

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania,	:	
By Attorney General	:	
David W. Sunday, Jr.	:	
	:	
v.	:	No. 364 C.D. 2025
	:	
Independent Construction	:	
Builders, LLC and Vincent Vince,	:	
individually and as managing	:	
member of Independent Construction	:	
Builders, LLC, and d/b/a Independent	:	
Construction,	:	
Appellants	:	Submitted: June 16, 2026

BEFORE: HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE MATTHEW S. WOLF, Judge
HONORABLE MARY HANNAH LEAVITT, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE WOLF

FILED: September 3, 2026

Independent Construction Builders, LLC and Vincent Vince (Appellants) appeal from the February 24, 2025 order of the Court of Common Pleas of Luzerne County (trial court) entering judgment against Appellants. The trial court denied Appellants' motion for post-trial relief after the trial court found, in a December 31, 2024 order, Appellants violated the Unfair Trade Practices and

Consumer Protection Law¹ (Consumer Protection Law) and the Home Improvement Consumer Protection Act² (HICPA).

The facts, as found by the trial court, are as follows. Appellant Independent Construction Builders, LLC is a registered Pennsylvania limited liability company, and Appellant Vince is its sole member. Appellants were registered with the Pennsylvania Bureau of Consumer Protection as a home improvement contractor pursuant to Section 3(a) of HICPA, 73 P.S. § 517.3(a), and have contracted with Pennsylvania consumers for home improvement construction services. Original Record, Item No. 175, Finding of Fact (F.F.) 7.

Based on complaints received from Appellants' former customers, the Commonwealth, by the Pennsylvania Attorney General (Appellee), commenced a civil action by complaint on November 13, 2020, alleging Appellants violated the Consumer Protection Law and HICPA. Following discovery, the trial court held a three-day bench trial, at which Appellee presented the testimony of several former customers. The trial court granted, over Appellants' objection, Appellee's motion to permit its witnesses to testify via videoconference.

Jo Anne Oszvart testified that she contracted for Appellants to construct a studio in her backyard. After she paid a 50% deposit of \$17,500 and bought \$2,000 in new hardware, Appellants only partly completed the work and never installed or returned the hardware. Ms. Oszvart has sued Appellants in the Court of Common Pleas of Pike County based on this contract. Reproduced Record (R.R.) at 76a-88a.

Josephine Vince, who is Appellant Vince's aunt, testified she contracted for a \$50,000 home remodeling. Appellants did not provide Ms. Vince with a written agreement. She paid a total of \$41,436.35, but Appellants never fully

¹ Act of December 17, 1968, P.L. 1224, *as amended*, 73 P.S. §§ 201-1 - 201-10.

² Act of October 17, 2008, P.L. 1645, 73 P.S. §§ 517.1-517.19.

completed the work, leaving a kitchen remodel unfinished and a fireplace improperly and unsafely vented, requiring Ms. Vince to hire a third party to complete the work. R.R. at 91a-96a.

George Charles Horwatt testified that Appellants completed a \$14,000 bathroom remodeling but after completion, several problems appeared: a rocking toilet, improperly installed doors, cracking grout, and drainage problems causing mold and mushroom growth. Appellants never returned Mr. Horwatt's multiple calls and texts about the problems, and he was forced to hire a third party to remedy them. R.R. at 97a-107a.

Kyle Bradley Ostopick contracted for Appellants to replace his home's exterior siding and paid a deposit of \$6,500. Appellants failed to obtain the proper permits and local code enforcement officials shut down the work on its second day. Appellants refused to return the deposit. Mr. Ostopick's roof was damaged due to Appellants' failure to properly protect the unfinished work from the weather during permitting. R.R. at 112a-17a.

John Farrell agreed to a \$90,000 installment contract for work by Appellants and paid the first of three installments. Appellants ceased work after two days, which represented about 8% of the agreed-upon work, and never responded to Mr. Farrell's calls, even after he terminated the agreement. R.R. at 124a-28a.

Audrey Butkiewicz testified she contracted for a bathroom remodel for her husband, who is disabled. Appellants never completed the work, delayed a requested refund for months, and ultimately returned only \$3,300 of the \$5,000 deposit Mrs. Butkiewicz had paid. R.R. at 135a-40a.

Scott Hagen testified that Appellants completed a roof and patio replacement on his property but then failed to address problems with the work, such

as broken shingles and loose gutters. Mr. Hagen hired a third party to repair the work and then won a judgment against Appellants in the trial court. Mr. Hagen failed to collect on the judgment and the judgment expired. R.R. at 144a-51a.

Appellant Vince presented his own testimony. He stated he did not profit from the work done for Ms. Oszvart because his work consumed the entire initial deposit. R.R. at 156a-57a. He admitted the work on Ms. Vince's property was performed without a written agreement and claimed the payments she testified to were made directly to laborers and not to Appellants. *Id.* at 157a. Vince testified the drainage problems with the work on Mr. Horwatt's property resulted from the windows Mr. Horwatt purchased and not from shoddy workmanship. *Id.* at 157a-58a. Vince stated that, aside from the consumers testifying in this matter, Appellants have never received other consumer complaints during their 25 years in the construction industry. *Id.* at 156a.

The trial court found the consumer witnesses credibly testified to Appellants' violations of HICPA and the Consumer Protection Law. The trial court correctly noted under Section 517.10 of HICPA, a violation of HICPA is deemed a violation of the Consumer Protection Law. Original Record, Item No. 175 (conclusions of law) at 24 (citing 73 P.S. § 517.10). Specifically, the trial court found Appellants: (1) failed to perform by accepting money for home improvement contracts and never finishing the work or issuing a refund, in violation of Section 517.9(5) of HICPA;³ (2) performed shoddy work and work in a not-workmanlike

³ Section 517.9(5) of HICPA states no person shall "[a]bandon or fail to perform, without justification, any home improvement contract or project engaged in or undertaken by a contractor." 73 P.S. § 517.9(5).

manner in violation of the Consumer Protection Law;⁴ (3) accepted deposits prohibited by Section 517.9(10)(1)(a) of HICPA;⁵ and (4) failed to use written agreements which comply with the requirements of Section 517.7 of HICPA.⁶ Trial Ct. Dec. 31, 2024 Order. The trial court ordered Appellants to pay restitution and penalties, and permanently enjoined them “from holding a license as a Home Improvement Contractor” and “operating a home improvement construction business.” *Id.* Appellants filed post-trial motions, which the trial court denied by February 20, 2025 order. This appeal followed.⁷

On appeal,⁸ Appellants raise essentially two issues. First, they argue the trial court erred in allowing Appellee’s witnesses to testify remotely via videoconference. Second, they argue the trial court’s finding of violations of the Consumer Protection Law and HICPA are not supported by substantial evidence.

⁴ “[U]nfair or deceptive acts or practices” prohibited by the Consumer Protection Law include “[r]epresenting that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another,” and “[m]aking repairs, improvements or replacements on tangible, real or personal property, of a nature or quality inferior to or below the standard of that agreed to in writing.” Section 201-2 of the Consumer Protection Law, 73 P.S. § 201-2.

⁵ Section 517.9(10)(1)(a) of HICPA prohibits accepting a deposit greater than one-third of the contract price for contracts with a price greater than \$5,000. 73 P.S. § 517.9(10)(1)(a).

⁶ Section 517.7 of HICPA requires home improvement contracts be in writing and signed by all parties. 73 P.S. § 517.7(a)(1), (2). Contractors must include in the contract approximate start and end dates, a toll-free phone number prescribed by statute, and a notice of the right of rescission. *Id.* § 517.7(a)(6), (12), (13). HICPA’s right of rescission allows homeowners “to rescind the contract without penalty regardless of where the contract was signed, within three business days of the date of signing.” *Id.* § 517.7(b). Failure to provide that notice is a violation of HICPA. *Id.* § 517.7(a)(3).

⁷ By May 20, 2025 order, the trial court denied Appellants’ request to stay the judgment pending appeal. By September 17, 2025 Memorandum and Order, this Court denied Appellants’ similar application to this Court.

⁸ Our review is limited to “determining whether the trial court abused its discretion or committed an error of law.” *Commonwealth ex rel. Corbett v. Manson*, 903 A.2d 69, 73 (Pa. Cmwlth. 2006).

On the first issue, Appellants argue the trial court abused its discretion in allowing testimony by videoconference because the witnesses were not subject to in-court cross-examination by Appellants. They add Appellee did not demonstrate remote testimony was necessary. Appellee argues the trial court acted within its discretion because travel to the courthouse would have been an undue burden on witnesses given their travel distance to the trial court or medical conditions limiting travel. Appellee also argues that even if the remote testimony was permitted in error, the error is harmless because Appellants were able to cross-examine all witnesses and have not alleged prejudice from the manner of testimony.

At trial, “[t]he court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to: (1) [m]ake those procedures effective for determining the truth; (2) [a]void wasting time; and (3) [p]rotect witnesses from harassment or undue embarrassment.” Pa.R.E. 611(a). “[I]t is indisputable that trial courts have broad discretion in controlling trial conduct.” *Commonwealth v. Purnell*, 259 A.3d 974, 984 (Pa. 2021). We find an abuse of discretion only “when the court has overridden or misapplied the law, when its judgment is manifestly unreasonable, or when there is insufficient evidence of record to support the court’s findings.” *B.A.B. v. J.J.B.*, 166 A.3d 395, 403 (Pa. Super. 2017).

We disagree with Appellants’ assertion that the trial court abused its discretion in allowing testimony by videoconference. As Appellee asserted, and as the trial court found, the witnesses who testified remotely either lived more than 100 miles from Luzerne County or their ability to travel was limited by medical conditions. *See* Pa.R.A.P. 1925(a) Op. at 4. In light of those facts, it was reasonable for the trial court to permit remote testimony. Like our sister court, we find “no

authority prohibiting such testimony,” provided the trial court remains able to assess credibility and permit cross-examination. *JP Morgan Chase Bank, N.A. v. Farrell* (Pa. Super., No. 222 MDA 2024, filed May 6, 2025), slip op. at 4.⁹ In this case, counsel for Appellants cross-examined each of Appellee’s witnesses. R.R. at 52a, 70a, 133a. As Appellee points out, the trial court remained attentive to directing the witnesses’ testimony and documentary evidence also supported the testimony. *See* Appellee’s Br. at 20-21. We find no indication in the record that allowing testimony by videoconference was unreasonable, unreliable, or an abuse of discretion.

As to support for the trial court’s factual findings, Appellants acknowledge the trial court is the arbiter of witness credibility and evidentiary weight, but they argue the trial court erred in not crediting Vince’s testimony. They argue Vince’s testimony adequately explained the consumers’ allegations and showed Appellants did not willfully breach contracts. Appellants also argue the trial court’s findings of nonperformance are unsupported because witnesses did not testify that their agreements (to the extent they existed in writing at all) contained a time-is-of-the-essence clause. Relatedly, Appellants claim the actions of the testifying consumers, whom “the Commonwealth claims to represent,” led to the delays, and Appellants invoke defenses such as waiver of claims by the consumers, laches, and unclean hands. Appellants’ Br. at 24-25.

Appellee responds that the trial court was not obligated to credit Vince’s testimony, and that willfulness is not a component of a violation of the statutes at issue. Appellee also argues Appellants’ contract-law defenses are misplaced: the proceeding at issue here is brought solely by the Commonwealth,

⁹ Non-precedential decisions of the Superior Court filed after May 1, 2019, may be cited for their persuasive value. 210 Pa. Code § 65.37(B).

not on behalf of individual consumers, and is distinct from common law remedies and the related common law defenses Appellants seek to invoke.

Initially, we note that “[t]he factfinder is responsible for weighing evidence, not this Court.” *Hutto v. Phila. Parking Auth.*, 118 A.3d 476, 482 (Pa. Cmwlth. 2015). We will not reweigh the evidence or revisit which evidence is credible; we ask only whether substantial evidence supports the trial court’s findings. *Id.* Substantial evidence is evidence “which a reasonable person would accept as adequate to support a conclusion.” *G.V. v. Dep’t of Pub. Welfare*, 91 A.3d 667, 671 (Pa. 2014).

We agree with Appellee that the record evidence adequately supports the trial court’s findings. Taking each count of the complaint in turn, for which the trial court found liability: multiple witnesses testified that Appellants either failed to complete any work at all or failed to finish agreed-upon work and did not offer refunds. Ms. Vince, Mr. Horwatt, and Mr. Hagen testified Appellants performed shoddy work. Ms. Oszvart testified she paid a 50% deposit of \$17,500, which is more than HICPA permits. Ms. Vince testified she paid more than \$41,000 without a written agreement whatsoever, and multiple consumers testified Appellants never provided notice of their right to rescission as HICPA requires. The trial court found that testimony credible, as is its province.

Further, we agree with Appellee that the common law defenses and doctrines Appellants seek to invoke are inapposite. Actions by the Attorney General for violations of the Consumer Protection Law are intended “to protect the public from fraud and unfair or deceptive business practices,” and are distinct from suits for compensation in tort or contract brought by individual consumers. *Feeney v. Disston Manor Pers. Care Home*, 849 A.2d 590, 597 (Pa. Super. 2004). These

actions are brought by the Commonwealth, not the consumer, and the question is only whether the contractor complied with the statutory requirements. *See Manson*, 903 A.2d at 74 & nn.6-7 (distinguishing tort liability and explaining contractor’s intent behind violations is irrelevant); *Gregg v. Ameriprise Fin., Inc.*, 245 A.3d 637, 650 (Pa. 2021) (explaining strict liability under the Consumer Protection Law). The duty to comply falls solely on vendors, who have “no legally cognizable excuse” if they fail to comply. *Gregg*, 245 A.3d at 649-50. Thus, we reject Appellants’ attempts to invoke common law defenses as in a suit in breach of contract.

For the foregoing reasons, we find no abuse of the trial court’s discretion and we conclude the trial court’s findings are supported by substantial evidence. Accordingly, we affirm the trial court’s judgment.

MATTHEW S. WOLF, Judge

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Commonwealth of Pennsylvania,	:	
By Attorney General	:	
David W. Sunday, Jr.	:	
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Independent Construction	:	
Builders, LLC and Vincent Vince,	:	
individually and as managing	:	
member of Independent Construction	:	
Builders, LLC, and d/b/a Independent	:	
Construction,	:	
Appellants	:	

ORDER

AND NOW, this 3rd day of September 2026, the February 24, 2025
order of the Court of Common Pleas of Luzerne County is AFFIRMED.

MATTHEW S. WOLF, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania, :
By Attorney General :
David W. Sunday, Jr. :

v. :

No. 364 C.D. 2025
Submitted: June 16, 2026

Independent Construction :
Builders, LLC and Vincent Vince, :
individually and as managing :
member of Independent Construction :
Builders, LLC, and d/b/a Independent :
Construction, :
Appellants :

BEFORE: HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE MATTHEW S. WOLF, Judge
HONORABLE MARY HANNAH LEAVITT, Senior Judge

OPINION NOT REPORTED

DISSENTING OPINION
BY SENIOR JUDGE LEAVITT

FILED: September 3, 2026

The Pennsylvania Rules of Evidence authorize a trial court to “exercise reasonable control over the mode and order of examining witnesses and presenting evidence[.]” Pa.R.E. 611(a).¹ I disagree that this Rule either contemplates or

¹ It states as follows:

(a) Control by the Court; Purposes. The court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to:

(1) make those procedures effective for determining the truth;

(2) avoid wasting time; and

(3) protect witnesses from harassment or undue embarrassment.

Pa.R.E. 611(a). The stated goals do not include the implementation of new and emerging technology or relieving a witness from having to travel to the court to testify.

authorizes out-of-state witnesses, with a stake in the outcome, to testify at trial via Zoom.

Prior to trial, the Commonwealth filed a motion to allow several witnesses to testify at trial via Zoom because they lived out-of-state and, for different reasons, could not travel to the courthouse.² Reproduced Record at 39a-40a (R.R. __). Each of the witnesses were consumers dissatisfied with the work of Independent Construction Builders, LLC (Company) and had an interest in the outcome of the litigation. Over Company's objection, the trial court allowed the consumers to testify by Zoom.

Generally, where a witness is unavailable to testify at trial due to distance or sickness, the Pennsylvania Rules of Civil Procedure permit the deposition testimony of that witness to be admitted as substantive evidence. Pa.R.Civ.P. 4020(a)(3)(b)-(c).³ To that end, the Judicial Code authorizes a process

² The witnesses were Audrey Butkiewicz, who lives in Massachusetts; Scott Hagen, who lives in South Carolina; and John Farrell, who lives in Florida.

³ It states:

(a) At the trial, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at the taking of the deposition or who had notice thereof if required, in accordance with any one of the following provisions:

....

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds

....

(b) that the witness is at a greater distance than one hundred miles from the place of trial or is outside the Commonwealth, unless it appears that the absence of the witness was procured by the party offering the deposition, or

(c) that the witness is unable to attend or testify because of age, sickness, infirmity or imprisonment[.]

Pa.R.Civ.P. 4020(a)(3)(b)-(c).

for obtaining the deposition testimony of an out-of-state witness, which can then be presented at trial. 42 Pa. C.S. §5325.⁴ The Uniform Interstate Depositions and Discovery Act (UIDDA) authorizes the compulsory deposition of non-party witnesses under a subpoena issued by a court in another state. Pennsylvania, Florida, and South Carolina have adopted the UIDDA. *See* 42 Pa. C.S. §§5331-37; Fla. Stat. Ann. §92.251 (West 2019); S.C. Code Ann. §§15-47-100–15-47-160. A witness who perjures himself in the deposition to be used at trial can be subject to sanctions in the state where the deposition takes place.

Due to health and safety concerns related to the COVID-19 pandemic, our Supreme Court authorized Pennsylvania’s Courts of Common Pleas to suspend the rules requiring physical presence of witnesses. *See In re: General Statewide*

⁴ It states, in pertinent part:

(a) General rule.--A deposition to obtain testimony or documents or other things in a matter pending in this Commonwealth may be taken outside this Commonwealth:

(1) On reasonable notice in writing to all parties, setting forth the time and place for taking the deposition, the name and address of each person to be examined, if known, and if not known, a general description sufficient to identify him or the particular class or group to which he belongs and the name or descriptive title of the person before whom the deposition will be taken. The deposition may be taken before a person authorized to administer oaths in the place in which the deposition is taken by the law thereof or by the law of this Commonwealth or the United States.

(2) Before a person commissioned by the tribunal of this Commonwealth. The person so commissioned has the power by virtue of his commission to administer any necessary oath.

(3) Pursuant to a letter rogatory issued by the court. A letter rogatory may be addressed “To the Appropriate Authority in (here name the state or country).”

(4) In any manner before any person, at any time or place, or upon any notice stipulated by the parties. A person designated by the stipulation has the power by virtue of his designation to administer any necessary oath.

42 Pa. C.S. §5325(a).

Judicial Emergency, 234 A.3d 408 (Pa. 2020) (Table). However, this emergency order was rescinded in June 2021, at which point courts were directed to return “to pre-pandemic status.” *See Order, In re: General Statewide Judicial Emergency*, No. 553 Judicial Administration Docket (Pa. filed June 21, 2021) (per curiam).

Before this Court, the Commonwealth does not cite specific authority to allow out-of-state witnesses to testify at trial by Zoom in place of deposition testimony obtained in accordance with the Rules of Civil Procedure and the Judicial Code. Recently, the Pennsylvania Supreme Court stated:

[V]irtual court appearance is a valuable tool when live, in-person proceedings cannot occur. Such technology allowed us to keep our courts open during the worst of the COVID-19 pandemic.[□] *But it is not an adequate substitute in the ordinary course.* Importantly, absent emergency circumstances such as those brought about by the pandemic, *our Rules of Civil Procedure do not provide for the virtual appearance of witnesses at trial as a matter of course.*[□]

Tranter v. Z&D Tour, Inc., 343 A.3d 1106, 1130 (Pa. 2025) (footnote omitted) (emphasis added) (rejecting the use of virtual appearance of witnesses to resolve an issue under the doctrine of *forum non conveniens*). The Supreme Court enumerated the drawbacks inherent in the virtual testimony, such as “frustrating connectivity problems, inadvertently muted microphones (or sounds captured on microphones that should be muted), or video feeds stuck on comical camera filters.” *Id.* The time-honored procedures for presenting out-of-state witness testimony by deposition avoid these drawbacks.⁵

⁵ The Supreme Court expressed concerns about abandoning the Rules of Civil Procedure, which concerns apply here. There is a process set forth in the Judicial Code and in the Rules of Civil Procedure to procure the testimony of out-of-state witnesses for trial due to sickness or distance from the courthouse. While a trial court may exercise “reasonable control over the mode and order

The majority cites the Pennsylvania Superior Court’s decision in *JP Morgan Chase Bank v. Farrell* (Pa. Super., No. 222 MDA 2024, filed May 6, 2025) (unpublished, nonprecedential memorandum), which affirmed the trial judge’s decision to allow a bank employee and records custodian to testify via Zoom in a debt collection action.⁶ There, the records custodian’s testimony was limited to authenticating Farrell’s bank account history documents, such as her credit card account. Here, by contrast, the virtual testimony went way beyond the simple authentication of documents by a disinterested financial institution employee. The three out-of-state witnesses had an interest in the outcome of litigation and offered extensive testimony about their dealings with Company. Their testimony should have been obtained by deposition in the states where the witnesses reside and then read into the record at trial.

There is a process set forth in the Judicial Code and in the Rules of Civil Procedure by which the testimony of out-of-state witnesses can be obtained for use at trial. This process should have been followed here. The trial court erred.

I would reverse the trial court’s ruling to allow the testimony of the three out-of-state witnesses via Zoom; vacate the trial court’s order; and remand the matter for consideration of the Commonwealth’s case without their testimony.

MARY HANNAH LEAVITT, President Judge Emerita

of examining witnesses and presenting evidence,” Pa.R.E. 611(a), it cannot ignore Rules of Civil Procedure.

⁶ The Superior Court remarked that Farrell presented no authority prohibiting such testimony, and it interpreted Pa.R.E. 611(a) as giving the trial judge discretion to allow remote testimony for good cause. *Farrell*, slip op. at 8. However, as noted, the witness merely authenticated documents which could be done by stipulation. I disagree that *Farrell* construed Pa.R.E. 611(a) as establishing the broad principle that a trial judge can authorize virtual testimony as a matter of course.