IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

RICHARDO L. HARDING and R & D CONSTRUCTION, Defendants-Below, Appellants, v. D. ROBERT FREEMAN, Plaintiff-Below, Appellee.	)	C.A. No. 2001-05-298

Submitted: May 16, 2002
Decided: May 29, 2002

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FINAL ORDER AND DECISION

This action is an appeal de novo from the Justice of the Peace Court pursuant to 10 Del. C. § 9570, et seq., where a judgment was entered against Defendants-Below, Appellants, Richardo L. Harding and R & D Construction (hereinafter "Defendant"), in favor of Plaintiff-Below, Appellee, D. Robert

Freeman (hereinafter "Plaintiff"). Trial took place on May 16, 2002. Following the receipt of testimony and evidence, the Court reserved decision. This is the Court's Final Decision and Order. For the reasons set forth below, the Court enters judgment in favor of the Plaintiff.

The Facts

Following trial the Court finds the relevant facts to be as follows. On or about July 13, 2000, Plaintiff contracted for Defendant to purchase and install a new garage door at Plaintiff's residence. Prior to any work being commenced, Plaintiff paid Defendant $480.00 for the cost of materials. (Plaintiff's Exhibit 2). When Defendant completed the work on July 14, 2000, Plaintiff paid Defendant an additional $350.00 in labor costs. (Plaintiff's Exhibit 2).

Within a few days of the installation, Plaintiff testified that the garage door did not function properly and that the door was damaged.[1] At that point, Plaintiff contacted Defendant, who came out to inspect the alleged problem. Defendant installed a support crossbar for which Plaintiff paid $95.00. (Plaintiff's Exhibit 2). Plaintiff testified at trial that he continued to have problems with the garage door. Defendant came back to the residence several times to put in extra screws, but he could not repair the garage door. Defendant testified that he told Plaintiff the problem was with the automatic door opener and that Plaintiff should only open

[1] Plaintiff moved into evidence a series of pictures depicting the alleged negligent work. (Plaintiff's Exhibit 1).

the garage door manually until the door opener was connected properly. It was Defendant's position at trial as set forth in his testimony that he was to install the garage door only, that he did so properly, and that any malfunction had to do with the automatic door opener. However, there is no evidence in the record indicating that the automatic door opener was the cause of the problem with the garage door.

Finally, in March of 2001, Plaintiff contacted the company Doors & Drywall to repair the damaged garage door. Taras Paulkarnai (hereinafter "Paulkarnai"), an employee from Doors and Drywall, testified at trial. Paulkarnai testified that when he went to Plaintiff's residence and the garage door "looked to be in a dangerous position." Further, Paulkarnai testified that the garage door was improperly installed because it was "off track" and did not have enough support when installed. It was Paulkarnai's position that the door was installed in an unworkmanlike manner and otherwise improperly installed. As a result, he testified, when the automatic door opener was activated, it damaged the door. Plaintiff testified he paid Doors and Drywall $180.00 for labor and materials to replace two panels in the door and tune up the overhead door. (Plaintiff's Exhibit 4).

The Law

When there is a written contract, the plain language of a contract will be given its plain meaning. Phillips Home Builders v. The Travelers Ins. Co., Del. Supr., 700 A.2d 127, 129 (1997). The party first guilty of material breach of contract cannot complain if the other party subsequently refuses to perform.

Hudson v. D.V. Mason Contractors, Inc., Del. Super., 252 A.2d 166, 170 (1969). In order to recover damages for any breach of contract, plaintiff must demonstrate substantial compliance with all the provisions of the contract. Emmett Hickman Co. v. Emilio Capano Developer, Inc., Del. Super., 251 A.2d 571, 573 (1969). Damages for breach of contract will be in an amount sufficient to return the party damaged to the position that party would have been in had the breach not occurred. Delaware Limousine Service, Inc. v. Royal Limousine Svc., Inc., Del. Super., C.A. No. 87C-FE-104, Goldstein, J., 1991 WL 53449 (April 5, 1991). At the same time, however, a party has a duty to mitigate once a material breach of contract occurs. Lowe v. Bennett, Del. Super., 1994 WL 750378, Graves, J. (December 29, 1994).

Decision and Order

The Court has a fairly limited record following trial. There is no dispute that the parties entered into a binding contract for the installation of a new garage door at Plaintiff's residence. The central dispute in the instant action deals with whether there was a material breach of the contract by the Defendant and whether actual damages were proven at trial by a preponderance of the evidence. Plaintiff seeks to recover damages for the alleged breach of contract as a result of Defendant's alleged failure to install the garage door properly and otherwise perform in a workmanlike manner in installing the door. Plaintiff also seeks the actual damages incurred by the breach as well as costs to fix and/or repair the door so it will operate properly. Defendant claims that if there was any damage to the

garage door, it is not a result of Defendant's work, but the result of Plaintiff's use of the automatic door opener.

It is clear from the testimony and evidence by a preponderance of the evidence in the trial record that Defendant breached the instant contract. After the installation of the garage door, Plaintiff began to experience problems immediately. Defendant went out to Plaintiff's residence several times, leading to the conclusion that there was a problem with the installation of the garage door. The Court gives great weight to this testimony because if the garage door opener was at fault, the Court finds there was no necessity for defendants' continued efforts to repair his work. While Defendant testified that the problem was actually with the automatic door opener, there is no evidence presented at trial to support this contention. Additionally, the testimony from the Doors and Drywall employee lends further support that the problem was with the installation of the garage door, not the garage door opener. The Court finds Paulkarnai was a very credible witness and gives his testimony great weight.

Thus, the Court also finds by a preponderance of the evidence that Defendant improperly installed the garage door and materially breached the contract. Furthermore, the Court finds that the Defendant's improper installation was the proximate cause of damage to the existing garage door.

Upon a finding of a breach of contract, the Court must determine actual damages. In the present case, the Court finds by a preponderance of the evidence

at trial that Plaintiff has proven the damages as plead in his Complaint in the amount of Nine Hundred Fifty Dollars ($950.00).

Therefore, the Court enters judgment in favor of Plaintiff against Defendant in the amount of $950 plus costs and post-judgment interest at the legal rate from the date of the filing of the Complaint. 6 Del. C. § 2301.

IT IS SO ORDERED this 29th day of May 2002.

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John K. Welch
Associate Judge