

**IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE**  
**IN AND FOR NEW CASTLE COUNTY**

<b>NICHOLAS W. MANTYLA,</b>	)	
<b>Plaintiff,</b>	)	
v.	)	<b>Civil Action No.: 2001-12-193</b>
	)	
<b>SHIRLEY M WILSON,</b>	)	
<b>Defendant Below,</b>	)	
<b>Appellant,</b>	)	
	)	
<b>and DONALD W. WILSON,</b>	)	
<b>Defendant.</b>	)	

**Date Submitted: January 9, 2004**  
**Date Decided: January 21,2004**

Clifford B. Hearn, Jr., Esquire  
606 Market Street  
Wilmington, DE 19801  
*Attorney for Plaintiff*

Ms. Shirley M. Wilson  
Mr. Donald W. Wilson  
819 Woodsdale Road  
Wilmington, DE 19809  
*Pro-Se Defendant*

FINAL ORDER AND OPINION

This action is an appeal *de novo* from the Justice of the Peace Court where a judgment was entered against Defendant-Below, Appellant, Shirley Wilson<sup>1</sup> (hereinafter “Defendants”), in favor of Plaintiff-Below, Appellee, Nicholas Mantyla (hereinafter “Plaintiff”). 10 *Del. C.* §9570 *et seq.* Trial took place on January 9, 2004. Following the receipt of testimony and evidence, the Court reserved decision. This is the Court’s Final Decision and Order.

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<sup>1</sup> The complaint as filed in this Court on appeal from the Justice of the Peace Court names Donald Wilson as a defendant. Since the JP Court does not maintain copies of complaints filed in its court after a certain amount of time, this Court was unable to determine whether Donald Wilson was a defendant named in the original complaint filed below. However, in this Court’s file is a copy of an answer to the Complaint on Appeal filed by Donald Wilson where he states he was stricken as a party in the lower court. His statement indicates he was a named defendant in the complaint filed in the Justice of the Peace Court. This issue, however, was not raised in the pleadings.

The sole issue before this Court is whether plaintiff has proven by a preponderance of the evidence that the parties entered into a second amended contract requiring the defendant to pay for work done on her property and whether defendant breached that amended contract. The Court finds by a preponderance of the evidence that the second contract between the parties was amended and therefore binding upon the parties. Defendant's refusal to pay for work done under the amended contract resulted in a breach. Judgment shall be entered for the plaintiff for work performed under the second amended contract in the amount of \$2,700.00 plus post judgement interest at the legal rate. 6 *Del. C.* §2301 *et seq.* Each party shall bear their own costs.

#### THE FACTS

The Court received testimony from plaintiff's case in chief as follows: Nicholas W. Mantyla ("Mantyla") was sworn and testified as follows: Mantyla contracted with Wilson to remove and replace fencing on property located at 800 South Walnut Street in Wilmington sometime in June of 2000. There were two contracts between Mantyla and Wilson. The first (Contract #1), required Mantyla to remove and replace approximately 400 feet of fencing. Mantyla himself performed work on Contract #1 and was paid in full by Wilson. The second contract (Contract #2) required Mantyla to continue removing and replacing an additional 100 feet of fencing.

Mantyla asked Wilson for a deposit on Contract #2. Wilson told him she would meet him with the deposit at the work site on the day the job was to start at 8 a.m. Wilson never showed up with the deposit. The work crew had started the job at 5a.m, did the work requested by Wilson, and finished. Mantyla was not present for the work done on Contract #2, but was informed by his crew that Wilson's husband had told the crew to

stop working before the project could be completed. The crew was permitted to replace the fencing they had all ready removed with new fencing, but to continue no further.

Mantyla testified he has not received payment for the materials, equipment rental, nor labor used on Contract #2. Initially Contract #2 was to cost \$7,000 for completion, including time and materials. After Mr. Wilson demanded the crew stop working, Mantyla spoke with Mr. Wilson regarding the work that had been done. Mr. Wilson told Mantyla there was no problem with the work. Sometime thereafter, Mantyla sent an invoice in the amount of \$2,700 for the work that was done. (Plaintiff's Exhibit "1")<sup>2</sup>. Mantyla testified he had not done \$7,000 worth of work and therefore did not bill Wilson for that amount.

Plaintiff's Exhibit "2" consisted of copies of four checks written by Mantyla in connection with time and materials for Contract #2.<sup>3</sup> Plaintiff's Exhibit "3" was an invoice dated July 17, 2000 from The Concrete Company for \$109.00. Plaintiff's Exhibit "4" is a rental contract between Mantyla and Modern Rental, Inc. dated July 17, 2003 for equipment in the amount of \$323.68. Mantyla testified the equipment was used to dig the holes for the posts of the fence. Plaintiff's Exhibit "7" was a letter dated October 10, 2000 from Mantyla to Wilson. Mantyla testified he sent the letter in order to set out why Wilson still owed him for Contract #2.

Plaintiff also introduced into evidence photographs of the work done at 800 South Walnut Street. According to Mantyla, Exhibit "8A" depicts the work his company did on

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<sup>2</sup> All of the exhibits introduced into evidence by the Plaintiff were stipulated to by both parties prior to the start of trial.

<sup>3</sup> Check #539 was made out to William Mantyla, Jr. in the amount of \$371.79.  
Check #540 was made out to Modern Rental, Inc. in the amount of \$323.68.  
Check #541 was made out to The Concrete Company in the amount of \$109.00.  
Check #542 was made out to Shones Lumber Co. in the amount of \$1578.95.

Contract #1 and Contract #2. Exhibit "8C" shows only the work done on Contract #2 for which Mantyla was not paid. Exhibit "9D" is photograph of the work done on Contract #1 and Exhibit "9M" shows the work on both contracts.

On cross-examination Mantyla reiterated that there were two contracts with Wilson. The fence his company put up was fine and to his knowledge is still in place. The height of the fence was to be eight feet high and the fence was built to comply with that specification. He was shown Defendant's Exhibit "1" and "2" which were proposals describing the projects printed on "Custom Carpentry by Nick Mantyla" letterhead. He testified the dollar amounts on Exhibit "2" were crossed out because he was trying to be honest about the work that was actually done. He did not do \$7,000 worth of work, which was what the total amount of Contract #2. He made up a new invoice to reflect the appropriate charges. He did not void the contract, but simply altered the total cost of the contract.

William Mantyla, Jr. presented testimony at trial. He did work for his son's (Plaintiff's) business and had worked on the Wilson fence. Mr. Wilson told him to stop work on the fence and that he did not want the rest completed. Plaintiff's Exhibit "8C" and "9M" show where the crew stopped work on Contract #2.

On cross-examination William Mantyla testified Mr. Wilson told him the work done on the fence was good "but they were spending his money like a drunken sailor." Also, in his opinion, the work on the fence did not need to be redone.

After the Plaintiff's case in chief, Defendant called Nicholas Mantyla back to the stand. He was shown a receipt dated July 17, 2000 from Shone's Lumber in the amount of \$1,578.95. (Defendant's Exhibit "4"). The materials listed on the invoice were for

Contract #2. More than half of the materials listed were returned after Mr. Wilson asked the crew to stop work on the fence; however, Mantyla did not have a return slip from Shone's.

On cross-examination Mantyla testified he only billed Wilson \$474.91 for materials from Shone Lumber.

Shirley Wilson ("Wilson") presented testimony at trial. Wilson entered into Contract #1 with Mantyla to remove and replace the fence on her property. She gave Mantyla a \$2,800 deposit. She stated all work done on her property by Mantyla was paid for. She further testified that the pictures moved into evidence by the Plaintiff did not show the framing of the fence or the mounds of concrete. According to Wilson the framing was not satisfactory. The framing was cut, not sturdy and the fence needed to be fixed. She presented no further evidence that the fence was constructed in an unworkmanlike manner.

Wilson testified she never received an invoice from Mantyla. (Plaintiff's Exhibit "1"). She did not know whether her husband stopped the job because she was not present at the site.

On cross-examination, Wilson admitted to receiving Mantyla's letter of October 10, 2000.<sup>4</sup> (Plaintiff's Exhibit "7").

#### THE LAW

Where 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.Super., 700 A.2d 127, 129 (1997). The party first guilty of a material breach of contract cannot complain if

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<sup>4</sup> The letter refers completion and payment of Contract #1 and the fact that the work done on Contract #2 in the amount of \$2, 700 remained unpaid by Wilson.

the other party subsequently refuses to perform. *Hudson v. D.V. Mason Contractors, Inc.*, Del.Super., 252 A.2d 571, 573 (1969). In order to recover damages for any breach of contract, the 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, Jr., 1991 WL 53449 (April 5, 1991).

Any amendment to a contract written or oral relies on the presence of mutual consent and consideration. *Continental Insurance Company v. Rutledge & Company*, Del.Ch., 750 A.2d 1219 (2000). Consideration is defined as a benefit to a promisor or as a detriment to the promisee pursuant to the promisor's request. *Id.* A fundamental element of consideration is that it be bargained for. *Barnard v. State*, Del.Super., 642 A.2d 808 (1992).

#### OPINION AND ORDER

The Court concludes that Plaintiff's Exhibit "1", an invoice, constituted a second amended contract. Mantyla's crew was in the process of performing Contract #2 when they were told to stop. The work on the fence was stopped in exchange for a promise to pay for what time and material had already been expended. That exchange constitutes sufficient consideration for Contract #2 to be amended.

The Court also finds by a preponderance of the evidence in the trial record that Defendant breached the second amended contract. The time and materials expended on the second amended contract amounted to \$2,700 as evidenced by receipts provided by

Mantyla. Mantyla testified that as the date of trial Wilson had not paid the amount due under the contract. Wilson presented no evidence to show she paid for the work done on her fence.

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 Two Thousand Seven Hundred Dollars (\$2,700) plus post judgement interest at the legal rate. *6 Del. C. §2301 et seq.* Each party shall bear their own costs.

**IT IS SO ORDERED this 21st day of January, 2004.**

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JOHN K. WELCH  
ASSOCIATE JUDGE

cc: Ms. Barbara Dooley  
Clerk, Civil Division