

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

CABINETREE LTD., d/b/a THE)	
KITCHEN FACTORY, a Delaware)	
corporation,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 2002-07-311
)	
DIANA L. DAY,)	
)	
Defendant.)	

Submitted: October 4, 2004
Decided: December 9, 2004

Charles Gruver, III, Esquire
724 Yorklyn Road, Suite 315
Stone Mill Office Park
Hockessin, DE 19707
Attorney for Plaintiff

Edward B. Rosenthal, Esquire
919 Market Street
Suite 1401
P.O. Box 1070
Wilmington, DE 19899
Attorney for Defendant

DECISION AFTER TRIAL

Cabinetree Ltd., d/b/a The Kitchen Factory, a Delaware corporation, hereinafter referred to as (“Cabinetree”) brings this proceeding to recover for services rendered for designing and estimating a kitchen layout. Cabinetree asserts two bases for recovery: first, that Diana Day hereinafter (“Diana”) was

aware that services were available only for a fee, and secondly, it is entitled to recover for services rendered on the basis of *quantum meruit*. Diana's responsive pleading denies the claims, raises affirmative defenses and asserts a counterclaim. The counterclaim was withdrawn on the morning of trial.

Facts

William Gandy, an employee of Cabinetree, testified that in mid February 2002, Diana came into their store, stated she was in the process of remodeling her home. She requested design services to install a new kitchen. Gandy stated he explained the company's policies regarding services rendered. He indicated the company provides one hour of free design, and thereafter, a fee of \$60.00 per hour is charged for any additional work.

During their initial meeting, he assessed the needs outlined by Diana and was informed that the budget for the project was \$150,000, but she wanted to keep the cabinet cost under \$100,000.00. He indicated that since their average kitchen range was in the neighborhood of \$30,000; a \$100,000 kitchen was considered a large project. He testified that work on the project started around March 6-8, 2002, and on March 11, 2002 Diana came in for a review of the layout. The design phase included a computer cad program, outline of the windows, doors, fixtures and molding. This phase also included faxing suppliers to get prices and quotes. He contacted Brubaker, a supplier, at the request of defendant.

Plaintiff introduced Exhibit No. 5, a hand-drawn sketch of the floor plan made by defendant. Gandy testified he was given this document, but it was not sufficient because it did not have specific measurements. Between February 21, 2002 and March 6, 2002, the owner of the business went to the defendant's proposed residence to secure specific measurements. With this information, they were able to develop a more precise layout.

Plaintiff introduced Exhibit No. 8 dated March 8, 2002, a design of the kitchen, and Gandy testified he met with Diana on March 11, 2002 to review and make necessary changes. Several changes were made at defendant's request. The defendant wanted the size and angle changed on a center island. She added a corner pantry. She added a preparation area, a television area, and included a bar/sink to the island. Gandy also testified Diana requested additional modifications so that she could visualize the kitchen. As a result, they ordered a computer program to provide a color design.

To further accommodate the needs of Diana, Gandy testified they contacted Carol Kissinger, a designer from Lancaster, Pennsylvania to meet with her on March 29, 2002. Prior to this meeting, the owner of the business explained to Diana that Kissinger's fee was \$75 per day. During this meeting, Diana provided copies of magazine clippings to show how she wanted the kitchen designed. Kissinger took the information and created a second kitchen design for Diana. During this period, plaintiff got additional door samples and color matching for the new design.

On April 24, 2002, the new design was delivered by Kissinger. After the submission of the documents by Kissinger, Diana was scheduled for an appointment on April 25, 2004. In anticipation of this appointment, Gandy testified Brubaker was contacted for updated cabinet prices. Following the receipt of prices from Brubaker on the cabinets, Gandy testified that they drew up a contract for the work. On April 25, 2002, plaintiff provided defendant with their first proposed contract for the latest design and the work prepared by Kissinger. This was admitted as Joint Exhibit No. 2. Also admitted as Joint Exhibit No. 1 is plaintiff company's policy outlining the cost for services.

Because Diana stated she was unable to conceptualize the design of April 25, 2002, the contract was not signed and a new design was attempted. The changes requested were made between April 24, 2002 and May 6, 2002. Plaintiff and defendant admitted Joint Exhibit No. 10 which reflected the requested changes marked up on the computer-generated exhibit prepared by plaintiff. The requested changes added a microwave oven, a plate rack, a large archway over the window, a mantel over the cook area, a spare drawer in the cabinets, and legs for the countertop. After these design changes, Gandy testified that the defendant stated on May 8, 2002 she was satisfied with the drawings and the design. The estimate for the work was \$108,000, but Diana wanted the amount reduced due to budget concerns. There were modifications to reduce the budget.

Gandy testified that on May 8, 2002, Diana stated she was going to submit the plans to her husband for approval. He further testified that during the

design period Diana would appear without an appointment and made calls which added time to complete the project. He further testified that on May 8, 2002, the projected cost was \$99,055.55. However, on May 27, 2002, there was an increase in cost to \$108,105.95. Much of this increased cost was attributed to the requested changes and labor cost.

Gandy indicated he met with Mrs. Day between 25 and 30 times from her initial visit to the project until the termination of their relationship. He further testified that there was no work completed after May 8, 2002. However, he never provided her with a bill. On re-direct, Gandy testified that he could not provide Diana with a bill because he could not locate her. Her telephone was disconnected and her cell phone memory was full. Further, he discovered that the property was not owned by Diana, but was the residence of a third party. On June 19, 2002, the owner of the business visited the property but could not find the defendant.

Plaintiff's second witness was Charles Rifon, President of Cabinetree Kitchen and Design with 25 years of experience. He testified he was present when the defendant came into the business and requested the design. He further testified based upon Joint Exhibit No. 1 that it was the Company policy to provide one hour of free service and thereafter, the cost is \$60.00 per hour. He testified that one hour is sufficient to get a good idea of the customer's needs. Further, when Diana first came into the business, he spoke to the defendant regarding the policy. He testified that in his conversation with Diana on February

21, 2002, he informed her that after the first hour, there was a design fee of \$60.00 per hour. He testified that after their fee discussion, he was shown photos and scheduled an appointment for Diana with Mr. Gandy to go over the design particulars.

Rifon testified the company had a 20/20 program which did not have the capability to prepare the layout defendant requested. He further testified he had a conversation with Diana where she inquired about the design cost. He informed her that at present, the design cost exceeded \$8,000. He further testified that the design fee is usually put in the base cost of the proposal. However, Diana never signed the agreement to install the kitchen. Towards the end of May, he was having difficulty getting in touch with Diana.

Because of the difficulty of getting in touch with the defendant, in May Rifon stopped by the property because he was doing a job nearby. He found men working at the house and was told that the property was not owned by Diana. Thereafter, he could not locate the defendant. On cross-examination, Rifon testified that the average design requires two to three hours and is produced in approximately 10 days. Diana came in about the middle of February, but they were unable to get the plans finished until the end of March. He further testified that he would have provided her with a bill for the services if he was able to find her. During the design phase, he met with Diana between 20 to 24 times. He further testified that they do not always take a credit card number when samples

are taken by prospective customers. Further, they did not charge \$25 for the site visit as outlined in the policy.

Diana testified she never indicated to plaintiff that the property was her residence or that her husband was in any way connected with the house. Further, in April 2002, the owners of the property hired a general contractor to take over the property renovation, and she was asked to vacate the property and stop all work. She informed Cabinetree they were dismissed as contractors for the kitchen. She further testified she disputed the architectural design fees on this project.

On cross-examination, she testified that she was a professor at Rutgers University and the Wharton School of Business. Further, she was an interior designer and that her primary business is decorating houses and helping owners to sell them on the open market.

Diana testified that Joe and Linda were the owners of the property and she was brought in as a 50 percent venture capital partner to renovate the property and put it on the market for sale. During renovation, she was living at the property so that she could oversee the work.

Diana testified she never requested Rifon to come to the property and he visited because he had another job in the area and wanted to take pictures. She further testified that she never gave a deposit for any of the sample materials she borrowed. Further, she never received a bill for the design work and was never sent a bill. She testified that she went to Home Depot to get the design and

make measurements. But it was a location other than the site on Naamans Road, Claymont, Delaware. She stated she had architectural design but needed the material costs before she could get a permit to begin the work. She only visited Cabinetree Kitchen two or three times to get their assistance for material costs.

Diana testified when she visited Cabinetree Kitchen, there was no sign posted which outlined the fees for design services, and no fees were discussed. Additionally, when she visited the Kitchen Factory, she already had made a deposit at Home Depot for the kitchen measurements. During the project design, she stated she threatened to go back to Home Depot on many occasions.

Diana Day also testified that during the design process, Rifon put her off because there were other kitchens already ahead of her project. Further, she testified that she went to plaintiff's place of business between December and January 2002 while on break, but they were not available and had a problem with their design software. When she discussed with Rifon the new software problem, she was informed that he could not get them because the manufacturer had been sold. Further, she testified that the plans produced by plaintiff were useless. Diana stated that during the design process, changes were made by plaintiff which were not requested. She further testified that the first time she saw a complete set plans was when she appeared on the morning of trial.

She further testified that she met with Kissinger at Cabinetree's request and was informed that the design would take two weeks. The design however was never delivered because Kissinger was injured. She testified that she

was never told that she would be required to pay for the design. Further, if she were told that there was a design cost, she would have gone back to Home Depot.

She testified that the original budget for the project was \$30,000 for the kitchen, and she attempted to terminate the services of plaintiff, but they begged her for another chance to straighten out the problems. During this discussion, Diana testified that she was promised quality design. She further testified that she could have installed the kitchen in the photo for \$40,000. On redirect, Diana Day testified that she never got the plans from Cabinetree.

Discussion

Cabinetree seeks recovery of costs for services on the basis of oral contract or in the alternative on the basis of *quantum meruit*. Defendant Diana denies liability on the basis of estoppel and that she was induced on the basis of a lost leader with no anticipation or understanding that the services were being rendered for compensation.

A party relying upon the doctrine of quasi contract may recover the reasonable value of its services only if he establishes that the services were performed with an expectation that the recipient would pay for them and further, that the services were performed absent a promise to pay, under circumstances which should have put the recipient of the services on notice that the services were only rendered in expectation of payment. Bellanca v. Bellanca, Del. Supr., 169 A.2d 620 (1961). Therefore, to recover on the quasi contract claim under *quantum*

meruit, the party seeking recovery must prove the following: 1) the party which performed the services did so with the expectation that the recipient would pay for such services; and 2) the recipient of such services should have known that the party expected to be paid. Petrosky v. Peterson, Del. Supr., 859 A.2d 77 (2004).

In these proceedings, Cabinetree testified that during their initial conversation with Diana, they outlined the company policy which indicated design services of hour was available free of charge, but any additional charges would be billed at \$60.00 per hour. They further testified that during the design phase, there were numerous scheduled meetings and drawings. Rifon testified that on one occasion, he discussed with Diana the cost for design services which had reached the sum of \$8,000. Additionally, Rifon testified they purchased new computer software to prepare color illustrations, and they retained the services of an independent computer design company to provide illustration requested by Diana. Diana testified however that at no time did she observe the sign which indicated services were billed at \$60.00 per hour after the initial hour, nor at any time did she discuss the fact that payment would be required for the services.

The facts in the record indicate that there were between 25 and 50 meetings where the parties discussed the design. On at least one occasion there was a visit by Cabinetree to the house where the kitchen was to be installed. There were repeated designs developed and illustrations prepared at the request of Diana. There were changes suggested by Diana and prepared by Cabinetree to facilitate this process.

Diana questioned whether all of the services were rendered and that she was never put on notice that payment was required. While I agree that the initial encounter may have given Diana a basis to conclude that the services were to be rendered without anticipation of compensation. However, any reasonable beliefs surely would have dissipated after the second or third meeting.

Further, once Cabinetree hired the services of an additional computer programmer to design or prepare the design at the request of Diana, a reasonable person would have concluded that there would be an expectation of payment. It is beyond question, in this instance that services rendered by the plaintiff was done so on the basis that there was an anticipation of payment. The fact that a contract was never signed by Diana is not sufficient to defeat plaintiff's claim for payment of services rendered. Further, it would be unreasonable for anyone to conclude under these facts that such extensive services would be rendered without anticipation for payment.

Therefore, I conclude the facts support a basis for a claim in *quantum meruit* for the reasonable value for the services rendered to design the kitchen at the request of Diana. The defenses raised by Diana that plaintiff is estopped on the basis of non-conforming performance is not supported by the record. Defendant testified there is no basis for recovery because no completed plans were ever rendered or submitted. However, Joint Exhibit No. 10 submitted by the parties indicates that there were completed designs for the kitchen supported by graphics, dimension specifications, and detailed layout. Based on

this testimony in the record, it is fair to say that the services rendered by the plaintiff in this case substantially performed to that of a reasonable person designing a kitchen and there is a basis for recovery.

Plaintiff seeks the sum of \$5,820.00 on the basis of 97 hours at the rate of \$60.00 per hour on the project; I find substantial evidence to support a basis of this recovery. Accordingly, judgment is hereby entered for plaintiff in the amount of \$5,820.00 with post-judgment interest and cost of these proceedings.

SO ORDERED this 9th day of December 2004

Alex J. Smalls
Chief Judge