

**Bloom v Grandis Constr. & Home Improvements**

2009 NY Slip Op 31532(U)

July 8, 2009

Supreme Court, Suffolk County

Docket Number: 4189-05

Judge: Elizabeth H. Emerson

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SHORT FORM ORDER

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NO. 4189-05

**SUPREME COURT - STATE OF NEW YORK  
COMMERCIAL DIVISION  
TRIAL TERM, PART 44 SUFFOLK COUNTY**

PRESENT: Honorable Elizabeth H. Emerson

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DAVID BLOOM and SHERYL BLOOM,

Plaintiffs,

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Attorneys for Plaintiffs  
200 Garden City Plaza, Suite 315  
Garden City, New York 11530

-against-

GRANDIS CONSTRUCTION & HOME  
IMPROVEMENTS , and JOHN GRANDIS,

Defendants.

IVARS BERZINS, P.C.  
Attorney for Defendants  
484 West Main Street  
Babylon, New York 11702

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**DECISION AND ORDER AFTER TRIAL**

A non-jury trial of this matter was conducted by this Court on October 28, 29 and 30, November 24 and December 17 and 19, 2008. Thereafter, the parties were given an opportunity to submit post trial memoranda which they did by April 17, 2009. In rendering its determination, the Court has considered the pleadings, the testimony of each of the trial witnesses and evaluated the credibility of the witnesses, examined the trial exhibits and reviewed the post-trial memorandums of law submitted on behalf of the plaintiffs and the defendants.

This action arises out of a home improvement contract between the plaintiffs, David and Sheryl Bloom (the "Blooms") and the defendants, Grandis Construction & Home Improvements ("Grandis Construction") and John Grandis (collectively referred to herein as "Grandis"). Grandis Construction is a sole proprietorship owned by John Grandis. According to the complaint, the parties entered into a written agreement in or about February 2004 (the "Contract"). The Contract provided that Grandis Construction agreed to perform certain construction services including the construction of a second-floor addition to the Bloom's residence located at 12 Donna Lane, Commack New York (the "Premises"). The total cost for the work included in the contract was \$147,900.00. All parties agreed that in addition to the contract amount, additional items were added to the project and that the cost of such additions was added to the contract price.

The Blooms allege first, that Grandis breached the Contract in that they failed to complete the work set forth therein, despite the fact that Grandis was paid \$132,150.00 of the Contract price, as well as \$14,618.63 in "extras". Additionally, the Blooms contend that the work completed, was done so in a poor workmanlike manner, with faulty material and that it contained structural defects. The Blooms also allege unjust enrichment in that certain work which they paid for was done incorrectly and they argue that Grandis intentionally ordered excess material and retained such material for their own use without crediting the Blooms for the cost. The complaint also includes a cause of action for conversion of kitchen cabinets valued at over \$10,000.00. These cabinets were delivered to Grandis but were never installed at the Premises. Finally, the Blooms set forth causes of action alleging violations of the Lien Law. On or about December 4, 2004, Grandis filed a Notice of Mechanic's lien on the Premises in the amount of \$31,650.00. The Blooms allege that not only was this lien exaggerated but when they served the defendants with a demand to furnish an itemized statement pursuant to Lien Law §38, the defendants failed to provide in and are therefore in violation of the Lien Law.

In response to the allegations in the complaint, John Grandis testified that up until the time he was "fired" by the plaintiffs, all work was done in accordance with the Contract and completed in a workmanlike manner. Grandis also contends that the mechanic's lien placed on the Premises represents an amount for the materials and labor furnished and performed pursuant to the Contract and set forth a counterclaim in the amount of \$31,650.00. However, at the time of trial, J. Grandis represented that during the discovery period in this matter, he inadvertently failed to credit the Blooms for certain payments made on their account. Thereafter, on or about February 15, 2006, he cancelled the mechanic's lien and withdrew this counterclaim.

Grandis however, also counterclaimed alleging breach of contract claiming that it was the Blooms who breached when they stated that Grandis would not be further compensated for any work completed on the Premises. Grandis claims that it was only after he was fired did he leave the job-site prior to completion of the project. Grandis seeks damages for breach of contract in the amount of \$100,000.00. This counterclaim was addressed during trial.

At trial, all parties testified that there were certain issues that arose during construction. The parties acknowledge that certain items failed the Town of Smithtown (the "Town") inspection. However, most of these items were resolved during construction. One of the issues raised by the Town pertained to "fire blocking". According to the record and the testimony at trial, the Town required fire blocking to be installed between floors. During construction, the Town required the architect to provide a detailed schematic as to how the fire blocking would be installed between the floors or they would not permit the job to continue. According to Grandis, the original plans submitted to the Town and approved thereby, did not provide for fire blocking and the cost associated therewith was not factored into the original Contract. He sought an additional \$5,000.00 to install the fire blocking and considered it as an extra work order. It is alleged that the Blooms refused to pay Grandis any additional money for the fire blocking. At the time Grandis ceased working on the Premises, the fire blocking had not

been installed.

It is undisputed that Grandis ceased working on the Premises on or about November 22, 2004 at which time he packed up his tools and equipment and never returned to the Premises. Grandis contends that the statement made by Mrs. Bloom regarding no further payment was in fact, a statement “firing” him and an anticipatory repudiation of the Contract by the Blooms. Grandis further contends that this statement was justification for leaving the job prior to completion.

The Blooms however argue that they never “fired” Grandis from the job and felt that since he was paid almost all of the amount due under the Contract, Grandis was obligated to finish the project pursuant to the Contract. Testimony at trial indicated that Mrs. Aletkin, Mrs. Bloom’s mother contacted Grandis and “begged him to come back and finish the job”<sup>1</sup>. Grandis never returned to the Premises. Mr. Bloom testified that because Mrs. Aletkin was scheduled to move into the Premises within a short period of time, it was necessary to hire Mr. Stancarone and Mr. Brenenson to complete the project. Mr. Bloom further testified that he spent numerous hours of his own time completing the Project, including installation of the fire blocking.

The Blooms also testified as to the additional costs incurred after Grandis left the job. Mr. Stancarone, through his company, Infinity was paid \$17,775.00 and Mr. Brenenson \$6,800.00 to complete the project as well as additional costs detailed below. Finally, Mr. Bloom testified as to the kitchen cabinets that he alleges were converted by Grandis. According to the testimony at trial, Grandis took delivery of the kitchen cabinets ordered by the Blooms to be installed by Grandis. Grandis testified that he kept the cabinets for a certain period of time and then sold them for a salvage value of \$1,000.00. Mr. Bloom indicated that he replaced these cabinets for a total cost of \$10,046.00.

Turning first to the Blooms’ cause of action based on a violation of the Lien Law. Pursuant to the record, the Blooms contend that Grandis willfully exaggerated the amount of the lien placed on the Premises. They further contend that a willful exaggeration entitles them to damages in the amount of the lien of \$31,650.00, as well as, reasonable attorneys’ fees in the amount of \$2,500.00. However, the record also indicates that while Grandis did place the mechanic’s lien on the property, he claims he inadvertently failed to give the Blooms credit for all amounts paid pursuant to the contract. He further claims that upon discovery of his error, almost one-year later, he voluntarily removed the mechanic’s lien. Courts have held that damages may not be awarded against a mechanic’s lienor for willfully exaggerating the lien unless the lien has first been discharged for willful exaggeration (*see, Pyramid Champlain Co. v R.P. Brosseau & Co.* 267 AD2d 539). Furthermore, any penalty for willful exaggeration does not include an exaggerated amount due to honest mistake (*see, Goodman v Del-Sa-Co Foods,*

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<sup>1</sup>Note that the second floor extension was being paid for by Mrs. Aletkin as she and her husband were selling their home to move in with the Blooms.

**Inc.** 15 NY2d 191. In the case now before the court, the record clearly indicates that Grandis voluntarily removed the lien from the Premises prior to any finding by the Court. Since there was no finding of willful exaggeration and there is evidence of an honest mistake, the Court declines to award the Plaintiffs damages on their claim for violation of the lien law.

As previously set forth, both parties assert causes of action for breach of contract. It is undisputed that a valid contract existed between the parties. The Contract submitted into evidence as Plaintiff's Exhibit 2, provides that Grandis will furnish all materials and necessary equipment and perform all labor necessary to complete the construction of an extension as per plans drawn by Robert Tredger dated 2/8/04. As set forth above, an issue arose regarding fire blocking. Although Grandis testified that the fire blocking was not part of the original plans and/or Contract, the Blooms claim that since Town code required installation of fire blocking, it was anticipated in the original scope of work and included in the Contract price. At trial, Robert Tredger testified that the fire blocking was not detailed in his original plans to the Town and it was necessary for him to submit an additional letter to detail how the fire blocking was to be installed. Furthermore, Mr. Heimer, an expert witness produced by the defendants at trial testified that in his professional opinion, the detail on the fire blocking on the original plans was "scant" and in situations such as this, "the contractor would normally have put in for an additional charge". Based on the testimony of all witnesses regarding the issue of fire blocking, the Court finds that fire blocking was not included in the original proposal and/or contract between the parties and failure to install such fire blocking without additional compensation did not constitute a breach of contract.

Turning to the remaining arguments with respect to the contract, it is undisputed that in or around November 2004 Grandis ceased working on the Premises and another contractor was hired to complete the job. Based on the record before it, the Court is unable to determine which party ultimately breached the contract. Neither the Blooms nor Grandis adequately sustained their burden of proving the other side breached. Although the Blooms provided detailed records of payments made to the subsequent contractor, they failed to prove that such costs were attributable to any actions by Grandis. The amounts charged by Mr. Brenenson and Infinity are comparable to the amount outstanding on the contract at the time Grandis left the project. Therefore, the Court declines to award any damages to the Blooms based on allegations of incomplete and/or unsatisfactory work against Grandis.

However, a few distinct costs which the Blooms have proven would have been covered by the original Contract with Grandis are recoverable. Grandis testified that there was some amount of construction debris left on the premises. The Court finds that it was necessary to rent a dumpster to clear the debris left by Grandis. The cost of the rental as evidenced at trial was \$706.88. In addition, the Blooms provided a receipt for custom shower doors for the master bath that were required as a result of Grandis' failure to install a wall pursuant to the Contract. The cost of the custom door was \$740.00. The Court therefore awards the Blooms \$1,446.88.

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As to the allegation of conversion, the Contract provides for an allotment of \$13,200 for tile, grout, medicine cabinets, tubs, toilets, vanities and tops, kitchen cabinets, kitchen counters and sink. In addition, the payment schedule attached to the Contract provides for the installation of the cabinets. To establish a claim for conversion, the plaintiff must demonstrate legal ownership to a specific identifiable thing and must show that the defendant exercised an unauthorized dominion over the thing in question to the exclusion of the plaintiff (see, **Hamlet at Willow Creek Development Co., LLC v Northeast Land Development Corporation** 2009 NY Slip Op 3136). It is undisputed that Grandis failed to install the cabinets pursuant to the Contract. Grandis testified that at some point during construction the cabinets were put in his in-laws garage. At the time they were brand new and had value of \$9,874.32 inclusive of the allotment provided for in the Contract. Grandis testified that the cabinets were never installed in the Blooms' home and were eventually sold by him for \$1,000.00. Therefore the Court finds that Grandis converted the cabinets for his own use and is liable to the Blooms in the amount of \$9,874.32.

Turning next to the Blooms' allegations of unjust enrichment. To prevail on a claim of unjust enrichment, a plaintiff must establish that a defendant benefitted at the plaintiff's expense and that equity and good conscience require restitution. Furthermore, such a claim does not require proof of a wrongful act (see, **Hamlet at Willow Creek Development Co., LLC v. Northeast Land Development Corporation** 2009 NY Slip Op 3136). However, where there is an existing valid and enforceable written contract covering a particular subject matter, recovery under theories of quasi-contract such as unjust enrichment, is inappropriate (**Id.**). Therefore the Blooms' cause of action for unjust enrichment is dismissed.

Therefore it is:

**ORDERED** that plaintiffs are entitled to the sum of \$1,446.88 on their breach of contract claim and \$9,874.32 on their claim for conversion plus interest from the date of the complaint.

Settle judgment.

Dated: July 8, 2009

**HON. ELIZABETH HAZLITT EMERSON**

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J.S.C.