

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

CAR HOMES, INC.)	
A Delaware corporation,)	
)	
Plaintiff Below,)	
Appellant)	
)	
v.)	C.A. No. 2003-09-045
)	
JOSEPH FREDERICK and)	
J&S Home Repair,)	
)	
Defendants Below,)	
Appellees.)	

Submitted: September 13, 2004
Decided: October 8, 2004

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DECISION AFTER TRIAL

Plaintiff, Car Homes, Inc., a Delaware corporation (hereinafter referred to as “Car Homes”) brings this action for breach of contract alleging defendants failed to perform work contracted under two separate agreements.

Defendants Joseph Frederick and J&S Home Repair (hereinafter referred to as “Frederick”) denies the claims.

The principal owner of Car Homes, Alicia Riches, testified that her company entered into an arrangement with Frederick for renovation work on a property located at 7 Andrea Road, Bear, Delaware. The work was to be performed under two separate agreements. The first dated October 13, 2002 provided for the construction of a new side carport, installation of new ledger board, new rafters, plywood and felt paper. It also included interior work which consisted of removing a seal plate and installing new pressure treated wood two-by-four, for a new seal plate; removing rotten and termite damaged wood two-by-four in the living room front wall and basement and installing new wood; removing the bottom of window seal plate and installing a new seal plate; and replacing termite damage wood two-by-four in the steps leading to the basement. The total cost for the completion of work under this contract was \$2,400.

Mrs. Riches testified the second contract was executed on October 24, 2002. The work to be performed under the first part of this agreement included installation of a new roof, which was later deleted. It also provided for the installation of new siding over existing siding, plywood and new foam to be installed as necessary. The cost for this work was \$5,595. The second part of this contract included the removal of all rotten and damaged fascia boards, primer and paint over all exterior wood, and installation of drywall in the living room, kitchen, downstairs powder room and laundry room. The agreed price was

\$1,450. The third part of this agreement provided for the removal of existing windows and back door, reframing where necessary, and installation of new doors and windows. The contract cost for this work was \$775. The fourth part of this contract provided for work in the basement which included insulation of all exterior walls, new paneling, which the owner was to provide, and new trim where the wall was different. The cost of this work was \$1,175. The final item under this contract was installation of a concrete front pad, at a cost of \$735.

Alicia Riches testified the amounts due under the first contract were paid in two installments \$1,000.00 on October 23, 2002, and \$1,400.00 on October 24, 2002. The amounts due under contract No. 2, of \$5,550.00 were paid on October 28, 2002 in the amount of \$3,000.00 and November 1, 2002 in the amount of \$2,500.00. These documents were admitted as Plaintiff's Exhibit No. 9.

Alicia Riches further testified that in addition to the amounts paid defendant, she paid other individuals to finish the incomplete work of defendant. Those payments are as follows: 1) cash payment in the amount of \$1,680.00, payable to William Walls; 2) Check No. 706 dated November 15, 2002 in the amount of \$1,400.00, payable to William Walls; 3) Check No. 713 dated November 22, 2002 in the amount of \$1,680.00, payable to William Walls; and 4) check No. 724, dated December 3, 2002 to William Walls in the amount of \$870.00.

Chet Riches, also a principal in Car Homes and who supervises the company projects testified as plaintiff's second witness. He stated there was a problem with the pitch on the carport, and he had to hire a roofer to correct the roof. The installation of new floor beams was not done properly which required a structural engineer inspection. This report resulted in additional work to complete the flooring so the house could be sold. The installation of the window was not properly installed. There were gaps around the window, and the defendant did not install vinyl spacing, which they purchased for the window. Further, the defendant improperly installed two-by-four along side of the window.

Chet Riches also testified that under Contract No. 2, the installation of the roof was deleted. The siding required under Contract No. 2 was not purchased nor installed by defendant. The removal of the rotten boards were not repaired. The drywall in the kitchen was installed, but the quality of the job was poor, and it had to be redone. The drywall joints were uneven, spackling and sanding was not completed and the drywall was screwed into the heat ducts instead of nailed to wood studs.

Chet Riches further stated the windows required under Contract No. 2 were not properly framed. There were gaps between the window at the adjoining wall. The molding was not properly installed. The work in the basement where the paneling was to be installed, were glued and not nailed. The basement window trim on one window prevented the window from being opened, and there were gaps along the edges. Finally, the concrete pad was not installed as

contracted. Plaintiff introduced several photographs which showed the work in the house.

Chet Riches testified he spoke with defendant at the property regarding his concerns with the poor quality of the workmanship and the progress of the work. He further inspected the house with the defendant and pointed out the problems. The defendant indicated to him he understood the problems and would make the necessary repairs personally. Based on a re-inspection, he discovered, however, the defendant made only one repair, the others were not addressed. The conversation regarding the work took place on November 8, 2002 at 9:30 a.m.. Thereafter, several follow-up telephone calls were placed without success or resolution.

On cross-examination, Chet Riches testified and conceded that the language of contract No. 2 does not specify that the drywall was to be spackled or taped. But he indicated that he expected this work to be done before the wall could be painted, which he stated to Frederick.

The Defense presented its case through the testimony of defendant, Joseph Frederick who stated, he has been in the home remodeling business for approximately 10 years, licensed by both the City of Wilmington and New Castle County, and insured for \$2 million. He testified he negotiated the first and second contracts with plaintiff. Under the first contract he built and installed the carport with the appropriate pitch. Because there was no building permit from New Castle County, he disputes whether the pitch on the roof was defective. He further

testified he installed two risers on the steps leading to the basement, which was consistent with the contract. The problem with the windows was caused by the plaintiff, who purchased the wrong size for the opening. Because the windows were not the proper size, he had to fill in the gaps with two-by-fours, which caused them to be exposed. However, when siding is installed on the house, the two-by-fours would be covered up. Also, he testified that the wood was placed under the windows for the seals, so water would not get into the house but drain down on the outside.

Frederick concedes the sidings were not installed. He indicated that contract No. 2 price was \$5,595 and does not recall if the amount included amounts for purchasing the siding. He testified he did not do the siding, because the relationship with plaintiff deteriorated. He further testified that after he completed work on the house, someone would tear out the work he had completed, when he left. He testified he installed the fascia board, removed the rotten boards, primed and installed the new wood boards.

Frederick stated he completed the drywall as provided in the contract. The contract did not require spackling and sanding, which is labor intensive and not included in the price. Additionally, he testified the parties had a third agreement dated November 6, 2002 (Defense Exhibit No. 1.) This document, involves installation of drywall in the kitchen and requires spackle, tape, and sanding of joints. This contract was for \$1,600.00. Defendant testified

he did the work under that contract which included taping and sanding of the joints.

Frederick testified plaintiff was to supply the doors and the windows. The failure to supply the proper window size resulted in the gaps between the window and casing. Further, plaintiff purchased the paneling and the trim. The trim purchased by plaintiff oftentimes did not match; therefore, it resulted in corners not being completely square.

Defendant reviewed each of the plaintiff's photographs and explained that the windows were properly installed, but they were smaller than the opening. Therefore, he had to fill in the gaps with the two-by-fours, which he testified is an acceptable method of installing windows. On cross-examination, defendant testified he received the November 6, 2002 letter from plaintiff, but he did not respond in writing. He also testified he did not recall the repairs which he did after the November 6, 2002 letter.

Plaintiff claims in these proceedings, the sum of \$5,587.70 for incomplete work and work not done by defendant. Defendant argues plaintiff failed to carry its burden of proof that the work was not properly done under the contract as required. He argues the excluded items were not performed, and that he performed as required and plaintiff is not entitled to recover under the contract. Both parties, however, concede that the siding work and the concrete pad under contract No. 2 were not completed by defendant. The value of those items equal \$6,730, however, only \$5,500 was paid under this agreement.

It is clear from the testimony and the documents submitted that the parties entered into two binding contracts which provided for construction work at the 7 Andren Road property. There was an offer, acceptance and consideration. Murphy v. State Farm Insurance Company, Del. Super., 1997 W.L. 528160 (1997).

The defendant testified that he built the carport as required under contract No. 1. The dispute in the roof as testified by Mr. Riches is not supported by documents or an inspection report. The issue of proper installation of the windows is open to interpretation. While the photos indicate some problems with their installation, I find that defendants' explanation that they were purchased by plaintiff, therefore, he had to use the wood to make the windows fit, reasonable. The new joist under the crawl space was not installed. Plaintiff testified it paid the full amount under contract No. 1 of \$2,400.00, but did not receive all of the work. I find because defendant did not install the joist under the crawl space, plaintiff is entitled to a refund of the cost of this item. In this category, there are four items listed for a cost of \$475.00. Since one of the items listed, was not performed, I award the sum of \$125.00.

Under contract No. 2, plaintiff paid the sum of \$5,500.00. The siding and the concrete pad were not installed and the drywall finish was not properly completed. Defendant argues that failure to indicate taping and sanding in the contract does not require such work. However, I fail to see how drywall can be installed as a finish job without taping and sanding, therefore, this must have

been contemplated by the parties. However, plaintiff received some work under this contract, and it is not clear that plaintiff paid for the siding. Therefore, for the unfinished work and failure to complete the concrete pad, I award the amount of \$1,658.00.

Accordingly, judgment is entered for plaintiff in the amount of \$2,133.00, cost, and post-judgment interest at the legal rate.

SO ORDERED this 8th day of October, 2004.

Alex J. Smalls
Chief Judge