[Cite as *Darling Masonry, Inc. v. Gardilcic*, 2004-Ohio-3988.]

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

DARLING MASONRY, INC.	:	JUDGES:
	:	W. Scott Gwin, P.J.
Plaintiff-Appellee	:	John W. Wise, J.
	:	Julie A. Edwards, J.
-vs-	:	
	:	Case No. 2003 CA 0103
STEPHAN GARDILCIC, et ux.	:	
	:	
Defendants-Appellants	:	O P I N I O N

CHARACTER OF PROCEEDING:	Civil Appeal Frm Richland County Court of Common Pleas Case No. 2003CV-90-H
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	July 19, 2004

APPEARANCES:

For Plaintiff-Appellee	For Defendants-Appellants
ERIC S. MILLER 13 Park Avenue W., Suite 608 Mansfield, OH 44902	JEFFREY N. KRAMER The Walnut Building, Suite 300 24 West Third Street Mansfield, OH 44902

Edwards, J.

{¶1} Defendants-appellants Stephan Gardilcic and Susan Gardilcic [hereinafter appellants] appeal from the September 26, 2003, Judgment Entry of the Richland

County Court of Common Pleas which rendered judgment in favor of plaintiff-appellee Darling Masonry, Inc. [hereinafter appellee] and against appellants in the amount of $15,117.82.

STATEMENT OF THE FACTS AND CASE

{¶2} This matter began when appellants contracted with appellee to perform the stone veneer masonry installation on a new home appellants were building. A written contract was entered into and appellee generally invoiced appellants monthly thereafter. In addition to paying appellee per the invoices, it was agreed that appellants would pay for the material used by direct payment on appellee's account at Mansfield Brick and Supply. Appellants did so, paying both appellee and his supplier, Mansfield Brick and Supply, as invoices were presented, until the final invoice.

{¶3} After paying a total of $124,796.00, appellants refused to make further payments, claiming the final invoice was excessive.[1] Eventually, the parties agreed to hire Tim Alexander to measure the stonework installed and accept his findings as to the amount of stone actually installed. Alexander measured the stonework installed and submitted a written report. Subsequently, appellee filed a complaint in the Richland County Court of Common Pleas for the amount appellee felt was due and owing from appellants. Appellee sued for $30,549.96. Appellants disputed the amount claimed due as excessive and not in accord with the terms of the parties' written contract.

{¶4} A bench trial was held on September 19, 2003. The parties had previously agreed and stipulated that they would accept architect Tim Alexander's measurement of stone installed on appellant's residence. Thus, the only issues that

[1] Prior to the commencement of the trial, appellee and appellants agreed that appellants had paid $124,796.00 to appellee.

remained for trial were liability for certain extra expenses outside the written contract and whether the contract basic labor charge of $7.85 per square foot should apply to all stone delivered or only to stone actually installed on the residence.

{¶5} During the trial, documentary evidence was received. Among that evidence, were five detailed invoices sent by appellee to appellants, a final statement of account and an exhibit prepared by appellees' counsel which purported to calculate a "reduction" factor the trial court should use if it determined that the basic stone labor charges applied only to installed stone. This document was identified as Exhibit 2. At the time that appellee offered Exhibit 2 for admission as evidence, appellants objected on the basis that Exhibit 2 had not been introduced through a witness. Exhibit 2 was admitted over the objection.

{¶6} On September 26, 2003, the trial court entered final judgment. In that Judgment Entry, the trial court determined that the damages due to appellee were $15,117.82. In addition, the trial court found that appellee should recover for all materials used on the job plus all extra labor charges. Further, the trial court found that the $7.85 per square foot charge was intended to be applied to the stone as measured in place. The trial court then used Tim Alexander's measurements to assess the charge of $7.85 per square foot. Accordingly, the trial court found that appellee was entitled to recover all amounts summarized on appellee's Exhibit 1 (a summary of the underlying invoices) less a reduction to the basic labor and equipment charge as was shown on appellee's Exhibit 2. Accordingly, the trial court found that appellee was entitled to $139,913.82, less credit for the $124,796.00 already paid by appellants. The trial court then calculated that the balance owing from appellants to appellee was $15,117.82.

{¶7} Subsequently, appellants alleged that there was an error in the calculation represented in Exhibit 2. [2] Appellants pursued a timely appeal from the September 26, 2003, Judgment Entry of the trial court.

{¶8} Thus, it is from the September 26, 2003, Judgment Entry that appellants appeal, raising the following sole assignment of error:

{¶9} "IT WAS ERROR FOR THE TRIAL COURT TO RENDER JUDGMENT INCORPORATING A MISTAKEN CALCULATION IN PLAINTIFF'S EXHIBIT 2 OF THE BASIC STONE LABOR CHARGES BILLED IN OTHER INVOICES, WHERE THE MISTAKE WAS ASCERTAINABLE FROM THOSE OTHER INVOICES IN EVIDENCE, AND RESULTED IN AN OVERSTATEMENT OF DAMAGES IN THE FINAL JUDGMENT."

{¶10} In appellants' sole assignment of error, appellants contend that the trial court erred when it made a finding based upon incompetent evidence, Exhibit 2, where other evidence, namely the underlying invoices, would have revealed the error. In the alternative, appellants assert that the trial court's determination of damages was against the manifest weight of the evidence. We disagree.

{¶11} This issue arises from the dispute over whether the labor charges of $7.85 per square foot should be charged for all of the stone delivered to the site or just the stone that was installed, as measured by Tim Alexander. Exhibit 2 stated the total amount of stone delivered and calculated the labor charge. Exhibit 2 then stated the labor charge if the charge only applied to the stone installed, as calculated by Tim

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[2] Appellants also filed a Civ. R. 60(B) motion for Relief from Judgment. The motion was filed the same date as the notice of appeal. The 60(B) motion raised the issue of the erroneous calculation in Ex. 2. The trial court denied relief. However, the Civ. R. 60(B) motion and subsequent denial are not at issue in this appeal.

Alexander. The reduced charge reflecting the labor charge for the stone actually in place was then subtracted from the labor charge calculated based upon all of the stone purchased. Thus, it calculated the "reduction in amount owing [to appellee] if the $7.85 sq. ft. is applied to the stone as measured in place." Exhibit 2. Exhibit 2 then took the balance owing as shown in another exhibit (Exhibit 1), appellee's final invoice, and subtracted the reduction figure calculated above and arrived at the balance owing to appellee if the labor charge only applied to the measurements of the stone in place. The balance owed was $15,117.82.

{¶12} Appellants allege that Exhibit 2 contained a mistake. Appellants assert that if one added up the "total stone laid" figures from the underlying invoices sent to appellants as the work progressed (Exhibits 10 through 13), one would find that Exhibit 2 understated the amount of stone for which appellants were invoiced. As a result, the amount of the reduction was decreased, costing appellants an additional $1,727.00. Accordingly, appellants ask this court to correct that mistake as a matter of law or at least find that the trial court's decision was against the manifest weight of the evidence.

{¶13} However, appellants' argument ignores appellee-plaintiff's Exhibit 14 which was also admitted as appellants-defendants' Exhibit A [hereinafter Exhibit 14]. Exhibit 14 is a final, invoice prepared by appellee. It reflects the same total figure for the total labor charges for the laying of the stone veneer as is reflected by Exhibit 2. At the time of trial, appellants did not argue any error in either Exhibit 2 or Exhibit 14. In fact, Exhibit 14 was admitted by appellants as well as appellee. We find that the trial court's reliance upon Exhibit 14 and hence, Exhibit 2, which reflected the same total figure as does Exhibit 14, was not error nor against the manifest weight of the evidence.

{¶14} Accordingly, appellants' sole assignment of error is overruled.

{¶15} The judgment of the Richland County Court of Common pleas is affirmed.

By: Edwards, J.

Gwin, P.J. and

Wise, J. concur

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JUDGES

JAE/0510

IN THE COURT OF APPEALS FOR RICHLAND COUNTY, OHIO

FIFTH APPELLATE DISTRICT

DARLING MASONRY, INC.	:	
Plaintiff-Appellee	:	
-vs-	:	JUDGMENT ENTRY
STEPHAN GARDILCIC, EX. UX.	:	
Defendants-Appellants	:	CASE NO. 2003 CA 0103

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Richland County Court of Common Pleas is affirmed. Costs assessed to appellants.

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JUDGES