

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

MARIE AUSTIN)
)
Defendant below, Appellant,)
)
v.) C.A. No. CPU5-13-000114
)
A+ Plumbing and Mechanical)
Solutions, LLC)
)
Plaintiff below, Appellee.)
)

Ms. Marie Austin
10531 Willow Grove Road
Camden-Wyoming, DE 19934
Pro Se Defendant below, Appellant

Melissa L. Dill, Esq.
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46 The Green
Dover, DE 19901
Attorney for the Plaintiff below, Appellee

Submitted: February 24, 2016

Decided: May 5, 2016

DECISION AFTER TRIAL

Defendant below, Appellant Marie Austin (“Defendant”), filed a civil appeal with this Court for a trial *de novo* of a final decision of a Justice of the Peace Court pursuant to 10 *Del. C.* § 9571 and Court of Common Pleas Civil Rule 72.3. Plaintiff below, Appellee, A+ Plumbing and Mechanical Solutions, LLC (“Plaintiff”), is seeking \$1,260.00, plus interest and court costs, from the Defendant for plumbing work that it provided for her pursuant to an oral agreement. The Defendant contests the amount due the Plaintiff and contends that the Plaintiff breached their agreement when a new water pump the Plaintiff installed never worked.

Following trial for this matter, and after careful consideration of the parties' arguments, the Court finds for the Plaintiff in the amount of \$1,260.00 plus pre and post judgment interest at the legal rate of 5.75% per annum from August 10, 2012, and court costs.

FACTS¹

The Defendant owns rental units. She hired the Plaintiff, through its owner and president, as a plumber to service one of her rental units.² Various plumbing services were provided by the Plaintiff, including the replacement of a water pump for the well for the unit.³ The pump was replaced and water was provided for the rental unit, including the faucets. Soon thereafter, however, the faucets were only spitting water and a lot of air. The Plaintiff attempted to remedy the problem without success. He determined that there must not be enough water in the well, meaning either the water level in the well itself or the well's recovery rate was not sufficient.⁴ The Plaintiff recommended that the Defendant get a "well guy" to test the well for sufficiency of water.

The Defendant never contacted a well expert to test the well, but, rather relied on her son to test the well. Her son cut the top of the well pipe off to determine if the well was dry and determined that it was not. He did not test the well for any recovery rate, however.

¹ The Court has found the facts of this matter by a preponderance of the evidence, based on all of the evidence introduced at trial and the reasonable inferences therefrom.

² Herbert Romisch is the owner and president of the Plaintiff. He performed the plumbing services for the Defendant and testified for the Plaintiff at trial.

³ The Plaintiff had to turn the water pump off when he performed the plumbing services that were requested by the Defendant. When he turned it back on, it would not work. He got no water, only air. After checking the water system, including whether it was sealed for a proper vacuum, he determined it needed a new water pump.

⁴ The Plaintiff explained that once a pump takes water out of a well, the water level declines. The "recovery rate" is the rate that water refills the well.

A new tenant soon moved into the Defendant's rental unit. He advised the Defendant that the unit's water pump was not working properly. The faucet was just spitting water. Additionally, the water pump was hot and started smoking. The Defendant went to Lowe's and purchased a new water pump, which the tenant installed, and the rental unit's water system started working properly.

The Defendant took the old water pump to the residence of the Plaintiff's owner and threw it into his front yard. He retrieved the pump and opened it with a friend who is a Master Plumber.⁵ They found that the pump's propeller was fused to the pump's guide pipe. Two plastic parts had fused together so that the fan for the pump and the pump did not work. In essence, the pump had overheated and burnt up. The best that they could determine was that there was not sufficient water being pulled up through the well to go through the pipe to keep the water pump cooled down.⁶

The Plaintiff's total bill for the plumbing services provided to the Defendant was \$2,060.00. The Defendant paid the Plaintiff a total of \$800.00 on the bill. She paid a \$500.00 advance for the water pump the Plaintiff installed and \$300.00 when the Plaintiff presented its original bill on or about July 11, 2012. She refused to pay anything on the bill thereafter.

The Plaintiff is seeking \$1,260.00, in damages from the Defendant, plus interest and court costs for breach of contract. It contends that it performed the plumbing services requested by the Defendant as required under their oral agreement and deserves

⁵ The Plaintiff explained that a Master Plumber is a certification provided by State of Delaware after a plumber has received sufficient training, worked under a Master Plumber for at least seven years and has passed a test given by the State of Delaware. The Plaintiff's owner is also a Master Plumber.

⁶ It was explained at trial that water pumps rely on the water being pulled through them to keep them cooled down. Otherwise, they will overheat.

to be paid. The Defendant contends that the Plaintiff breached their oral agreement when it never got the water pump to work.

DISCUSSION

In order to recover for breach of contract, the Plaintiff must prove three elements by a preponderance of the evidence: (1) that a contract existed with the Defendant, (2) that the Defendant breached an obligation imposed by the contract, and (3) that the breach resulted in damage to the Plaintiff.⁷ The Plaintiff has met its burden in this case.

The Defendant entered a contract with the Plaintiff when she asked it to perform plumbing services on her rental unit. She was then obligated to pay for the services performed. While performing these services, it became apparent that the rental unit's water pump had to be replaced. The Plaintiff replaced the water pump as requested by the Defendant. However, water was not being properly drawn into the rental unit. The Plaintiff attempted to troubleshoot the problem and concluded that there had to be a problem with the water level or recovery rate of the well itself. Therefore, it recommended that the Defendant retain the services of a well expert to see if there was a problem with the well. The Defendant ignored the recommendation. Instead, she asked her son to look at the well. He determined that the water level was fine. However, he did not determine the recovery rate of the well. The Plaintiff's actions were reasonable and necessary given the circumstances. The Court finds no issue with its performance of the contract it had entered into with the Defendant.


The Plaintiff provided the Defendant a bill for its services in the total amount of \$2,060.00, which the Court finds reasonable for the services performed. The Defendant

⁷ See *Wilkinson Constr. v. Brice Builders*, 2005 WL 958131, at *1 (Del. Com. Pl. Apr. 27, 2005)(citing *VLIW Tech., LLC v. Hewlett-Packard Co.*, 840 A.2d 606, 612 (Del. 2003)).

paid \$800.00 of that amount, but, has refused to pay any additional amounts due on the bill. Therefore, the Defendant has breached an obligation imposed by the contract by refusing to pay for the Plaintiff's services as performed pursuant to her request. The breach has resulted in damage to the Plaintiff in the amount of \$1,260.00.

CONCLUSION

Based on the foregoing, the Court enters judgment for the Plaintiff and against the Defendant in the amount of \$1,260.00, plus pre judgment and post judgment interest at the legal rate of 5.75% from August 10, 2012, and court costs.⁸


CHARLES W. WELCH
JUDGE

⁸ The Court finds that the July 11, 2012, bill that the Plaintiff provided to the Defendant was due on receipt by the Defendant and that 30 days from the date of the bill was a reasonable time to make payment thereon.