

Lewis v Brown

2008 NY Slip Op 30253(U)

January 28, 2008

Mount Vernon City Ct

Docket Number: 0002754/2007

Judge: Adam Seiden

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BEFORE: HON. ADAM SEIDEN
ASSOCIATE CITY JUDGE OF MOUNT VERNON

CITY COURT OF MOUNT VERNON
MOUNT VERNON : NEW YORK

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VIVIAN AUGUSTUS LEWIS,

Plaintiff,

DECISION AND ORDER
Docket #SC 2754-07

-against-

MR. and MRS. RONALD BROWN,

Defendants.

-----X

In this small claims action where the plaintiff seeks to recover payment of \$3,000 for exterior painting services provided at defendants' home, the defendants move to dismiss the claim. The defendants also counterclaim for \$3,000, asserting that the plaintiff performed work in a sub-standard manner and failed to complete the work.

The defendants hired the plaintiff to paint their home in New Rochelle pursuant to a written contract dated March 29, 2007, for a total price of \$6,000. They claimed he told them he was a licensed painter, although in fact he is not. The defendants asserted that they paid the plaintiff \$3,000 of the contract price but that he did very poor work and refused to fix the problems they pointed out, which included failing to properly sand, painting over tape, using two different colors of paint and failing to point the brick, as had been agreed in writing. The defendants assert that they do not owe him any money because he is not a licensed contractor. They received an estimate of \$2,685 from another painter to redo the work, which they have submitted to the court.

The plaintiff opposes the motion to dismiss his claim, arguing that he has a license to do business in Westchester county and believed that this was all that was

required of him. He also claims he performed the job properly and should be paid the balance of the contract price. He does not dispute that the defendants paid him \$3,000 of the contract price.

A home improvement contractor who is unlicensed at the time of the performance of the work for which he or she seeks compensation forfeits the right to recover damages based on either breach of contract or quantum meruit (Flax v Hommel, 40 AD3d 809 (2d Dept 2007); see also B&F Bldg. Corp. v Liebig, 76 NY2d 689). Further, a plaintiff who is required to be licensed is required to plead the existence of such license in order to maintain the action (CPLR 3015(e)).

The Westchester County Consumer Protection Code, Article 16, Section 863.313(1) states that “No person shall maintain, conduct, advertise, operate, or engage in the home improvement business within the county of Westchester, or hold himself or herself out as being able to do so, unless such person is licensed pursuant to this Article.” The statute defines a “home improvement” as “a repair, replacement, remodeling, installation, construction, alteration, conversion, modernization made to, in or upon a private residence, apartment or dwelling place of not more than three units...” and specifically includes “exterior painting” (Westchester County Consumer Prot. Code, Section 863.312(2)).

The statute defines a “contractor” as “any person who owns, operates, maintains, controls, transacts or conducts a home improvement business or who undertakes or advertises a home improvement service or offers to undertake or agrees to perform any home improvement ”(Westchester County Consumer Prot. Code, Section 863.312(1)). The plaintiff does not claim that he has a license to perform home

improvements in Westchester county. Accordingly, the plaintiff may not maintain this action to recover for breach of a contract to provide home improvement services, which includes exterior painting (Flax v Hommel, supra; B&F Bldg. Corp. v Liebig, supra). The plaintiff's claim is therefore dismissed.

The court declines to award the defendants with respect to the counterclaim, as it would bestow a windfall upon them. They had originally agreed to a contract price of \$6,000 for their house painting job, and paid the plaintiff \$3,000 for the work he did. The defendants received an estimate of \$2,685 to repair the job done by plaintiff. The amount paid plus the repair cost totals less than the \$6,000 the defendants had initially agreed to pay plaintiff for the properly completed job. Thus, the court finds that defendants would receive a windfall if they were awarded their counterclaim against the plaintiff. The counterclaim is therefore dismissed.

Dated: January 28, 2008
 Mount Vernon, New York

HON. ADAM SEIDEN
Associate City Judge of Mount Vernon

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