

# DAILY REPORT

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## Jury delivers mixed verdict in fight over dream home

**Plaintiffs win almost \$200K, but they lost \$50K on counterclaim by contractors**

**GREG LAND** | gland@alm.com

A COUPLE WHO claimed their \$2 million dream home turned into an uninhabitable money pit received nearly \$200,000 worth of relief from a Fulton County Superior Court jury last month.

But the couple will have to make do with less. Two third-party defendants hit with about \$30,000 of the damages didn't show up in court and appear unlikely to pay up. Plus, the jury also awarded one of the defendant building companies about \$50,000 in a counterclaim.

The dispute that left the custom-designed home overlooking Chastain Park unfinished and vacant may not end anytime soon, said attorney Michael St. Amand, who defended one of the companies. The plaintiffs have recently filed a nearly identical suit against the individual owner of the defendant companies in the just-tried case, architect and home builder Mark Wilcox, in Fulton County State Court.

"In our last communication with their lawyers, we suggested it might be a good idea to get together and try to resolve everything," said the Gray, Rust, St. Amand, Moffett & Brieske partner.

Kim Perez and Patrick Arndt of Decatur's Perez Arndt, who represent plaintiffs Robin and James Macke, said there are still several issues under discussion and that an appeal is likely.

Perez said the parties are in the early stages of hashing out a global settlement of all the

issues, but, "Right now, we're stuck at a different stage: We're arguing over the form of the judgment concerning the third-party defendants."

According to the complaint, the roots of the case were laid in 2007 when the then-Robin Prescott — who would go on to marry James Macke — hired Wilcox to design and build a "showpiece-caliber home" on Lake Forrest Lane.

Wilcox was the owner of two companies: CRE8 ATL Inc., which oversaw the design and supervised the construction of the project, and its subsidiary, 2X8 Construction Co. The complaint said Wilcox calculated that the home would cost a total of \$1.9 million. (Perez said Prescott paid an additional \$635,000 for the lot the house occupies.)

Construction on the soaring, modern home began in the summer of 2007.

"Everything was going smoothly until they were nearly finished," said St. Amand, who represented CRE8. The couple had been living in a condominium during the construction, he said, but they were under pressure to move out because it was about to be rented to someone else.

Although the house wasn't quite finished,



**Michael St. Amand**

the city issued a Certificate of Occupancy in December 2008, and Prescott and Macke moved in shortly thereafter.

"She had paid almost \$2 million at that point, and still owed about \$60,000," St. Amand said. Once they moved in, however, "she ran into disagreements with some of the subcontractors on the job, [and] Mr. Macke started trying to tell them what to do. She stopped paying any bills and [Wilcox] couldn't pay the subcontractors."

Macke created a lengthy "punch list" — a construction-industry term referring to items that need to be completed or corrected prior to finishing a job — including complaints about the house's painting, waterproofing, flooring, drywall and windows, among other things.

"He put about 160 Post-It Notes all over the



**About \$2 million has been spent on this house on Lake Forrest Lane, but problems led to the courthouse.**

house, and created what came to be known as the Sticky-Label Notebook,” said St. Amand..

With Prescott refusing to pay any more on the house, Wilcox entered a stop-work order in January 2009. Unable to reach an agreement, Wilcox requested an opportunity to inspect and repair any items for which he was contractually responsible under Georgia’s Right to Repair Act, St. Amand said.

“He had a dozen or so contractors come in and go through and see what needed to be repaired,” he said. “In some instances, there was nothing wrong. In other occasions, some work was not completed, and some did need to be repaired.”

St. Amand said the couple hired their own remodeling expert to assess the situation, and they “came up with about \$350,000 right quick, and that didn’t include plumbing, electrical or structural issues.”

Prescott and Macke refused to pay Wilcox any more money, he said, and the house has essentially remained as it was then: Incomplete tile work in some areas, uninstalled steam-shower controls, incomplete or uninstalled fireplace features, hardwood flooring that has buckled and cupped — either because of a leaky pipe, according to St. Amand, or because of a faulty in-floor heating system, according to plaintiffs’ documents — and other items that need to be finished or corrected.

Even so, the couple remained in the home until a few months ago, said the lawyers. .

In January 2010, Prescott and Macke sued CRE8 and 2X8 for breach of contract, breach of fiduciary duty, fraud, negligence and violation of the Georgia Fair Business Practices Act. The suit said Prescott had paid CRE8 and 2X8 more than \$2.1 million, and that it would take at least \$790,000 to complete and repair the home and swimming pool.

CRE8’s insurer, Auto-Owners, hired St. Amand’s firm to defend the company, while 2X8’s carrier, Builders Insurance, turned to Carlock, Copeland & Stair.

Defense experts spent two days inspecting the house and concluded that, while there were no structural deficiencies, some systems needed to be completed, and some repairs and cleanup needed to be done.

The final defense estimate to finish the house was just under \$100,000, said St. Amand, some of which was the fault of sub-contractors.

The defense brought third-party complaints against three subcontractors. Two of them, Custom Glass Concepts Inc. and Weldtech One Inc., never responded to the suit. The third, James Electric, settled with 2X8 for \$54,000 prior to trial, St. Amand said.

During a mediation with Victor Faenza of Bay Mediation, he said, the plaintiffs wanted \$2 million, while the defense offered “peanuts.”



**A lawyer said defendants offered “peanuts” in mediation over the home. Above, its kitchen.**

“Nobody offered them \$100,000, because we thought the subcontractors were responsible in part,” he explained.

Trial began Aug. 20 before Fulton County Superior Court Judge Shawn LaGrua, with Gray Rust associate William Martin assisting St. Amand. Atlanta solo practitioner James Neuberger pursued CRE8’s counter-claim against the Mackes for unpaid invoices and outstanding sums owed on the contract.

Carlock Copeland partner David Root and associate Katherine Holley represented 2X8.

Perez said the plaintiffs’ key witnesses were Maureen Davis, a structural engineer with Lawrenceville’s Haight Davis & Associates, who testified that the house was structurally unsound; and Keiffer Phillips, the builder and remodeler the Mackes had hired to appraise the house’s alleged defects prior to filing suit.

“He was only allowed to testify as to certain issues, and not to others that were critical to our case,” Perez said. She said Phillips testified that, in order to properly assess the structure’s deficiencies, he would have had to destroy so much of it that it “would have been easier to just tear it down.”

CRE8 put up Dave Philips, the structural engineer who certified the plans for the house, and Bob Kenney, another structural engineer who rebutted Davis’ testimony, St. Amand said.

A third key defense witness was Larry Stoddard, a general contractor and builder, who estimated the total cost to repair the house at \$99,970.

At closing, he said, the plaintiffs’ lawyers asked the jury to award \$486,000 to the Mackes.

Neuberger asked for \$59,000 for CRE8 to resolve the counterclaim, St. Amand said.

After eight days of trial, the jury of two Asians, three African-Americans and seven Caucasians took about six hours over two days to award the plaintiffs a total of \$193,663.

The panel allocated 69.3 percent of the damages, or \$134,208, to 2X8. It found CRE8 liable for 15.2 percent, or \$29,437. And it evenly assigned the two third-party defendants 15.5 percent of the total, or \$30,018.

But the panel found the Mackes liable for \$51,110 on CRE8’s counterclaim.

Both St. Amand and Perez said post-trial interviews indicated that the jurors had been widely split and wanted to strike a compromise.

“It was a fun case to try,” said Perez. “Even though it was knock-down, drag-out litigation, there were very skilled, competent lawyers on the other side.”

“We were happy with the result,” said Neuberger, who did not speak to the jurors.

Root, the lawyer for 2X8, offered a brief email statement: “The plaintiff asked in opening for \$2,467,684 to re-build the house, plus \$223,149 in attorneys fees; plus punitive damages. They didn’t quite get there.”

The case is *Prescott v. CRE8 ATL Inc.*, No. 20101CV180651. ☞