

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

Brian P. Murphy and	:	C.A. No. 04-10-422
Loretta J. Murphy,	:	
	:	
Plaintiffs,	:	
	:	
vs.	:	
	:	
Romie D. Bishop and	:	
Shirley A. Bishop,	:	
t/a Sinex Pools, Inc.	:	
	:	
Defendants.	:	

Decision after trial

Date of Trial: April 26, 2005

Date Decided: April 28, 2005

**Judgment is entered on behalf of plaintiffs and against defendants.
Judgment is also entered on behalf of plaintiffs on the defendants' counterclaims.**

Brian P. Murphy and Loretta J. Murphy, 55 West Main Street, Middletown, Delaware 19709, Pro Se Plaintiffs.

Romie D. Bishop and Shirley A. Bishop, 2715 DuPont Parkway, Middletown, Delaware 19709, Pro Se Defendants.

Trader J.

In this civil action the plaintiffs, Brian P. Murphy and Loretta J. Murphy, allege a breach of contract by the defendants, Romie D. Bishop and Shirley A. Bishop because the defendants failed to supply various materials for the completion of the plaintiffs' swimming pool. The defendants have a counterclaim for the replacement of the pool liner, a claim for tortious interference with contractual relations, and a claim for slander. I conclude that the defendants breached their contract with the plaintiffs by failing to supply various items that the plaintiff bargained for. Additionally, I conclude that the defendants failed to produce sufficient evidence to establish their counterclaims. Accordingly, I enter judgment for the plaintiffs on their civil action and judgment against the defendants on their counterclaims.

The Facts

The defendants purchased a swimming pool business from Mr. and Mrs. James Sinex in the fall of 2003. Shirley Bishop handled the bank accounts and tax filings, but Romie Bishop had the overall management of the business. On February 16, 2004, the plaintiffs and the defendants signed a contract whereby the defendants were to install a swimming pool on the plaintiffs' property at 109 Steven Court, Middletown, Delaware. In May 2004, during the course of the installation of the pool, Mrs. Murphy noticed that the pool was leaking. Mrs. Murphy had James Sinex examine the pool and he noticed that there was a cut in the pool liner and he proceeded to patch the liner. The plaintiff then requested that Romie Bishop replace the liner and the liner was replaced by Romie Bishop. Mr. Murphy wrote several letters to the defendants concerning the completion of the pool and furnishing the balance of the items under the contract. When the defendants

had failed to supply the requested items by early July, the plaintiffs terminated the performance of the defendants on the job. Thereafter, the plaintiffs filed this civil action for damages for failure to complete the swimming pool and for materials that were paid for and were not supplied under the contract. The defendants filed a counterclaim for the replacement of the pool liner, a claim for tortious interference with contractual relationships with other customers, and a claim for slander.

The Defendants' Breach of Contract

As to the question of which party breached the contract, I conclude that the defendants breached the contract when they failed to complete the swimming pool in a timely manner and failed to supply materials that were paid for by the plaintiffs. I also conclude that the Murphy's were justified in terminating the contract with the Bishops because of the Bishops' breach of contract.

The Defendants are Jointly and Severally Liable

The defendants initially contended that they could not be sued individually because Sinex Pools, Inc. was a corporation in the state of Delaware. They failed to produce any evidence that Sinex Pools, Inc. is incorporated in this state. Mrs. Bishop conceded on the witness stand that the defendants were not incorporated in the state of Delaware.

The defendants contend that Shirley Bishop was the sole proprietor of the business and Romie Bishop had no connection with the operation of the business. The defendants' contention is incorrect. Prior to the signing of the contract, Romie Bishop

told Mr. Murphy that he was operating the business with Shirley Bishop. There is evidence that Romie Bishop worked on the Murphy pool, that he fired one of the employees, and that the letter from Sinex Pools signed by Mrs. Bishop refers to both defendants. Based on this evidence, I conclude that Romie D. Bishop and Shirley Bishop are jointly and severally liable for the breach of contract.

The Plaintiffs' Award of Damages

The next issue relates to the amount of damages established by the plaintiffs. Plaintiff's Exhibit 8 sets forth damages in the amount of \$7943.69. The claim for damages to the plaintiffs' yard was not included within plaintiffs' complaint and is speculative. Therefore, that claim is disallowed. The claim for a Kreepy Krauly to replace the Viper Sweeper is a duplication of another claim and is disallowed. I also disallow \$100.00 for the plumbing repairs. After deducting these disallowed amounts, the balance of plaintiffs' claim is \$6054.47. I conclude that this claim is reasonably within the scope of plaintiffs' complaint. Accordingly, I award damages in the amount of \$6054.47.

Defendants' Counterclaim for Breach of Contract

As to the defendants' counterclaim for the replacement of the pool liner, the defendants contend the pool liner was cut by a disgruntled employee who was working for the plaintiffs. The contention is speculative and there is no evidence to support this conclusion. Accordingly, this counterclaim is rejected.

Defendants' Claim for Tortious Interference With Contractual Relations

The defendants have set forth a cause of action for tortious interference with existing contractual relations. In order to prove a cause of action for interference with contractual relations, the claimant must show: (1) a contract; (2) of which the defendant was aware; (3) an intentional act by the defendant that is a significant factor in causing the breach of the contract; (4) without justification; and (5) that act causes injury or results in injury. *Aeroglobal Capital Mgmt. v. Cirrus Indus.*, 2005 WL 774844 (Del.)

In this case, the defendants contend that the plaintiffs called other clients and told them the defendants were planning to file bankruptcy. They also contend that the plaintiffs were encouraging other clients to file civil actions against the defendants. There is absolutely no evidence to support this claim and it is rejected.

Defendants' Counterclaim for Slander

Finally, the defendants appear to allege a claim of slander. There are five elements that must be pled and established to support a claim of defamation. These elements are: (1) the defamatory character of the communication; (2) publication; (3) the communication refers to the plaintiff; (4) the third party's understanding of the communication defamatory character; and (5) injury. *Read v. Carpenter*, 1995 WL 945544 (Del. Super.). There is no evidence to support a defamatory communication by the plaintiffs. Mr. Murphy called Mr. Caudel concerning his pool problems with the defendants. He made no derogatory statements concerning the defendants. He was simply sympathizing with Mr. Caudel concerning his pool problems. Accordingly, the claim for slander is rejected.

Based on these findings of fact and conclusions of law, judgment is entered on behalf of the plaintiffs and against the defendants in the amount of \$6054.47 plus costs for these proceedings. Judgment is also entered on behalf of the plaintiffs on the defendants' counterclaims.

IT IS SO ORDERED.

Merrill C. Trader
Judge