

**COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE
WILMINGTON, DELAWARE 19801**

*John K. Welch
Judge*

November 17th, 2009

Ms. Harriet Williams
18 Spring Arbor Drive
Middletown, DE 19709
Pro-Se Appellant

John James Conly, Esquire
301 S. DuPont Road, Suite H
Wilmington, DE 19804
Attorney for Appellee

**Re: *Harriet Williams v. Vertical Blind Factory Inc.*
C.A. No. CPU4-09-001672**

Date Submitted: November 9, 2009

Date Decided: November 17, 2009

LETTER OPINION

Dear Ms. Williams and Mr. Conly,

Trial in the above captioned matter took place on November 9, 2009 in the Court of Common Pleas, New Castle County, State of Delaware. Following the receipt of documentary evidence¹ and sworn testimony, the Court reversed decision. This is the Court's Final Decision and Order.

¹ The Court received into evidence the following items: Plaintiff's Exhibit # 1 – Blank standard Blind Factory order form which constitutes a contract for sale between customers and the Blind Factory. Lists the parties and terms of the contract for sale, including free in-home service for 90 days after installation; Plaintiff's Exhibit # 2 – Page one of a contract between Blind Factory and Harriet Williams dated July 31, 2008. Contract lists the two separate custom items that Williams ordered, "Kingston Valance" and "Mock Roman." The Kingston Valance is priced at \$2436.15, and the Mock Roman is priced at \$1088. The total amount due is listed as \$3524.15. A deposit of \$1500 is listed as paid; Plaintiff's Exhibit # 3 – Page two of the contract between Blind Factory and Harriet Williams dated July 31, 2008. This page describes in further detail the "Mock Roman" described in Plaintiff's Exhibit # 2, including a description of the costs, and dimensions of the "Mock Roman" of 75 ½ x 12; Plaintiff's Exhibit # 4 – Page three of the contract between Blind Factory and Harriet Williams dated July 31, 2008. This page describes in further detail the "Kingston Valance" described in Plaintiff's Exhibit # 2, including dimensions of the valance of 77 x 14, 39 x 14, and 37 x 14; Plaintiff's Exhibit # 5 – Page 5 of the contract between Blind Factory and Harriet Williams dated July 31, 2008. Describes the dimensions for the types of fabric needed to complete the job for the Kingston Valance as 77 x 15, 39 x 15, and 37 x 15. Also included in a section titled "Notes, Special Instructions, and Hardware" is a photograph provided by Ms. Williams as a model. Defendant's Exhibit # 1 – Stop payment order from Harriet Williams to Wilmington Savings Fund Society for check number 512,

I. Procedural Posture.

This is an *appeal de novo* brought pursuant to the Court of Common Pleas under 10 *Del. Code* §9570 *et seq.* from the Justice of the Peace Court. Plaintiff has timely perfected his appeal and Defendant has answered the Complaint.

The Court construes the instant action as a debt collection or breach of contract claim. The Plaintiff claims Defendant breached her contract to pay the balance due for custom window treatments.

Plaintiff requests this Court award the remainder of the payment due, \$2,024.15, post-judgment interest, and court costs. In her answer, the Defendant counter claims in the amount of \$1,950.00, which includes her initial paid deposit for the window treatments and “unnecessary expenses paid.” This claim was not filed below in Justice of the Peace Court, and thus will not be answered pursuant to CCP Rule 72.3(c) and the mirror image rule.

in the amount of \$2024.15, dated September 22, 2008, payable to the Blind Factory, and the reason for stop payment listed as unsatisfactory product; Defendant’s Exhibit # 2 – A letter from Harriet Williams to Richard Keith, dated October 9, 2008. The letter describes Ms. Williams account of all activities between the parties beginning with her initial visit to the Blind Factory. It describes the Blind Factory as non-responsive to complaints and mediation, and requests that the window treatments be redone to Ms. Williams specifications, or removal, and refund of deposit and other associated costs; Defendant’s Exhibit # 3 – Customer copy of the July 31, 2008 contract entered into by Harriet Williams and Blind Factory; Defendant’s Exhibit # 4 – Sample pictures of the window treatments which Harriet Williams provided to Blind Factory and were included in the July 31, 2008 contract; Defendant’s Exhibit # 5 – Page of the July 31, 2008 contract between Harriet Williams and Blind Factory. This page describes in further detail the Mock Roman with tassel ties, including dimensions of 75 ½ x 12. The document is signed by Harriet Williams and dated July 31, 2008. Ms. Williams signature on this document does not resemble any of her signatures on any other items admitted into evidence, all of which are similar; Defendant’s Exhibit # 6 – Three photographs of the window treatments installed by the Plaintiff in the Defendant’s home. The window treatments are visibly different from the sample photograph of the window treatments in Plaintiff’s Exhibit # 5.

The sole issue pending before this Court is whether the Plaintiff has proved beyond a preponderance of the evidence that the custom window treatments were delivered and installed as ordered, and whether the 90-day service guarantee was honored. For the reasons set forth below, the Court enters judgment in favor of the Defendant. Plaintiff's claim is therefore DENIED.

II. The Facts.

Plaintiff, Vertical Blind Factory, Inc. (hereinafter "Vertical") is a corporation incorporated under the laws of the State of Delaware. Defendant, Harriet Williams (hereinafter "Williams"), is a resident of the State of Delaware.

At trial, Vertical presented its case-in-chief and called as a witness, Richard Keith (hereinafter "Keith"). Keith is the Vice-President of Vertical. Keith testified regarding Vertical's standard operating procedure for entering into contracts with clients. Vertical uses a standard boilerplate contract for every contract it enters into with clients.² This contract includes all terms and conditions of the service, including a 90 day free service guarantee.³ Vertical's payment procedure includes two steps - a down payment, and a second payment for the remainder of the balance, made before delivery.

Williams testified that she went to Vertical to order custom-made window treatments for her home. She met with Denise Baker (hereinafter "Baker"), the manager of a Vertical retail store located at 314 E. Main Street, Middletown, Delaware. Baker has 14 years experience as an interior decorator.⁴ During two discussions at the Vertical retail store and a consultation at Williams' home, Williams and Baker agreed on the type of window treatments Williams would purchase - a Kingston Valence for her living room,

² Plaintiff's Exhibit 1.

³ Id.

⁴ Defendant's Exhibit 2.

and Mock Roman for her sunroom. During these preliminary conversations, Williams repeatedly rebuffed Baker's attempts to sell her a generic type of Kingston Style Valence with tightly gathered pleats.

Williams provided Baker with a picture, which Baker attached to the contract for sale. Williams testified that she told Baker that she was giving her the picture because she wanted her custom-made window treatments to look exactly like the ones in the picture. Williams also told Baker that she wanted the Kingston Valence to be 19½ inches long, with wide pleats. Baker assured Williams that the window treatments would be to her specifications, and reminded Williams of Vertical's 90 day free in home service guarantee. Williams signed the contract, and made a down payment of \$1,500.⁵

Keith testified that 8 weeks later, Williams' window treatments arrived from the manufacturing plant, and were ready for installation. He contacted her and told her that when she paid the remainder of her balance, the window treatments would be installed. Williams said that she had a personal "policy" against paying for items like this before installation. Keith agreed that Williams could pay the remainder of her balance to the installing employee.

A Vertical employee was sent to Williams' residence to install the window treatments on September 22, 2008. The window treatments, which this employee installed, were not the items that Williams had ordered. The Kingston Valence installed was 12 inches long, instead of the 19½ inches requested. The pleats in the fabric were extremely narrow, and did not match the picture provided.⁶ Although Williams had

⁵ Plaintiff's Exhibit 2; Plaintiff's Exhibit 3; Plaintiff's Exhibit 4; Plaintiff's Exhibit 5; and Defendant's Exhibit 3.

⁶ Defendant's Exhibit 6.

requested⁷ two “swoops” and three “bells,” there were numerous bells and swoops. Also, the installers hasty installation rendered a sensor on Williams’ home security system ineffective. The Mock Roman window treatment was badly damaged, wrinkled, and there was no padding. Despite these numerous problems, Williams gave the installing employee a check for the remainder of her balance, in the amount of \$2,024.15.

Williams immediately contacted Baker to complain. Her calls were not returned that day. The next morning, Williams went to the Wilmington Savings Fund Society, and placed a stop payment on the check she had tendered at installation.⁸ Later that afternoon, Baker visited Williams home. It is unclear from documentary evidence and testimony on the record what was discussed at this visit. However, Williams testified that she requested that Vertical honor its 90-day service guarantee by either removing the window treatments and refunding her money, or by replacing the window treatments with the custom window treatments she had ordered.

During the following week, Williams repeatedly contacted Vertical. Her calls were ignored. On September 30, Vertical received notice that Williams had stopped payment on her check for \$2,024.15.⁹ Baker called Williams and told her that nothing would be done to honor the 90-day service guarantee until payment was received. On October 1, Williams called Keith. He told her that he was not interested in honoring the service guarantee. Over the next two weeks, Vertical ignored Williams repeated attempts to discuss the matter.¹⁰

⁷ Defendant’s Exhibit 4.

⁸ Defendant’s Exhibit 1.

⁹ Defendant’s Exhibit 1.

¹⁰ Defendant’s Exhibit 2.

On cross-examination, Keith described Vertical's custom window treatment manufacturing process. He stated that Vertical does base their custom designs on customer provided pictures and specifications. He conceded that customer provided designs and specifications are routinely altered based on comparisons between window size in customer provided pictures and actual window size in the customer's home. It is undisputed that such modification was made here, without Williams consent. It is also undisputed that Williams received unequivocal guarantees from Baker that her custom window treatments would match her exact specifications and provided picture.

III. The Law.

In a civil claim for breach of contract, the burden of proof is on the Plaintiff to prove her claim by a preponderance of the evidence. *Interim Healthcare, Inc. v. Spherion Corp.*, 844 A.2d 513, 545 (Del. Super. 2005). To state a claim for breach of contract, the Plaintiff must establish the following: (1) a contract existed; (2) the defendant breached the contractual obligations; and (3) the breach resulted in damage to the plaintiff. *VLIW Technology, LLC v. Hewlett-Packard Co. STMicroelectronics, Inc.*, 840 A.2d 606, 612 (Del. 2003).

IV. Discussion.

Based upon all documentary and oral testimony in the record, the Court finds that the Plaintiff has not proven beyond a preponderance of the evidence all the elements of its breach of contract claim.

(a) Existence of a Contract

There is no doubt in the Court's view of the documentary and testimonial evidence presented at trial that a contract for sale and installation of custom window treatments existed between the parties. Neither party disputes the existence of a valid contract between the parties. Plaintiff's exhibits show the four-page contract between the parties. The contract, dated July 31, 2008, includes terms for the manufacture and installation of Kingston Valence and Mock Roman custom window treatments. All specifications are listed. A picture, provided by Williams, is affixed under the section titled "Notes, Special Instructions, & Hardware." All four pages of the contract are signed and dated by Williams.

At trial, Williams entered into evidence a final page of the contract.¹¹ This page lists the details of the Mock Roman window treatments.¹² No picture is affixed to the document. Williams testified that she believed her signature on this document was forged and backdated by the Plaintiff. It is clear to the Court that Williams' signature on this document does not even closely resemble Williams' signatures on all other documents in evidence.

(b) Breach of Contract

The issue to resolve is, in light of Williams' stop payment, whether there is any further duty on behalf of the Plaintiff to honor the 90-day service guarantee. Plaintiff argues that despite delivering a different than ordered, damaged product, the Defendant breached the contract when she placed the stop payment order, precluding all contractual duties with respect to the plaintiff. The Court disagrees.

¹¹ Defendant's Exhibit 5.

¹² Defendant's Exhibit 5.

Plaintiff failed to prove by a preponderance of the evidence that they installed the custom window treatments as ordered. The photograph provided in the Plaintiffs own exhibit of the Kingston Valence shows a markedly different window treatment from what was installed in the Defendant's home. Baker visited Williams' home on September 23, 2008, after Williams had stopped payment on her second check, for the balance of monies owed. While it is unclear from the record what was discussed, Williams testified that Baker examined the window treatments installed, and photographs of what she wanted. The Plaintiff did not argue, nor could it reasonably be argued, that Baker, a professional interior decorator with 14 years experience, did not see the difference between what was ordered and what was installed. After this visit, Williams repeatedly attempted to contact Vertical and was ignored.

On September 30, 2008, Vertical received notification of the stopped payment. Baker contacted Williams. Williams told Baker that she would not pay the remainder of her balance until the faulty window treatments were replaced to her initial specifications. Two days later Williams contacted Keith. He informed her that because she had stopped payment on the second portion of her balance, Vertical would not remove or replace the window treatments. Over the next week, Williams made many more attempts to contact Vertical, and was ignored.

Vertical did not install the product as offered. They altered Williams' custom design without her consent. The product installed had numerous bells and swoops instead of the three (3) bells and two (2) swoops specified in the picture attached to the contract. The Mock Roman design installed in Williams' home was damaged. By failing to cure or remedy this defect, they have forgone any contractual right to collect payment.

The Defendant stood ready and willing to accept removal or repair, was willing to tender the remainder of her balance upon repair, and repeatedly requested that the Plaintiff do so. The Plaintiffs utter disregard of requests to repair or remove the installed products violated their contractual duty to install the bargained for goods and services.

Based on the forgoing facts and analysis discussed *supra*, the Court finds that the Plaintiff has failed to meet its burden of proving all elements of its claim of breach of contract by a preponderance of the evidence.

Thus the Court enters judgment in favor of the Defendant and finds no liability against the Defendant. Each party shall bear their own costs.

IT IS SO ORDERED this 17th day of November, 2009.

John K. Welch
Judge

/jb
cc: Jose' Beltran, Case Manager
Civil Division