

STATE OF MAINE

KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-05-277
DHM-KEN- 7/13/2007

BARBARA H. TILLSON,

Plaintiff

v.

ORDER ON DAMAGES

ANDREW LANE,

Defendant

This matter is before the court after bench trial on the issue of damages. Plaintiff's complaint alleges breach of contract, unjust enrichment, violation of the Home Construction Contracts Act, violation of the Unfair Trade Practices Act, conversion and fraud. Service was made on defendant on February 21, 2006, by service in hand on defendant's father at a location in Litchfield, Maine. By letter of March 6, 2006, defendant disputed the allegations in the complaint and therefore put the case at issue. Defendant filed a formal amended answer to complaint on May 2, 2006, pro se. Mandatory ADR was scheduled and defendant failed to appear. Plaintiff requested default through counsel on January 24, 2007, and the clerk entered default on January 29, 2007. Defendant has refused to answer any discovery requests, refused to appear for alternative dispute resolution, and has made himself unavailable to plaintiff for communication regarding the case.

By document titled, "Proposal" dated April 18, 2005, defendant agreed to construct a two-story addition to a seasonal dwelling of the plaintiff located in Litchfield. Upon execution of that document, plaintiff paid to defendant \$8,000 toward a total contract amount of \$16,000. At the time, plaintiff, a resident of Florida, was not present in the State of Maine and did not return to Maine until June of 2005. In the

meantime, at the request of the defendant, plaintiff paid an additional \$2,000 on May 4, 2005, and an additional \$2,000 on June 3, 2005, resulting in a total expenditure by plaintiff to defendant of \$12,000.

Defendant demolished a portion of a room on the existing seasonal dwelling for purposes of erecting the addition. He dug holes for placing of cement posts to support the existing structure and the addition and purchased and had delivered the concrete posts but only installed three. He purchased some lumber and he closed off the openings to the existing dwelling in the area of construction. At this point, for all intents and purposes, he disappeared. On June 10 to June 22, the defendant refused to appear on site citing weather and other difficulties. He put in partial time on June 22 and did not appear on June 23. He was on site from 7:00 a.m. to 1:30 p.m. on June 28 but was absent for a period commencing at 8:30 a.m., he appeared on June 29 from 8:00 a.m. to 3:00 p.m. but left for one and a half hours, and he did not appear on June 30. Through the good efforts of family members, plaintiff had the construction completed at a cost for labor and materials of \$12,925.58.¹

Because plaintiff was not present during the period of time of expected construction under the contract she can present no evidence of the amount of time spent by the defendant in demolishing a portion of the existing structure, preparing the ground for installation of some concrete posts, and purchase of materials. It appears that misrepresentations were made by the defendant to the plaintiff as to the source of his building materials and he has not presented to her any invoices indicating the reasonable value of said materials. Plaintiff, however, is willing to concede that she may have received a value at the most in the amount of \$3,000 from labor and material

¹ It must be noted that to some extent the defendant's father assisted in the completion of the work for no compensation.

provided by the defendant for which he is entitled to credit. On the other hand, there is no evidence to suggest that the \$16,000 contract figure was not a reasonable amount for the project in question taking into consideration that the actual amounts spent by the plaintiff to complete the project is reflective of the work of her family members and the defendant's father and, therefore, not a true indication of arm's length cost of labor. Since the measure of damages for breach of contract is the difference between that which the plaintiff contracted to receive and that which she actually received, she is entitled to \$16,000 less the \$3,000 benefit conferred for a total of the breach of \$13,000.

The court is satisfied that this transaction is within the jurisdiction of the Home Construction Contracts Act, 10 M.R.S.A. § 1486 *et seq.* The written contract provided for a 50% down payment. That is a violation of 10 M.R.S.A. § 1487(5) which limits the initial payment to one-third of the total contract price. A civil penalty of \$1,000 is assessed for that violation. The contract does not contain a provision for change orders which is a violation of 10 M.R.S.A. § 1487(9). For that violation the court assesses a civil penalty of \$1,000. The written document does not contain a provision for resolution of disputes which is a violation of 10 M.R.S.A. § 1487(8). For that violation the court assesses a civil penalty of \$1,000. The written document does not contain a provision for warranty, a requirement of 10 M.R.S.A. § 1487(7). For that violation the court assesses a civil penalty of \$1,000.

Violation of the Home Construction Contracts Act is a *prima facie* violation of the Unfair Trade Practices Act, 5 M.R.S.A. ch. 10 per 10 M.R.S.A. § 1490(1). As such, the plaintiff is entitled to reasonable attorney's fees pursuant to 5 M.R.S.A. § 213. Upon evidence submitted to the court, plaintiff is awarded \$5,137.50 as and for attorney's fees.

Plaintiff is entitled to costs proven to be the amount of \$647.04.

The entry will be:

Judgment for the plaintiff in the amount of \$22,784.54; post-judgment interest will be assessed at the rate of 10.99%.

Dated: July 13, 2007



Donald H. Marden
Justice, Superior Court

BARBARA H TILLSON - PLAINTIFF
3841 CHESTWOOD AVENUE
JACKSONVILLE FL 32277
Attorney for: BARBARA H TILLSON
MICHAEL T BIGOS - RETAINED 11/09/2005
BERMAN & SIMMONS
129 LISBON STREET
PO BOX 961
LEWISTON ME 04243-0961

SUPERIOR COURT
KENNEBEC, ss.
Docket No AUGSC-CV-2005-00277

DOCKET RECORD

vs
ANDREW LANE - DEFENDANT
171 PINE TREE ROAD,
LITCHFIELD ME 04350
MAINE FAMILY FEDERAL CREDIT UNION - TRUSTEE

Attorney for: MAINE FAMILY FEDERAL CREDIT UNION
GRETCHEN JONES - RETAINED 01/23/2006
SKELTON TAINTOR & ABBOTT
95 MAIN STREET
PO BOX 3200
AUBURN ME 04212-3200

Filing Document: COMPLAINT Minor Case Type: CONTRACT
Filing Date: 11/09/2005

Docket Events:

11/09/2005 FILING DOCUMENT - COMPLAINT FILED ON 11/09/2005

11/09/2005 Party(s): BARBARA H TILLSON
ATTORNEY - RETAINED ENTERED ON 11/09/2005
Plaintiff's Attorney: MICHAEL T BIGOS

11/09/2005 CERTIFY/NOTIFICATION - CASE FILE NOTICE SENT ON 11/09/2005
Plaintiff's Attorney: MICHAEL T BIGOS
MAILED TO ATTY. OF RECORD

11/09/2005 Party(s): BARBARA H TILLSON
MOTION - EX PARTE ATTACH/TRUSTEE PROC FILED WITH AFFIDAVIT ON 11/09/2005
Plaintiff's Attorney: MICHAEL T BIGOS
AFFIDAVIT OF BARBARA H. TILLSON, AFFIDAVIT OF MICHAEL T. BIGOS, ESQ. IN SUPPORT OF MOTION
FOR ATTACHMENT, ATTORNEY'S CERTIFICATE AND PROPOSED ORDER

11/22/2005 Party(s): BARBARA H TILLSON
OTHER FILING - AFFIDAVIT FILED ON 11/22/2005
Plaintiff's Attorney: MICHAEL T BIGOS
AFFIDAVIT OF MICHAEL BIGOS, ESQ. IN SUPPORT OF EX PARTE MOTION FOR ATTACHMENT ON TRUSTEE
PROCESS AND PROPOSED ORDER, FILED.

12/08/2005 HEARING - EX PARTE ATTACH/TRUSTEE PROC SCHEDULED FOR 01/04/2006 @ 9:00

01/04/2006 HEARING - EX PARTE ATTACH/TRUSTEE PROC NOT HELD ON 01/03/2006

01/04/2006 Party(s): BARBARA H TILLSON

MOTION - EX PARTE ATTACH/TRUSTEE PROC GRANTED ON 01/03/2006
DONALD H MARDEN , JUSTICE
COPIES TO PARTIES/COUNSEL

01/23/2006 Party(s): MAINE FAMILY FEDERAL CREDIT UNION
OTHER FILING - DISCHARGE OF TRUSTEE FILED ON 01/23/2006
Defendant's Attorney: GRETCHEN JONES

01/23/2006 Party(s): MAINE FAMILY FEDERAL CREDIT UNION
ATTORNEY - RETAINED ENTERED ON 01/23/2006
Attorney: GRETCHEN JONES

01/23/2006 SUMMONS/SERVICE - SUMMONS TO TRUSTEE SERVED ON 01/03/2006
DEFENDANT HAS NO ASSETS AT SABATTUS REGIONAL CREDIT UNION

01/25/2006 Party(s): BARBARA H TILLSON
MOTION - MOTION FOR ENLARGEMENT OF TIME FILED ON 01/25/2006
Plaintiff's Attorney: MICHAEL T BIGOS
TO EXTEND TIME LIMIT WITH WHICH TO COMPLETE PROCESS OF SERVICE WITH PROPOSED ORDER

01/27/2006 Party(s): BARBARA H TILLSON
MOTION - MOTION FOR ENLARGEMENT OF TIME GRANTED ON 01/26/2006
DONALD H MARDEN , JUSTICE
COPIES TO PARTIES/COUNSEL
TO 3/9/06.

TIME ENLARGED

02/28/2006 Party(s): BARBARA H TILLSON
SUMMONS/SERVICE - CIVIL SUMMONS FILED ON 02/28/2006
Plaintiff's Attorney: MICHAEL T BIGOS

02/28/2006 Party(s): BARBARA H TILLSON
SUMMONS/SERVICE - CIVIL SUMMONS SERVED ON 02/21/2006

03/06/2006 Party(s): ANDREW LANE
RESPONSIVE PLEADING - ANSWER FILED ON 03/06/2006
FILED BY DEF. PRO SE

04/04/2006 Party(s): BARBARA H TILLSON
MOTION - MOTION TO STRIKE FILED ON 04/04/2006
Plaintiff's Attorney: MICHAEL T BIGOS
WITH MEMORANDUM OF LAW, DRAFT ORDER, NOTICE OF HEARING
STRIKE AND FOR ORDER TO ANSWER AND INCORPORATED MEMORANDUM OF LAW

MOTION TO

05/03/2006 Party(s): ANDREW LANE
RESPONSIVE PLEADING - ANSWER AMENDED ON 05/03/2006
FILED BY DEF. ANDREW LANE PRO SE AMENDED ANSWER TO COMPLAINT

05/16/2006 Party(s): BARBARA H TILLSON
MOTION - MOTION TO STRIKE DENIED ON 05/12/2006
DONALD H MARDEN , JUSTICE
PLAINTIFF'S MOTION FOR ORDER TO ANSWER IS GRANTED. MOTION TO STRIKE IS DENIED. COPIES
MAILED TO ATTYS.

07/13/2006 Party(s): BARBARA H TILLSON
DISCOVERY FILING - NOTIFICATION DISCOVERY SERVICE FILED ON 07/13/2006
Plaintiff's Attorney: MICHAEL T BIGOS
PLTS. FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND REQUEST FOR ANSWERS TO INTERROGATORIES
PROPOUNDED UPON DEF. SERVED ON ANDREW LANE ON 07-11-06.

10/06/2006 ORDER - SCHEDULING ORDER ENTERED ON 03/13/2006
DONALD H MARDEN , JUSTICE
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT. COPIES TO
PARTIES/COUNSEL

10/06/2006 DISCOVERY FILING - DISCOVERY DEADLINE ENTERED ON 11/13/2006

10/06/2006 ASSIGNMENT - SINGLE JUDGE/JUSTICE ASSIGNED TO JUSTICE ON 03/13/2006
DONALD H MARDEN , JUSTICE

10/17/2006 ORDER - ORDER FAIL FILE ADR REPORT ENTERED ON 10/16/2006
DONALD H MARDEN , JUSTICE
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT. COPIES TO
PARTIES/COUNSEL SANCTIONS PAID IN THE
AMOUNT OF \$50.00 ON BEHALF OF THE PLAINTIFF (11/1/06)

10/23/2006 Party(s): BARBARA H TILLSON
MOTION - MOTION FOR ENLARGEMENT OF TIME FILED ON 10/23/2006
Plaintiff's Attorney: MICHAEL T BIGOS
PLAINTIFF'S UNOPPOSED MOTION TO EXTEND ALTERNATIVE DISPUTE RESOLUTION DEADLINE WITH
PROPOSED ORDER.

10/23/2006 Party(s): BARBARA H TILLSON
MOTION - MOTION EXTEND DISCOVERY FILED ON 10/23/2006
Plaintiff's Attorney: MICHAEL T BIGOS
WITH PROPOSED ORDER

10/25/2006 Party(s): BARBARA H TILLSON
ADR - NOTICE OF ADR PROCESS/NEUTRAL FILED ON 10/25/2006
Plaintiff's Attorney: MICHAEL T BIGOS
MEDIATION SCHEDULED FOR 10/30/06 WITH KEN ALBERT, ESQ.

10/27/2006 Party(s): BARBARA H TILLSON
MOTION - MOTION FOR ENLARGEMENT OF TIME GRANTED ON 10/26/2006
DONALD H MARDEN , JUSTICE
COPIES TO PARTIES/COUNSEL ADR EXTENDED TO
11/30/06.

10/27/2006 Party(s): BARBARA H TILLSON
MOTION - MOTION EXTEND DISCOVERY GRANTED ON 10/26/2006
DONALD H MARDEN , JUSTICE
COPIES TO PARTIES/COUNSEL DISCOVERY
EXTENDED TO 2/12/07

10/27/2006 DISCOVERY FILING - DISCOVERY DEADLINE ENTERED ON 02/12/2007

11/01/2006 ORDER - REPORT OF ADR CONF/ORDER FILED ON 11/01/2006

Plaintiff's Attorney: MICHAEL T BIGOS

11/01/2006 ORDER - REPORT OF ADR CONF/ORDER UNRESOLVED ON 11/01/2006

11/07/2006 ORDER - REPORT OF ADR CONF/ORDER ENTERED ON 11/06/2006

DONALD H MARDEN , JUSTICE

PARTIES TO RESCHEDULE ADR: DEFENDANT TO PAY ALL COSTS OF TILLSON, ALBERT & BIGOS UPON AMENDMENTS SUBMITTED TO THE COURT. COPIES MAILED TO ATTYS.

12/01/2006 Party(s): BARBARA H TILLSON

MOTION - MOTION FOR ENLARGEMENT OF TIME FILED ON 12/01/2006

Plaintiff's Attorney: MICHAEL T BIGOS

MOTION TO EXTEND ADR DEADLINE AND PROPOSED ORDER.

12/04/2006 Party(s): BARBARA H TILLSON

MOTION - MOTION FOR ENLARGEMENT OF TIME GRANTED ON 12/01/2006

DONALD H MARDEN , JUSTICE

COPIES TO PARTIES/COUNSEL

ADR EXTENDED TO

1/31/07.

01/24/2007 Party(s): BARBARA H TILLSON

MOTION - AFFID & REQUEST DEFAULT/JUDG FILED ON 01/24/2007

Plaintiff's Attorney: MICHAEL T BIGOS

01/29/2007 Party(s): BARBARA H TILLSON

MOTION - MOTION FOR ENLARGEMENT OF TIME FILED ON 01/29/2007

Plaintiff's Attorney: MICHAEL T BIGOS

PLAINTIFF'S THIRD MOTION TO EXTEND ALTERNATIVE DISPUTE RESOLUTION WITH PROPOSED ORDER.

01/31/2007 Party(s): ANDREW LANE

ORDER - DEFAULT ENTERED ON 01/29/2007

NANCY DESJARDIN , CLERK II

DEFAULT ENTERED AGAINST ANDREW LANE.

COPIES TO

PARTIES/COUNSEL

03/09/2007 Party(s): BARBARA H TILLSON

LETTER - FROM PARTY FILED ON 03/09/2007

Plaintiff's Attorney: MICHAEL T BIGOS

LETTER REQUESTING A HEARING FOR DEFAULT JUDGMENT.

06/15/2007 OTHER FILING - STATEMENT OF TIME FOR TRIAL FILED ON 06/13/2007

Plaintiff's Attorney: MICHAEL T BIGOS

ESTIMATE OF TIME FOR TRIAL IS 1/2 DAY.

07/05/2007 HEARING - HEARING ON DAMAGES SCHEDULED FOR 07/11/2007 @ 9:00

07/05/2007 HEARING - HEARING ON DAMAGES NOTICE SENT ON 07/05/2007

07/11/2007 HEARING - HEARING ON DAMAGES HELD ON 07/11/2007

DONALD H MARDEN , JUSTICE

Plaintiff's Attorney: MICHAEL T BIGOS

DEFENDANT, ANDREW LANE NOT PRESENT.

BARBARA TILLSON AS A WITNESS. PLAINTIFF'S EXHIBITS 1-10 ADMITTED. COURT TO TAKE MATTER

PLAINTIFF CALLS

UNDER ADVISEMENT.

07/13/2007 Party(s): BARBARA H TILLSON
OTHER FILING - WITNESS LIST FILED ON 07/12/2007
Plaintiff's Attorney: MICHAEL T BIGOS

07/13/2007 FINDING - JUDGMENT DETERMINATION ENTERED ON 07/13/2007
DONALD H MARDEN , JUSTICE
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT. COPIES TO
PARTIES/COUNSEL

ORDER - COURT JUDGMENT ENTERED ON 07/13/2007
DONALD H MARDEN , JUSTICE
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT. COPIES TO
PARTIES/COUNSEL
Judgment entered for BARBARA H TILLSON and against ANDREW LANE in the amount of \$22784.54.

07/13/2007 FINDING - FINAL JUDGMENT CASE CLOSED ON 07/13/2007

07/13/2007 ORDER - COURT JUDGMENT COPY TO REPOSITORIES ON 07/13/2007

A TRUE COPY

ATTEST: _____
Clerk