

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2011 CA 2252

RAYMOND A. HORVATH, JR. AND 2766 FRONT, L.L.C.

VERSUS

SONNY ANNALORO D/B/A CROSSWIND PROPERTIES

Judgment Rendered: June 8, 2012

* * * * *

Appealed from the
22nd Judicial District Court
In and for the Parish of St. Tammany, Louisiana
Trial Court Number 2008-12906

Honorable William J. Knight, Judge

* * * * *

Paul E. Harrison
C. deShea Richardson
Mandeville, LA

Attorneys for
Plaintiffs – Appellees
Raymond A. Horvath, Jr. and
2766 Front, L.L.C.

Ronald W. “Ron” Guth
Pearl River, LA

Attorney for
Defendant – Appellant
Sonny Annaloro, d/b/a
Crosswind Properties

* * * * *

BEFORE: PETTIGREW, McCLENDON, AND WELCH, JJ.

WELCH, J.

In this action for damages for breach of contract, the defendant, Sonny Annaloro d/b/a Crosswind Properties ("Annaloro"), appeals a judgment awarding damages in favor of the plaintiffs, Raymond A. Horvath, Jr. and Floorworks and Blinds, L.L.C. (formerly known as 2766 Front, L.L.C.) (collectively "Horvath"). Finding no error in the judgment of the trial court, we affirm.

On May 29, 2008, Horvath filed a petition for damages for breach of contract. In his petition, Horvath alleged that on March 11, 2005, he entered into a commercial lease with Annaloro for the premises located at 2766 Front Street in Slidell, Louisiana, and that he operated his flooring and blind installation business from that location. Horvath further alleged that on July 15, 2005, he entered into a contract with Annaloro to install carpet in the upstairs office of the leased premises for the price of \$1,681.64, and that he supplied and installed the carpet in that office. Horvath also alleged that following Hurricane Katrina, which caused extensive damage to the leased premises, he entered into a contract with Annaloro on October 26, 2005, to repair the flooring in the showroom of the leased premises for the price of \$21,223.65, and that he supplied, installed, and repaired the flooring in the showroom. Horvath further claimed that Annaloro had not paid any of the amounts to him in regard to those contracts, although Annaloro had submitted the above referenced contracts to his insurance company (for damages resulting from Hurricane Katrina) and had received insurance proceeds for the repairs conducted by Horvath. Accordingly, Horvath sought judgment against Annaloro for those sums.¹

¹ Annaloro responded with a reconventional demand alleging that he hired Horvath to replace the flooring in another commercial premises that he owned, and that the flooring was replaced so negligently and inefficiently that Annaloro had to have the flooring taken up and moved at the cost of \$2,093.00, and that Horvath was liable to him for all costs of that job.

A trial on the merits was held on January 24, 2011. Following trial, the trial court rendered judgment in favor of Horvath and against Annaloro for the sum of \$1,681.64 plus the sum of \$21,223.65, together with legal interest from the date of judicial demand until paid and all costs.² A written judgment in accordance with the trial court's ruling was signed on March 10, 2011, and it is from this judgment that Annaloro has appealed. On appeal, Annaloro contends that the trial court erred in finding that contracts existed for the installation of carpet in the upstairs office and for the replacement of the showroom floor of the leased premises.

With regard to these issues, the trial court's written reasons for judgment provide as follows:

It is undisputed that the parties entered into a commercial lease for the property located at 2766 Front Street in Slidell on March 10, 2005. It is further undisputed that this lease was to extend for a period of three years. There is further no question that Hurricane Katrina on August 29, 2005 inflicted significant damage on the property located at 2766 Front Street. This was an older commercial building which had previously flooded on at least once occasion; and during Hurricane Katrina, it was inundated with approximately five feet of water. The windows and doors were damaged on the exterior walls; the roof was significantly damaged both over the warehouse and the showroom area. The electrical system of the building was [a]ffected, and the flooring in the building was damaged or destroyed. There is also no question that both the landlord [Annaloro] as well as the lessee [Horvath] began attempts to place the property in a habitable condition as soon as possible. It was in this chaotic and hectic time period immediately following Hurricane Katrina's landfall that the operative facts which give rise to this suit occurred. That is significant to the [court] inasmuch as the [c]ourt is very aware of the rapid pace with which many things had to be done following the storm, and the time and physical demands which were placed on the community in attempting to resume life as it was known before the landfall of Katrina.

The [c]ourt begins by stating that both [Annaloro] and [Horvath] were credible in their testimony, and the [c]ourt frankly feels that they both are in good faith in their respective positions. Based upon the [c]ourt's observance of the credibility of the principals to the lawsuit, as well as their witnesses, the [c]ourt makes the following findings.

² The trial court also rendered judgment that Annaloro was entitled to a credit of \$1,463.23, together with legal interest from the date of judicial demand, which related to the claims made by Annaloro in his reconventional demand.

First, [Horvath] had in fact replaced the flooring in the upstairs apartment [office] ... and this operation had been completed only one day prior to the landfall of Katrina. This certainly is borne out by [Horvath's] testimony as well as the physical evidence presented at trial. [Horvath] is therefore entitled to recover the cost of that flooring, as agreed to by [Annaloro] despite a disagreement by [Annaloro] as to his authorization for that work to be done.

Secondly, the [c]ourt finds that an agreement in principle was reached between the parties as to the removal and replacement of the flooring in the showroom. Specifically, the [c]ourt has reviewed in detail plaintiff's Exhibit No. 3 which is the proposal for removal and installation of flooring in the showroom in question. The two dollar per square foot removal price is identical to the price which Chad Stevenson (lessor's own witness) said was his normal price for removal of flooring material. While Mr. Stevenson did testify that he agreed to remove flooring for [Annaloro] on another occasion at one-half price, this testimony corroborates the reasonableness of the costs to remove the flooring in question. Further, there is no question that the removal of the flooring benefitted both [Annaloro] as well as [Horvath]. There is also no question that [Annaloro] was aware that [Horvath] intended to reinstall flooring in the showroom area. The question becomes whether or not there was a meeting of the minds between the parties as to the costs for performing that work. Mr. Stevenson testified that replacing the flooring in question with a commercial vinyl congoeum tile would have been \$4,000 to \$5,000 in addition to the removal of the old floor. The proposal presented to the [c]ourt as plaintiff's Exhibit No. 3 provides for approximately \$15,000 in costs for the installation of the floors which actually were placed in the building. Several pieces of information relative to plaintiff's Exhibit No. 3 are pertinent. First, the proposal was apparently prepared by Julie Chadwick, a former employee of [Horvath], who is now deceased. The flooring was actually installed after Ms. Chadwick's death according to the testimony at trial. Secondly, the date of the proposal is October 26, 2005, after the business had already resumed operation. Third, there is mention of a mosaic in the proposal about which the [c]ourt heard testimony from [Horvath] who stated that [Annaloro] was concerned about not getting too elaborate with the mosaics so as to hold down costs. This was confirmed by the testimony of Chris Carson, an employee of [Horvath]. While the amount received in insurance proceeds for the floors which were being replaced is of no moment to the [c]ourt, it is significant to the [c]ourt that, despite [Annaloro's] distancing of himself from the sample floors in question, he made claim for and received payment for the floors which he contends did not belong to him and were always the property of ... [Horvath]. Accordingly, the [c]ourt finds that the preponderance of the evidence indicates that an agreement was reached to remove and reinstall flooring and that the amount of \$21,223.65 shown on the exhibit list to P3 is due and payable. *[sic]*

* * *

Accordingly, a judgment will be signed upon presentation awarding unto [Horvath] the sums of \$1,681.64 and \$21,223.65 together with legal interest thereon from the date of judicial demand until paid and all costs of this suit.³

Based on our review of the record before us, we find no manifest error in these factual findings by the trial court. See Stobart v. State through DOTD, 617 So.2d 880, 882-83 (La. 1993). It is clear that the trial court's findings were based largely on credibility determinations, and this court is bound to give wide deference to the trial court's credibility determinations. After reviewing the documentary evidence offered at trial and the testimony of the witnesses from trial, we find that the trial court's conclusion that contracts existed between Horvath and Annaloro for the installation of carpet in the upstairs office and for the replacement of the showroom floor of the leased premises following Hurricane Katrina are reasonably supported by the record. Accordingly, we affirm the trial court's judgment and assess all costs of this appeal to the appellant, Sonny Annaloro d/b/a Crosswind Properties. We issue this memorandum opinion in accordance with Uniform Rules—Courts of Appeal, Rule 2-16.1(B).

AFFIRMED.

³ The trial court's written reasons for judgment also provided for Annaloro to receive a credit of \$1,463.23 relating to his claim for flooring work performed by Horvath that was not completed to Annaloro's satisfaction and also denied Horvath's claim relating to a reduction of rent because of the alleged untenable condition of the property during a portion of the lease after Hurricane Katrina.