

**IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY**

CONSTANTIN AFILIPOAEI,)	
)	
Appellant/Plaintiff-below,)	
)	C.A. No. CPU6-12-000309
v.)	
)	
ERIN R. FRUEHAUF, individually and)	
t/a FRUE-CON CONTRACTING)	
SERVICES, LLC)	
)	
Appellees/Defendants-below,)	

Submitted October 2, 2013

Decided October 31, 2013

Richard E. Berl, Jr., Esquire, counsel for Appellant/Plaintiff-below
H. Clay Davis III, Esquire, counsel for Appellees/Defendants-below

DECISION AFTER TRIAL

In this breach of contract action the Court is called upon to determine whether Defendants are liable to Plaintiff for damages resulting from renovation work to Plaintiff's residence. On August 28, 2013, the Court held a bench trial in this matter. This is the Court's decision.

FACTUAL AND PROCEDURAL BACKGROUND

The Court makes the following findings of fact after hearing the testimony and reviewing the exhibits presented at trial. In August 2010, Constantin Afilipoaei (hereinafter "Plaintiff") and Frue-Con Contracting Services, LLC through its President, Erin R. Fruehauf, (hereinafter collectively referred to as "Defendants") began negotiations for the completion of interior remodeling to Plaintiff's residence in Selbyville, Delaware. On August 30, 2010, Defendants provided Plaintiff with three options, which were collectively referred to as Bid #511. Plaintiff chose Option C, which provided for installation of six replacement windows, three new doors and extensive interior remodeling.

Approximately two months later, the parties entered into negotiations to replace the roof of Plaintiff's residence. On November 3, 2010, after Plaintiff rejected Defendants' \$6,000.00 bid for a complete replacement of the roof, Defendants submitted a bid to Plaintiff for repair work to the roof, referenced as Bid #615 which included, "cover over existing shingle roof with architectural grade shingles at owner's request only [and] all wood replacement will be upcharge[d] as necessary".¹ On November 4, 2010, the parties signed a proposal for both bids, including: Bid #511 for interior remodeling with an estimated cost of \$17,800.00 and Bid #615 for the roof repair with an estimated cost of \$3,000.00, for a total cost of \$20,800.00 for all improvements to

¹ See Plaintiff's "Exhibit C".

Plaintiff's residence. At Defendant Fruehauf's request, Plaintiff submitted a deposit of \$10,000.00. Per the proposal, payment for each line item of the proposal was to be tendered at the time of completion of the line item. Defendants estimated that the work would take six to eight weeks to complete.

Defendants began work on the roof two weeks later in mid-November. In mid-December, Defendants completed work on the roof. In mid-January, Defendants returned to install two windows. At that time, Defendants requested payment for the roof work. Plaintiff tendered a partial-payment of \$1,500.00. On that same day, after partially installing the windows, Defendants removed their tool trailer from the job site. Defendants did not return or contact Plaintiff for several months thereafter. During this time, Plaintiff attempted to contact Defendants to no avail. At the end of March, Defendant Fruehauf returned with members of his crew to collect the ladders that they had left behind at Plaintiff's residence. An argument ensued, and Plaintiff contacted the state police. The state police advised Defendant Fruehauf to collect the ladders and not return to Plaintiff's residence.

DISCUSSION

The parties signed a binding contract for extensive interior and exterior renovations to Plaintiff's residence.² The salient issues presented to this Court are whether Defendants satisfactorily performed their duties under the contract, and if Defendants breached their duties, whether the Plaintiff is owed any damages.

To prevail on a breach of contract claim, a plaintiff must prove three (3) elements by a preponderance of the evidence:

- (1) the existence of a contract, whether express or implied;
- (2) the breach of an obligation imposed by the contract; and
- (3) resultant damage to the plaintiff.³

In Delaware, material breach is defined by considering the factors listed in section 241 of the Restatement (Second).⁴ These factors include:

- a. the extent to which the injured party will be deprived of the benefit which he reasonably expected;
- b. the extent to which the injured party can be adequately compensated for the part of that benefit of which he will be deprived;
- c. the extent to which the party failing to perform or to offer to perform will suffer forfeiture;
- d. the likelihood that the party failing to perform or to offer to perform will cure his failure, taking account of all the circumstances including any reasonable assurances;

² *Id.*

³ *VLIW Technology, LLC v. Hewlett-Packard Co.*, 840 A.2d 606, 612 (Del. 2003).

⁴ *Daystar Const. Mgmt., Inc. v. Mitchell*, 2006 WL 2053649, at *8 (Del. Super. July 12, 2006).

- e. the extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing.⁵

It is undisputed that the agreement before the Court required Defendants to repair the roof and complete extensive remodeling to Plaintiff's residence. After a thorough review of the trial testimony, exhibits and submissions of the parties, the Court finds that the Defendants installed the roofing shingles in a workmanlike manner per Plaintiff's instructions; however, the Defendants breached the agreement as to remaining renovations.

At trial, Plaintiff argued that Defendants breached the contract as to the roof repair work because the roofing tiles did not match the color of the existing tiles and the roof continued to leak after completion of the repairs. Conversely, Defendants claimed that Plaintiff consented to the mismatched shingles and elected the least expensive option fully aware of the continued risk of leakage from the roof.

The standard under which the Court reviews the contracting work performed by Defendants is the implied builder's warranty of good quality and workmanship. In determining whether the contractor's work was performed in a workmanlike manner the standard is whether the party "displayed the degree of skill or knowledge normally possessed by members of their profession or trade in good standing in similar

⁵ *Id.*

communities” in performing the work.⁶ A “good faith attempt to perform a contract, even if the attempted performance does not precisely meet the contractual requirement, is considered complete if the substantial purpose of the contract is accomplished.”⁷ Therefore, if the work done is such that a reasonable person would be satisfied by it, the builder is entitled to recover despite the owner’s dissatisfaction.⁸

Although Plaintiff may not have been wholly satisfied with the work performed, the Court is satisfied that Defendants completed the substantial purpose of Bid #511 for the roof repair work. Defendant testified that Plaintiff acknowledged and consented to the use of mismatched shingles. Plaintiff admitted that he consented to the use of grey shingles that did not match the existing tiles but complained, at trial, that he later decided that the “hodge-podge” of colors was unacceptable.

Defendant Fruehauf advised Plaintiff that a new roof, including fascia and wood replacement with new shingles, was preferable to ensure that the roof would not leak. He further testified that Plaintiff rejected the more expensive bid as “too high” and asked only that a new layer of shingles be added to the existing roof. Defendant Fruehauf testified that Plaintiff advised that he would upgrade the fascia and wood at a later date, choosing the less expensive and less effective roof repair. Based on the

⁶ *Shipman v. Hudson*, 1993 WL 54469, at *3 (Del. Super. Feb. 5, 1993).

⁷ *Nelson v. W. Hull & Family Home Improvements*, 2007 WL 1207173, at *3 (Del. Com. Pl. May 9, 2007) (quoting Del. Civ. Pattern Jury Instructions § 19:18 (1998)).

⁸ *Shipman*, *supra*. at *3.

foregoing evidence, the Court is convinced that Plaintiff received the benefit of the bargain as to Bid #615 for the roof repair work.

In contrast, the Court is not convinced that Defendants performed the extensive remodeling work per Bid #511 as agreed. The Court finds that Defendant Fruehauf failed to complete the remaining improvements to Plaintiff's residence in a timely manner.

In a case, such as this one "where the parties did not intentionally omit a time period for performance, the Court may add some reasonable time frame for performance to the agreement."⁹ The Court bases its decision on the following facts presented by the parties at trial. Defendant Fruehauf testified that the estimated time for completion of the projects was approximately six to eight weeks. He further testified that he worked for one day in November, one day in December, approximately three days in January and, then, ceased performance for either inclement weather or due to an altercation with Plaintiff. Plaintiff, conversely, testified that an altercation occurred between the parties, on March 23, 2011, when Defendant returned to the residence after a two-month absence during which no work was performed despite Plaintiff's repeated yet unsuccessful attempts to request Defendants to commence work during that time.

The Court finds Plaintiff's testimony on this point to be more credible. It is clear to the Court that a contract for renovations with an estimated time of completion of six

⁹ *Hadley v. Krolick*, 1999 WL 1847376, at *3 (Del. Com. Pl. May 24, 1999).

to eight weeks commencing in November, would reasonably be performed no later than March. In spite of Defendants' varied excuses, the work was not performed in a reasonable time. Defendant Fruehauf's removal of the tools from the worksite and his unwillingness and failure to communicate with Plaintiff regarding his return to the job site supports Plaintiff's contention that Defendants abandoned the job prior to completion. Thus, the Court finds that the Defendants materially breached the agreement and, therefore, Plaintiff is entitled to recover damages. As such, the Court must decide how to calculate the appropriate damage award.

The standard remedy for breach of contract is based upon the reasonable expectations of the parties.¹⁰ Expectation damages are measured by the amount of money that would put the non-breaching party in the same position as if the breaching party had performed the contract.¹¹ Had Defendants not breached the contract, Plaintiff would have enjoyed the benefit of a completely remodeled home at the cost of approximately \$20,800.00. As it stands, Plaintiff has his bargained-for roof repair, two partially installed windows and a completely un-renovated interior space.

Plaintiff requests \$11,500.00 in damages which represents the total sum he tendered to Defendants. As mentioned previously, the Court finds that Defendants completed the roof work in a reasonable and workmanlike manner. Per Bid #615, the roof repair work was priced at \$3,000.00. Defendant is entitled to payment for this job.

¹⁰ *Duncan v. Thera Tx, Inc.*, 775 A.2d 1019, 1022 (Del. 2001).

¹¹ *Id.*

On the other hand, Defendant breached the agreement as to Bid #511 for the remaining renovation tasks. Therefore, the Court finds that Defendants are liable to Plaintiff for the return of his deposit less the full payment for the roof repair work.

CONCLUSION

As to the Plaintiff's claim for breach of contract, the Court finds that the Defendants are liable to the Plaintiff in the amount of \$8,500.00. Therefore, the Court enters judgment in favor of the Plaintiff for \$8,500.00 against the Defendants, with costs.

IT IS SO ORDERED, this ____ day of October 2013.

The Honorable Rosemary Betts Beauregard