

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

<b>WILKINSON CONSTRUCTION</b>	:	
	:	
<b>Plaintiff/Appellee</b>	:	<b>C.A.# 2003-09-099</b>
	:	
<b>v.</b>	:	
	:	
<b>BRICE BUILDERS, SHANE BRICE</b>	:	<i>Date Submitted: April 20, 2005</i>
	:	<i>Date Decided: April 27, 2005</i>
<b>Defendant/Appellant</b>	:	

*Eric Howard, Esquire, attorney for Wilkinson Construction  
Bruce Rogers, Esquire, attorney for Brice Builders, Shane Brice*

**DECISION AFTER TRIAL**

In this breach of contract action the Court is called upon to determine whether a breach of contract for the construction of a residential building occurred, whether the Plaintiffs are entitled to money damages and the appropriate amount of damages if applicable. Wilkinson Construction (hereinafter “Plaintiff”) claims that Brice Builders, Shane Brice (hereinafter “Defendant”) breached the construction contract when he failed to complete the project. Plaintiff is claiming damages that it incurred when it hired another subcontractor to complete the work. The Defendant asserts that the parties mutually agreed to terminate the contract. The Court conducted a trial and took testimony and evidence on April 20, 2005. This is the Court’s decision.

**FACTS**

The Court makes the following finding of facts after reviewing the testimony and exhibits submitted. The parties entered into a contract on

March 10, 2000. According to the contract, the Defendant was to complete the framing of a residential building (hereinafter “Fenwick job”). In exchange, the Plaintiff agreed to pay the Defendant \$29,524.00. The contract set forth specific items of construction that the Defendant would perform. (Pl. Ex. 1.)

The parties stipulate that the Defendant hired a subcontractor, Custom Carpentry, to perform the construction listed in the contract. Construction on the Fenwick job began in June 2000. The parties agree that problems arose in the summer of 2000. Stephen Wilkinson, of the Plaintiff-company, testified that the Defendant failed to complete the Fenwick job and that he attempted to contact the Defendant via telephone on several occasions. He stated that the Defendant did not return his calls. He also testified that he left a final message with the Defendant that the Plaintiff would hire Custom Carpentry to complete the job if the Defendant did not return his call.

The Defendant disputes that he failed to return Mr. Wilkinson’s phone calls. Instead, the Defendant testified that he was attempting to reach the Plaintiff because he had not been paid. The Defendant’s testimony was significantly discredited by the admission of Pl. Ex. 4<sup>1</sup>. The exhibit establishes that the Plaintiff paid the Defendant a sum of money for work on the Fenwick job during the period that he claims he was calling the Plaintiffs regarding their failure to pay him. The Defendant could not explain this discrepancy in his testimony upon further questioning. Thus, the Court accepts Mr. Wilkinson’s testimony as the most credible version of the facts relating to phone calls between the parties.

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<sup>1</sup> Pl. Ex. 4 is Plaintiff’s check in the amount of \$2,350 payable to the Defendant, dated July 14, 2000 with the description “Fenwick draw.”

When the Defendant failed to complete the work and/or return Mr. Wilkinson's calls related to the Fenwick job, the Plaintiff hired Custom Carpentry directly to finish the project.

## **DISCUSSION**

### *Breach of Contract*

The first issue that the Court must address is whether the Defendant's failure to perform constituted a breach of contract. To state a claim for breach of contract the Plaintiff must establish three elements. First, it must prove that a contract existed. Second, it must establish that the defendant breached an obligation imposed by the contract. Finally, the Plaintiff must show that the breach resulted in damage to the Plaintiff. *VLIW Technology, LLC v. Hewlett-Packard Co. Stmicroelectronics, Inc.*, 840 A.2d 606, 612 (Del. 2003).

The Court is satisfied that the Plaintiff established all of the necessary elements. There is no dispute that the contract between the parties existed. Additionally, the parties agree that the Defendant failed to perform in accordance with the agreement. Lastly, the Plaintiff submitted substantial evidence proving that it was damaged by the Defendant's breach.

### *Affirmative Defense: Accord and Satisfaction*

The Defendant asserts the affirmative defense of accord and satisfaction. The party raising the affirmative defense of accord and satisfaction bears the burden of establishing the defense. *Acierno v. Worth Brothers*, 693 A.2d 1066, 1069. (Del. 1997). Three elements are necessary

to prove an accord and satisfaction. First, the asserting party must establish that a bona fide dispute existed as to the amount owed and that the dispute was based on mutual good faith. *Id.* at 1168. Second, the party must show that the debtor tendered an amount to the creditor with the intent that payment would be in total satisfaction of the debt. *Id.* Finally, the debtor must establish that the creditor agreed to accept the payment in full satisfaction of the debt. *Id.*

The Defendant testified that he met with Mr. Wilkinson when the July 19, 2000 invoice was satisfied. He affirmed that the parties agreed that he had not completed the work on the Fenwick job. However, he asserted that the parties agreed that the Defendant would leave the remaining work unfinished and the Plaintiff would leave the balance of the contract unpaid. In essence, the Defendant claimed that this agreement concluded the dispute between them and terminated their agreement. The Defendant's version of the meeting does not coincide with other evidence. The Court draws particular suspicion from the invoice itself. It does not indicate that the agreement would be terminated or otherwise deemed satisfied by the parties. In fact, the invoice merely indicates that it was paid and restates work that remained to be performed and an amount owed upon completion of the work. (Def. Ex. 1.)

The Defendant did not offer any further evidence to support its defense of accord and satisfaction. Consequently, this Court opines that the defense is inapplicable to the facts of this case and the Defendant remains liable for any damages that resulted from his breach.

### Damages

The standard remedy for breach of contract is based upon the reasonable expectations of the parties. *Duncan v. TheraTx, Inc.*, 775 A.2d 1019, 1022 (Del. 2001). According to the facts before the Court, the Plaintiff expected to have certain work performed on the Fenwick job for the amount of \$29,524.00. The contract itself spelled out the scope of the work that the Defendant would perform for the stated price. (See Pl. Ex. 1.) The parties agree that four tasks remained to be completed under the contract at the time of the breach. Namely, that work included construction of the outside shower, plywood under the house, skirting and pickets and handrails. (See. Def. Ex. 1.) Thus, the Plaintiff is entitled to damages incurred in hiring an alternative subcontractor to perform those four tasks.

Upon the Defendant's breach the Plaintiff hired Custom Carpentry to complete the project. The Plaintiff submitted four invoices and corresponding checks to prove its damages. (Pl. Ex. 4.) Upon review of the invoices the Court finds that the Plaintiff is not entitled to amounts paid for Custom Carpentry's completion of the extended deck, ceiling out front or materials because those items were beyond the scope of the contract at issue.

Mr. Lewis of Custom Carpentry testified that at the time that he performed the work, he charged the Plaintiff \$25 per hour for each crewmember and \$40 per hour for his personal service. He also estimated that the extended deck took him and one other crewmember eight hours to complete. He also estimated that the ceiling took him and two other crewmembers three hours. Thus, this Court finds that \$520 should be deducted for completion of the extended deck and \$270 should be deducted

for the ceiling. Additionally, the Court deducts \$250 in material that the Plaintiff concedes was not within the scope of the contract at issue. Consequently, the Plaintiff paid a total of \$8,760 to remedy the Defendant's breach when it expected to pay \$ 3,650 for the same work under the terms of the contract. (See Def. Ex. 1.) Thus, the Plaintiff is entitled to \$ 5,110 in expectation damages.

### **CONCLUSION**

The Plaintiff has established its breach of contract claim by a preponderance of the evidence. Additionally, the Plaintiff sufficiently proved damages. Therefore, judgment is entered in favor of the Plaintiff, Wilkinson Construction, in the amount of \$5,110.00 plus costs.

**IT IS SO ORDERED** this \_\_\_\_\_ day of April, 2005.

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Judge Rosemary Betts Beauregard