

**NOT DESIGNATED FOR PUBLICATION**

RAY LEACH CONSTRUCTION CO., AND  
RAYMOND D. LEACH

NO. 03-CA-73

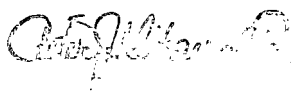
FIFTH CIRCUIT

VERSUS

COURT OF APPEALS  
FIFTH CIRCUIT COURT OF APPEAL

RICHARD LIENHOP AND LAURA  
LIENHOP

FILED MAY 28 2003 STATE OF LOUISIANA



ON APPEAL FROM THE FORTIETH JUDICIAL DISTRICT COURT  
PARISH OF ST. JOHN THE BAPTIST, STATE OF LOUISIANA  
NO. 38152, DIVISION "A"  
HONORABLE MADELINE JASMINE, JUDGE PRESIDING

May 28, 2003

**SUSAN M. CHEHARDY  
JUDGE**

Panel composed of Judges Thomas F. Daley,  
Susan M. Chehardy and Clarence E. McManus

WAYNE JABLONOWSKI  
Hulse & Wanek, APLC  
1010 Common Street  
Suite 2800  
New Orleans, Louisiana 70112  
COUNSEL FOR APPELLANTS,  
RICHARD AND LAURA LIENHOP

SAMUEL J. ACCARDO, JR.  
Accardo Law Firm, L.L.C.  
110 Belle Terre Blvd.  
Suite 200  
LaPlace, Louisiana 70068  
COUNSEL FOR APPELLEES,  
RAY LEACH CONSTRUCTION CO. AND  
RAYMOND D. LEACH

**AFFIRMED**

SMC  
TD  
CEM

After trial, the trial judge found that homeowners owed the construction “supervisor” \$5,553.21 for unpaid invoices and, further, ordered the “supervisor” to provide a steel support post for the home’s garage, screens for the home’s windows and reimbursement for repairs to the home’s Jacuzzi. For the following reasons, we affirm.

### **Facts**

In 1996, Richard and Laura Lienhop (“Lienhops”) decided to build a house on a lot that they owned in LaPlace, Louisiana. They purchased house plans from a magazine and approached Ray Leach (“Leach”) to construct their home. They knew he was “new to the business.”

Leach reviewed their house plans and wrote an estimate for construction of the house. The estimate, which included the costs of materials, labor, options, construction allowances, and Leach’s “Builder’s fee,” totaled \$154,095.00. In the estimate, Leach’s “Builder’s Fee” of \$12,000.00 is inconsistent with fees ordinarily charged on by builders in construction contracts.

Finally, the Lienhops met with their construction loan officer who recommended that they borrow more money than the estimate suggested in order to cover any additional expenses that may arise. The loan officer also informed the Lienhops that they would need to present the bank with a copy of an agreement with their builder to qualify for financing. After meeting with their construction loan officer, the Lienhops and Leach signed a document, which stated, in part, "Ray Leach Construction proposes to construct a 3,494 square foot residential structure on Oakmont Drive, LaPlace, Louisiana for One Hundred Sixty Six[sic] Thousand Dollars (\$166,000.00<sup>1</sup>)."

Leach applied for and obtained the necessary building permits and began construction at 129 Oakmont, Lot #58 in Belle Terre Links Subdivision, LaPlace, Louisiana. Richard Lienhop contacted three subcontractors to perform work on his home: flooring, cabinets, and heating and air conditioning ("HVAC"). He stated that the flooring and HVAC subcontractors were personal friends whose work he trusted.

Leach recommended the remaining subcontractors for the Lienhop project, including but not limited to concrete, framing, electrician, drywall, plumber, siding, and marble. Leach ordered most, if not all, of the materials for the project using accounts in his name with the suppliers. Further, Leach was billed for the materials and by the subcontractors. Leach would present those bills for payment to Lienhop, obtain payment, and deliver payment to the correct supplier or subcontractor. In the end, the Lienhops spent \$166,209.32 on the construction of their home.

In March of 1997, the Lienhops moved into their home. The Lienhops presented Leach with a "punch list" of items that they expected him to finish on their home, including caulking windows and doors and installing window screens

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<sup>1</sup> This revised sum did not include any additional fee to be paid to Leach.

among other things, which was not completed. After the Lienhops were in their home, Leach presented Mr. Lienhop with invoices for lumber, bricks, roofing materials, and hardware supplies totaling approximately \$6,500.00. Although several of the invoices dated back to November of 1996, Leach had not previously presented them for payment. The Lienhops refused to pay the invoices because they did not believe that the materials had actually been used in the construction of their house. Further, \$750.00 of Leach's "Builder's fee" was not paid.

On March 30, 1997, the Lienhops noticed water leaking into their kitchen through the ceiling light fixtures. At their request, Leach came to their house to observe the problem. Leach refused to repair the leak in their roof because the Lienhops had refused to pay the invoices he had presented to them.

On April 27, 1997, River Parishes Building Materials Inc., placed a lien on the Lienhops' property to secure payment of \$6,355.64 owed on Ray Leach's account for building materials delivered to 129 Oakmont, Lot #58, Belle Terre Links, LaPlace, Louisiana. At some point, Leach paid the outstanding balance on his account at River Parish Building Materials.<sup>2</sup> In September of 1997, Leach hired an attorney who sent a demand letter to the Lienhops for reimbursement for the payments he made on the outstanding invoices.

Meanwhile, the Lienhops continued to experience various problems in their home including water leaking through the windows in their den, a crack near the drain of their Jacuzzi tub, rotting door frame of the exit door from their kitchen into the garage, and numerous other problems. On February 9, 1998, the Lienhops hired an attorney to represent them in their claims against Leach.

On February 10, 1998, Leach filed suit against the Lienhops for "sums due on an open account." On February 18, 1998, the Lienhops answered and reconvened seeking return of monies paid in excess of the contract price for their

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<sup>2</sup> After the balance at River Parishes Building Materials was paid, River Parishes privilege was extinguished. Thereafter, Richard Lienhop paid to have the lien removed from the public record.

home and damages for the defects in the construction and failure to complete construction.

On November 26, 2001, a three-day bench trial commenced. After taking the matter under advisement, the trial judge rendered judgment with written reasons on June 7, 2002. In her lengthy written reasons for judgment, the judge found that there was no contract between the Lienhops and Leach because the document that they all signed did not contain the word "contract" or "agreement." The trial judge also found that, because there was no contract, Leach was not a contractor or builder so that the New Home Warranty Act did not apply to this project. The trial judge awarded Leach \$5,553.21<sup>3</sup> with interest and ordered that Leach provide the Lienhops with screens for their windows, reimbursement for repairs to their Jacuzzi, and provide or reimburse for installation of the required steel support post in the Lienhops' garage.

On July 12, 2002, the Lienhops filed a petition for suspensive appeal. On appeal, they assert seven assignments of error: the trial court erred in finding that a contract did not exist between the parties; the trial court erred in finding that Leach had a cause of action against the Lienhops on an open account for amounts in excess of estimated costs of construction; the trial court erred in finding that a contract did not exist because neither the word "contract" nor the word "agreement" was contained in the document in questions; the trial court erred in finding that Leach was not the "general contractor" of the home; the trial court erred in finding that Leach was not liable for defects in the construction under the New Home Warranty Act, La. R.S. 9:3141 *et seq.*; the trial court erred in failing to award damages to the Lienhops as a result of Leach's breach of contract and breach of warranty; and, alternatively, the trial court erred in failing to find that

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<sup>3</sup> In her written reasons, the trial judge stated: "The amount awarded to [Leach] represents the stipulated total of the unpaid invoices due to River Parishes Building Material[sic], \$5,952.30, plus the total of the unpaid invoices to True Value, \$200.91 minus the \$600.00 total paid as insurance costs, for a net figure of \$5,553.21."

Leach was negligent in his admitted supervision of their home's construction and failing to award damages for this breach of their contract.

### Analysis

The Lienhops' first and third assignments of error address the trial court's finding that there was no written contract between the parties so we will address these claims together. Specifically, the Lienhops allege that the trial court erred in finding that no written contract existed between the parties because neither the word "contract" nor the word "agreement" appeared in the proposal that the parties signed on September 4, 1996.

It is well settled that a court of appeal may not set aside a trial court's finding of fact in the absence of "manifest error" or unless it is "clearly wrong," and where there is conflict in the testimony, reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed upon review, even though the appellate court may feel that its own evaluations and inferences are as reasonable. Rosell v. ESCO, 549 So.2d 840, 844 (La. 1989); Marcentel v. Jefferson Door Co., Inc., 01-1307 (La.App. 5 Cir. 4/10/02), 817 So.2d 236, 240.

In the matter before us, there was a document signed by the parties but the parties disagree as to their intent. The Lienhops contend that they believed that the document was a building contract between them and Leach. Leach contends that the document was confected at the Lienhops' loan officer's request and solely for the purposes of obtaining financing. The Lienhops' loan officer corroborated that the document was prepared at his request so that the Lienhops could obtain financing.

Here, the trial judge accepted Leach's and the loan officer's testimony that the document was prepared solely for financing purposes and not to memorialize a building contract between Leach and the Lienhops. Considering our standard of review, and the evidence presented at trial, we cannot find the trial court was

manifestly erroneous or clearly wrong in its ultimate finding that there was no contract between Leach and Lienhop. Accordingly, we affirm the trial court's ruling in this regard.

Further, because we agree that no contract existed between the parties, we also find the trial court's decision to dismiss the Lienhops' reconventional demand was correct. We, therefore, pretermitt discussion of the Lienhops' remaining assignments of error.

Based on the foregoing, we affirm the trial court's judgment. Costs of this appeal are assessed equally to both parties.

**AFFIRMED.**



EDWARD A. DUFRESNE, JR.  
CHIEF JUDGE

SOL GOTHARD  
JAMES L. CANNELLA  
THOMAS F. DALEY  
MARION F. EDWARDS  
SUSAN M. CHEHARDY  
CLARENCE E. MCMANUS  
WALTER J. ROTHSCHILD

JUDGES

# Court of Appeal

FIFTH CIRCUIT  
STATE OF LOUISIANA

101 DERBIGNY STREET (70053)  
POST OFFICE BOX 489  
GRETNA, LOUISIANA 70054

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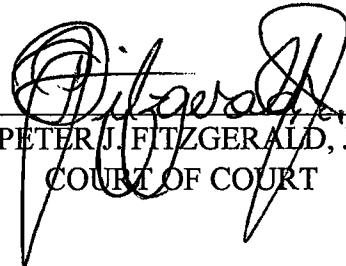
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JERROLD B. PETERSON  
DIRECTOR OF CENTRAL STAFF

(504) 378-1400  
(504) 378-1498 FAX

## CERTIFICATE

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN MAILED OR DELIVERED THIS DAY MAY 28, 2003 TO ALL COUNSEL OF RECORD AND TO ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

  
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