

IN THE SUPREME COURT FOR THE STATE OF ALASKA

In the matter of the proceeding pursuant to  
A.S.22.30.011(a) in relation to:

MARTIN FALLON.

JUDGE of the District Court Third Judicial  
District at Kenai, Alaska

ACJC File No. 2022-007

Supreme Court No. S-18873

RECOMMENDATION TO ACCEPT AGREED FINDINGS OF FACT AND  
UNCONTESTED PUBLIC REPRIMAND

Procedures before the Commission

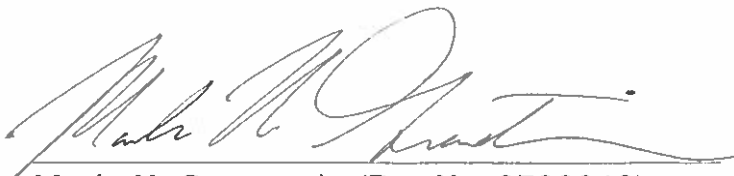
This matter was brought to the attention of the Alaska Commission on Judicial Conduct ("Commission") as part of a written complaint on October 13, 2022. Staff began an investigation that resulted in a Notice of Formal Investigation to the judge, pursuant to Commission Rule of Procedure Rule 8A, on March 8, 2023. At its regular meeting on April 28, 2023 the Commission determined that it would hold a Probable Cause Determination Meeting at its next regular meeting. A Notice of Probable Cause Determination Meeting issued on June 7, 2023. At the time set for the Probable Cause Determination Meeting on September 1, 2023, the Commission's Executive Director requested that the Commission move directly to a

Alaska Commission on Judicial Conduct  
510 L Street, Suite 585  
Anchorage, Alaska 99501  
(907) 272-1033  
FAX (907) 272-9309

Public Formal Hearing to allow her to present the attached Agreed Findings of Fact and Uncontested Recommendation for Discipline. That request was granted by unanimous vote of the Commission. At the conclusion of deliberations, the Commission unanimously voted to accept the Agreed Findings of Fact and Uncontested Recommendation for Discipline and recommend a public reprimand by the Alaska Supreme Court under Rule 406 of the Rules of Appellate Procedure.

While preparing this recommendation to the Alaska Supreme Court, the Commission's Executive Director became aware of an error in the number of pay affidavits referenced in the original approved Findings of Fact. The attached Amendment to Findings of Fact to Correct Original was agreed to by the full Commission and the judge's counsel.

SUBMITTED by the COMMISSION ON JUDICIAL CONDUCT, through its Executive Director, this 19<sup>th</sup> day of September 2023.



Marla N. Greenstein (Bar No. 9708048)  
Executive Director  
Commission on Judicial Conduct

STATE OF ALASKA

COMMISSION ON JUDICIAL CONDUCT

In the matter of the proceeding pursuant to  
A.S.22.30.011(a) in relation to:

MARTIN FALLON,

JUDGE of the District Court Third Judicial  
District at Kenai, Alaska

ACJC File No. 2022-007

**AGREED FINDINGS OF FACT AND UNCONTESTED  
RECOMMENDATION FOR DISCIPLINE**

The Alaska Commission on Judicial Conduct and Judge Martin Fallon agree to the attached Findings of Fact. Judge Fallon does not contest the Commission recommendation to the Alaska Supreme Court that Judge Fallon receive a Public Reprimand for the conduct and has waived his rights to a Probable Cause Determination and a Formal Disciplinary Hearing before the Commission. *Approved by vote of the Alaska Commission on Judicial Conduct September 1, 2023.*

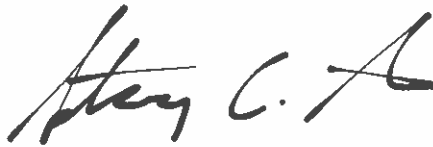


for the Commission

Marla N. Greenstein (Bar No. 9708048)

Executive Director

Commission on Judicial Conduct



for Judge Martin Fallon

Stacey C. Stone (Bar No. 1005030)

Holmes, Weddle & Barcott, PC

STATE OF ALASKA

COMMISSION ON JUDICIAL CONDUCT

IN RE:

MARTIN FALLON,

Judge of the District Court,  
Third Judicial District at Kenai, Alaska

ACJC File No. 2022-007

**AMENDMENT TO FINDINGS OF FACT TO CORRECT ERROR IN ORIGINAL**

The Alaska Commission on Judicial Conduct and Judge Martin Fallon agree to the following corrected paragraph 6 (the original paragraph 6 mistakenly included the pay affidavit for pay period ending October 16, 2022; Judge Fallon correctly waited to sign that affidavit until October 21, 2022):

6. Between August 26, 2022 and October 17, 2022, three pay affidavits were executed by Judge Fallon indicating that to the best of his knowledge and belief, there was no matter referred to him that had been undecided for a period of six months or longer.

STATE OF ALASKA  
COMMISSION ON JUDICIAL CONDUCT

IN RE:

MARTIN FALLON.

Judge of the District Court,  
Third Judicial District at Kenai, Alaska

ACJC File No. 2022-007

**FINDINGS OF FACT**

The Alaska Commission on Judicial Conduct and Judge Martin Fallon agree to the following findings of fact with regard to the above-referenced matter:

1. Judge Martin Fallon was appointed to the bench on December 6, 2019 by Governor Michael J. Dunleavy.
2. Judge Fallon stood for retention in 2022, and he received a favorable vote from the citizens of the State of Alaska during that election.
3. Judge Fallon heard the case of *Lopez v. Gunzner*, 3KN-21-00039SC, and the matter was ripe for decision at the conclusion of trial on December 21, 2021.
4. On August 26, 2022, Judge Wells placed a sticky note on the file, noting that it had been brought to her attention, and the case had been closed out in courtview in error. Judge Wells also noted the ripe date of December 21, 2021.
5. Judge Fallon issued a decision on October 17, 2022.
6. Between August 26, 2022 and October 17, 2022, four pay affidavits were executed by Judge Fallon indicating that to the best of his knowledge and belief,

there was no matter referred to him which had been undecided for a period of six months or longer.

7. Judge Fallon heard the case of *Superstructures Inc. v. Expi-Door Systems, Inc.*, 3KN-21-00089SC. In that matter, six months from the date the matter was ripe for decision, Judge Fallon requested additional information from the parties.

8. The requested additional information was provided by the parties on June 30, 2022, and a decision was issued on November 6, 2022.

9. Judge Fallon failed to dispose of the referenced matters in a prompt and efficient fashion in violation of the Alaska Code of Judicial Conduct 3B(8), which conduct stands to prejudice the administration of justice and may undermine the public's confidence in the integrity of the judiciary. In addition, by continuing to sign pay affidavits after another judge brought the overdue matter to his attention, Judge Fallon acted in a manner that did not promote public confidence in the integrity of the judiciary and created an appearance of impropriety in violation of Alaska Code of Judicial Conduct 2A.

IN THE SUPREME COURT FOR THE STATE OF ALASKA

In the matter of the proceeding pursuant to  
A.S.22.30.011(a) in relation to:

MARTIN FALLON.

JUDGE (retired) of the District Court Third  
Judicial District at Kenai, Alaska

ACJC File No. 2022-007

Supreme Court No. 5-18873

Designation of Record

Attached are the materials relied on by the Commission on  
Judicial Conduct in making its recommendation. The materials  
include: Notice of Probable Cause Meeting with attachments and  
documents supporting incorrect pay affidavits: (handwritten  
note from Judge Wells; following pay affidavits until final order  
issued; Final Decision and Order 3KN-21-00039SC).

SUBMITTED by the COMMISSION ON JUDICIAL CONDUCT,  
through its Executive Director, this 19<sup>th</sup> day of September 2023.



Marla N. Greenstein (Bar No. 9708048)  
Executive Director  
Commission on Judicial Conduct

Alaska Commission on Judicial Conduct  
510 L Street, Suite 585  
Anchorage, Alaska 99501  
(907) 272-1033  
FAX (907) 272-9309

**RETURN**

I served the above on Judge's Counsel Stacey C. Stone on the 21<sup>st</sup> day of September 2023, by mail.



Administrative Assistant

Aleta Bartimmo

Signature

Title

Name



STATE OF ALASKA  
COMMISSION ON JUDICIAL CONDUCT

In the matter of the proceeding )  
pursuant to AS 22.30.011(a) in )  
relation to, )

MARTIN FALLON, )

ACJC File No. **2022-007**

Judge of the District Court, )  
THIRD Judicial District at )  
Kenai, Alaska )

**NOTICE OF PROBABLE  
CAUSE DETERMINATION  
MEETING**

**To: Hon. Martin Fallon  
Alaska District Court  
125 Trading Bay Drive, Suite 100  
Kenai, Alaska 99611**

Pursuant to Rule 8 (b) and 11 (b) (4) of the Commission Rules of Procedure, this notice informs you that a Probable Cause Determination meeting will be held on **Friday, September 1, 2023 at 1:00 p.m.** at the **Alaska Commission on Judicial Conduct, 510 L Street, #585, Anchorage, Alaska**. Possible outcomes at that meeting include dismissal, informal and private admonishment, recommendation for counseling, or the issuance of formal charges.

As required by Commission Rule 12 (b) attached to this notice is the previous notice of investigation sent to you dated March 8, 2023 that sets out the factual allegations and the legal issues that were the subject of the staff investigation. The allegations and issues set out in that notice constitute the allegations and legal issues for purposes of this notice as well. The Commission will consider whether your delay and inaccurate pay affidavits in this case constitute a violation of AS 22.30.011 (a) (3) (C), (D) and (E), Canons 1, 2A and 3B (8).

A list of witness names for purposes of probable cause is also attached. If you choose, the Commission will hear from you again directly as well as consider any written information that you provide at the Probable Cause Determination meeting. Your written response to the

Notice of Investigation is part of the record. At this point in the process, judges often find it helpful to consult counsel. Any additional written information or motion under Rule 12 (b) must be submitted by **4:00 p.m. Monday, August 28, 2023. Please provide both an electronic copy of any additional materials and a hard copy.**

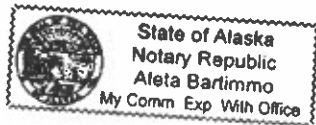
DATED this 1<sup>st</sup> day of **June, 2023**, at Anchorage, Alaska.

ALASKA COMMISSION ON JUDICIAL CONDUCT



MARLA N. GREENSTEIN  
Executive Director

SUBSCRIBED AND SWORN TO before me this 11<sup>th</sup> day of **June, 2023**, at Anchorage, Alaska.



Notary Public in and for Alaska

My commission expires: 12/31/23

**RETURN**

I served the above Notice of Probable Cause Determination on Judge Martin Fallon, the person to whom it is addressed, on the 7<sup>th</sup> day of June, 2023, by certified mail.



Administrative Assistant

Aleta Bartimmo

Signature

Title

Name



**CONFIDENTIAL**

March 8, 2023

Honorable Martin Fallon  
Alaska District Court  
125 Trading Bay Drive  
Suite 100  
Kenai, Alaska 99611

**Re: Complaint #2022-007**

Dear Judge Fallon:

The Alaska Commission on Judicial Conduct has considered a complaint that may require action by the Commission. There were two matters in which there was undue delay in rendering a decision and in one of those matters you signed pay affidavits while knowing that the matter was under advisement for more than six months. The allegations include:

(1) In *Lopez v. Gunzner*, 3KN 21 00039SC, the matter was ripe for decision at the conclusion of trial on December 21, 2021. The file remained in your chambers from the end of the trial. On August 26, 2022, the file was brought to Judge Wells's attention and she sent the file with a "sticky note" to you noting the ripe date. That file remained in chambers with no action by you until after a complaint was received by the Commission. Your decision issued on October 17, 2022. Pay affidavits were erroneously signed by you after June 21, 2022 (six months past the conclusion of the trial). There were approximately 8 inaccurate signed pay affidavits.

(2) Your explanation to the parties set out in the October 17, 2022 "Explanatory Memo to Parties" did not accurately describe the circumstances surrounding the delay.

(3) In a second similar matter, *Superstructures Inc v. Expi Door Systems Inc*, 3 KN 21 00089SC, there was undue delay. Six months to the day after the matter was ripe for decision, you issued an order on June 10, 2022 requesting additional information from the

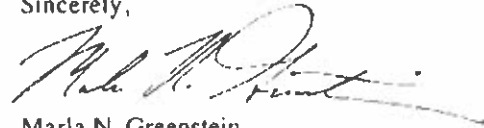
parties. The parties in that matter provided the information to the June 10, 2022 order promptly by June 30, 2022 but you did not issue a final opinion until November 6, 2022.

Commission Rule 8A requires that you be provided notice of any investigation where the complaint is not dismissed at the conclusion of the staff investigation. This letter will serve as that notice. This notice is sent to enable you to provide any additional information that you believe is relevant to the Commission's concerns. You may also wish to appear at the Commission's next meeting, Friday, April 28<sup>th</sup>.

You may provide written comments or other materials to the Commission for its consideration prior to the meeting. There is a range of possible outcomes in this matter from dismissal, to informal and private admonishment, recommendation for counseling, or to proceed to a probable cause determination.

If you have any questions, please feel free to call.

Sincerely,

A handwritten signature in black ink, appearing to read "Marla N. Greenstein", with a long horizontal flourish extending to the right.

Marla N. Greenstein  
Executive Director

**WITNESS LIST #2022-007**

Jennifer Wells, Judge Superior Court (ret)

Denise Chappell, Clerk of Court Kenai (ret)

Vicki Fruichantie, JA Kenai Court

Phillip Lopez, Party case 3KN-21-0039SC

8/26

Marty - Denice  
brought this  
by. Looks as  
though it was  
closed out on  
court view in  
error. One of the  
parties brought  
it to her attention  
Jan

21-395C

ripe 12/17/21

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**ALASKA COURT SYSTEM  
AFFIDAVIT**

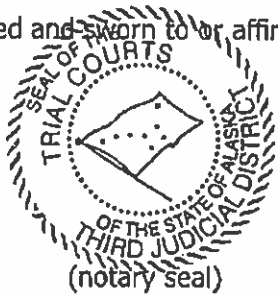
For the pay period ending on this date: 9/4/2022

I, being first duly sworn, state that to the best of my knowledge and belief no matter currently referred to me for opinion or decision has been uncompleted or undecided by me for a period of more than six months.

Signature [Signature]  
Title District Court Judge  
Print Name Martin C. Fallon

Date 9/1/22  
Address 125 Trading Bay Dr. Ste. 100  
Kenai AK 99611

Subscribed and sworn to or affirmed before me at Kenai Alaska, on 9-1-22



[Signature]  
Signature of Notary Public, Clerk of Court, or other person authorized to administer oaths.

My commission expires: With Office

I certify under penalty of perjury that the foregoing is true, that this statement is being executed at \_\_\_\_\_, Alaska, and that no notary public or other official empowered to administer oaths is available.

\_\_\_\_\_  
Date Signature

**INSTRUCTIONS**

The affidavit must be signed before a notary public, postmaster, or any other person authorized by AS 09.63.010 to administer oaths. If there is no one available who is authorized to administer oaths, you should sign and date the statement certifying that the affidavit is true (AS 09.63.020).

An affidavit must be completed at the end of each pay period. Starting December 16, 2019, the Alaska Court System is moving from a semi-monthly pay period to a bi-weekly pay period. Pay periods will start on a Monday and end on a Sunday, 2 weeks later. Your pay period ending date is the Sunday following a pay day. You can find a State of Alaska biweekly payroll calendar at: <http://doa.alaska.gov/calendar/>

The completed affidavit must be sent to the Division of Finance in Juneau at the end of each pay period:

- Mail:* P.O. Box 110204  
Juneau, Alaska 99811-0204
- Fax:* (907) 465-5639
- Scan and Email:* [doa.dof.pr.affidavit.mailbox@alaska.gov](mailto:doa.dof.pr.affidavit.mailbox@alaska.gov)



**ALASKA COURT SYSTEM  
AFFIDAVIT**

For the pay period ending on this date: 9/18/2022

I, being first duly sworn, state that to the best of my knowledge and belief no matter currently referred to me for opinion or decision has been uncompleted or undecided by me for a period of more than six months.

Signature [Signature]  
Title District Court Judge  
Print Name Martin C. Fallon

Date 9/14/22  
Address 125 Trading Bay Dr. Ste. 100  
Kenai AK 99611

Subscribed and sworn to or affirmed before me at Kenai Alaska, on 9.14.22



[Signature]  
Signature of Notary Public, Clerk of Court, or other person authorized to administer oaths.

My commission expires: With Office

I certify under penalty of perjury that the foregoing is true, that this statement is being executed at \_\_\_\_\_, Alaska, and that no notary public or other official empowered to administer oaths is available.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

**INSTRUCTIONS**

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[doa.dof.pr.affidavit.mailbox@alaska.gov](mailto:doa.dof.pr.affidavit.mailbox@alaska.gov)

ADM-100 (12/19)  
AFFIDAVIT

AS 22.05.140(b), AS 22.07.090(b)  
AS 22.10.190(b), AS 22.15.220(c)





**ALASKA COURT SYSTEM  
AFFIDAVIT**

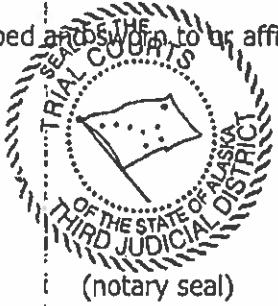
For the pay period ending on this date: 10/2/2022

I, being first duly sworn, state that to the best of my knowledge and belief no matter currently referred to me for opinion or decision has been uncompleted or undecided by me for a period of more than six months.

Signature [Signature]  
Title District Court Judge  
Print Name Martin C. Fallon

Date 9/27/22  
Address 125 Trading Bay Dr. Ste. 100  
Kenai AK 99611

Subscribed and sworn to by affirmed before me at Kenai Alaska, on 9.27.22



[Signature]  
Signature of Notary Public, Clerk of Court, or other person authorized to administer oaths.

My commission expires: With Office

I certify under penalty of perjury that the foregoing is true, that this statement is being executed at \_\_\_\_\_, Alaska, and that no notary public or other official empowered to administer oaths is available.

\_\_\_\_\_  
Date Signature

**INSTRUCTIONS**

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**ALASKA COURT SYSTEM  
AFFIDAVIT**

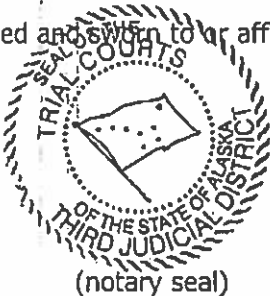
**For the pay period ending on this date:** 10/16/2022

I, being first duly sworn, state that to the best of my knowledge and belief no matter currently referred to me for opinion or decision has been uncompleted or undecided by me for a period of more than six months.

Signature [Signature]  
Title District Court Judge  
Print Name Martin C. Fallon

Date 10/21/22  
Address 125 Trading Bay Dr. Ste. 100  
Kenai AK 99611

Subscribed and sworn to or affirmed before me at Kenai Alaska, on 10/21/22



[Signature]  
Signature of Notary Public, Clerk of Court, or other person authorized to administer oaths.

My commission expires: With Office

I certify under penalty of perjury that the foregoing is true, that this statement is being executed at \_\_\_\_\_, Alaska, and that no notary public or other official empowered to administer oaths is available.

\_\_\_\_\_  
: Date Signature

**INSTRUCTIONS**

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*Fax:* (907) 465-5639  
*Scan and Email:* [doa.dof.pr.affidavit,mailbox@alaska.gov](mailto:doa.dof.pr.affidavit,mailbox@alaska.gov)

IN THE DISTRICT COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT KENAI

Phillip Lopez, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 Aaron Gunzner, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

Case No.: 3KN-21-00039SC

DECISION AND ORDER

On December 6, 2021, the above captioned parties appeared before Judge Martin C Fallon for a small claims trial. Mr. Lopez was self-represented. Sonya Redmond appeared with Mr. Gunzner of Aaron Construction.

Findings of Fact:

Plaintiff in this case has filed a complaint seeking \$10,918.00, plus interest and costs for alleged breach of contract. On March 21, 2018, the parties entered into a contract for the construction of a pole building shell. In exchange for a payment of \$28,700, Gunzner agreed to build a 24' x 36' pole building shell, with a 24' x 20' second floor above a 24' x 36' x 15' shop. Plaintiff alleged that, due to faulty construction, snow came in through a gap in the peak of the roof of the pole building. This led to a large buildup of snow in the attic. Once the temperatures warmed in the spring-time, the snow melted, causing damage to the structure below. Plaintiff alleges that defendant improperly installed foam closures in the ridge. The foam closures were displaced, leading to an opening in the ridge allowing snow to blow in under the ridge cap. Plaintiff also alleges that defendant failed to install the proper plywood sheathing under the

D

metal roof, failed to install a water/ice shield on the eaves and underlayment, and failed to properly vent the ridge.

Plaintiff also alleges that defendant installed windows at an improper height. Once cabinets were installed in the kitchen of the building, the base of the window was about 4 inches below the countertop, and thus 6 inches below the proper height.

Defendant filed an Answer claiming they owe plaintiff nothing because defendant performed in accordance with the contract. Defendant asserts that, since the structure originally contracted for was essentially a pole barn, there was never an agreement for sheathing, a water/ice shield, nor any ridge venting. Defendant asserts that these items may have been included if the parties had contracted for a residential structure but this was not what was agreed to and the complained of missing items were not included in the contract. Defendant also asserts that the contract included the installation of one exterior window but there was no agreement as to its specific location.

There were many changes and add-ons subsequent to the original pole barn contract. Each of these changes and add-ons were addressed in subsequent agreements and none are the subject of this litigation.

At the trial, plaintiff testified that defendant was aware that the implicated structure was to have a residential aspect as defendant participated in internal framing, pouring the concrete flooring, outside decking, and internal upstairs flooring. As such, defendant should have known that the attic area would be closed off and insulated, thus requiring proper venting and baffling as necessary.

Since, plaintiff argues, defendant knew of the residential aspect of the structure, defendant should have known the proper height for the window opening. Given standard

countertop heights, the widow opening should have had its base at 6 inches above standard countertop height.

Plaintiff also testified that snow had blown into the insulated attic. Plaintiff asserts the snow must have blown in under the ridge cap through the gap left in the ridge line when the foam closures were displaced. Plaintiff provided photographs of tall piles of snow in the attic under the gaps left in the ridge line. The photos also show the foam closures as missing and/or hanging down from the ridge line where they were originally installed.

Aaron Gunzner, the owner of Aaron Construction, testified for defendant. Defendant testified that the original agreement was for a pole building shell. As it was not anticipated that the building would have a residential aspect, many of the items plaintiff complains of were not included in the agreement to build the pole structure. In particular, there was no agreement for any plywood sheathing, any water/ice shield, and no ridge venting. Defendant provided a copy of the original contract consistent with his testimony.

Defendant testified that the contract called for the installation of one 4' x 3' exterior window. There was no agreement as to its specific placement. Additional windows were added by subsequent agreement. Defendant testified the windows were installed per plaintiff's request in the original pole shell construction phase. No where in the contract is there an agreement as to the specific location.

Defendant also testified that the foam closures originally installed in the gap in the ridge line is not intended to prevent snow from entering the structure. According to defendant, the foam closures are installed only to keep bugs and dirt from entering the

structure. Defendant opines that the snow build up in the attic was due to condensation. Once the attic was insulated (which happened after defendant finished his work on the project), water vapor from the warm residential area under the attic traveled upwards into the attic until it reached the cold air at the ridge line. At this point, defendant believes, the water vapor becomes condensation in the form of snow which falls to the attic floor thus creating the piles of snow beneath the ridge line. Plaintiff asserts the snow in the attic was not a result of condensation but rather was snow that blew into the attic under the ridge cap through the gap left vacant by the improperly installed foam closures. Plaintiff opines that condensation would fall evenly throughout the attic as opposed to in piles centered under the ridge line beneath the failed seals. Plaintiff also testified a vapor barrier was installed in the attic before the insulation was added, thus limiting any condensation that might enter the attic.

Plaintiff testified that the snow that built up in the attic later melted once spring arrived. This led to water damage to the area below. After attempting to engage defendant for repairs (which defendant refused), plaintiff engaged Hanson's Roofing to make repairs. In addition to completing repairs, Hanson also drafted a letter regarding observations made. Plaintiff included the Hanson letter in the original pleadings. In the letter Hanson noted the foam closures had "blown out, which led to quite a bit of snow/rain to blow up under the ridge metal and build up in the attic." Hanson vented the ridge and re-installed foam closures with adhesive to keep them in place.

In order to repair the roof, Hanson performed the following: removed existing metal roofing; installed 19/32" sheathing on existing beams; installed ice and water shields and synthetic underlayment; reinstalled foam closures with adhesive; reinstalled

metal roofing. Plaintiff included the invoice from Hanson for the repair work done. The total on the Hanson invoice was \$6918.

Plaintiff also engaged Abolish Abortion Construction ('AAC') to correct the placement of the kitchen window. AAC reframed the window at the proper height, refinished the interior drywall and trim and the exterior siding. Plaintiff included the invoice from AAC which shows a total charge of \$4,015.

As noted above, plaintiff asserts a claim for a total of \$10,918. This seems to be an attempt to be fully compensated for repairs made (Hanson \$6918 plus AAC \$4015).

#### Conclusions of Law:

A contract is a promise or set of promises. In the event of the breach of that promise, the law provides a remedy. In order to assert a claim for breach of contract, a plaintiff must allege that a contract was made, breach of that contract, causation, and damages. *Nicdao v. Chase Home Finance* 839 F.Supp.2d 1051 (D. Alaska 2012). To prevail on a contract claim, plaintiff must prove: the existence of the contract by a preponderance of the evidence; the parties expressed mutual assent to the contract through valid offer and acceptance; and the exchange of valuable consideration. *Christianson v. First Nat. Bank Alaska* 2012 WL 6062124 (Alaska 2012).

In the instant case, it is undisputed that the parties entered into a valid contract. The parties had an agreement and there was performance on both sides. The parties agreed to the construction of a 24' x 36' pole building shell, with a 24' x 20' second floor above a 24' x 36' x 15' shop for a total of \$28,700. The issue in this case is whether that contract was breached. As noted above, there was a contract and both parties

performed. Plaintiff was not satisfied with defendant's performance, and filed the instant claim.

There was no testimony regarding any express warranties included in the original agreement between the parties. However, "it is well settled that, in building or construction contracts whenever someone holds himself out to be specially qualified to do a particular type of work, there is an implied warranty that the work will be done in a workmanlike manner, and that the resulting building, product, etc. will be reasonably fit for its intended use." *Lewis v. Anchorage Asphalt Paving Co.*, 535 P.2d 1188 (Alaska 1975) (internal citations omitted). Here, defendant holds herself out to be a qualified contractor. The implied warranty gives rise to a duty to perform the contracted for work with a specific degree of care. It "imposes on the performer only the degree of care or skill that a reasonably prudent, skilled worker would have exercised under the circumstances. There is no requirement of perfection. The test is reasonableness in terms of what the workman of average skill and intelligence would ordinarily do." *Lunn v. Silfies* 106 Misc.2d 41, 44-45, 431 N.Y.S.2d 282 (Supr. Ct., Allegany County 1980).

There is a dispute as to the many alleged defects not admitted by defendant. At the trial, Defendant gave credible testimony refuting many of the alleged defects. For instance, there was no agreement to install plywood sheathing, any water/ice shields, nor any ridge venting. This testimony is confirmed by the written terms of the agreed upon contract.

Defendant also gave credible testimony that the agreed upon exterior window installation was done according to the parties' agreement. The contract calls for no specific location of the window and defendant testified credibly that plaintiff agreed to



the original placement of the exterior window. At this point, defendant understood the building was to be a pole structure with no residential aspect. There was no expectation that the window opening would have to align with later installed kitchen cabinets.

There remains the issue of the displaced foam closures in the ridge line. Although not specifically denoted in the contract, defendant admits to installing the foam closures but alleges the installation was only to keep bugs and dirt out of the attic. Defendant asserts that the snow build up in the attic was a result of plaintiff's decision to later add a residential aspect to the pole structure, including insulation in the attic created. This led to condensation which resulted in the snow piles. Plaintiff asserts that, by failing to properly install the foam closures, defendant breached the contract. Plaintiff asserts this breach led to snow blowing into the attic through the gap left in the ridge line. This then led to the water damage later suffered when the snow melted, as well as the need for repairs which defendant was unwilling to perform.

Plaintiff's photos show the snow piles directly below the ridge line in the areas where the foam closures are missing. The snow piles are steep mounds with the highest point directly below the open gaps in the ridge line. It appears much more likely that the snow entered the attic through the gaps in the ridge line as a result of the improperly installed foam closures. As noted by plaintiff, any snow caused by condensation would be spread more evenly across the attic. This conclusion is further supported by Hanson's letter indicating that the snow had blown in through the gaps in the ridge line left by the missing foam closures.

Hanson indicated they fixed the problem by using an adhesive to keep the foam in place thus keeping any snow from blowing in. This is a relatively simple solution well

within the ambit of what a reasonably prudent, skilled worker would have done under the circumstances. While the contract did not specifically call for installation of foam closures, the implied warranty of workmanlike performance imposed upon defendant the duty to install the foam closures in a manner that would reasonably assure they would remain in place. As such, the court finds defendant breached the contract by failing to properly install the foam closures.

There remains the issue of determining the amount of damages arising from the breach. Plaintiff asserts damages in the amount of \$10,918, as the cost of affecting the repairs necessary as a result of defendant's breach (n.b. the statutory limit in a small claims action is \$10,000). However, many of the repairs performed not necessitated by defendant's breach. In particular, all of the work performed by AAC was unrelated to defendant's breach. The contract in this case did not denote a specific location for the exterior window and plaintiff agreed to the original placement of the window. As such, defendant is not responsible for any of the work done by AAC.

Defendant is responsible for some of the work done by Hanson. As noted above, Hanson performed the following repairs: removed existing metal roofing; installed 19/32" sheathing on existing beams; installed ice and water shields and synthetic underlayment; reinstalled foam closures with adhesive; reinstalled metal roofing. Defendant cannot be held liable for the installation of the sheathing, water shields or synthetic underlayment, as none of these items was included in the original contract. Nor can defendant be held liable for the removal and re-installation of the metal roof. Defendant's breach was for improperly installing the foam closures. These closures could have been reinstalled with adhesive without having to remove and reinstall the

metal roof (either from inside the attic or by removing the ridge cap only). While Hanson does not itemize its invoice for repairs made, the reinstallation of the foam closures is a relatively insignificant aspect of the overall work performed. This would tend to limit defendant's liability to a relatively insignificant amount.

However, plaintiff gave credible testimony that the melting snow in the attic led to water damage in the structure below. Defendant's breach led directly to the snow build up in the attic and was the proximate cause of plaintiff's water damage. Plaintiff did not specify what damages resulted nor any specific monetary amount for damages suffered. As previously noted, plaintiff sought reimbursement for all repairs completed on the structure after defendant's breach. However, the court found that defendant's breach is limited to improper installation of the foam closures, and the damage resulting from the snow build up in the attic.

There are well established measures which the court may use in establishing damages in contractor breach of contract cases. The Alaska Supreme Court has stated that the preferred method of calculating damages is the cost of completion or repair in accordance with the contract specifications. *Advanced, Inc. v. Wilks*, 711 P.2d 524, 526 (Alaska 1985). Here, however, defendant refused to make repairs. Furthermore, there was damage caused to the structure prior to repairs being made. The damage was proximately caused by defendant's breach.

There are Alaska statutes regarding contractor disputes. AS 09.45.881 requires that "[i]n an action brought on a claim against a construction professional, the claimant shall, at least 90 days before filing the action, serve written notice of the claim on the construction professional." In this case, it appears that proper notice was given.

The statute provides some guidance for determining the appropriate amount of damages in a contractor dispute case where no opportunity to repair was afforded the contractor. AS 09.45.889 provides: "If a claimant unreasonably rejects an offer made under AS 09.45.881 - 09.45.899 or does not give the construction professional a reasonable opportunity to repair the defect under an accepted offer of settlement, the claimant may not recover an amount that exceeds the reasonable cost of the repairs offered under AS 09.45.886 that are necessary to cure the defect and that are the responsibility of the construction professional[.]" AS 09.45.889(a)(1). Here, defendant was offered an opportunity to repair, but refused.

Calculating damages in this case is further complicated by the fact that the cost of affecting the necessary repair (re-installing the foam closures with adhesive) is relatively insignificant. However, the resulting water damage is significant. Pursuant to District Court Rules of Procedure, Rule 16(c), the court investigated the cost of water damage ceiling repairs by going to <https://www.angi.com/articles/how-much-does-repairing-ceiling-cost.htm>. The court determined the cost of water damage ceiling repair to range nationally from \$419 to \$1340. Given the repairs here must be made on the Kenai Peninsula, in Alaska, the court will use the high end of the national range.

Therefore, the court calculates damages in this case as follows:

1. The cost to repair the water damage: \$1340.
2. The cost to re-install the foam closures: (calculated as 10% of the work done by Hanson): \$691.

Total cost, items 1 – 2: \$2031.

THE COURT THEREFORE FINDS that: there was a valid contract in this case; defendant breached said contract; defendant's breach was the legal cause of plaintiff's damages, and said damages are valued at the cost of repair, \$2,031.00.

As such, IT IS HEREBY ORDERED:

That Plaintiffs recover from Defendants:

PRINCIPAL: \$2,031.00.

Since each party prevailed in part, each party to bear their own costs. Any appeal must be filed within 30 days from the date of distribution of this order.

This judgment shall bear interest at the annual rate of 3.25% from the date of judgment until paid.

After this judgment is collected, the plaintiff shall file with the court a Satisfaction of Judgment (form SC-17).

10/17/22  
Date

  
\_\_\_\_\_  
Martin C. Fallon, District Court Judge

CERTIFICATION OF DISTRIBUTION

I certify that a copy of the following was Mailed/faxed/court box to the following at their address of record.

Lopez - emailed, CC mailed - 10/20/22  
Date 10/19/2022 Clerk: SVO

Redmond 10/19/22