

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

RICHARD GERMAN CONTRACTING,	:	
Plaintiff,	:	DOCKET NO. 12-00,467
	:	
vs.	:	CIVIL ACTION
	:	
BENNARDI SISTERS, LLC,	:	NON-JURY VERDICT
Defendant.	:	

VERDICT

This matter arises out of rehabilitation project occurring at 414 West Fourth Street, Williamsport, Lycoming County, Pennsylvania; this property is located within the City's Historic District. Plaintiff contractor brought suit for payments allegedly due to it for demolition and reconstruction work performed on the project. Defendant countersued for monies allegedly due to it to repair work performed by Plaintiff on the project. The Court held a non-jury trial on April 17-18, 2013. The Court hereby enters a verdict in favor of Plaintiff and against Defendant in the amount of \$4,987.94.

I. Findings of Fact

1. Plaintiff is Richard German Contracting, a business located at 402 Broadway Street, Hughesville, Lycoming County, Pennsylvania.
2. Richard German was the business owner and sole proprietor of Plaintiff at the time of this incident. Mr. German appeared in front of this Court on behalf of Plaintiff during the non-jury trial.
3. Defendant is Bennardi Sisters, LLC, a Pennsylvania-registered business entity, with a business address of 414 West Fourth Street, Williamsport, Lycoming County, Pennsylvania.
4. Anna Falat is the managing partner of Defendant. Ms. Falat appeared in front of this Court on behalf of Defendant during the non-jury trial.

5. This matter pertains to a rehabilitation project (the project) that occurred at 414 West Fourth Street, Williamsport, Lycoming County, Pennsylvania (the property). This property is located within the City's Historic District.
6. In March 2010, Defendant bought the property. Approximately six (6) years prior to this purchase, the home located on the property was involved in a fire. After the fire, the home on the property was condemned. The property remained dormant for approximately (6) years until Defendant's purchase in March 2010. Defendant purchased the property for the purpose of rehabilitating the home located on the property.
7. Rehabilitation of the home was to occur in two (2) phases. First, demolition would occur within the structure. Second, reconstruction of the home on the property would occur.
8. In the winter of 2010-11, Plaintiff submitted a bid to Defendant to complete the first phase of the project (demolition). Plaintiff's initial bid was in the amount of \$30,203.07. *See* Pl. Ex. 5. Defendant accepted this bid.
9. After Plaintiff began working on the project, Ms. Falat relayed to Plaintiff that she wanted eight (8) foot ceilings in the basement. In order to facilitate this ceiling height, Plaintiff dug underneath the pre-existing floor of the home. This additional cost amounted to \$9,944.20. *See* Pl. Ex. 6.
10. After demolition was completed, Defendant hired Plaintiff to continue working on the second phase of the project (reconstruction). Plaintiff charged Defendant for this work by invoices in the amounts of \$60,379.93, \$25,050.49 and \$71,698.25. *See* Pl. Ex. 7-9, respectively.
11. Defendant fired Plaintiff by asking Mr. German to leave the property. Defendant did not allow Plaintiff to finish any of its existing projects or repair anything that Plaintiff would have complaints about. Plaintiff's last day of work on the property was March 4, 2011.

12. Defendant hired Jay Two Associates, Inc. (Jay) to finish the rehabilitation project.
13. Jay contacted Joseph P. Girardi, the Codes Administrator for the City of Williamsport Bureau of Codes, to conduct an inspection of the property before commencing work on the project. On March 31, 2011, Mr. Girardi conducted a framing inspection on the property. This inspection was performed at the request of Jay. *See* Def. Ex. 9.
14. Following the inspection, Mr. Girardi sent a letter to Jay stating that overall the framing in the home was code-compliant, with the exception of the interior stair tower risers. Mr. Girardi told Jay that the interior stairs had to be removed and reconstructed to eliminate the code issue. Def. Ex. 9.
15. The interior stairwell that Mr. Girardi found to be non-compliant was a *temporary* staircase. This staircase was to be used only by the construction workers performing the rehabilitation of the home. Plaintiff constructed the tread of the interior staircase out of a temporary material. Plaintiff did not charge Defendant for the construction of this staircase.
16. Additionally, Mr. Girardi found that the exterior stair landings were not code-complaint. Specifically, Mr. Girardi found that the landing elevations were constructed in a manner so that any stairs placed in between the landings would not be complaint with the City code. At the time of Mr. Girardi's inspection, only the landings of the exterior stairs were constructed.
17. Plaintiff's complaint, filed February 29, 2013, raises two counts: 1) breach of contract, and 2) unjust enrichment.
18. For the work completed on the project, Plaintiff charged Defendant with the following invoices:

<i>Invoice</i>	<i>Amount</i>
Pl. Ex. 5	\$ 30,203.07
Pl. Ex. 6	9,944.20
Pl. Ex. 7	60,379.93
Pl. Ex. 8	25,050.49
Pl. Ex. 9	71,698.25
Total	<u>\$197,275.94</u>

See id.

19. Defendant paid Plaintiff in the following amounts for work completed on the project:

<i>Payment Date</i>	<i>Amount</i>
04/26/10	\$10,000.00
04/26/10	10,000.00
07/12/10	22,000.00
07/30/10	40,000.00
11/01/10	50,000.00
01/28/11	10,000.00
03/02/11	30,000.00
03/14/11	5,000.00
Total	<u>\$177,000.00</u>

See Pl. Ex. 10.

20. Instantly, Plaintiff claims that it is due a base amount of \$20,275.94.

21. Additionally, Plaintiff claims that it is due a debit in the amount of \$7,960.00 for

unskilled labor. *See* Pl. Ex. 1 (referred to as the “[p]revious agreement of cash”).

Plaintiff claims this money is owed to it based upon the parties’ oral agreement that Defendant would pay cash for unskilled work at a rate of \$20.00/hour. Plaintiff testified that he kept a running log of the amount Defendant owed to Plaintiff’s unskilled workers, and, at the time he was discharged from the project, the total amount Defendant owed was \$7,960.00. Plaintiff did not provide his running record to the Court; Mr. German merely testified to its existence.

22. Plaintiff also claims that it is due interest of one and a half percent (1/5%) on any outstanding monies. *See* Pl. Ex. 1 (referred to as the “[f]inance charge”). Plaintiff did

not provide that it had an agreement with Defendant regarding this interest rate on outstanding funds due.

23. Defendant's answer, new matter, and counterclaim, filed March 23, 2011, raises Defendant's two counterclaims: 1) breach of contract, and 2) unjust enrichment.¹
24. Defendant claims that it is due multiple credits; these credits include a check payment of \$250.00, improperly charged profit/overhead rates of \$790.73, improperly charged past-completed work of \$7,450.00 (*See* Pl. Ex. 9, pg. 3), and cash payments of \$9,600.00.
- a. As to the \$250.00 check payment, Defendant did not provide any evidence that it paid an additional check in the amount of \$250.00 to Plaintiff.
 - b. As to the improperly charged profit/overhead, Ms. Falat testified that Defendant was not to be charged profit/overhead on lumber supplies that Ms. Falat personally bought.
 - c. As to the past-completed work, Ms. Falat testified that Plaintiff improperly billed this amount to Defendant because the demolition phase of the project was complete; Ms. Falat testified that Defendant should not have to pay the \$7,450.00 because it was for work that should have been completed prior to this bill.
 - d. Lastly, as to the cash payment, Ms. Falat testified that Defendant made payments to Plaintiff in cash totaling \$12,000.00, and that the only documented credit Defendant received for this payment was in the amount of \$2,400.00. *See* Pl. 6, pg. 2.
25. In addition to these credits, Defendant claims that it is due monies expended to repair the work completed by Plaintiff. Particularly, Defendant claims it is due \$9,100.00 for

¹ The Court dismissed Defendant's third counterclaim, alleging intentional interference with contractual relations, by order dated May 21, 2012.

basement repairs, \$12,144.00 for fire escape (or outside staircase) repairs, and \$8,439.00 for northern interior stair repairs.

- a. As to the basement repair, Mr. Albarano testified that it would cost Defendant \$9,100.00 to waterproof the basement of the property.
- b. As to the exterior stair repairs, Mr. Albarano testified that it cost Defendant \$6,624.00 to demolish the old landings and \$5,520.00 to rebuild the landings, a total charge of \$12,144.00. Both Mr. Albarano and Ms. Falat testified that Jay completely tore down the outside landings that Plaintiff erected; also, they testified that Jay did not reuse any of the lumber from the landings constructed by Plaintiff when Jay rebuilt the landings. The Court finds Mr. Albarano's testimony to be credible.
- c. As to the interior stair repairs, Mr. Albarano testified that it cost Defendant \$2,944.00 to remove the old stairs, \$200.00 to remove the old stair debris, and \$5,295.00 to reconstruct the new stairs (\$4,416.00 in labor costs and \$879.00 in materials). The Court finds Mr. Albarano's testimony to be credible.

II. Conclusions of Law and Discussion

In order to prevail on a breach of contract claim, Plaintiff must establish: 1) the existence of a contract, 2) Defendants' breach of that contract, and 3) damages resulting from that breach. *Discover Bank v. Stucka*, 33 A.3d 82, 87 (Pa. Super. Ct. 2011). In this matter, Defendant breached its oral agreement with Plaintiff by failing to pay Plaintiff for the costs associated with labor and materials it expended on Defendant's building rehabilitation project. Thus, Plaintiff is entitled to damages that it incurred as a result of Defendant's breach. However, Defendant is

also entitled to credits in the amount that it expended to repair Plaintiff's improperly completed construction.

In this matter, Plaintiff claims that it is due monies totaling \$20,275.94; this amount includes the total invoices charged to Defendant (\$197,275.94) minus Defendant's payments (177,000.00). Additionally, Plaintiff claims it is due a \$7,960.00 payment for unskilled labor and interest on outstanding funds. As to Plaintiff's claim for \$20,275.94, the Court finds Defendant owes Plaintiff this amount. Further, as to Plaintiff's claim of \$7,960.00 in unskilled labor, the Court finds that Plaintiff failed to prove by a preponderance of the evidence that it was due those monies. No documents or writings were provided to substantiate the hours claimed by Plaintiff. Additionally, as to Plaintiff's claim for interest, the Court additionally finds that Plaintiff failed to prove by a preponderance of the evidence that it was due this interest. The Court finds that there was no meeting of the minds as to the charging of interest on unpaid monies.

However, the Court also finds that Defendant is entitled to credits for Jay's exterior stair repair, totaling \$12,144.00, and Jay's removal of the interior staircase, totaling \$3,144.00. As to Defendant's remaining claims for credits, the Court finds that Defendant failed to prove by a preponderance of the evidence that Defendant was due credits for: a check payment of \$250.00, improperly charged profit/overhead rates of \$790.73, improperly charged past complete work of \$7,450.00 (*See* Pl. Ex. 9, pg. 3), cash payments of \$9,600.00, basement repair of \$9,100.00, and stair reconstruction of \$5,295.00.

The Court finds that Defendant is due a credit for the exterior stair repair because both Mr. Albarano and Mr. Girardi testified that Plaintiff constructed the exterior landings improperly. Specifically, Mr. Girardi testified that the angles at which the landings were constructed made it impossible for the landings to comply with the City's Building Code. Mr. Girardi testified that landings needed to be remedied in order for them to be code-compliant. Mr.

Albarano testified that Jay completely tore down these landings and reconstructed them at the price of \$12,144.00; Mr. Albarano also testified that Jay did not re-use the old lumber to reconstruct the new landings. The Court finds Mr. Albarano's testimony to be credible.

Additionally, the Court finds that Defendant is due a credit for the removal of the interior staircase. Mr. German testified that he built the interior staircases for purely the use of the construction workers. Both Mr. German and Mr. Albarano testified that the treads of the interior stairs were made of temporary material. Also, after a review of Plaintiff's invoices, it appears that Plaintiff did not charge Defendant for the installation of the interior stairwell. Therefore, the Court finds that Defendant is due only the monies it cost Defendant to remove these temporary stairs, i.e. \$2,944.00 to remove the old stairs and \$200.00 to remove the old stair debris. Therefore, the Court finds that Defendant is due a \$15,544.00 credit on its counterclaim, and that Defendant owes a net amount of **\$4,987.94** to Plaintiff.

The Court enters the following Order.

ORDER

AND NOW, this 23rd day of April, 2013, following a non-jury trial in the above-captioned matter, in regard to Plaintiff's claim, a verdict is hereby entered in favor of Plaintiff and against Defendant in the amount of **\$4,987.94**.

BY THE COURT,

Date Richard A. Gray, J.

cc: Melissa R. Clark, Esq. – Counsel for Plaintiffs
 Michael E. Groulx, Esq. – Counsel for Defendants
 Gary L. Weber, Esq. – Lycoming County Reporter