

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

Window Wizards, Inc.)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 06C-10-012-JRJ
)	
Nancy Ford Thorton)	
)	
Defendant.)	

VERDICT AFTER BENCH TRIAL

AND NOW TO WIT, this 27th day of October, 2008, the Court having held a bench trial in this matter, **IT APPEARS TO THE COURT THAT:**

1. The parties entered into a contract for the sale, purchase, and installation of windows (the "Contract"). (PX 1, 2)

2. The Contract provides:

The aforesigned work will commence before 11-28, 2005 and be completed on or before 11-30, 2005. (Except for situations involving labor stoppage, unavailability of supplies or materials, unavoidable casualties, or any cause beyond the sellers control as specified under the New Jersey Regulation concerning Home Improvement Practices. Timely written notice by certified mail shall be given for any such legal delay. (PX 2)

This provision is a material term, is not ambiguous, and, contrary to

seller's contention, is binding, even though the buyer is a Delaware resident.

3. On November 23, the seller mailed a postcard to buyer which states:

Inclement weather, increased promotional response and manufacturing delays have prevented the prompt installation of your merchandise. Simply put, we are truly sorry your order is taking longer than expected. If you have directly scheduled an installation date with your installer, don't worry. We will keep our appointment weather permitting. If you have not heard from us, we are making every attempt to expedite your installation. We simply ask for your continued patience and understanding. I assure you we are working long hours to uphold the confidence you placed in Widowizards.
(PX7)

This postcard was not sent by certified mail.

4. Seller did not install the windows during the time period expressly set forth and agreed upon in the Contract.

5. Seller breached paragraph 1 of the Contract. It did not install the windows within the time period set forth in the Contract, nor did it timely notify the buyer of the delay by certified mail.

WHEREFORE, the Court finds in favor of the defendant buyer. The Court awards no damages to the defendant buyer for the breach of the Contract. The parties shall each be responsible for their own costs and attorneys fees.

IT IS SO ORDERED.

Jurden, J.

cc: Prothonotary – Original
Adam M. Elgart, Esq.
David W. deBruin, Esq.