

are entitled to several credits to off-set in the amount claimed by Plaintiffs. Following trial on March 23, 2007, the Court reserved decision. This is the Court's final decision.

FACTS

Plaintiff Enertech is owned by Paul Hooley ("Hooley"). Defendants Steven and Tonya Cicconi are the owners of residential property located at 204 Bromley Drive, Wilmington, DE 19808. The parties executed an agreement on August 12, 2004 which provided that certain work was to be performed by adding a room addition for the Cicconis' home and other related work at the quoted price of \$82,000.00. (Plaintiff's Exhibit #1) However, during the course of construction from approximately August 19, 2004 to July 28, 2005, the parties agreed to several changes, sometimes with—and sometimes without—an explicit discussion of price. From the testimony offered at trial it is evident that Plaintiff performed all the work for which he is asking payment. It is also undisputed that Defendants have already paid Plaintiff \$72,500.00.

Upon completion of the project, Hooley presented the Cicconis with an invoice dated August 30, 2005. In addition to stating that \$9,500.00 which remained to be paid on the original contract, the invoice also included a lengthy list of "extras" for which Enertech sought additional payment. Although Enertech was contractually obligated to perform some of these "extra" items under the August 12, 2004 agreement, other charges clearly reflected changes above and beyond the original contract.

Sometime during construction Tonya Cicconi asked Hooley whether they could substitute a cathedral ceiling for the originally planned flat roof without incurring additional cost, and Hooley told her it was "no big deal." Also, when the architectural

drawings were received by New Castle County, a design flaw was discovered in the originally planned flat roof which required revisions and the parties agreed to reframe as a gable roof with an additional cost of \$1,800.00. The Cicconis also amended the work to add a sump pump for a basement bathroom. Although they paid Eneritech \$186.00 for plumbing materials, Hooley later included \$350.00 as an extra on the final bill. Although they did not directly discuss pricing, the Cicconis agreed to change the location of their fireplace, a move which ultimately cost \$650.00. The Cicconis wanted additional lights over a cabinet area, so Eneritech installed a receptacle and switch for those lights at a cost of \$350.00. All parties agreed that Eneritech added an extra island light at the Cicconis' request. Eneritech also installed wood framing in the basement beyond what it was required to do in the original agreement.

The parties made a verbal agreement for Eneritech to prime, sand, and paint all the kitchen cabinets for a price in the range between \$2,500.00 and \$3,000.00. The parties also agreed to change the deck railing from wood to plastic; although this change would cost \$800.00 extra, under the contract. The Cicconis were entitled to a \$300.00 reduction for the cost of the unused wood. The Cicconis also agreed to add crown molding to the front hall, which ultimately cost \$250.00, but I find this comes under the original contract.

The record also shows that the Cicconis were entitled to several credits on the work performed by Eneritech. They agreed to not install four windows on the second floor of the house in exchange for the added cost of installing a ceiling beam in accordance with New Castle County specifications. They also gave Hooley a refrigerator and stove in exchange for a \$250.00 credit. They were entitled to an \$825.00 credit for

fifty-five yards of carpet priced at \$15 per yard which was not installed. Because they opted not to have a window seat installed, they are also entitled to an \$800.00 credit.

Defendants testified that the roof installed by Plaintiff leaks when there is a heavy rain. They also complained that some of the electrical work was not wired properly, although Defendant Steven Cicconi admitted that he had also done some work on this wiring. Hooley classified a section of kitchen counter space as a peninsula that required no outlet. However, the electrician Brian Ploskin testified that such counter space should have been wired for at least one outlet.

DISCUSSION

To recover on a claim for breach of contract, plaintiff must prove the existence of a contract, breach of an obligation imposed by the contract, and resulting damages. *Spanish Tiles, Ltd., et al. v. Hensey, et al.*, 2005 WL3981740 (Del. Super.); *ULIW Technology, LLC v. Hewlett Packard Company*, Del. Supr. 840 A2d 606 (2003). The parties agree that plaintiff Exhibit #1, the agreement signed on August 12, 2004, represents the contract extended into for the work to be done at the Cicconis' residence.

Therefore, to recover for the original contract amount, Plaintiff must show that it fulfilled its obligation under the August 12, 2004 agreement. Defendants do not dispute that the work was done, but rather challenge the quality of the work, especially the roof, some of the electrical wiring, and the amounts claimed as extras. The Cicconis also claim an offset for items traded, deleted and changed during the construction. Since the Cicconis concede that the work was performed under the contract, Enertech has met hit

burden of proving an existing contract, performance, and failure to pay by Cicconis. Therefore, he is entitled to payment subject to any additions or adjustments.

In order to recover for the extra costs, Plaintiff must show either that there was an agreement to incur extra costs for the changes, or that Defendants could not reasonably believe that they could agree to a particular change without incurring extra expense. The record shows that when Tonya Cicconi asked Hooley directly about the added price for changing from a flat to a cathedral ceiling, he told her it was “no big deal.” Based on this objective behavior the Court finds that there was no agreement between the parties to any extra expense for this change.

Steven Cicconi testified that he thought that the \$186.00 charge for plumbing materials would cover the full cost of installing the basement sump pump, but given the substantial amount of work required to configure such a pump into an existing plumbing system, the Court finds that it is not reasonable for Defendants to expect that such a change would not incur additional costs. The extra cost sought by Plaintiff of \$350.00 is reasonable and is awarded.

The amount sought of \$1,800.00 for reframing the outside kitchen roof from flat to gable as a result of an architectural design error is reasonable, since it was required to construct the additional room. The amount to move the fireplace of \$650.00; install receptacle and switch over the cabinets of \$350.00; add a second light over the kitchen island of \$150.00; prime, sand and paint the kitchen cabinets of \$2,750.00; increase due to deck change from wood to plastic of \$500.00; and framing the basement area of \$500.00, I find reasonable and the amounts claimed for this work is awarded. Therefore,

the total principal amount awarded Enertech is \$9,500.00 balance due on the original contract, and \$7,050.00 for the extras, for a total amount of \$16,550.00.

The original amount awarded Enertech is offset by the claims of the Cicconis. They testified the roof leaked during heavy rain and has caused damage to the light fixture. While there was no direct estimate for the repair of the roof, a reasonable amount based on the evidence is \$850.00, which is awarded. The Cicconis also claim offset amounts for the following: \$825.00 for 55 yards of carpet given plaintiff; \$250.00 for a refrigerator and stove given; \$800.00 for window seat not installed; and \$375.00 to install an outlet over the extended counter. I find these amounts which equal \$3,100.00 reasonable, supported by the evidence and is awarded.

Based on these findings of fact and law, I find that Defendants Steven and Tonya Cicconi remain contractually liable to Plaintiff Enertech, Inc. for the total amount of \$16,550.00, offset by the amount of \$3,100.00

CONCLUSION

Accordingly, judgment is hereby entered for Plaintiff in the amount of \$13,450.00, with post-judgment interest. Each party shall bear their own costs.

IT IS SO ORDERED

Alex J. Smalls
Chief Judge