

Supreme Court, Appellate Division, Second Department, New York.

Annmarie MARINO, appellant,

v.

David LEWIS, respondent.

April 4, 2005.

Richard J. Burke, Jr., Poughkeepsie, N.Y., for appellant.

Daniels and Porco, LLP, Pawling, N.Y. (Michael G. Hayes of counsel), for respondent.

In an action to recover damages for breach of a construction contract, the plaintiff appeals, as limited by her notice of appeal and brief, from so much of an order of the Supreme Court, Dutchess County (Pagones, J.), dated February 13, 2004, as, in effect, granted that branch of the defendant's motion which was for summary judgment dismissing that part of the first cause of action which was to recover \$17,000 paid to the defendant on the contract.

Ordered that the order is affirmed insofar as appealed from, with costs.

The appropriate measure of damages for defective construction "is the cost to repair the defects or, if the defects are not remediable, the difference in value between a properly constructed structure and that which was in fact built" (\*326 *Brushston- Moira Cent. School Dist. v Thomas Assoc.*, 91 NY2d 256, 262 [1998]; see *Ferreira v Saccento*, 286 AD2d 366 [2001]). Since the complaint alleged that the amount needed to remedy the work performed by the defendant was \$5,000, the Supreme Court correctly concluded that she was not also entitled to recover the \$17,000 previously paid to him on the contract.

Adams, J.P., Santucci, Goldstein and Lifson, JJ., concur.