

IN THE COURT OF COMMON PLEAS IN THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

EDWARD L. HAZLETT,

Plaintiff,

V.

DIANE M. POMPEO and STEPHEN
SANNUTI, trading as S & S DRYWALL

Defendants,

C.A. No. 01-11-0042

Decision after trial.

Trial: December 2, 2002

Final Submission: December 27, 2002

Decided: December 27, 2002

Steven Schwartz, Esquire, Schwartz & Schwartz, P O Box 541, 1140 South State Street,
Dover, Delaware, 19903, Attorney for the Plaintiff.

John C. Andrade, Esquire, Parkowski & Guerke, P.A., 116 West Water Street, P O Box 598, Dover, Delaware, 19903, Attorney for the Defendants

Trader, J.

In this civil action, I conclude that Diane M. Pompeo and Stephen Sannuti, trading as S & S Drywall (S & S Drywall) have breached their contract with Edward L. Hazlett (Hazlett) because they abandoned the job and performed defective work. Hazlett is entitled to all the damages that flow from this breach of contract and I award him damages in the amount of \$11,582.00.

The relevant facts are as follows: Hazlett entered into a contract with S & S Drywall whereby S & S Drywall was to install the exterior stucco walls as well as perform interior drywall work and paint all walls and ceilings for the sum of \$28,000.00. Hazlett agreed to pay for the materials and S & S Drywall would provide the labor. S & S Drywall commenced work on August 29, 2001 and their employees applied the felt paper and wire for the later application of stucco. S & S Drywall did not perform any work on the job after September 7, 2001, and although Mrs. Hazlett attempted to contact the defendants several times, they did not return to the job. On September 24, 2001, Mark Smith of Class Custom Homes, a stucco contractor, examined the defendants' work and determined that the work was defective in several respects. Hazlett notified S & S Drywall by letter dated September 24, 2001 that the contract was null and void because of the defective work. Shortly thereafter, Hazlett hired Mark Smith to complete the job and it was necessary to remove the wire mesh and replace it before the stucco could be applied. Hazlett hired two former employees of S & S Drywall to remove the wire mesh so that Mr. Smith could begin to work on the job. Thereafter Mark Smith performed the stucco work for \$26,032.00 and Steven Dill performed the drywall work and painting for \$5050.00. Hazlett seeks damages for the amount of money that would have put him in the same position as if S & S Drywall had performed the contract.

Hazlett contends that S & S Drywall breached its contract when it abandoned the job and also performed defective work. S & S Drywall, on the other hand, contends that the work was not defective and that they did not abandon the job. I conclude that the evidence supports the plaintiff's contentions.

Edward Hazlett and Iva Hazlett, his wife, testified that the defendants' last day of work was September 7, 2001, and S & S Drywall did not return to the job site on September 10, 2001. They also testified that there was material on the job site from which the defendants could commence work. Additionally, Hazlett and his wife called the defendants several times about a meeting or returning to the job site, but the defendants did not make a commitment to return to the site. On September 16, 2001, in a telephone call with Mrs. Hazlett, Mr. Sannuti asserted that Hazlett had breached the contract when he gave the defendants a check rather than cash. The documentary evidence indicated that the defendants made no objection to payment by check (Plaintiff's Exhibit 2) and Mr. Sannuti at that time gave no indication of when he would return to work. On September 18, 2001, Mrs. Hazlett called Ms. Pompeo about setting up a meeting concerning the completion of the job, but Ms. Pompeo called back the next day stating that Mr. Sannuti could not meet with them. On September 23, 2001, Rick Walker, a friend of the plaintiff, called the defendants on behalf of Mrs. Hazlett, and Ms. Pompeo told him that they were busy and he should not to call any more.

On September 24, 2001, Mark Smith of Class Custom Homes inspected the defendants' work and discovered that the wire mesh was not properly placed. On the same date Hazlett wrote a letter to the defendants advising them that the contract was cancelled because of the defective work. In response to this letter, Mr. Andrade, the

defendants' attorney, wrote a letter to Mr. Hazlett contending that Mr. Hazlett was on the site and approved all of the defendants' work. Secondly, he requested an opportunity for the defendants to inspect the site and correct any alleged defects. However, by this time, the defendants' defective work had been removed and Hazlett had hired Mr. Smith to complete the job.

Both Ms. Pompeo and Mr. Sannuti testified that on September 10, there were no materials on the job site so that they could continue the work. However, Plaintiff's Exhibit 8 indicates that materials were ordered from Angerstein on September 8, 2001 and Hazlett testified that Ms. Pompeo ordered these materials. Furthermore, it was the defendants' obligation to order materials under the contract. I accept Mr. Hazlett's testimony and reject the defendants' testimony on this issue.

S & S Drywall also contends that Hazlett in his letter declared the contract "null and void". Therefore, they argue that the defendants are discharged from any further performance on the contract. However, a fair interpretation of the entire letter is that the contract was terminated as a result of defective work by the defendants.

The defendants also contend that Hazlett wanted so many changes in the contract that they could not return to work until the issue of the various changes was addressed. I accept Mr. and Mrs. Hazlett's testimony that the only change made was the proposal to use pre-made keystone material for the windows. Additionally, there is insufficient evidence to support the defendant's contention that Hazlett supervised the work.

The defendants also contend that they were not given an opportunity to inspect the work site and cure the defect. The wire mesh had been pulled off the house before the defendants made a request to remedy the defects. Mark Smith's testimony convinces me

that the work was so defective that the wire mesh had to be pulled off of the house and replaced entirely.

Although the testimony of Mr. Smith and the photographs showed the defective condition of the wire mesh, Mr. Sannuti asserts that he did not leave the property in that condition. However, this testimony is incredible since no one worked on the property from the time the defendants abandoned the job site on September 7 until the property was inspected by Mr. Smith. The evidence supports the conclusion that S & S Drywall is responsible for defective work. I, therefore, hold that the defendants are liable for breach of contract.

As to the issue of damages, the defendants contend that the plaintiff is only entitled to the amount he paid the defendants. But this theory is unsupported by any legal authority or precedent and is rejected by the court.

A breach of contract case, “[t]he traditional measure of damages is that which is utilized in connection with an award of compensatory damages, whose purpose is to compensate a plaintiff for proven, actual loss caused by the defendant’s wrongful conduct. To achieve that purpose, compensatory damages are measured by the plaintiff’s ‘out-of-pocket’ actual loss.” *Strassburger v. Earley*, 752 A.2d 557, 579 (Del.Ch. 2000).

If a party to a construction contract fails to perform his obligations under the contract, the aggrieved party is entitled to damages measured by the amount required to remedy the defective performance, unless it is not reasonable or practical to do so. *Farny v. Bestfield Builders, Inc.*, 391 A.2d 212, 214 (Del. Super. 1978).

The amounts required to remedy the defective performance are listed as follows: \$1000.00 was paid for the removal of the wire mesh. Hazlett also removed the wire mesh

and he would have had to pay someone else the sum of \$500.00 for the work that he did. He is allowed \$500.00 as the reasonable value of his labor. Hazlett paid \$26,032.00 for the installing of the stucco, \$3250.00 for the drywall work, and \$1800.00 for painting. Although \$1540.52 was paid out for various supplies, some of this material was used by Mr. Smith when he completed the job. I, therefore, disallow the claim for \$1540.52.

The defendants contend that they should be given credit for the sum of \$2500.00 for the felt portion of the stucco wall. But, I reject Mr. Sannuti's testimony concerning the value of this work.

The total amount that was paid for the completion of the contract was \$39,582.00. If S & S Drywall had performed its obligation, Hazlett would have paid S & S Drywall \$28,000.00. As a result of the defendants' wrongful conduct, Hazlett paid out \$39,582.00. The amount of actual out-of-pocket expense is \$11,582.00. Accordingly, I award damages in that amount.

Judgment is entered on behalf of Edward L. Hazlett against Diane M. Pompeo and Stephen Sannuti trading as S & S Drywall for the amount of \$11,582.00 plus costs of these proceedings.

IT IS SO ORDERED.

JUDGE