

Veggacado v Lordsworks Welding Co.

2018 NY Slip Op 32872(U)

November 8, 2018

Civil Court of the City of New York, Bronx County

Docket Number: CV-013055-18/BX

Judge: Sabrina B. Kraus

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX: PART 11

ARABIA VEGGACADO,

X

Plaintiff

-against-

LORDSWORKS WELDING CO. &
ERIC SESSOMS

Defendants

X

DECISION & ORDER

Index No.: CV-013055-18 /BX

HON. SABRINA B. KRAUS

BACKGROUND

Plaintiff commenced this action *pro se* pursuant to a Summons and Endorsed Complaint filed on June 5, 2018, seeking \$7,500 for breach of contract and property damage. Plaintiff named two defendants Lordswork Welding Co. (a/k/a The Lordworks Welding Co.) and Eric Sessoms (ES).

ES appeared *pro se* on August 8, 2018, and filed an answer asserting a general denial, and that he had performed the agreed upon services. ES filed a counterclaim for \$1600.00.

There was an initial court date on September 4, 2018. The action was adjourned to October 11, 2018 for ES to hire counsel for the corporation and for trial.

The trial commenced on October 11, 2018. The trial continued and concluded on October 29, 2018, pursuant to this court’s order of October 11, 2018. At the conclusion of the trial, the court reserved decision.

The court issued an order dated October 11, 2018, restoring the matter for a further hearing, because there was in fact no corporate entity and ES did have personal liability. The

trial was restored on October 29, 2018, to afford ES an opportunity to testify and submit evidence and to afford Plaintiff an opportunity to submit additional evidence.

Plaintiff failed to appear on October 29, 2018, but called the court to request an adjournment. The continued trial was adjourned to November 8, 2018 on consent of both parties. Once again Plaintiff failed to appear on November 8, 2018.¹ The court allowed ES to testify and present evidence and the court reserved decision.

FINDINGS OF FACT

Plaintiff and Devern Woordard (DW) hired ES to install a security gate in their home. Plaintiff and ES signed off on a proposal for the work on April 18, 2018. The proposal was admitted into evidence (Ex 1). The proposal provided for a six foot gate with a door. The proposal stated that material and labor would total \$1600, half was to be paid when the job started and the other half upon completion.

Plaintiff testified that ES installed two gates one by the entrance and a second by the house. Plaintiff testified that ES did not complete the work. Plaintiff testified the work was done between mid April and mid May in 2018.

Although, the proposal had indicated materials were included, Plaintiff did agree to purchase some of the materials used for the job. Receipts for these purchases were submitted into evidence (Ex 5A-5D). Plaintiff and DW spent \$832.19 on materials.

Plaintiff also submitted photographs in evidence (Ex 2A- 2U). Plaintiff testified that the photos show defects in the work as well as alleged damage to Plaintiff's property caused by the

¹ Plaintiff again called the clerk several hours after the scheduled appearance to state she would not be coming to court because she was not feeling well.

work. On or about May 18, 2018, DW and ES did a final walk through. ES' position was that the agreed upon work had been done. DW did not agree, but paid the balance of \$800 to ES anyway.

Plaintiff and DW testified that they subsequently hired someone else to finish the work at additional cost. Plaintiff was not satisfied with the work, because she stated the property had not been secured, the gate was not stable and there was no door handle or lock installed. Plaintiff testified that ES damaged the stoop during the installation of the gate.

ES testified that the work was done properly and that he gave the Plaintiff an extra door she had not paid for. ES also submitted photographs in evidence (Ex A). The Court credits the testimony of Plaintiff and DW over the testimony of ES.

DISCUSSION

‘As a general rule, there is implied in every contract for work or services a duty to perform it skillfully, carefully, diligently and in a workmanlike manner ‘ (N.Y. Prac, Contract Law § 11:14) [*Jeffries v. Willow Woodworking, Inc.*, 40 Misc. 3d 1205(A)].

The contract at issue is a Home Improvement Contract which is defined by statute as “... an agreement for the performance of home improvement, between a home improvement contractor and an owner, and where the aggregate contract price specified in one or more home improvement contracts, including all labor, services and materials to be furnished by the home improvement contractor, exceeds five hundred dollars (*N.Y. Gen. Bus. Law § 770(6)*).”

Home improvement includes the repairing, remodeling, altering, converting, or modernizing of, or adding to, residential property, and specifically include the construction, replacement or improvement of roofing and flooring, as well as other improvements of the residential property [*N.Y. Gen. Bus. Law § 770 (3)*].

Plaintiff proved to the court's satisfaction that there were defects in Defendant's work. However, Plaintiff failed to prove a dollar amount of damages. Although Plaintiff testified that she hired someone to finish the work, she never submitted documentation to support that or show the amount incurred.

Plaintiff bore the burden of proving damages resulting from defendant's breach of contract (see *Peak v. Northway Travel Trailers, Inc.*, 27 A.D.3d 927, 928, 811 N.Y.S.2d 798 [2006]; *Cotazino v. Basil Dev. Corp.*, 167 A.D.2d 632, 633, 562 N.Y.S.2d 988 [1990]). In general, the proper measure of damages for breach of a construction contract is the cost to either repair the defective construction or complete the contemplated construction (see *Route 7 Mobil v. Machnick Bldrs.*, 296 A.D.2d 809, 810, 745 N.Y.S.2d 336 [2002]; *Thompson v. McCarthy*, 289 A.D.2d 663, 664, 733 N.Y.S.2d 791 [2001]; *Lyon v. Belosky Constr.*, 247 A.D.2d 730, 731, 669 N.Y.S.2d 400 [1998]). The damages must be reasonably certain, however, not based upon speculation (see *Peak v. Northway Travel Trailers, Inc.*, 27 A.D.3d at 929, 811 N.Y.S.2d 798).

Similarly while Plaintiff claimed that parts of her property were damaged, no evidence was offered to enable the court to place a dollar value on said damage.

Based on the foregoing, the action is dismissed.

This constitutes the decision and order of this court.

Dated: November 8, 2018
Bronx, New York

Hon. Sabrina B. Kraus
JCC

TO: ARABIA VEGGACADO
Plaintiff *Pro Se*
880 Colgate Avenue, #17E
Bronx, New York 10473

ERIC SESSOMS
Defendant *Pro Se*
73 East 128th Street - Suite # 606
New York, New York 10035

