

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

Andrew J. Fox :
t/a Fox Construction, :
 : C.A. No. 07-05-0080AP
Plaintiff below/ :
Appellee, :
 :
v. :
 :
 :
Craig Reeves and :
Chavon Conte-Reeves, :
 :
Defendants below/ :
Appellants. :

Decision after trial.

Date of Trial: September 12, 2007

Date Decided: September 17, 2007

Judgment for the Plaintiff.

Andrew J. Fox, 3892 Paradise Alley Road, Harrington, Delaware 19952, Pro Se
Plaintiff/Appellee.

Craig Reeves, 84848 Westville Road, Camden, Delaware 19934, Pro Se
Defendant/Appellant.

Trader, J.

In this civil appeal from the Justice of the Peace Court, I find that the plaintiff, Andrew J. Fox t/a Fox Construction (Fox), is entitled to recover \$4,100.00 from the defendant, Craig Reeves (Reeves), as a result of a breach of contract. Chavon Conte-Reeves was not a party to the contract and the complaint against her is dismissed.

Posture of the Case

On May 11, 2007, the defendants filed a notice of appeal from the decision of the Justice of the Peace Court #16. After service of process on the plaintiff, he filed a complaint alleging that he is entitled to \$4,100.00 from Reeves. The defendants filed an answer to the complaint, but did not assert a counterclaim against Fox. A pretrial conference was held on August 14, 2007, and trial was held on September 12, 2007.

The Facts

On August 30, 2006, the parties entered into a contract for the construction of a 14' x 24' addition for the sum of \$2,400.00. Fox was a subcontractor and Reeves, the home owner, was the general contractor on the job. Subsequent thereto, the parties orally agreed to the construction of a 28' x 24' addition for the sum of \$5,600.00. Fox was responsible for the framing, windows, and door, but Reeves hired another subcontractor for the construction of the roof on the addition. In late September 2006, the forecast called for rain and Fox placed tar paper over the plywood on the roof of the new addition to protect the addition from rain damage. That evening a heavy rain occurred and it damaged the new addition as well as the ceiling in the existing dining area in Reeves' house. As a result of the damage to Reeves' property, Fox offered to accept less money for the construction of the addition (Plaintiff's Exhibit #2), but this offer was never

accepted by Reeves. Reeves has made a payment of \$1,500.00 for the construction of the addition, but he has not paid the balance due under the contract.

Contentions of the Defendant

Reeves first contends that Fox is responsible for the damages to the addition and his house. Reeves' contention is incorrect. Fox agreed to construct the framing, doors and windows, but he did not agree to install the roof. He did place tar paper over the plywood to prevent rain damage, but he was not obligated by contract to do so. Therefore, Reeves is not entitled to any offset to plaintiff's claim because of the damage caused by the rain. Additionally, Reeves has filed no counterclaim in his pleadings, setting forth a claim for damage to his property.

The defendant next contends that Plaintiff's Exhibit 2 should be construed as an admission by the plaintiff that he is liable for the damages to Reeves' property. I do not construe Plaintiff's Exhibit 2 that way. Plaintiff's Exhibit 2 states in pertinent part: "total amount due \$2,700.00" and "\$1,200.00 is still due, but will settle on amount once estimate is completed." Fox simply made a goodwill business gesture as a consequence of the rain damage. To the extent that the language in Plaintiff's Exhibit 2 can be construed as an offer of settlement, the settlement offer was never accepted by Reeves. Moreover the settlement sheet introduced into evidence indicates that Reeves agreed that \$4,270.00 was due Fox. (Defendant's Exhibit 1.) Fox has not yet received the above sum, but a disbursement could not be made to Fox without Reeves' consent.

The Conclusions of the Court

Since Reeves has breached his contract with the plaintiff by failing to pay the balance due under the contract, Fox is entitled to recover \$4,100.00. In accordance with

these findings of facts and conclusions of law, judgment is entered on behalf of Andrew J. Fox and against Craig Reeves for the sum of \$4,100.00, plus costs of these proceedings. The complaint against Chavon Conte-Reeves is dismissed.

IT IS SO ORDERED.

Merrill C. Trader
Judge