

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

Quality Builders, Inc., :
 : C.A. No. 06-12-0118AP
Plaintiff below/ :
Appellant, :
 :
v. :
 :
Howard Macknett, Nancy Macknett, :
Elmer Graden and Betty Graden, :
 :
Defendants below/ :
Appellees. :

Decision after Trial

Date of Trial: August 13, 2007

Date of Decision: August 15, 2007

**Judgment for the Defendant, Nancy J. Macknett
and against Plaintiff, Quality Builder, Inc.**

**David D. Hutt, Esquire, Wilson, Halbrook & Bayard, Post Office Box 690,
Georgetown, Delaware 19947-0690, Attorney for Appellant.**

**James A. Landon, Esquire, Woloshin, Lynch, Natalie & Gagne, Post Office Box 7329,
Wilmington, Delaware 19899-7329, Attorney for Appellee.**

Trader, J.

In this civil appeal from Justice of the Peace Court 16, I hold that the plaintiff, Quality Builders, Inc., failed to perform its contract in a workmanlike manner. Since the plaintiff has breached its contract with the defendant, Nancy J. Macknett, it cannot recover for the balance due under the contract.

Facts

On March 24, 2006, the plaintiff entered into a contract with the defendant, Nancy J. Macknett, for the construction of a 10' x 12' sunroom that would be connected to the defendant's trailer. The contract price was \$11,850.00 and \$4,000.00 was paid on the signing of the contract. The balance was due upon the completion of the work and the sunroom was completed on May 27, 2006. After the completion of the job, the roof was leaking and Howard Macknett, the husband of the defendant, called the plaintiff several times concerning this matter. Plaintiff's employees went to the site of the sunroom on at least one occasion to repair the leak, but the roof continued to leak. Mary Ressler, owner of Quality Builders, Inc. testified that the defendants did not contact her any further concerning the leaking roof, but Howard Macknett testified that he called the plaintiff many times concerning this issue. Thereafter, a light wind blew the roof off of the sunroom and the defendants had the sunroom replaced at a cost of \$4,800.00. The defendants refused to pay the balance due on the contract and the plaintiff filed a civil action in the Justice of the Peace Court 16. After an appeal from the decision of the magistrate at trial, I hear this case as a trial *de novo*. At trial the plaintiff's claim against Howard Macknett, Elmer Graden, and Betty Graden, who is now deceased, was dismissed because none of those defendants was a party to the contract.

Contentions of the Parties

The plaintiff contends that it completed the sunroom and is entitled to the balance due on the contract. The defendant, on the other hand, contends that because plaintiff's

performance was defective, it is not entitled to the balance due under the contract. I conclude that the plaintiff's performance was defective and that Quality Builders, Inc. is not entitled to the balance due under the contract.

Rationale for the Decision

The contract between the parties required the plaintiff to complete the sunroom in a workmanlike manner. Mary Ressler testified that she only received two calls relative to the construction of the sunroom. She also testified that the leak to the sunroom was repaired and that the leak to the sunroom came from the roof on the defendant's trailer, rather than the roof to the sunroom. On the other hand, Mr. Macknett testified that there were multiple leaks from the roof to the sunroom and the roof was never adequately repaired by the plaintiff. He also testified that the roof was nailed to Styrofoam and a light wind blew the roof off the sunroom. Wayne Stover, who has been in the construction business for over thirty-seven years, testified that because the wall to the sunroom was so twisted, he could not put a roof on the existing structure. He built a new sunroom at a cost of \$4,800.00 and it was necessary to replace all of the structure except the windows and doors. Based on the photographs, the testimony of the defendant's expert witness, and the testimony of Howard Macknett, I accept the testimony of the defendant's witnesses and reject the testimony of the plaintiff's witnesses.

The law in Delaware recognizes an implied builder's warranty of good quality and workmanship. *Sachetta v. Bellevue Four*, 1999 Del. Super. LEXIS 132, *8 (Del. Super. 1999) citing *Smith v. Berwin Builders, Inc.*, 287 A.2d 693, 695 (Del. Super. 1972). If a "person holds himself out as a competent contractor to perform labor of a certain kind, the law presumes that he possesses the requisite skill to perform such labor in a proper manner, and implies as a part of his contract that the work shall be done in a skillful and workmanlike manner." *Bye v. George McCaulley & Son Co.*, 76 A. 621, 622 (Del. Super.

1908). The standard for whether or not the contractor performed his work under the contract in a good and workmanlike manner is “whether they displayed that degree of skill or knowledge normally possessed by members of their profession or trade in good standing in similar communities.” *Marcano v. Dendy*, 2007 Del. C.P. LEXIS 36, at *19 (Del. C.P. May 22, 2007) citing *Shipman v. Hudson*, 1993 Del. Super. LEXIS 44, 1993 WL 54469, at *3 (Del. Super. Feb. 5, 1993).

The fact that a light wind blew the roof off the house is circumstantial evidence that the sunroom was not constructed in a workmanlike manner. A light wind should not blow a roof off a house unless there is negligence on the part of someone and in this case, it was the negligence of the plaintiff.

The plaintiff contends that the defendant never gave the plaintiff an opportunity to repair the structure. This contention is incorrect. Even as much as six weeks ago when Mary Ressler and a representative of the manufacturer went to the defendant’s property, no attempt was made to repair the structure. Under the circumstances outlined in this case, because of the defective workmanship and because the construction of the sunroom was of no value to the defendant, the plaintiff is not entitled to recover any damages. *See Mid-Atlantic Sys. of DPN v. Wasson*, 2002 Del. C.P. LEXIS 68, at *4 (Del. C.P. Feb. 19, 2002) (holding that in order to recover damages for a breach of contract, the complaining party must demonstrate substantial compliance with the contract and if the complainant committed a material breach, he cannot complain if the other party refuses to complete performance.).

Accordingly, judgment is entered in behalf of the defendant, Nancy J. Macknett, and against the plaintiff, Quality Builders, Inc., for the costs of these proceedings.

IT IS SO ORDERED.

Judge