2025 IL App (1st) 240063-U
No. 1-24-0063

SIXTH DIVISION
September 26, 2025

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

TIMOTHY KELLY, Plaintiff-Appellee, v. MINAL GIRI, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Cook County, Illinois. No. 18 L 12486 The Honorable Bridget A. Mitchell, Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Justices Hyman and Gamrath concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's finding that defendant committed fraudulent inducement by not disclosing a material defect prior to the sale of her condominium unit to plaintiff was not against the manifest weight of the evidence.

¶ 2 Defendant Minal Giri appeals the trial court's ruling in favor of plaintiff on his claim of fraudulent inducement and its award of $76.429.19 to him after a bench trial. On appeal, defendant contends that the trial court's ruling that plaintiff proved by clear and convincing evidence that defendant fraudulently induced him was against the manifest weight of the evidence presented at trial. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 This matter arises from defendant's 2016 sale to plaintiff of a condominium unit (unit) in the Admiral's Pointe Condominium Complex in Chicago, Illinois. The record establishes that the unit is the two-story penthouse on the 26th and 27th floors of the building connected by an internal stairwell. The main living areas are on the 26th floor (first floor), which include two bedrooms, two bathrooms, and an open floor plan containing a living room, kitchen, and dining room. The first floor also has an outdoor balcony which is connected to the interior of the unit by a sliding glass door (first floor patio door). The 27th floor (second floor) comprises one large room with a wet bar, and also has a sliding door (second floor patio door) leading to a second outdoor balcony. A floor plan of the first floor of the unit is attached to the 2017 mold remediation contract provided by J.C. Restoration. The floor plan shows that while the entrance to the master bedroom is near the hallway leading to the front door, the master bedroom shares a wall with the first-floor patio door.

¶ 5 After the sale, plaintiff discovered mold under the flooring of the unit which resulted from water intrusion through defects on the property, including around the first-floor patio door. Plaintiff sought mold remediation for the unit, and subsequently initiated this proceeding in the circuit court of Cook County.

¶ 6 A. Pretrial Proceedings

¶ 7 On November 16, 2018, plaintiff filed his initial four-count complaint against both defendant and the Admiral's Point Condominium Association (Association) seeking damages in excess of $50,000. He alleged that defendant breached her real estate contract with plaintiff by not disclosing a known issue of water damage and leaks in the unit (count I) and fraudulently induced plaintiff to purchase the unit by intentionally concealing the water intrusion issue (count II).

Plaintiff also alleged that the Association breached its contract with him by not resolving issues in his unit which arose from the water intrusion (count III) and breached its fiduciary duty to him by not repairing or maintaining the common elements of the unit despite having knowledge of the defective conditions (count IV). In relevant part, plaintiff attached the residential real estate contract he entered into with defendant and a Residential Real Property Disclosure Report wherein defendant represented that she did not know of any material defects within the unit.

¶ 8 After proceedings on motions to dismiss related to all counts brought by both defendant and the Association, the court dismissed counts I, III, and IV, giving plaintiff leave to replead. The court denied defendant's motion to dismiss count II, the fraudulent inducement claim.

¶ 9 Plaintiff subsequently filed his first amended and second amended complaints, the latter of which alleged that defendant breached the legal duties created by the disclosure report by not disclosing the known issues of water damage and water infiltration into the unit (count I), fraudulently induced defendant into purchasing the unit by her representations in the disclosure report (count II), and fraudulently concealed the known defects from plaintiff (count III). Plaintiff also alleged that the Association breached its contract (count IV) and its fiduciary duty to him (count V), and was negligent in hiring a contractor who incompetently repaired the defect which caused the water infiltration prior to plaintiff's purchase (count VI). Plaintiff attached, in relevant part, the Residential Real Property Disclosure Report and photographs showing mold underneath the flooring of the unit.

¶ 10 On October 8, 2019, defendant filed another motion to dismiss counts I and III of plaintiff's complaint, and on February 13, 2020, the court dismissed count I with prejudice, but denied defendant's motion with respect to count III. On February 27, 2020, defendant answered plaintiff's second amended complaint and raised plaintiff's failure to mitigate damages by not making prompt

repairs to the unit as an affirmative defense. Plaintiff also settled with the Association, and the Association was dismissed from the litigation.

¶ 11 On May 13, 2022, defendant filed a motion for summary judgment, arguing that there was no genuine issue of material fact that she was aware of water damage or leaks to the first floor patio door between the time she placed the unit for sale until the closing of the property, and so there was no evidence that she concealed a material fact or made a false statement of material fact regarding water intrusion or that the first-floor patio door leaked. She also contented that there was no genuine issue of material fact that she concealed a material fact that she had a duty to disclose, with respect to count III, the fraudulent concealment issue. The court denied the motion, and scheduled the matter for a three-day bench trial starting on September 26, 2022.

¶ 12 B. Bench Trial

¶ 13 i. Plaintiff's Case-in-Chief

¶ 14 At trial, plaintiff called defendant, who testified that she was a pediatrician who studied at the University of Chicago. She purchased the unit when it was in preconstruction in January or February of 2001 or 2002, and lived there from July 2002 through April 2013. When she moved out in April 2013, she remodeled the unit and placed it on the market for rental from 2013 through 2016. Defendant had two tenants during this time.

¶ 15 Defendant listed the unit for sale in summer 2016 because she and her husband were moving to the suburbs. Defendant identified the information sheet for the listing of the unit for sale, which is included in the record on appeal. The information sheet noted that the unit was 11 to 15 years old, and was a "[r]ecent [r]ehab." Defendant also identified photographs of the unit which are included in the record on appeal and have been viewed by this court. The photographs

depict an open concept kitchen with a hardwood floor near the first-floor patio door, and windows, which defendant testified were on the south and east sides of the building.

¶ 16 Defendant, who was represented by her attorney Vickie M. Gonzalez, entered into a residential real estate contract with plaintiff, which included a Residential Real Property Disclosure Report which she initialed as part of the transaction. Defendant marked "no" for all disclosures, including asserting that she was not "aware of material defects in the walls, windows, doors or floors."

¶ 17 As a part of the litigation, defendant also signed a verified affidavit in which she averred that she "replaced the flooring in the condominium in 2013 and was unaware of any water intrusion between 2013 and November 18, 2016." Defendant also averred that when she executed the Illinois Residential Real Property Disclosure form, she "was unaware of any existing water intrusion or mold issues in the penthouse condominium or the patio door," and "was unaware of any existing water intrusion, mold issues or problems with the patio door between August 1, 2016, and closing on the property in November 2016."[1]

¶ 18 Plaintiff then confronted defendant with a proposal dated April 3, 2013, for Keith Carlson of "KCS" to renovate the unit, including "[r]epair and refinish floor in master bedroom damaged by water, remove a couple of planks and match as close [*sic*] as possible and re-sand existing hardwood including closet." The proposal also noted that KCS would "[r]emove existing tile" in the kitchen, hallway, and both bathrooms, "[i]nstall new hardwood," and "[r]emove existing hardwood and sub floor in [h]all bedroom and install new flooring to match above." On June 13, 2013, defendant hired North Shore Flooring to replace the flooring again. Defendant noted that

[1] We note that the affidavit did not specify which patio door in this context.

"KCS never finished the job." The June 13, 2013, North Shore Flooring proposal in the record is faded and illegible.

¶ 19 Defendant also identified a July 31, 2014, proposal from North Shore Flooring, which included a notation "remove all damaged material from unit" among other flooring work. The July 31, 2014, proposal related to water damage in the unit. Defendant also filed a claim with her insurer, Allstate Insurance Company (Allstate), regarding the 2014 water damage to her unit. In a property subrogation report dated September 11, 2014, for the July 19, 2014, loss, defendant described the location of the loss as the "[u]pstairs flooring (adjacent patio door)" with defendant claiming that the Association was responsible for the damage because the damage "was caused by cracks in the foundation at [the] base of [the] [second-floor] patio door." The damages were described as "[w]ater damage to upstairs flooring directly in front of sliding glass patio door. Extensive buckling of floors. Approximately 10 x 10 feet of damage."

¶ 20 Defendant testified that she replaced different parts of the flooring in 2013 and 2014 because of water damage. According to defendant, "[t]here was one episode of this type of damage that occurred in 2014," and the problem did not recur. Defendant clarified that she replaced part of the first-floor master bedroom floor in 2013 because of water damage, but believed "[a]t the time," that "the source of the water was a plant that [she] had sitting in that window area, that [she] overwatered." She did not recall whether she had made any statement about overwatering a plant prior to trial.

¶ 21 Defendant made a second claim to Allstate for water damage on May 15, 2016. Allstate investigated the claim, and sent her a denial letter on May 25, 2016. Defendant spoke with an insurance agent on the phone who informed her that the claim was denied because the floor showed "ordinary wear and tear." The denial letter, which is included in the record on appeal, stated that

Allstate did not cover loss to property caused by "[w]ater or any other substance on or below the surface of the ground, regardless of its source. This includes water or any other substance which exerts pressure on, or flows, seeps or leaks through any part of the residence premises." The denial letter also noted that Allstate did not cover loss to property due to "a) wear and tear, aging, marring, scratching, deterioration, inherent vice, and latent defect; b) mechanical breakdown."

¶ 22 On June 1, 2016, defendant received a proposal from I.B. Construction, regarding a job at the unit which included removing "existing engineered flooring and insulation" in the first-floor master bedroom, and "install[ing] new maple engineered flooring, install[ing] transitions and new base shoe." The proposal also included sanding the floor in the "[l]iving room, kitchen, hallway and bedrooms."

¶ 23 Additionally, during the litigation, defendant answered interrogatories wherein she was asked to state all maintenance and repairs performed to the unit during her ownership and details regarding the entities who performed the work. Defendant answered, in relevant part, that she "replaced the flooring in about August 2014, made repairs to the flooring on the second floor after the May 2016 insurance claim, replaced the flooring on the first floor after the May 2016 insurance claim, and did other work consistent with that project." Defendant acknowledged that her interrogatory stated that she replaced the flooring on the first floor after the 2016 water damage claim, which was also before she placed the property on the market for sale. She denied knowing that her claim was denied because of water flowing, seeping, or leaking into the unit, but acknowledged that she did not contest Allstate's denial of her 2016 claim. She did not inform the representative of the Association about water damage issues in the unit.

¶ 24 Between 2013 and 2016, defendant did not hire contractors to discover the source of the water which came into the unit, but testified that it was only "one episode." Defendant also did not

request that the Association test the unit for mold or hire contractors to test for mold. Defendant agreed with plaintiff that the health and safety of occupants could be at risk if the unit had recurring water problems. Defendant did not inform plaintiff or any of his representatives about prior water damage to the unit before the purchase.

¶ 25 Defendant testified that in April and June 2013, she replaced the floor of the unit, and in July 2014, she repaired the floor. However, plaintiff confronted her with photographs of her unit which were submitted to Allstate regarding 2014 insurance claims she made regarding the second floor of the unit. The photographs are in the record on appeal, and show, in part, warped hardwood flooring and a man lifting the flooring, both adjacent to the second-floor sliding glass door. Defendant acknowledged that she replaced the floor "in that section." She also acknowledged that nothing in the 2013, 2014, and 2016 construction proposals regarding locating the source of the water intrusion and fixing the problem.

¶ 26 In 2016, defendant saw that the flooring in the master bedroom, which was "patched" in 2013, looked "discolored." Defendant wanted to ensure that water was not underneath the flooring, so had it replaced. Defendant testified that she planned on replacing the floor regardless, because "it looked ugly," as the previous work was a poorly done "patch job." Plaintiff asked defendant if she remembered stating in her deposition that she replaced the flooring in the master bedroom to match the flooring on the first floor, and she responded so "it would look nice." Plaintiff confronted defendant and stated that she did not replace the flooring in the master bedroom to match the rest of the flooring, but she stated that she believed she did.

¶ 27 On cross-examination, defendant stated that she was not advised to make any specific investigations or inquiries prior to signing the disclosure form. Defendant read the disclosure form in open court, which stated in part that the disclosures only applied to the residential property,

including the "limited common elements," but not the "common elements" of the unit, and the disclosures were "intended to reflect the current condition of the premises and do not include previous problems, if any, that the seller reasonably believes" have been corrected. When defendant signed this document, she believed that she had completed the necessary repairs to the unit, and did not believe that conditions existed which required further repair. Specifically, after defendant completed work on the second floor, she never experienced that type of warping of the hardwood floorboards in the unit again. Additionally, the flooring on the first floor was not warped or buckled when she signed the disclosure form. The photographs of the unit did not show any issues with the flooring and reflected the condition of the unit on August 1, 2016.

¶ 28 Additionally, defendant never repaired the walls, and last painted them in 2013. She was unaware of any defects in the wall or windows of the unit, and never experienced leaking windows. She was unaware of any existing water intrusion or mold issues in the unit at the time she sold it.

¶ 29 Regarding the initial remodels of the unit in 2013, contractor Keith Carlson of KCS, prior to leaving the job unfinished, replaced warped flooring in the first-floor master bedroom which had been damaged by water. The warped floor was next to defendant's bed. Defendant did not undertake any inspections to discover the source of the warping and did not make an insurance claim for this damage because she believed the damage occurred due to her own use of the unit rather than water intrusion. She also stated that she remembered the issue regarding watering the plant because she recently repotted the same plant, and she did not recall events from 2013 through 2020 very well because of her busy schedule during that time.

¶ 30 In 2014, defendant leased the unit to a tenant, and she never received notice about further warping in the first-floor master bedroom, but she did learn about warped floors on the second floor. Defendant repaired the issue and made the 2014 insurance claim to Allstate. Defendant did

not recall whether the source of the water intrusion was identified. Further, none of the 2016 construction work to the unit regarded the repair of water damage; nor did defendant discover water intrusion into the unit or mold during this work. Consequently, defendant never believed that she needed to test for mold in the unit.

¶ 31 On redirect examination, defendant testified that despite not seeing water damage to the unit during the 2016 construction, she made a claim to Allstate for water damage because she observed discoloration on the floor, and did not know whether it resulted from water damage, given the history of the unit. Defendant also clarified that she did not recall whether she painted the unit prior to selling it.

¶ 32 Plaintiff testified that he was a "semiretired" attorney who currently lived in the unit with his wife, Sharon.[2] Plaintiff made the initial offer on the unit on August 6, 2016, and after defendant accepted the offer, the parties entered into a contract which included the Residential Real Property Disclosure Report. The disclosures were "very important" to plaintiff and Sharon, because Sharon was allergic to mold and was concerned about issues related to water infiltration. Had plaintiff and Sharon seen anything on the disclosure report indicating that water intrusion had been an issue, they "would have done a lot more due diligence." The unit was "pristine," when plaintiff and Sharon saw it, and they observed that the walls had been patched and freshly painted, because they saw no holes where people normally hang pictures, and the floor had been recently installed, because it had no scuff marks or indentations from furniture. Prior to closing, plaintiff hired an inspector for a standard visual home inspection. The inspection report showed that the property had a water problem on the ceiling of the second floor, outside the entrance to the unit. Plaintiff

[2] As plaintiff's wife shares his surname, we will refer to her by her first name.

inquired about the issue, and defendant's representative informed him that it was an issue for the Association, because it was outside the unit.

¶ 33 Plaintiff also requested information about insurance claims that defendant made for water damage in the unit, and defendant's attorney sent a letter on August 16, 2016, in which she stated that "the only insurance claim sellers have had in the past 14 years was due to some damaged flooring caused by an open door in a rainstorm."

¶ 34 The parties closed on the unit on November 18, 2016, and Sharon moved in with her cat sometime after closing; plaintiff was living in another of their homes. Sharon called plaintiff in January or February 2017 regarding the unit, and plaintiff traveled to Chicago. When he saw the unit, he observed that the floor was warping in front of the first-floor patio door. It appeared as if water was coming under or through the door and warping the wood, but there was no standing water in the unit. This warping was not visible when plaintiff purchased the unit.

¶ 35 After seeing the issue, plaintiff notified the Association and discovered that defendant had made two prior insurance claims on the unit, including a subrogation report where she asserted that water came into the unit through the foundation. He also learned about the multiple floor replacements between 2013 and 2016. Plaintiff asked the Association if they knew about the water damage in the unit, and they responded that they had not been informed by defendant that she had damage to the unit from water infiltration. Plaintiff also took defendant's deposition wherein she admitted that the unit sustained water damage necessitating a floor replacement in 2013. Defendant never informed plaintiff prior to trial that the 2013 water damage resulted from watering a plant.

¶ 36 Plaintiff hired Indoor Science to test for the presence of mold in the unit. According to their report dated September 13, 2017, they discovered mold in the kitchen and bedroom on the first floor. Plaintiff also hired Advanta Clean for mold remediation, but the company was unsuccessful

because "the project had gotten too big for them." Then, plaintiff hired J.C. Restoration, who successfully remediated the mold issue. Plaintiff subsequently hired Emblaze Development, with materials purchased from Pro Source, to repair the floorboards and repaint the walls after the mold remediation. Plaintiff also hired Christopher Glass, who caulked the inner workings of the sliding glass door to reduce the water intake to the unit. They were unable to solve the issue although they reduced it.

¶ 37 Plaintiff separately hired Western Specialty, an engineering firm, to discover the source of the leak and attempt to stop it. At that point, the Association agreed to bring in two experts to source the leaks and fix the issues. The Association hired Berglund Construction, a construction company, and ECS Midwest, an engineering firm. They located the source of the water intrusion and "for the most part" stopped the issue. Berglund Construction repaired the patio door by placing sealant between the patio and the door where a membrane designed for waterproofing had pulled away from the door. As of the time of trial, the door still leaked, and Berglund Construction gave plaintiff an estimate to replace the door.

¶ 38 Through the course of his ownership of the unit, plaintiff observed water infiltrating the unit through the patio doors on both the first and second floors and through the east and south windows on the first floor. Plaintiff testified that the photographs attached to his second amended complaint were taken in 2017 and depict mold under flooring in the kitchen and dining area, and near the first-floor patio door.

¶ 39 On cross-examination, plaintiff stated that he believed that defendant's repairs to the unit were not complete because she replaced the flooring but "she did not source the leak, nor did she repair the leak." When plaintiff first viewed the unit with Sharon, he did not observe Sharon sneezing or having difficulty breathing; however, the windows were open and air was circulating

through the unit. Further, the inspector plaintiff hired found no defects in the flooring and walls, because the floor was "brand new" and the walls had been "freshly painted" as they still smelled like paint. Nor did the inspector find any defects concerning the patio door, other than a small issue regarding damage to its screen, or evidence of water damage in the unit.

¶ 40 Plaintiff asserted that if he were the owner of the unit at the time that defendant owned it, he would have tested the unit for mold and attempted to find the source of the leak and repair it prior to selling the unit; therefore, he concluded that plaintiff had "some obligation to investigate those issues." He stated that defendant had "actual notice" of the material defect, due to the floor replacements in April and June 2013, July 2014, and June 2016, along with the two insurance claims for water damage in 2014 and 2016. Plaintiff asserted that "no reasonable person would believe that she corrected these water-infiltration problems without finding the source of the leaks and stopping them." Plaintiff also clarified that he was not seeking damages related to the second floor but believed that the issues on both floors were related because they showed the extent of the water infiltration into the unit.

¶ 41 Plaintiff first noticed the problem due to warping in the floor near the first-floor patio door and he identified a photograph Sharon took in January or February 2017, which accurately depicted the warping. This photograph is in the record on appeal and depicts the flooring near the first-floor patio door, described by plaintiff as looking "like a washboard." Plaintiff stated that the warping in the flooring was not present in November 2016 when he closed on the property. He also discovered that the property had hidden defects on the first floor where windows on the south and east sides of the unit leaked. These defects did not cause warping in the flooring but did contribute to the mold under the flooring. Plaintiff asserted that defendant installed new flooring over the

mold, because the photographs depicting the mold were taken in 2017 and the new flooring was installed in June 2016.

¶ 42 As of the time of trial, the unit still experienced water intrusion from the first-floor patio door, but plaintiff and Sharon had taken measures to observe the intruding water to see if new mold resulted. Most of the water intrusion was solved by Berglund Construction, who sealed the base of the patio door, Christopher Glass, who caulked the interior of the door, and Emblaze Development who also attempted remediation. Plaintiff concluded by stating that he did not replace the floor after discovering the water intrusion issue because "[i]t would have just risen up again," and replacing the flooring without discovering the source of the water and correcting it did not make "sense" to him.

¶ 43 Jennifer Hallisy testified that she was the former property manager of the condominium, and left the position at the end of March 2022. Hallisy was aware of one issue regarding water damage in the unit caused by a tenant leaving open the door to the second floor, but did not believe that defendant reported any issues regarding water intrusion. Hallisy was aware that defendant replaced the floor of the unit several times between 2013 and 2016, but she never reported that water damaged the floor. Hallisy first became aware of the water infiltration when Sharon or plaintiff reported it to her.

¶ 44 Hallisy then investigated the issue with the building engineer and observed buckled floors caused by water penetration into the unit through the first-floor patio door, and so she called a consulting firm, ECS Midwest, to help source the leak. Patio doors are classified as "limited common element[s]," and so they are the homeowner's responsibility to repair, rather than the Association's. The Association was responsible for repairing windows.

¶ 45 Hallisy returned to the unit with the structural engineer from ECS Midwest, Gary Syslo, which was the Association's typical response when alerted to water infiltration from outside the unit. Syslo believed the water came through the framing at the base of the patio door but wanted further tests to determine the source. They also water tested all the windows, and discovered some were leaking, so they "wet-sealed a number of units." Berglund Construction was hired to look at the first-floor patio door. At some point, flooring was removed around "the perimeter" of the patio door revealing black staining underneath, which looked to Hallisy like bacterial growth. Additionally, the second time Hallisy observed the unit, drywall had been removed, and Hallisy observed metal studs which had been corroded and were "rusting."

¶ 46 ECS Midwest sent Hallisy an October 12, 2017, report authored by Syslo, showing various places where water entered the unit. The report is in the record on appeal and contains diagrams showing deficiencies "at [the] window/door assembly" for multiple windows of the unit and both patio doors.

¶ 47 On cross-examination, Hallisy stated that the prior water issue regarded a tenant who reported water by the second-floor patio door. The engineer and contractor determined that the tenant likely left the door open causing water to enter the unit. Additionally, the rusted metal studs were common elements because they were behind a wall, and Hallisy agreed that unless a wall were wet, "it would be impossible for the unit owner to know if they're having a leaking problem inside the common elements." Hallisy never received a report from defendant regarding wet walls or water intrusion. Hallisy did not believe that defendant performed construction work on the unit without informing her and never had problems with defendant as an owner.

¶ 48 Syslo testified that he worked for ECS Midwest as an engineer from 2010 until 2020. Syslo's professional work experience was "primarily related to building envelope," which he

defined as "everything that separates the building interior from the exterior environment." Syslo was hired by Hallisy in October 2017, to evaluate the conditions which caused water intrusion into the unit. He recommended testing the doors and windows on the first floor, which involved spraying water at the bottom of the wall on the exterior of the building to identify potential sources of water intrusion at doors and windows. The testing showed such water intrusion, as noted in the above-described report. The report identified "voids" at select window and door locations, and corrosion, or rust accumulation, on metal stud surfaces which were exposed due to work that had been performed on the unit.

¶ 49 After ECS Midwest issued its report to the Association, the Association hired Berglund Construction to remedy the issues that ECS Midwest identified. Berglund Construction had performed prior façade work in 2016, including placing sealant joints on the exterior of the building, and ECS Midwest consulted on the project. Regarding the voids discovered in the unit, Syslo testified that "[s]elect joints were joints that were included in Berglund's contract; select joints were not." Thus, Syslo discovered deficiencies that were outside the scope of Berglund's 2016 contract.

¶ 50 On cross-examination, Syslo stated that nothing in the report established when the voids appeared on the property. Further, the testing Syslo performed on the doors and windows was "qualitative in nature and not quantitative," in that it showed the source of water intrusion rather than the quantity of water. Syslo stated that it was possible that water vapor could have entered through the voids, but ECS Midwest's assessment regarded water intrusion not air infiltration. They also did not assess what caused the corrosion on the metal studs. Additionally, ECS Midwest's report identified voids on the second floor, but Syslo saw no visual deficiencies, including warped wood or wet walls, resulting from water damage on the second floor.

¶ 51 Jeffrey Berglund testified that he was the Vice President of Berglund Construction, and oversaw a variety of construction projects. In March 2016 through the end of the year, Berglund Construction performed façade repairs to the condominium building at issue, with Berglund acting as project manager overseeing the project. The focus of the project was to replace all existing sealant on the outside of the building.

¶ 52 After the completion of the project, Berglund Construction was called back to the building with respect to water infiltration into the unit. Berglund discovered that some sealant joints did not appear to be "bonded as well as they could have been," and so Berglund Construction addressed the issue and replaced the faulty sealant joints. After the sealant joints were replaced, an engineer performed a water test at the windows, which failed, suggesting that the water was infiltrating from some other part of the windows unrelated to Berglund's work.

¶ 53 Berglund identified an October 24, 2017, report regarding the conditions in the unit that he co-authored with Jack Tribbia, the president of Berglund Construction's restoration division. This report is included in the record on appeal and has been viewed by this court. Berglund and Tribbia concluded that additional work was required to eliminate the water intrusion issue at the windows, and the water intrusion through the patio door was caused by a failure of the membrane system at the patio, which let water into the unit from "underneath the subsill of the door system." These issues were not within the scope of Berglund Construction's contract, but they installed sealant underneath the subsill of the doors, which Berglund testified was temporary or "a bandaid." Berglund also installed a "wet seal" around the windows to create a better weather barrier. Berglund concluded that the best solution would be to build a curb and shrink the door to create a barrier in case of future failings of the membrane system.

¶ 54 Berglund's report also mentioned "extensive corrosion of the metal studs and ductwork in the interior of the unit," and they concluded that "the unit had been experiencing excessive water infiltration and resulting damages in the years prior" to the 2016 Berglund Construction project. Berglund testified that this corrosion was located near the doorway. He described the corrosion as "not only rust, [but] corrosion in the sense of part of the metal had actually eroded away because of corrosion and water exposure around the unit." Berglund concluded that this corrosion had occurred over a period of years not months. He also opined that the water infiltration issue at the first-floor patio door had been occurring for a long period of time, predating the 2016 sealant project.

¶ 55 On cross-examination, Berglund stated that in 2016, he had four years of construction experience. He was not educated specifically regarding how rust was formed, but knew from his experience that moisture causes rust. Berglund did not know whether the 2016 sealant project began because the building was experiencing water intrusion problems. In his experience, he understood that the "extent of corrosion" of the studs provided evidence that water intruded into the unit. Berglund was unable to determine whether the rust was the result of other factors, including water vapor or humidity, but opined that "a little bit of water" likely would not cause the degree of rusting seen on the studs, although he could not be certain as to its cause. Berglund stated that the process of rust developing "depends on the environment" and the condition of the surroundings and a variety of factors. Berglund believed that the rust he observed in the unit did not happen "very fast," but could not be "a hundred percent" certain. In Berglund's opinion, a layperson could know about water intrusion if the drywall were wet or paint peeled from the wall; otherwise, it would only be visible by removing the drywall.

¶ 56 On redirect examination, Berglund testified that the metal studs "had started to erode away at the base of the bottom of the stud *** going up the wall." The studs that Berglund observed did not connect to the base of the floor due to the corrosion. On recross examination, Berglund stated that he had no way of knowing whether defendant was aware of the issue.

¶ 57 Finally, plaintiff introduced the stipulated deposition testimony of Cory Ambrose taken on September 19, 2022. Ambrose testified that he was employed by J.C. Restoration for ten years, and had been involved in mold remediation projects for over ten years.

¶ 58 On July 26, 2017, Ambrose was assigned by J.C. Restoration to assess the situation in the unit. When Ambrose arrived at the unit he observed "[s]evere water damage that required a mold remediation scope to rectify, wood floors were destroyed, discoloration was present on walls" on the first floor. He saw water damage on the walls, flooring, and exterior of the building in the kitchen and dining areas which was "adjacent to the bedroom." Ambrose believed the water was intruding from outside the unit, and recommended that plaintiff work with a structural engineer to determine the source of the water. He also recommended "[f]ull-blown remediation" to remove and treat the mold-affected surfaces.

¶ 59 Ambrose testified that mold "doesn't happen overnight," and will start "somewhere in a matter of days to a couple weeks." Ambrose recalled needing to remove the impacted drywall walls in the kitchen/dining room area and living room, as well as the impacted flooring. The walls of the unit also had water stains, and that material was not removed from the site. According to Ambrose, signs of water damage and discoloration or organic growth on surfaces can imply the presence of mold.

¶ 60 Ambrose identified a remediation report dated September 26, 2017, with attached photographs, which is in the record on appeal and has been viewed by this court. The photographs

depict damaged drywall with staining which Ambrose described as "[c]ompromised wall material," necessitating removal. According to Ambrose, drywall and flooring depicted in the photographs appeared in poor shape, and some looked to have "heavy impact" of mold, meaning "microbial growth." Ambrose described the materials as having been "water damaged for an extended period of time, based on the deterioration." Ambrose defined long-term water damage as present for "several days or weeks" through months and years.

¶ 61 Ambrose further described evidence in multiple photographs of water intrusion into the unit where the drywall had deteriorated and stained from long-term water damage. He also identified rust and corrosion, including one metal piece which had been completely eroded away, which was "substantial evidence" of long-term water damage in the unit.

¶ 62 On cross-examination, Ambrose stated that he was unable to determine specifically how long the damage depicted in the photographs had been taking place, but noted that it would be "weeks or longer" rather than a matter of days.

¶ 63 ii. Defendant's Case-in-Chief

¶ 64 Sharon testified that she currently resided at the unit, and first viewed it in summer 2016 by herself. When Sharon first viewed the property, she believed it was in "very good condition," and she did not notice physical deficiencies. The walls were "freshly painted," and the floors were "pristine."

¶ 65 Sharon is very allergic to mold, which affects her sinuses and airways when she inhales it, causing her to experience excess mucus, going "froggy" in her throat, and feeling her airways become inflamed as if she needs "to get oxygen." She described it as a "gradual process" happening over hours. When she first viewed the property at an open house viewing, she spent 10 to 15 minutes in the unit, and because the windows were open, she had no issues breathing.

¶ 66 Sharon and plaintiff made an offer on the unit in later summer 2016 and, prior to closing in November 2016, did a final walkthrough of the property and did not observe any signs of water intrusion or mold. When Sharon spent time in the unit in late 2016 after closing but prior to officially moving, she did not notice wet walls or buckled floors, but her sinuses began bothering her "a lot." She moved into the unit in early 2017 and, during that time, traveled with her cat from Arizona. Sharon and her cat spent the day at the unit, during which time Sharon became sick, and her cat began sneezing, which had never happened before. At that point, Sharon observed "warping" by the first-floor patio door with the baseboards "coming off," and called plaintiff. Sharon and plaintiff then took the remedial steps plaintiff described in his testimony. At the time of trial, Sharon and plaintiff had not done mold remediation or replaced the flooring on the second floor. Additionally, the water intrusion problem was ongoing with regard to both patio doors in the unit, but the unit had not experienced new mold growth.

¶ 67 On cross-examination, Sharon stated that she knew that the walls had been freshly painted when she first viewed the unit because (1) the unit had a "lingering odor of fresh paint," (2) the walls had no nail marks visible, and (3) the painters left paint cans in a closet. Sharon took a picture of the paint can, which is in the record on appeal, and shows a paint can with a note describing its creation date as July 13, 2016, which Sharon stated was shortly before she and plaintiff viewed the unit.

¶ 68 Defendant testified that she moved into the property in July 2002 as its first occupant, and lived there from July 2002 through April 10, 2013. Defendant never experienced water intrusion during her occupancy of the unit. Defense counsel made an offer of proof regarding defendant's diagnosis of asthma in 2000, which had not been disclosed to plaintiff prior to trial. Under the offer of proof, mold affected defendant by making her cough. When defendant lived in the unit, she

never experienced mold issues or was told to test for mold. Defendant also described another time when her washing machine overflowed, which did not require repairs to the unit and did not result in mold.

¶ 69 After defendant moved in 2013, she remodeled the unit, which included replacing floors on the first floor and repairing the floor of the master bedroom which had "warping." The floor of the master bedroom experienced water damage which was unrelated to any water intrusion into the unit, and defendant never made an insurance claim based upon this damage. In June 2013, defendant never received notice regarding water intrusion into the unit. She testified that the first-floor patio door is "on the opposite side" of the unit from the master bedroom, which is close to the entrance of the unit.

¶ 70 Defendant then leased the unit to a tenant who lived there for two years. The tenant called defendant during his tenancy to report water in front of the second-floor patio door which caused buckling or warping of the floor. The water came through the patio door and caused damage to the flooring in front of the door. Defendant repaired the issue and made an insurance claim to Allstate, who provided coverage for the claim. Defendant informed the Association, who hired an inspector, and the Association resealed the door. Defendant never again had issues with the flooring or walls on the second floor. Defendant's next tenant lived in the unit for a few months before the 2016 sealant project began, and moved out in March or April 2016. Defendant was unaware of water intrusion or mold issues during the second tenant's tenancy.

¶ 71 At that point, defendant decided to sell the property, and visited the unit "half a dozen times" to prepare it for listing. Defendant never noticed water intrusion, mold, or wet walls. Around the time defendant listed the unit, she replaced the floor in the master bedroom to help sell the unit, because the 2013 work was a patch of a small area of flooring and "ugly," and she

described this work as "cosmetic." None of the work performed related to water intrusion or mold. Defendant made an insurance claim regarding this work because she observed "discoloration of the flooring in that area," and she did not know the source, so wanted to make sure it wasn't a bigger problem. According to defendant, Allstate denied coverage because the damage was "from regular wear and tear." She did not test the unit for mold because she did not see signs of mold, wet walls, or warped floors. She also never smelled mold or mildew.

¶ 72 Defendant eventually entered into a real estate contract with plaintiff and, at that time, was not experiencing water intrusion or mold in the unit. Defendant never denied plaintiff the opportunity to make an inspection, and provided him with a mold disclosure on August 1, 2016, wherein she stated that she did not test for mold, fungi, or mildew. Defendant also identified an August 24, 2016, letter sent from plaintiff's attorney to defendant's attorney wherein plaintiff's attorney stated: "In a previous letter, I specifically asked if your client had any insurance claims for roof leaks within the unit. You have not responded with this information. Please provide it immediately." Defendant testified that she had never made any insurance claims regarding a roof leak. Defendant also identified her attorney's response wherein her attorney stated: "The Seller has never had an insurance claim for any damage from roof leaks. *** [T]he only insurance claim Sellers have had in the past 14 years was due to some damaged flooring caused by an open door in a rainstorm." Defendant testified that she informed plaintiff about the other claim, because she wanted to give him more information regarding the second floor and be honest about the prior floor problem.

¶ 73 Defendant believed that she answered the disclosure form truthfully, because the prior work to the floor had been completed and she did not experience water intrusion, wet walls, or any issues related to the windows, doors, floors, and walls. She also did not notice any issues when she

walked through the unit after she signed the contract. She recalled repairing and "touching up" spots on the walls where nails may have existed, but did not recall repainting the walls prior to sale. Nor had she ever learned about wet walls while the property was rented.

¶ 74 On cross-examination, defendant stated that that she "regret[ted] the wording" of her answer in the attorney letter regarding the insurance claims, because it was not a true statement. Defendant stated that she had never had an insurance claim for an open door in a rainstorm but had two insurance claims alleging water intrusion. The first such claim was in 2014, where defendant filed a subrogation report arguing that the Association was responsible for her damages because the water damage was caused by cracks in the foundation at the base of the second-floor patio door. The second claim was in 2016, which was denied by Allstate after an investigation. Defendant did not recall reading the denial letter, which denied the loss in part due to water below the surface of the ground flowing into the premises. Defendant denied understanding how the exclusion applied to her situation, because the unit did not "have a continuous seepage problem."

¶ 75 Regarding the 2014 floor replacement, defendant believed that the water intrusion issue had been repaired. Defendant stated that she did not know anything about the construction projects because she was not living on the premises and did not "ask." She believed that because the issue "did not recur *** it was fixed." She also acknowledged that nothing in the July 2014 floor replacement proposal regarded identifying and repairing the water leak.

¶ 76 Richard Levey testified as an expert witness that he was a floor-covering consultant and inspector who was familiar with hardwood floors experiencing water intrusion. Levey testified that hardwood floors exposed to water would change shape depending on the location of the water. If water intrudes from underneath the flooring, the water creates "cupping," which causes the floor to look like a "washboard," with the pieces of wood curving upward with raised edges. Levey

testified that cupping was the "first visual sign" of a high amount of moisture under the floor, and occurs when the active water or water vapor underneath varies with the top of the wood "in at least 2 to 4 percent." A hardwood floor experiencing cupping cannot be fixed by sanding and refinishing it due to the moisture underneath, as it would eventually cause "crowning," where the edges of the floor would be lower than the middle, when the floor becomes flat again after it dries.

¶ 77 Levey identified his report dated January 28, 2022, wherein he described the effect of water under a hardwood floor, and his review of photographs of the unit prior to its sale. Levey observed no signs of cupping or crowning. Levey's report specifically stated that "[e]xposure to elevated moisture underneath the flooring will cause cupping in as short a time as 24 hours, appearing more rapidly and or more severe with higher moisture levels and the length of exposure." Additionally, "[o]nce moisture content levels reach 18% or higher, there is a strong chance for mold to grow," which may occur "within 24-48 hours of excessive moisture exposure." Cupping represents moisture but does not "necessarily indicate mold." Levey concluded that the flooring in the unit would begin noticeably cupping within 24 hours if the floors were experiencing water intrusion, which would be "highly evident to a layperson." He opined that defendant would have seen cupping had she installed new floors over the ongoing water intrusion.

¶ 78 On cross-examination, Levey stated that he never inspected the flooring of the unit or visited the location in person. The report notes that the date the hardwood floor was installed was June 21, 2013. The date of the floor's installation was an important item of Levey's report, and he relied upon defense counsel to give him accurate information. Plaintiff confronted Levey with defendant's interrogatory answers wherein she averred that she replaced the flooring on the first floor in 2016. Levey did not have any quantitative testing to measure how much moisture was under the floor between August 1, 2016, and January 2017. Levey also stated that it would be

"irrelevant" to know the weather conditions between those dates, but he would want to know if there were water under the floor.

¶ 79 On redirect examination, Levey testified that he opined that if recurring water intrusion was on the property from August 1, 2016, evident cupping would appear on the flooring. Such cupping could be related to the weather if the building was not properly sealed, but Levey did not know the relevant conditions.

¶ 80 The court found plaintiff established that defendant was liable for fraudulent inducement by clear and convincing evidence where she did not disclosure the water intrusion issue. In reviewing the evidence, the court found that "[b]oth parties' experts were credible but only [p]laintiff's experts had knowledge and experience on the topic of water intrusion, a central issue in this case." It noted that defendant replaced the floors of the unit several times, but never located the source of the leaking water nor remediated the issue. Further, Allstate denied defendant's 2016 property damage claim, in part, because it did not cover water damage claims. Defendant later signed a sworn affidavit stating that she was unaware of mold or water intrusion when she signed the disclosure report. Defendant's disclosure report and affidavit contained false statements of fact regarding defendant's denial of knowledge of material defects in the unit. The evidence further established that defendant knew the statements were false, and were made with the intention to induce plaintiff to purchase the unit. Plaintiff relied on defendant's representations in purchasing the unit, and incurred property damage. The court also found that defendant was not liable for fraudulent concealment. It entered a judgment of $76,429.19 in favor of plaintiff regarding the fraudulent inducement count.

¶ 81 On December 12, 2023, the court denied defendant's motion for reconsideration. Defendant filed a timely notice of appeal on January 10, 2024.

¶ 82 II. ANALYSIS

¶ 83 On appeal, defendant argues that the trial court's ruling that defendant fraudulently induced plaintiff was against the manifest weight of the evidence because it was unreasonable and not based upon the evidence. In particular, defendant contends that the evidence did not establish that she knew about the defects on the first floor near the patio door, because the prior flooring work was unrelated to the water intrusion at issue. Further, as Levey testified, replacing the flooring would not have been an adequate method to hide water intrusion as the wood would have cupped, and subsequently sanding it would have caused crowning.

¶ 84 A. Standard of Review

¶ 85 This appeal is pursuant to a judgment entered after a bench trial. After a bench trial, we reverse the trial court's judgment only if it is against the manifest weight of the evidence. *Cadle Properties of Illinois, Inc. v. Fortune Investments, LLC*, 2021 IL App (1st) 200556, ¶ 23. "A decision is against the manifest weight of the evidence only when an opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based on the evidence." *Eychaner v. Gross*, 202 Ill. 2d 228, 252 (2002). This standard "affords great deference to the trial court because the trial court is in a superior position to determine and weigh the credibility of the witnesses, observe witnesses' demeanor, and resolve conflicts in their testimony." *Wade v. Stewart Title Guaranty Company*, 2017 IL App (1st) 161765, ¶ 59. Accordingly, the reviewing court must not substitute its judgment for that of the trier of fact. *Eychaner*, 202 Ill. 2d at 252.

¶ 86 B. Fraudulent Inducement

¶ 87 "Fraudulent Inducement is a form of common law fraud." *Avon Hardware Co. v. Ace Hardware Corp.*, 2013 IL App (1st) 130750, ¶ 15. In order to prevail on a cause of action for common law fraud, a plaintiff must establish: "(1) a false statement of material fact; (2) knowledge

or belief by the defendant that the statement was false; (3) an intention to induce the plaintiff to act; (4) reasonable reliance upon the truth of the statement by the plaintiff; and (5) damage to the plaintiff resulting from this reliance." *Id*. The false statement of material fact "may be made by words, or by actions or other conduct amounting to a statement of fact." (Internal quotation marks omitted.) *Hassan v. Yusuf*, 408 Ill. App. 3d 327, 343 (2011) (quoting *Glazewski v. Coronet Insurance Co.*, 108 Ill. 2d 243, 250 (1985). As the law presumes that transactions are fair and honest, common law fraud must be proved by clear and convincing evidence. *Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 191 (2005). "To prove something by clear and convincing evidence, a plaintiff must leave no reasonable doubt in the mind of the trier of fact as to the truth of the proposition in question." (Internal quotation marks omitted.) *Metropolitan Capital Bank & Trust v. Feiner*, 2020 IL App (1st) 190895, ¶ 39. It is considered to be more than a preponderance but less than the proof necessary to convict a person of a criminal offense. *Id*.

¶ 88 Silence alone in not disclosing defects does not give rise to a cause of action for fraud, but rather must be combined with active concealment; however, silence combined with deceptive conduct or the suppression of material facts results in active concealment creating a duty for the seller to speak. *Henderson Square Condominium Association v. LAB Townhomes, LLC*, 2014 IL App (1st) 130764, ¶ 99.

¶ 89 Additionally, defendant signed a disclosure report form, stating she was not aware of material defects in the floors or walls of the unit, as required under the Illinois Residential Real Property Disclosure Act (Act). See 765 ILCS 77/35 (West 2016). The purpose of the report is to "provide prospective buyers with information about material defects in the residential real property before the signing of a contract." *Id*. Under the Act, the word "aware" means "to have actual notice or actual knowledge without any specific investigation or inquiry." *Id*. The disclosures further

reflect "the current condition" of the premises and do not include previous problems "that the seller reasonably believes have been corrected." *Id*. The disclosure form also notes that "[t]hese disclosures are not intended to cover the common elements of a condominium, but only the actual residential real property including limited common elements." *Id*. We have previously determined that a fraud claim may be premised upon representations made in the disclosure report. *Rolando v. Pence*, 331 Ill. App. 3d 40, 45-46 (2002).

¶ 90 Defendant specifically contends that plaintiff did not prove that she knowingly provided a false disclosure or took steps to conceal exterior water intrusion on the first floor of the unit. She does not challenge the other elements of plaintiff's fraudulent inducement claim. Actual knowledge in the context of common law fraud can be demonstrated through circumstantial evidence. *Metropolitan Capital Bank & Trust*, 2020 IL App (1st) 190895, ¶ 40. A defendant's knowledge of a material defect at the time of closing and the reasonableness of his or her belief that the defect had been corrected are questions of fact. See *Curtis Investment Firm, Ltd. v. Schuch*, 321 Ill. App. 3d 197, 201 (2001); *Woods v. Pence*, 303 Ill. App. 3d 573, 577 (1999).

¶ 91 C. Whether plaintiff proved defendant knowingly defrauded him

¶ 92 Here, the circumstantial evidence presented at trial established that defendant knew about ongoing water intrusion issues in the unit such that she knowingly failed to disclose the material defects on the disclosure form. See *Metropolitan Capital Bank & Trust*, 2020 IL App (1st) 190895, ¶ 40. The evidence presented at trial showed that in 2013, defendant remodeled the unit, in part, to replace part of the flooring in the first-floor master bedroom, which had become warped due to water exposure. Defendant testified that she believed that the damage was not due to water intrusion, but rather due to her overwatering a plant. According to plaintiff, the first-floor master bedroom was on "the opposite side" of the unit from the patio door, and the contractors did

not inform her that the damage was caused by water infiltration. We note that the master bedroom shares a wall with the first-floor patio door, although there is no evidence as to where in the bedroom the water damage was located.

¶ 93 Defendant then leased the unit and, in 2014, learned of water damage to second floor near the patio door, requiring replacement of the floor. Although some evidence suggested that the water intrusion was due to a tenant leaving the second-floor patio door open, defendant also filed an insurance claim asserting water infiltration and a subrogation report stating that the water damage was caused by "cracks" in the foundation at the base of the second-floor patio door. Defendant decided to sell the unit in 2016 and again replaced the flooring on the first floor in the master bedroom, claiming the 2013 flooring replacement was an "ugly" patch job. She also testified that she replaced it in part to ensure that water was not underneath the flooring because a patch of flooring was "discolor[ed]." Defendant submitted an insurance claim for water damage, which was denied. The denial letter stated that several exceptions or exclusions applied, including flowing or seeping of "[w]ater or any other substance on or below the surface of the ground, regardless of its source."

¶ 94 After the sale of the unit, plaintiff discovered ongoing water infiltration specifically near the first-floor patio door. Plaintiff's expert witnesses testified that they discovered a large quantity of mold underneath the drywall and flooring of the first floor of the unit, and studs that had been completely corroded, both implying "long-term" water exposure.

¶ 95 With these facts in mind, we conclude that the circumstantial evidence regarding the various leaks near the two patio doors establishes defendant's knowledge of uncorrected material defects in the patio doors which she failed to disclose. See 765 ILCS 77/35 (West 2016). The evidence showed that defendant made a water damage claim to Allstate regarding the second-floor

patio door, noting that the water seeped through "cracks" in the foundation. The record is not clear what, if any, remediation was done to prevent water intrusion through the "cracks," although defendant testified that the Association had the door "sealed." Defendant also testified that in 2016, she was concerned about water underneath discolored flooring in the master bedroom which had been replaced in 2013; the master bedroom is adjacent to the first-floor patio door. She made a claim to Allstate for water damage, which was subsequently denied. After plaintiff's purchase of the unit, ECS Midwest discovered multiple deficiencies or "voids," unrelated to prior façade sealant work, at many windows and both patio doors. Given the multiple instances of suspected water damage or water intrusion near the patio doors, including an instance where water seeped through "cracks," in the foundation near the second-floor patio door, we cannot conclude that the court's finding that defendant knowingly concealed a material defect was unreasonable, arbitrary, or not based on the evidence." See *Eychaner*, 202 Ill. 2d at 252.

¶ 96 Further, prior to selling plaintiff the unit, defendant disclosed only one insurance claim regarding water damage: the 2014 Allstate claim after the repair of the flooring near the second-floor patio. She characterized it as "caused by an open door in a rainstorm," which is directly contrary to her stated reasons for filing the claim. She did not disclose the 2016 Allstate claim which she filed after being concerned about water damage to the first-floor master bedroom. While she did disclose one issue regarding water intrusion, she did not disclose the issues on the first floor. Although this disclosure was unrelated to the requirements of the Act, it provides further support that defendant was actively concealing the multiple water damage claims in order to induce plaintiff to purchase the unit. See *Greenspan v. Gordon*, 2025 IL App (1st) 240600-U, ¶¶ 53-54 (evidence that the sellers failed to disclose "the whole truth" regarding a prior water issue in the basement and actively concealed the necessity of standpipes supported the court's finding of a

genuine issue of material fact regarding fraudulent misrepresentation and concealment precluding summary judgment for the sellers).[3]

¶ 97 Defendant nevertheless contends that the court's ruling was against the manifest weight of the evidence because none of the issues related to water damage recurred during her ownership of the unit, and no evidence was presented that she was aware of or hid ongoing water intrusion. She also contends that the floor near the first-floor patio never showed any signs of water intrusion and was never replaced during her ownership, and all issues related to water intrusion were unrelated to the first-floor patio door. Defendant, however, merely seeks to reweigh the evidence presented at trial. As noted, the court found that defendant replaced the floors multiple times due to water damage without attempting to locate and remediate a leak. It did not credit defendant's explanation that her overwatering a plant caused the 2013 damage in the master bedroom, nor that the 2016 repair to the floor in the master bedroom was unrelated to water damage, especially given her subsequent insurance claim. The reasonableness of defendant's belief that the leaks had been repaired is a question of fact to be determined by the trier of fact. See *Pence*, 303 Ill. App. 3d at 577.We must not substitute our judgment for that of the trial court. See *Eychaner*, 202 Ill. 2d at 252. Here, the evidence was ample to support the conclusion that defendant knowingly made a false statement about material defects in the floors or patio doors because the floors repeatedly sustained water damage over the course of four years. See *Woods*, 303 Ill. App. 3d at 576-77 ("Evidence of at least three, and perhaps as many as five repairs in a four year period raises at least an inference of a chronic condition that had never been permanently eliminated.").

[3] Under Illinois Supreme Court Rule 23(e)(1) (eff. June 3, 2025), unpublished orders entered on or after January 1, 2021, may be cited for persuasive purposes.

¶ 98 In sum, the trial court's findings were not against the manifest weight of the evidence given its determinations regarding defendant's conduct and the reasonableness of her actions with respect to her knowledge about the property. See *Cadle Properties of Illinois, Inc., LLC*, 2021 IL App (1st) 200556, ¶ 23.

¶ 99 III. CONCLUSION

¶ 100 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 101 Affirmed.