

Williams v Ashley

2021 NY Slip Op 31734(U)

May 24, 2021

City Court of Peekskill, Westchester County

Docket Number: SC-282-20

Judge: Reginald J. Johnson

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PEEKSKILL CITY COURT
COUNTY OF WESTCHESTER: STATE OF NEW YORK

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MARLON WILLIAMS,

DECISION & ORDER

Plaintiff,

--against--

Index No. SC-282-20

ROBERT ASHLEY d/b/a ASHLEY
KITCHEN & BATH/DUNRITE
CONSTRUCTION,¹

Small Claims Part

Defendants.

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Appearances:

Marlon Williams, plaintiff pro se

Cebrena Williams, witness

Robert Ashley d/b/a Ashley Kitchen & Bath/

Dunrite Construction by Rick S. Cowle, Esq. for defendant

Reginald J. Johnson, J.

This is a small claims action commenced pursuant to Uniform City Court Act (UCCA), Article 18-A. The plaintiff claims the parties entered into a remodeling contract wherein defendants agreed to remodel his kitchen and entry hallway for \$28,500.00. Plaintiff claims that defendants abandoned the project after a dispute about the remaining payment of

¹ As per the Contract, the corporate defendant is Dunrite Construction II Corp./Ashley Kitchen & Bath.

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\$2500.00. Defendants claim that plaintiff refused to permit them access to the premises to complete the work. Defendants assert a counterclaim for the value of working tools retained by the plaintiff in the sum of \$3200.00 and for the balance of the contract in the sum of \$2500.00. The plaintiff appeared pro se; Cebrena Williams testified on behalf of plaintiff. Defendants appeared by Rick S. Cowle, Esq. The parties' previous attempts to resolve this matter were unsuccessful and thereafter this matter proceeded to a bench trial.

In deciding this matter, the Court considered the testimony of the parties and the following exhibits: Contract (Doc. "A"); copy of \$12,000 check payment (Doc. "B"); pictures of kitchen, floor and garage (Doc. "C"); copy of Home Advisor Claim (Doc. "D"); copy of Home Advisor claim result (Doc. "E"); completion estimate from Sunshine Home Remodeling (Doc. "F"); paid invoice from Sunshine Home Remodeling for backsplash install, and tile install in hallway; invoice from RAS Electric for electrical wire gauge upgrade and stove connection (Doc. "H"); paid invoices from RT tiles for replacement hallway tiles (Doc. "I"); paid receipts for items from Home Depot (Doc. "J"); paid receipts from Amazon (Doc. "K"); email about cooktop specifications (Doc. "L"); email about floor tiles (Doc. "M"); email about backsplash (Doc. "N"); email from Demichiel to Cebrena regarding cooktop dated 7/3/19 (Doc. "O"); and photos showing unfinished cabinet underlighting (Doc. "P").

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Procedural History

On October 29, 2020, the plaintiff commenced this small claims action against the defendants for breach of contract. On February 17, 2021, the parties were scheduled to appear in court, but neither party answered the call of the calendar and case was dismissed.² This matter was restored to the calendar and scheduled for trial on April 21, 2021. On April 5, 2021, the defendants filed a counterclaim. On April 21, this matter proceeded to a bench trial whereupon both parties fully presented their cases and rested.

Facts

In or about April 19, 2019, the parties entered into a Contract for \$28,500.00³ for the remodeling of plaintiff's kitchen, entry hallway and powder room floor with a completion date of May 31, 2019 (Doc. "A"). The Contract required plaintiff to pay \$12,000.00 upon signing; a second payment of \$12,000.00 cash only by April 26, 2019; a third payment of \$3,500.00 cash only by May 3, 2019; and the balance of \$2500.00 upon completion of the project (Id. p. 2). It is undisputed that all payments were timely made by the plaintiff until a dispute arose about the final

² Due to an administrative error in the clerk's office, the case was dismissed even though the plaintiff had been waiting patiently in the courthouse lobby for his case to be called.

³ Although the base contract price was \$28,500.00, additional costs increased the total contract price to \$30,000.00

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payment. The Contract was to be performed by Dunrite Construction II Corp./Ashley Kitchen & Bath, not Robert Ashley⁴ (Id. at p. 3. ¶2).⁵

In or about April 22, 2019, the defendants commenced the remodeling contract (Id. at p. 2). Plaintiff testified that the showroom items did not match the Contract items and that defendants installed wall tiles on the floor, which started to crack in several places. Plaintiff said defendants asked him to purchase new tile with the understanding that he would reimburse the plaintiff. Plaintiff said that defendants did not completely remodel the kitchen before asking to be paid the balance of the Contract. Plaintiff said he refused to pay the defendants the balance because the Contract clearly stated that defendants must complete the kitchen before the balance would be due. Plaintiff said that since he refused to pay the Contract balance before the work was completed, the defendants refused to deliver the countertops for the kitchen and to complete the remaining work.

Plaintiff said he then sought the assistance of Home Advisor to help resolve the dispute since it provided his unsolicited contact information to the defendants (Doc. “D”). Plaintiff said that he interviewed three contractors before he was contacted by defendants and none of them could promise the specific completion date that he requested—except

(Doc. “A” p. 2).

⁴ Robert Ashley is referred to hereinafter as defendant Ashley for reference purposes only.

⁵ Since Robert Ashley was not a party to the Contract, the Court granted defendant’s attorney’s oral motion to dismiss the action as to him.

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defendants, which is why he hired defendants. Home Advisor later informed plaintiff that after discussing the matter with the defendants, the defendants said that “they have made a business decision to not move forward with the complaint process” (Doc. “E”). Plaintiff then commenced this action.

On cross examination, plaintiff was asked whether he complained directly to defendants about the incomplete work at any time and he said that he did so via verbal conversations and text. Plaintiff also stated that he did not retain any of the defendants’ tools at his house and that he never threatened to call the police on the defendants.

Plaintiff’s wife, Cebrena Williams, testified that the photos marked depicted the unfinished kitchen (Doc. “C”). She said that the defendants contacted them about the remodeling project; they did not contact the defendants. Ms. Williams said that the tiles on the floor in the kitchen did not match and that the tiles in the foyer were cracked (Doc. “D”). Ms. Williams said that the defendants damaged the tiles during the two-month period that they were working in the house before they moved in in June 2019. Ms. Williams said that the plaintiff always timely made the contractual payments to the defendants. She said that the unfinished kitchen created a hardship on her family because they have a 6-month-old and a disabled child who does not walk or talk.

On cross examination, Ms. Williams said that plaintiff never denied the defendants access to the premises, as the defendants always had

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access to the house through the garage with the access code. She said that she asked the defendants to come back to complete the work, but defendants said that they would not deliver the countertop and complete the remaining work unless the plaintiff paid the remaining balance of \$2500.00. She said that defendants requested payment of the balance even though the undercabinet lights were not completed. Lastly, Ms. Williams said that the plaintiff did not retain the defendants' tools.

Plaintiff claims that due to the defendants' refusal to complete the remodeling project, he had to pay for the services of a contractor in the sum of \$2,450.00 to install a new backsplash around the new counter top, install new grout, and install some tiles in the foyer (Doc. "G"). Because he could no longer afford to pay a contractor to complete the work left unfinished by the defendant, the plaintiff undertook to complete the project by purchasing various tools and supplies from Home Depot, Rengi Tile Inc., Lowe's, and Amazon in the sum of \$2,504.92⁶ for a total claim damages sum of \$4,954.92 (Docs. "G", "I", "J", and "K").

The defendant Ashley testified that the parties entered into a Contract to remodel the plaintiff's kitchen and tile in the entry hallway. Defendant Ashley averred that the only items left incomplete were a few tiles from the hallway; backsplash tiles in the kitchen, and installation of the toilet. Defendant Ashley said that defendants eventually installed the

⁶The purchase of the tools and supplies were proven by paid itemized receipts (see, UCCA §1804).

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countertop in the kitchen and flooring and that they were ready, willing and able to complete the project (Doc. “N”), but that plaintiff threatened to call the police on them if they returned to the premises. Defendant Ashley further testified that the defendants left their tools in the garage but were never able to retrieve them due to plaintiff’s threat. Defendant Ashley counterclaimed for the Contract balance of \$2500.00 and for the value of the tools in the sum of \$3200.00.

Defendant Ashley conceded that defendants were working in the plaintiff’s home prior to him moving in, but that the items listed in Doc. “J” are not defendants’ responsibility, and that only the cabinet underlighting needed to be completed (Doc. “P”).

Discussion

“A small claims court is generally ‘not bound by statutory provisions or rules of practice, procedure, pleading or evidence,’ and all that is required is that proceedings be conducted ‘in such manner as to do substantial justice between the parties according to the rules of substantive law’ (CCA 1804)” (*Buvis v. Buvis*, 38 Misc.3d 133[A] [App Term, 2d 11th & 13th Jud Dists [2013]; see also, *Williams v. Roper*, 269 A.D.2d 125, 126 [1st Dept. 2000]). Further, the determination of a trier of fact as to issues of credibility is given substantial deference, as a trial court’s opportunity to observe and evaluate the testimony and demeanor of the witnesses affords it a better perspective from which to evaluate their credibility (see, *Vizzari v State of New York*, 184 A.D.2d 564 [2d

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Dept. 1992]; *Kincade v. Kincade*, 178 A.D.2d 510, 511 [2d Dept. 1991]). Unless the fact-finding trial court's conclusions could not be reached under any fair interpretation of the evidence, its determinations are usually left undisturbed by appellate courts (see, *Claridge Gardens v Menotti*, 160 A.D.2d 544 [1st Dept. 1990]). This standard applies with greater force to judgments rendered in the Small Claims Part of the court (*Williams v. Roper*, 269 A.D.2d at 126).

To prevail on a breach of contract claim, the plaintiff must prove the following elements: 1) the existence of a contract; 2) one party's performance under the contract; 3) another party's breach of that contract; and 4) resulting damaged (*Hampshire Properties v. BTA Bldg. and Developing, Inc.*, 12 A.D.3d 573 [2d Dept. 2014]; *Vision China Media Inc. v. Shareholder Representative Services, LLC*, 109 A.D.3d 49, 58 [1st Dept. 2013]). In order to state a cause of action to recover damages for breach of contract, the plaintiff's allegations must identity the provisions of the contract that were breached (*Sutton v. Hafner Valuation Group, Inc.*, 115 A.D.3d 1039, 1042 [3d Dept. 2014]; *Barker v. Time Warner Cable, Inc.*, 83 A.D.3d 750, 751 [2d Dept. 2011]). Without a clear demonstration of damages, there can be no claim for breach of contract (*Milan Music, Inc. v. Emmel Communications Booking, Inc.*, 37 A.D.3d 206 [1st Dept. 2007]).

A contractual condition precedent is "an act or event, other than the lapse of time, which, unless the condition is excused, must occur before a

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duty to perform in the agreement arises” (*Oppenheimer & Co. v. Oppenheimer, Appel, Dixon & Co.*, 86 N.Y.2d 685 690 [1995] [internal quotation marks omitted]). Further, “[a] condition precedent is linked to the implied obligation of a party not to do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract” (*A.H.A. Gen. Constr. v. New York City Housing Auth.*, 92 N.Y.2d 20, 31 [1998] [internal quotation marked omitted]). However, it is a “well-settled and salutary rule that a party cannot insist upon a condition precedent, when its non-performance has been caused by himself” (*Young v. Hunter*, 6 N.Y. 203, 207 [1852]; see also, *Arc Elec. Constr. Co. v. Fuller Co.*, 24 N.Y.2d 99, 104 [1969]). In other words, “a party to a contract cannot rely on the failure of another to perform a condition precedent where he has frustrated or prevented the occurrence of the condition” (*Kooleraire Serv. & Installation Corp. v. Board of Educ.*, 28 N.Y.2d 101, 106 [1971]).

In the case at bar, there is no dispute that the parties entered into a written Contract (Doc “A”). Based on the trial testimony and the evidence submitted at trial, the Court finds that the plaintiff fully performed his obligations under the Contract, and that the defendants did not fulfil their contractual obligations, resulting in damages to the plaintiff. The defendants’ claim that the plaintiff threatened to call the police on them which allegedly prevented them from returning to complete the project is unsupported by any credible evidence proffered a

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trial. The Court notes that the defendant did not call any of his employees to testify at trial, and the claim result from Home Advisor did not mention that plaintiff threatened to call the police on defendants (Doc. "E"). The defendants had a contractual obligation to return to the premises and complete the project, but they failed to do so in breach of the Contract. Defendants cite Doc. "N" as proof that they were ready, willing, and able to complete the project, but the email is without context and unpersuasive since it is not complete and there is no response from plaintiff to it.

The plaintiff's specific contractual obligation to pay the remaining balance did not arise until the defendants completed the project, which defendants did not do (Doc. "A" p. 2). The Court is of the opinion that the defendants simply wanted to cease working on the project for reasons not entirely clear. The idea that the plaintiff timely paid the defendants \$27,500.00 (92%) of the \$30,000.00 Contract price and then allegedly prevented the defendants from completing the project by threatening to call the police on them is simply not credible, as doing so would not serve the plaintiff's interest in the least (see defendants' incomplete work in Docs. "C" and "P").

As stated above, the plaintiff's obligation to pay the Contract balance of \$2,500.00 was not triggered until the defendants completed the work, so therefore the defendants' decision to walk away from the project was an indisputable breach of contract. The defendants

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unjustified refusal and/or failure to complete the work under the Contract, which was a condition precedent to payment of the Contract balance, is also “linked to the implied obligation of a party not to do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract” (*A.H.A. Gen. Constr. v. New York City Housing Auth.*, 92 N.Y.2d at 31 [1998] [internal quotation marked omitted]). Since the defendants failed to complete the work, they were clearly neither entitled to the Contract balance nor relieved of their obligation to complete the work.

The Court now turns to the issue of damages. The Court finds that the defendants’ breach of contract damaged the plaintiff in the sum of \$4,954.92 (Docs. “G”, “I”, “J”, and “K”). The Court is persuaded that the plaintiff took all reasonable measures to mitigate his damages and that the costs of the contractor employed and the tools and supplies paid for post breach were necessary and reasonable to remedy the breach and complete the work. Defendants’ counterclaims for the value of tools allegedly retained by the plaintiff and for the Contract balance are dismissed. The defendants failed to proffer any credible evidence that the plaintiff illegally retained their tools, and based on the foregoing, the defendants’ breach of contract counterclaim must fail as the Court finds that defendants were never entitled to the Contract balance because they never completed work, as required by the Contract (Doc. “A” p. 2).

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Any other claims raised at trial and not addressed in this Decision and Order were considered and found to be without merit or moot in light of the Court's decision.

Based on the aforesaid, it is

Ordered that a judgment issue in favor of plaintiff and against defendant Ashley Kitchen & Bath/Dunrite Construction II Corp. in the sum of Four Thousand Nine Hundred Fifty-Four and Ninety-Two Cents (\$4,954.92) plus costs and interest from July 3, 2019;

Ordered that defendants' counterclaims are dismissed.

This constitutes the decision and order of the Court.

Hon. Reginald J. Johnson
Peekskill City Court Judge

DATED: Peekskill, New York
May 24, 2021

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