

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D36736
C/kmb

_____AD3d_____

Submitted - October 31, 2012

RANDALL T. ENG, P.J.
PETER B. SKELOS
MARK C. DILLON
L. PRISCILLA HALL, JJ.

2009-06365

DECISION & ORDER

Hassan Turan Fidan, appellant, v NAYCI Contracting
& Custom Cabinetry Corporation, respondent.

(Index No. 26493/05)

Loanzon Sheikh, LLC, New York, N.Y. (Tristan C. Loanzon of counsel), for
appellant.

Glenn J. Wurzel, Hempstead, N.Y., for respondent.

In an action, inter alia, to recover damages for breach of contract, the plaintiff appeals from a judgment of the Supreme Court, Queens County (Geller, S.R.), entered April 29, 2009, which, upon a decision of the same court dated March 5, 2009, made after a nonjury trial, is in favor of the defendant and against him on the counterclaim to recover damages for breach of contract in the principal sum of \$23,000.

ORDERED that the judgment is modified, on the law and the facts, by reducing the award on the counterclaim from the principal sum of \$23,000 to the principal sum of \$16,000; as so modified, the judgment is affirmed, without costs or disbursements, and the matter is remitted to the Supreme Court, Queens County, for the entry of an appropriate amended judgment.

In reviewing a determination made after a nonjury trial, the power of this Court is as broad as that of the trial court, and this Court may render the judgment it finds “warranted by the facts,” bearing in mind that in a close case, the trial judge had the advantage of seeing the witnesses and hearing the testimony (*Northern Westchester Professional Park Assoc. v Town of Bedford*, 60 NY2d 492, 499). Here, the Supreme Court’s determination that the plaintiff breached his contract with the defendant by not allowing the defendant to complete the renovations of his apartment was

warranted by the facts (*see Felix Contr. Corp. v Oakridge Land & Prop. Corp.*, 106 AD2d 488; *Austin v Afzal*, 24 Misc 3d 128[A]).

However, the Supreme Court erred in calculating that the defendant was entitled to damages on its counterclaim in the principal sum of \$23,000. The agreed-upon contract price for the renovation work was the sum of \$20,000, and the plaintiff presented documentary proof that he paid the sum of \$4,000 to the defendant, leaving an unpaid balance in the sum of \$16,000. Under these circumstances, the defendant is entitled to recover the principal sum of \$16,000.

The parties' remaining contentions either are without merit, are improperly raised for the first time on appeal, or need not be reached in light of our determination.

ENG, P.J., SKELOS, DILLON and HALL, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court