IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

E. JANE QUASHNE,	)	
	)	
Plaintiff Below,	)	
Appellant,	)	
	)	
v.	)	Case No.: CPU4-18-005019
	)	
THUNDER HILL LANDSCAPING	)	
GROUND PRO CO.,	)	
	)	
Defendant Below,	)	
Appellee.	)	

Submitted: September 12, 2019
Decided: October 15, 2019

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MEMORANDUM OPINION AND ORDER

Welch, J.

E. Jane Quashne (hereinafter "Plaintiff") brought this action against Thunder Hill Landscape Ground Pro. Co. (hereineafter "Defendant") to recover damages for breach of contract arising from lawn care. Both parties stipulated to all exhibits and had them pre-marked prior to trial.

PROCEDURAL HISTORY

On November 9, 2018, Plaintiff filed an appeal of decision from JP Court 13 pursuant to 10 *Del. C.* § 9570 et. seq. On January 25, 2019, Defendant filed an answer denying liability,

asserting Plaintiff failed to state a claim upon which relief can be granted and counterclaiming for unpaid bills for lawn services it rendered to Plaintiff.

On February 11, 2019, Plaintiff filed a Motion to Amend its complaint to request an increase in damages from $9,000 to $15,000. On this same date, Plaintiff filed an answer to Defendant's counterclaim denying the allegations. On February 27, 2019, Defendant filed a letter informing the Court that it did not oppose Plaintiff's motion to amend. On March 8, 2019, the Court granted the Motion to Amend.

On July 17, 2019, Plaintiff served a subpoena upon James Hughes ("Hughes") seeking to compel him to appear as a witness at trial. On August 16, 2019, the Delaware Department of Agriculture filed a Motion to Quash the subpoena. On August 30, 2019, this Court denied the Delaware Department of Agriculture's motion to quash the subpoena. However, this Court limited Hughes's testimony to an hour and ordered the parties pay this witness $100 for time spent testifying in this case and reasonable travel expenses to get to this Court from his Dover office. The Court ordered Hughes's counsel submit costs incurred by this witness for travel.

On September 12, 2019, this Court held trial in this matter. At the conclusion of trial, this Court reserved decision. This is the Court's Final Opinion after consideration of the arguments and evidence presented at trial.

FACTUAL BACKGROUND

Based on the testimony and evidence presented at trial, the Court finds the relevant facts to be as follows.

In March 2018, Plaintiff entered into an agreement with Defendant for lawn care and treatment. Susanne Varone (hereinafter "Varone"), owner of Thunder Hill Landscape, testified that she began the business in April 2017. Varone further testified that she has been in the business

for three years, two years when she worked on Plaintiff lawn, and has a Delaware Department of Agriculture license. In addition, prior to owning the landscaping business, Varone was a construction and property manager for twenty years. In April 2018, Plaintiff requested Defendant treat her lawn with fertilizer to destroy growing weeds. Varone indicated that her twenty-four year old son, Jordan Talley (hereinafter "Talley"), applied fertilizer to Plaintiff's lawn on April 21, 2019. Talley worked for Defendant for two or three years and mostly cuts grass. After no visible signs of improvement, Plaintiff requested that Defendant retreat the lawn. Plaintiff testified Defendant promised to apply another coat of fertilizer for free.

On June 12, 2018, Defendant had Joshua Trusty (hereinafter "Trusty") and another employee apply another coat of fertilizer. Wade Kantor (hereinafter "Kantor"), a tenant residing at Plaintiff's property, was present for the second application. Kantor observed a young man pushing fertilizer up and down the lawn. Further, Kantor watched the young man refilled the bucket of fertilizer twice on the lawn and spilled some fertilizer during the process. Moreover, Kantor saw the young man spilled fertilizer several times, notably by the fence and shed area. Trusty is twenty-one and works for Varone. Trusty further indicated at trial that he followed the instructions on the fertilizer packaging and does not recall spilling any fertilizer when he worked on Plaintiff's lawn. Moreover, Trusty believed the other employee was spreading fertilizer and if he spilled fertilizer in the process, Trusty would not have known.

Shortly after the second application of fertilizer, Plaintiff's lawn showed signs of marked deterioration. Plaintiff informed the Defendant of the lawns worsening state and Defendant denied any responsibility for the lawns condition. However, Defendant stated that the lawn might have a fungus disease. On July 5, 2018, Hughes of the Delaware Department of Agriculture made a site visit to Plaintiff's home to inspect the lawn. Hughes observed patches of brown grass with signs

of excess fertilizer in small piles. Hughes concluded a misuse in pesticide resulted in the browning of the grass.

Only July 6, 2019, Plaintiff reached out to Defendant attempting to resolve the matter before taking legal action. Plaintiff stated she would seek estimates to fix her lawn and requested Defendant pay the estimated cost, adding that she did not trust them to fix it. On July 17, 2019, Defendant responded to Plaintiff denying its involvement in the destruction of her lawn and refused to pay any costs associated in fixing it.

On July 23, 2019, the Department of Agriculture sent a Notice of Warning to Defendant based upon its inspection of Plaintiff's property. In the written warning, the Department alleged the browning occurred as a result of piles of excess fertilizer left on Plaintiff's lawn. The warning required Defendant to provide the Department with a written response within fourteen days outlining what steps they have taken or will take to achieve compliance with the law. On August 9, 2019, Plaintiff responded to the Department's letter asserting compliance with the law. Plaintiff had two companies come out to her property and provide estimates on the cost to fix the lawn. Christopher Kalinowski (hereinafter "Kalinowski") of Hustle Construction observed that Plaintiff's lawn had sporadic patches of brown all over. Kalinowski started his business in 1985 and is experienced in landscaping, grass cutting, plant removal, yard reseeding and sodding. Kalinowski found that patch fixing the lawn would not work as the damage was too sporadic and doing so might contaminate undamaged growing grass. Kalinowski recommended Plaintiff strip the soil, put down new soil and put sod on top. Kalinowski proposed $12,000 to fix Plaintiff's lawn. Kevin Patterson (hereinafter "Patterson") of A-1 Kevin's Landscaping testified that Plaintiff's lawn had patches of dead grass and piles of fertilizer. Patterson has been in the landscaping business for thirty-three years and his experience includes lawn fertilization.

Patterson is licensed and certified by the Department of Agriculture. At trial, this Court qualified Patterson as an expert. Patterson opined that the damage to Plaintiff's grass was due to fertilizer. Patterson testified that if Plaintiff does not remove the soil, the chemical will remain and it could take years for the grass to grow back. Patterson recommended Plaintiff remove the soil and apply a new layer of top soil. Paterson proposed $11,770 to fix Plaintiff's lawn.

Varone believed the product Defendant applied did what it was supposed to do. Moreover, Varone felt Plaintiff was not happy with the service Defendant provided and as a result, the relationship between both parties ended. However, Varone argued that Plaintiff has an outstanding balance of $275 for the second application of fertilizer and the mowing Defendant provided in the month of June.

STANDARD OF REVIEW

As trier of fact, the Court is the sole judge of the credibility of each fact witness and any other documents submitted to the Court for consideration.[1] If the Court finds that the evidence presented at trial conflicts, then it is the Court's duty to reconcile these conflicts—if reasonably possible—in order to find congruity.[2] If the Court is unable to harmonize the conflicting testimony, then the Court must determine which portions of the testimony deserve more weight in its final judgment.[3] In ruling, the Court may consider the witnesses' demeanor, the fairness and descriptiveness of their testimony, their ability to personally witness or know the facts about which they testify, and any biases or interests they may have concerning the nature of the case.[4] In civil

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[1] *See Nat'l Grange Mut. Ins. Co. v. Davis,* 2000 WL 33275030, at *4 (Del. Com. Pl. Feb. 9, 2000) (Welch, J.).
[2] *See id.*
[3] *See id.*
[4] *See State v. Westfall,* 2008 WL 2855030, at *3 (Del. Com. Pl. Apr. 22, 2008).

actions, the burden of proof is by a preponderance of the evidence.[5] "The side on which the greater weight of the evidence is found is the side on which the preponderance of the evidence exists."[6]

DISCUSSION

To prevail on a claim for breach of contract, the movant must establish three elements by a preponderance of the evidence: (1) a contract existed between the parties; (2) breach of an obligation imposed by the contract; and (3) damages.[7] The Courts have concluded that a person who holds themselves out as a contractor capable of performing certain work "possesses the requisite skill to perform such labor in a proper manner, and implies as a part of his contract that the work shall be done in a skillful and workmanlike manner."[8] A breach occurs if the contractor fails to display "the degree of skill or knowledge normally possessed by members of their profession or trade in good standing in similar communities in perform the work."[9]

In this case, neither party has disputed the existence of a contract. The Court finds this element to have been proven during trial by a preponderance of the evidence. Thus, the Court will move on to analyze the other elements of breach of contract.

Here, Varone has no significant professional experience in lawn fertilization. Varone has been in the landscaping business for three years, and was in the business for two when she entered into a contract to provide lawn care service to Plaintiff. While Varone has experience in construction and property management, the Court finds this experience unrelated to grass fertilization. Notably during trial, Varone was unable to answer whether applying a second coat of fertilizer one month after a first coat was applied would destroy the lawn.

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[5] *See Gregory v. Frazer,* 2010 WL 4262030, at *1 (Del. Com. Pl. Oct. 8, 2010).
[6] *See Reynolds v. Reynolds,* 237 A.2d 708, 711 (Del. 1967).
[7] *Gregory v. Frazer,* 2010 WL 4262030, at *1 (Del. Com. Pl. Oct. 8, 2010); *VLIW Technology, LLC v. Hewlett-Packard, Co.,* 840 A.2d 606, 612 (Del. 2003).
[8] *Channels v. Deshields,* 2018 WL 3752144, at *6 (Del. Com. Pl. Aug. 6, 2018); *Lee-Scott v. Shute,* 2017 WL 1201158, at *4-5 (Del. Com. Pl. Jan. 30, 2017).
[9] *See Lee-Scott,* 2017 WL 1201158, at *4

Furthermore, Varone had two newly hired employees apply fertilizer to Plaintiff's lawn who were, in part, impeached at trial as to their knowledge of fertilizer application. Talley, who applied the first coat of fertilizer, has only worked for Defendant for two or three years and mostly cuts grass. Trusty, who applied the second coat of fertilizer with another employee, relied solely on bag instructions and no past experience. While Trusty did not recall spilling fertilizer on the lawn, neither him or Varone can account for the actions of the other employee who also worked on the lawn that day. In addition, Kantor observed the second application of fertilizer and noted that spillage of fertilizer did, in fact, occur.

Moreover, unlike Varone, Kalinowski and Patterson have vast experience in the landscaping business, including the process of fertilizing grass. Both Kalinowski and Patterson found that an excess use of fertilizer caused the sporadic patches of burnt grass throughout Plaintiff's lawn. Further, Kalinowski and Patterson propounded the only way to remedy the issue is to strip the soil, apply new soil and fresh grass on top. Additionally, Defendant was sent a warning by the Department of Agriculture following its inspection of Plaintiff's lawn. The Department's findings, as well as Hughes testimony, corroborates the fact that Plaintiff's lawn was burnt as a result of Defendant's improper application of fertilizer.

Lastly, no expert testimony was presented on behalf of Defendant to validate the work done or contradict the evidence and expert testimony presented on behalf of Plaintiff that established major defects in Plaintiff's lawn were caused by Defendant's fertilization. In short, Defendant did not rebut the expert testimony at trial offered by the Plaintiff.

All of the testimony and evidence in the record support a finding that Defendant breached the contract with Plaintiff by a preponderance of the evidence and failed to fertilize the lawn in a workmanlike manner.

CONCLUSION

For the foregoing reasons, judgement is entered in favor of the Plaintiff in the amount of $11,825, which includes the $175 offset to Defendant for mowing service in the month of June and court costs.

Further, the Court ordered $100 reimbursement to Hughes for time spent testifying in this case. It is so **ORDERED.** However, Hughes's counsel never submitted a statement for mileage and hereby waives those costs.

IT IS SO ORDERED

The Honorable John K. Welch
Judge

cc: Pat Thomas, Judicial Case Manager