquisition Corp. I v. Lucic Ents., Inc.*, 8th Dist. Cuyahoga No. 102119, 2016-Ohio-1466, ¶ 93 citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249, 91 L.Ed.2d 202, 106 S.Ct. 2505 (1986). "When trial courts choose between competing affidavits and testimony, they improperly determine credibility and weigh evidence contrary to summary judgment standards." *Lucic Ents., supra*, citing *Finn v. Nationwide Agribusiness Ins. Co.*, 3d Dist. Allen No. 1-02-80, 2003-Ohio-4233, ¶ 39.

{¶28} Appellants produced the relevant part of the Mentor Codified Ordinance, which stated that contractors are required to register and that failure to register constitutes a fourth-degree misdemeanor. Appellees' sworn testimony is that when they called the Mentor Building Department, they were told they did not need to register. Appellants in this case were the non-moving party. However, the trial court viewed appellees' argument that the City of Mentor Building Department told them that no registration or permit was required as more convincing than appellants' assertion that regardless of what the building department said, the local ordinance requires registration. It was improper for the trial court to engage in this determination of credibility at this stage, and to weigh this factor in the moving party's favor.

{¶29} This necessarily raises a question of law: whether a violation of the Mentor Codified Ordinance rendered the contract void and unenforceable. If it does not, the trial court's error would be harmless. As discussed below, however, we find that a contract that violates a valid codified ordinance is void and unenforceable, and thus, the court's error was not harmless.

{¶30} The Eighth District in *McClennan v. Irvin & Co.*, 8th Dist. Cuyahoga No. 36798, 1978 WL 217728 (Jan. 30, 1978), noted that "[a]s a general rule, professional contracts which violate registration statutes are unenforceable." *Id.* at *4. In that case, an architectural firm entered into a contract to perform architectural services. The firm had only one employee who was a registered architect, and he "delegated the 'entire job * * *,' a senior architectural designer but not an architect, under [the registered architect's] supervision." *Id.* at *3. The senior architectural designer was to perform all the work; the registered architect never personally visited the project site and testified he believed it

was unnecessary for him to do so. The relevant statute in that case required anyone engaging in the practice of architecture to be a registered architect. The court found the services performed by the party in that case was the practice of architecture. Under the circumstances in that case, the Eighth District reversed the trial court, finding that the firm could not recover for services rendered under the “illegal contract.”

{¶31} Similarly, the Fourth District has noted that “[t]he general rule is that a contract entered into by a person engaged in a business without taking out a license as required by law is void and unenforceable and that where a license or certificate is required by statute as a requisite to one practicing a particular profession, an agreement of a professional character without such license or certificate is illegal and void.” *Elephant Lumber Co. v. Johnson*, 120 Ohio App. 266, 268 (4th Dist.1964), citing 53 C.J.S. Licenses § 59, p. 711; 33 American Jurisprudence, 384; 34 Ohio Jurisprudence 2d 388. “It is also a well established rule that a contract which cannot be performed without a violation of a statute is void.” *Elephant Lumber*, citing *National Transformer Corp. v. France Mfg. Co.*, 215 F.2d 343 (6th Cir. 1954) and *Bell v. Northern Ohio Tel. Co.*, 149 Ohio St. 157, 78 N.E.2d 42 (1948).

{¶32} Appellees attempt to distinguish these cases from the facts at bar by arguing that “courts have refused to apply these cases to lawsuits that are not entirely on point.” In support, they cite *Greenspan v. Third Fed. Savings & Loan Assoc.*, 122 Ohio St.3d 455, 2009-Ohio-3508, 912 N.E.2d 567. However, *Greenspan* declined to extend these arguments to claims related to the unauthorized practice of law. We find no such material distinction between the above-cited cases and the facts at bar.

{¶33} Mentor Codified Ordinance 1307.01 states in pertinent part:

{¶34} No contractor shall perform any work in the City without **first obtaining** a certificate of registration from the Building Inspection Division. Any contractor who contracts with the general public to perform work regulated by this chapter **must be registered** with the City to do such work. (Emphasis added.) *Id.*

{¶35} The ordinance plainly states the contract shall be registered before the performance under a contract begins. In this case, appellees began performance under the contract without registering, but assert they were not required to register.

{¶36} The general rule remains; contracts that violate statutory law are void and unenforceable. We see no material distinction between a contract that violates a statute versus one that violates a valid city ordinance. Accordingly, if the question of fact is resolved in appellants' favor and it is determined that appellees did not obtain the required registration prior to performing work under the contract with appellants, the contract would be illegal and unenforceable. Thus, the court's error in weighing the testimony of appellees in favor of appellees as the moving party, was not harmless error.

{¶37} Because the trial court improperly weighed the evidence pertaining to appellees registration requirements, we find the trial court erred in finding that no question of material fact remained as to whether appellees were required to register under the Mentor Codified Ordinance. This conclusion does not, however, preclude appellees from raising equitable claims, if applicable, in the lower court. Because we find any such error would not be harmless, we reverse the trial court's grant of summary judgment on Counts I and II of the appellants' initial complaint.

{¶38} As to appellants' arguments that they did not breach the contract because appellees unreasonably delayed their work, performed defective work, and were abusive to appellants, we find no error on the part of the trial court. Nor do we find error in the

trial court's determination that no question of fact remained concerning the performance of work or initial, material breach by appellees.

{¶39} Appellees gave a verbal estimate of the time to complete the project at the start of the work; appellees testified that the extensions of time were due to appellants' requests for project changes and custom-ordered items. Nothing in the record contradicts those assertions. Additionally, we agree with the trial court that appellants' assertion that appellees yelled at him and made him stay in his room would constitute a tort claim and is irrelevant to appellants' action for breach of contract. Finally, appellees testified that they addressed appellants' complaints for defective work to within HBA standards. Appellants did not present evidence to the contrary; they merely stated it was not completed to their standards.

{¶40} In light of the foregoing, appellants' third assigned error has merit.

{¶41} The judgments of the Geauga County Court of Common Pleas are affirmed in part, reversed in part, and remanded to the trial court for further proceedings consistent with this opinion.

MARY JANE TRAPP, J., concurs,

CYNTHIA WESTCOTT RICE, J., dissents with a Dissenting Opinion.

CYNTHIA WESTCOTT RICE, J., dissents with a Dissenting Opinion.

{¶42} I respectfully dissent and would find that remodeling contracts such as the one at issue would fall under the HCSSA.

{¶43} There is no clear agreement or precedent as to the definition of “construction” as defined in R.C. 4722.01. When the language of statutes is ambiguous, “words should be given their common, ordinary and accepted meaning unless the legislature has clearly expressed a contrary intention.” *State v. Hix*, 38 Ohio St.3d 129, 131 (1988), quoting *State v. Singer*, 50 Ohio St.2d 103, 108 (1977). Courts have often looked to dictionaries to provide guidance as to the “common, ordinary, and accepted meaning.” Merriam Webster’s Dictionary defines “construction” as “the process, art, or manner of constructing something.” Merriam-Webster, *Construction*, www.merriam-webster.com/dictionary/construction (accessed June 15, 2022). Similarly, “constructing” is defined as “to make or form by combining or arranging parts or elements; build.” Merriam-Webster, *Construct*, www.merriam-webster.com/dictionary/construct (accessed June 15, 2022). These definitions do not limit “construction” to the creation of something new.

{¶44} I recognize that the Supreme Court of Ohio has held that the meaning of the word “construction” is the “creation of something new, as distinguished from the repair or improvement of something already existing.” *State. ex. rel. Celebrezze v. Nat’l Lime & Stone Co.*, 68 Ohio St.3d 377, 382 (1994), quoting Black’s Law Dictionary (6 Ed.1990) 542 and *U.S. v. Narragansett Improvement Co.*, 571 F.Supp. 688, 693 (D.R.I.1983). However, that 1994 case relied on a definition in Black’s Law Dictionary that has since been updated. Moreover, the *Celebrezze* court’s focus in that case was not the definition

of “construction” but “whether the replacement of [a particular] mill in 1987 with a virtually identical mill constituted the ‘installation’ of an air contaminant source, as that term is defined and set forth in relevant administrative rules.” *Id.* at 381. The Court’s definition of “construction” in *Celebrezze* was dicta and interpreted in a different context. I agree the context of words is necessary for an accurate interpretation of their meaning. Moreover, the meaning of words can change over time. I believe this 1994 *Celebrezze* definition of “construction”, which, notably, was used 18 years prior to the enactment of the HCSSA, is inconsistent with our current understanding of the word.

{¶45} Additionally, the legislative history of the statute supports a definition of construction that includes remodeling. As introduced, the bill which would eventually become the HCSSA and modify the CSPA initially defined “home construction service” as “the construction of a new residential building or the substantial rehabilitation of a residential building. ‘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.” 2012 Am.Sub. H.B. No. 383. The final definition of “home construction service” as codified eliminated “new” and “substantial rehabilitation of a residential building” from its definition. The modification of the definition in this way evidences an intention for the HCSSA to include work not only on new buildings but to existing structures as well. This is further supported by the inclusion of “work on an individual dwelling unit within that structure” in the R.C. 4722.01 definition. *Id.* If the definition of construction was limited to the construction of new structures, and not modifications of existing structures, that phrase would be effectively meaningless.

{¶46} Finally, the General Assembly has more recently specifically defined construction to include new work as well as remodeling in R.C. 4115.03(B)(2). Given that “construction” is not defined by R.C. 4722.01, I see no reason to deviate from the definition as used elsewhere in the Revised Code, as it is consistent with the current common, ordinary, and accepted meaning of “construction” used in this context.

{¶47} Thus, I would find remodeling contracts that meet the other statutory requirements of the HCSSA fall under the HCSSA, and not the CSPA. Accordingly, I dissent.