

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

STATE OF DELAWARE,	:	
	:	I.D. No. 1008010002
v.	:	Cr.A.No. PK10-10-0489
	:	
ROBERT R. ELSEY,	:	
	:	
Defendant.	:	

ORDER

AND NOW, TO WIT, this 20th day of January, 2012, it is the finding of the Court that:

On October 19, 2011, Defendant Robert R. Elsey pled guilty to the lesser-included charge of Home Improvement Fraud, a misdemeanor. Defendant had contracted with Mr. & Mrs. John Hynes, through his sole proprietorship, dba Custom Remodeling, to do several jobs on the Hynes' property in Smyrna, Delaware. Defendant failed to substantially complete the work for which funds were provided or he deviated the funds to alternate uses.

Section 4204 of Title 11 of the Delaware Code grants the Court the authority to order restitution.¹ Section 4204(c)(9) provides, in pertinent part, that:

Wherever a victim of crime suffers a monetary loss as a result of the defendant's criminal conduct, the sentencing court shall impose as a special condition of the sentence that the defendant make payment of restitution to the victim in such amount as to make the victim whole, insofar as possible, for the loss sustained.²

¹ 11 *Del. C.* § 4204.

² 11 *Del. C.* § 4204(c)(9).

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Section 4106 was enacted to expand the use of restitution to cases where individuals are convicted of “stealing, taking, receiving, converting, defacing, or destroying property.”³ Section 4106 does not constitute a comprehensive codification of the trial court’s restitution authority.⁴

A sentencing court’s authority to order restitution is not limited to out-of-pocket losses or the types of losses the Court is required to address under Section 4106.⁵ The court has broad discretion to determine restitution.⁶ A court is not limited to direct evidence of the exact amount of loss, but may use extrapolation or any other rational method of estimating the amount of the victim’s losses.⁷

The Court, after weighing the evidence presented, finds that sufficient, competent evidence was presented to convince the Court that the ongoing contractual relationship was seriously breached.

The Court finds as follows:

1. The Bilco door was not installed. There is no evidence of what the door would cost nor of the cost of labor. Therefore, no amount is awarded. The original contract was paid in full for \$7,600.00.

³ *Wyatt v. State*, 498 A.2d 1088, 1089 (Del. 1985); *see also* 11 *Del. C.* § 4106.

⁴ *Id.*

⁵ *Id.* at 1090.

⁶ *Id.*

⁷ *State v. Wilson*, 1997 WL 364027, at *7 (Del. Super.).

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2. The dog run was not completed; therefore, \$1,450.00 is awarded.

3. The Defendant received \$3,800.00 for tree removal. Little work was accomplished other than cutting the trees and giving away the wood. In light of this, I award \$3,800.00 for the loss and an additional \$2,450.00 which was paid in excess for the tree and debris removal by a third party.

4. The Hynes paid \$5,300.00 for the insulation of their home and \$3,500.00 for work on the sunroom which had to be re-done due to inadequate construction. Therefore, I award \$5,300.00 for the insulation and \$3,500.00 for the sunroom.

5. I will discount the labor by 20% since the Defendant did employ labor on the job and the exhibits submitted do evidence work on the overall project.

Therefore, the amount of restitution awarded is \$33,755.00. IT IS SO ORDERED.

/s/ William L. Witham, Jr.
Resident Judge

WLW/dmh

oc: Prothonotary

xc: Nicole S. Hartman, Esquire

Lloyd A. Schmid, Jr., Esquire