

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

J. MICHAEL'S PAINTING, INC.)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 2006-03-109
)	
MICHAEL PEDEN and)	
KRISTINA M. PEDEN,)	
)	
Defendants.)	

Submitted: March 29, 2007
Decided: April 4, 2007

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OPINION

J. Michael's Painting, Inc. (hereinafter "Michael's") brings this breach of contract action for failure of defendants, Michael Peden and Kristina M. Peden (hereinafter "Pedens") to pay for services rendered under a contract entered into by the parties on April 13, 2005. The facts which are fairly straight forward as testified to by James Purvis, owner and President of J. Michael's Painting, indicates that the defendants were referred to his company to paint at their residence at 514 N. Red Fox Circle, Middletown, Delaware. The contract involved painting the interior of the house which included the

living room, kitchen, dining room, foyer, powder rooms, the second floor bath, and bedroom areas. For services to be rendered under the contract, the defendants agreed to pay upon full completion the sum of \$5,965.00. Mr. Purvis testified that he met with the defendants on June 6, 2005 to discuss the job and to agree on color selections.

Purvis also testified the painting job began on June 8, 2005 where he assigned several workers. On Thursday, June 9th, while installing a bead board in the upstairs bathroom, one of the installers struck a water pipe with a nail gun causing it to rupture and water to leak in the interior. Gerald W. Williams, an employee of J. Michael's Painting, testified he was assigned at the job with 10 other employees and while installing wainscoating in the powder room upstairs with the nail gun, he struck a water pipe. Upon hearing the water running, he went downstairs and turned off the water. He further testified that he notified his boss who in turn was to notify the homeowner. He testified based on his best estimate, the water was leaking for a period of 15 minutes.

Purvis testified that when he was informed of the ruptured pipe, he called the homeowners and told them to have a plumber come out, fix the leak, and they would repair any holes required to fix the pipe. He estimated that since they were on the job, to repair the holes in the wall after the plumber had repaired the leak would cost somewhere around \$25.00. Williams estimated this at about \$50.00. Purvis testified that the plumber came out on June 9, 2005, but did not repair the leak until June 10, 2005, but during the entire time, the water was turned off. Also during the first day, the employees of Michael's when attempting to move a desk, damaged it beyond repair.

Purvis testified that after he was informed of the water damage, he visited the Peden's residence and offered to pay \$500.00 for the damage to the desk and \$500.00 for

the water damage. He also testified that he was not made aware that the carpet needed to be replaced, or that water had leaked into the basement which required any additional repairs. He did testify, however, he was informed curtains were on the floor in the basement which got wet and that his workers put plastic down on the lawn and put the curtains on them outside to be dried.

Williams testified that at the time the relationship became confrontational between the company and the defendants, they had completed 95 percent of the paint job required under the contract. The only work remaining on the contract was minor details and touch ups. He also testified that they were told by the homeowners to leave the job and not return to the house, therefore, they could not complete the remaining 5 percent touch up on the job.

Kristina Peden testified that on June 9, 2005, she got a call a nail had gone through a pipe in her house, and she needed to call a plumber to get an estimate, and to get the water pipe fixed. She testified she called the plumber, but she could not meet him at the house, so he left an estimate and indicated he would return the following Thursday to complete the work, which he did. The cost of the plumber to repair the pipe came to \$476.00 which she paid. She further testified that as a result of the water spill from the ruptured pipe, she was required to replace her rug and carpet at the cost of \$4,300.00. She was required to dry clean her draperies at the cost of \$251.00, and to dry clean a rug runner which was in the basement at cost of \$119.00. The cost of replacing the desk was \$500.00.

Additionally, Mr. Peden testified that damage to the grass caused by the plastic and the draperies being placed on it came to \$500.00, and that the estimate to repair the

dry wall is \$825.00. Therefore, the Pedens bring a counterclaim in the amount of \$6,971.00, costs, pre-judgment and post-judgment interest and attorneys' fees.

DISCUSSION

To recover on a claim for breach of contract, plaintiff must establish three elements which include: 1) the existence of a contract; 2) the breach of an obligation imposed by that contract; and 3) resulting damage to the non-breaching party. *Crowhorn v. Nationwide Mutual Insurance*, 2001 WL 695542 (Del. Super.) The claim brought by Michael's is based upon an agreement executed by the parties for painting the Peden's house. The owner and Plaintiff, Mr. Purvis, and his employee Williams, testified they painted the residence as required under the contract, and at the time they were excluded from the job, they had completed 95 percent of the work under the agreement. Michael Peden testified that while inspecting the job, he discovered there were paint stains on the carpet, and he was able to count 12 to 15 paint spots, that he thought the job was not professionally done, and he refuses to make payment for the work. He further testified Purvis agreed to pay for the desk his employees damaged.

The testimony of Purvis and Williams clearly indicates that the job as contracted by the Pedens for painting their house was rendered by Michaels as required under the contract. Therefore, Michaels is entitled to payment since they provided the services as required under the agreement.

The amounts claimed by Pedens as a result of the water leak are for replacement of the carpet which was damaged, cleaning the drapes and rug runner, the cost of plumber, damage to the grass, repair of the dry wall, and damage to the desk.

All of the testimony in the record supports a finding that the water damage was caused by a nail driven into the wall by an employee of Michael's, so there is little question that the water damage is the result of action by Plaintiff's employee. Therefore, those damages which are directly related to their actions which are reasonable, Plaintiff must bear the cost.

The amount to repair the dry wall, which Pedens claimed in the amount \$825.00 is for an area 2 feet by 3 feet. The Plaintiff testified under the most optimistic circumstances repair of the area would cost \$50.00. While I find \$50.00 to be extremely low, the amount demanded by Pedens I find excessive, especially since there is no estimate. Based on the testimony, I find that a reasonable amount to pay for this repair is \$250.00. The cost of the plumber in the amount of \$476.00 is hereby awarded, as is the amount for dry cleaning the runner and the draperies in the amount of \$370.00. The claim of \$500.00 for the grass I do not find reasonable. It is a small area and Peden did the work himself. Therefore, I award the amount of \$100.00, which I find reasonable. The claim of \$500.00 for the desk is awarded. The Pedens assert a claim for the paint spots on the carpet. They argue this as a basis for unprofessional work. However, I do not find upon reviewing the photographs in the record this allegation is supported. Therefore, any claim on this basis I do not find has merit. The cost of replacing the carpet of \$4,300.00 claimed by the Pedens is subject to further analysis.

It is clear that the carpet and the rug were damaged by the action of the Michael's employee. The question, however, is whether it requires the full replacement thereof when the evidence in the record is that the water only leaked for fifteen minutes. Additionally, even if it requires the replacement thereof, are the Pedens entitled to a new

carpet and rug at the expense of Michael's when the value of the old carpet would not equal that of the replacement cost. A more reasonable approach is that the Pedens are entitled to the value of the damage to their carpet and rug. To grant them the full cost of a new rug and carpet would be to grant them a windfall at the expense of Michael's. They are entitled to reasonable damages, but not to profit at the expense of Michael's, especially since there is no indication that Michael's did not act immediately to correct the problem when informed. Therefore, I conclude that the damage to the carpet in the amount of \$900.00 is reasonable under the circumstances and such amount is awarded.

Accordingly judgment is hereby entered for Michael's in the amount of \$5,965.00 subject to the counterclaim award to the Pedens in the amount of \$2,571.00 for a final judgment amount of \$3,394.00.

SO ORDERED this 4th day of April 2007

Alex J. Smalls
Chief Judge