

Clark Plumbing & Heating, Inc. v Green

2020 NY Slip Op 30972(U)

April 24, 2020

Peekskill City Court

Docket Number: SC-565-19

Judge: Reginald J. Johnson

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PEEKSKILL CITY COURT
COUNTY OF WESTCHESTER: STATE OF NEW YORK

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Clark Plumbing & Heating, Inc.

Plaintiff,

--against--

Jason Green,

Defendant.

DECISION & ORDER

Index No. SC-565-19

Small Claims Part

-----X
Appearances:

Jason Green, pro se
Adam Green, witness
Clark Plumbing & Heating, Inc., by Howard Clark and Sharon Clark

Reginald J. Johnson, J.

This is a commercial claims action seeking \$2,712.83 for non-payment for services rendered. The plaintiff corporation appeared through its owners Howard Clark and Sharon Clark. The defendant appeared pro se. Adam Green appeared as a witness for defendant. After unsuccessful settlement negotiations, this matter proceeded to a bench trial.

In deciding this matter, the Court considered the testimony of the parties and the following exhibits: copy of invoice #4542 dated 2/12/19 (Plt’s “1”), photo of pump clogged with wipes (Plt’s “2”), copy of invoice #4558 dated 3/7/19 (Plt’s “3”), text messages between the parties (Plt’s “4”), invoice #3379 dated 5/9/16 (Plt’s “5”), and 18 photos of defendant’s basement (Def’t’s “A”).

Procedural History

On November 18, 2019, the plaintiff commenced this civil action against the defendant for essentially a breach of contract.¹ The case was scheduled for first appearances on January 22, 2020, but then adjourned to February 26 by defendant for trial. On February 26, the parties were

¹ On the Commercial Claims Application form (Application), the plaintiff noted that he is suing for “Failure to pay for services rendered.” On the Application the plaintiff alleged that he did work for the defendant on 2/2/19, 2/3/19, 3/5/19 and 3/6/19 and that defendant “has not paid bill for work done last winter (2/2-2/3/19 & 3/5-3/6/19)[.] Spoke with Mr. Green on 9/11/19 [and] he said to send invoices [and] he would pay them.”

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unable to settle this case, so this matter proceeded to bench trial. After both sides rested, the Court reserved its decision.

Facts

The disputed facts in this case are not complicated. Plaintiff alleges that the defendant called him on February 7, 2019 due to a water backup in his basement. Plaintiff responded to defendant's home and determined that the pump in the sewer pit was not working; he installed a new flapper on the toilet in the basement, but he needed to obtain a new pump and come back to install it. Plaintiff returned on February 8, 2019, vacuumed wastewater out of the sewer pit, disconnected and removed the old pump, and installed a new pump. Upon inspection of the old pump, plaintiff discovered that it was jammed with wipes (Plt's "2"). After flushing the toilet several times to ensure that new pump was working, the plaintiff addressed the heating system on the first floor by bleeding the air out of the system to get it working again. On or about February 12, 2019, the plaintiff sent the defendant an invoice for services rendered in the sum of \$1072.68 (Plt's "1").

On March 5, 2019 at approximately 8:00 p.m., plaintiff received a call from defendant that 3 to 4 inches of water had backed-up into his basement. Plaintiff responded to defendant's home, inspected the pump in the basement and determined that it was not working, until after he shook it. Plaintiff also observed water running non-stop into the sewer pit, because the shut off valve did not work, so he had to turn off the water to the house. Plaintiff then pumped water out of the basement, installed a new shut off valve on the basement toilet, and installed a new ball cock (it was not shutting off the toilet) and a new supply line to the toilet. On March 6, 2019, the plaintiff removed the sewer injector pump, installed a new float on the pump, and reinstalled the injector pump. Plaintiff tested the pump to ensure that it was working. On March 7, 2019, the plaintiff sent defendant an invoice for services rendered in the sum of \$1,640.15 (Plt's "3").

On cross examination, plaintiff said that he replaced a pump in defendant's home in 2016. However, plaintiff said that he did not know the cause of the current water backup and that he never told the defendant that he was responsible for the water backup in his basement. On or about September 11, 2019, plaintiff re-sent invoices for prior services rendered to defendant who said that he would pay them (Plt's "1" and "3"). When plaintiff did not receive a check from

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defendant, he called him and left a voicemail message inquiring about the status of his payment. On or about December 20, 2019, plaintiff said that defendant offered to pay him only half of the amount due and owing which he rejected before commencing this lawsuit.²

Adam Green testified that he resided in the basement of defendant's home and that it consisted of a one bedroom with carpeting, a couch, a television, a bar, a gym area, and a bathroom with a steam shower.³ Adam said that the toilet continually ran wasting water. He said that plaintiff repaired the toilet by installing a new pump in or about April 25, 2016 and that everything appeared to be working fine (Plt's "5"). In or about February 8, 2019, Adam said the plaintiff was called to the home to remove and replace an inoperable pump, which was clogged with wipes. Adam said that after the plaintiff left, everything was working fine. On March 5, 2019, Adam walked downstairs to the basement, turned on the lights, and noticed water all over the 2000-2500 square foot basement. Adam said the water damaged the bar stools, treadmill and stair master. Adam said that plaintiff told him that the water pump was defective.

Defendant testified that he first met the plaintiff in 2016 when he enlisted his services to replace a water pump in his basement (Plt's "5"). Defendant testified that his brother moved into the basement in 2018 and that the toilet at some point in time started to malfunction. Defendant said that plaintiff informed him that he needed a new pump, so he paid the plaintiff to install a new pump on February 8, 2019. On March 5, 2019, defendant said that his basement flooded due to a defective pump that plaintiff installed on February 8, causing over \$100,000.00 in damages to the basement and to personal items located therein, including his father's ashes (Def's "A"). Defendant said he immediately called the plaintiff and informed him of the flooding in the basement and plaintiff returned to the home that night to inspect the cause of the flooding. Defendant said that plaintiff determined that the pump he installed on February 8 was not working so he installed a new pump (Plt's "3"). Defendant said that plaintiff told him that the pump he installed was defective.

In closing the defendant argued that the complaint should be dismissed because the plaintiff performed defective work causing damage to his basement and to personal items located therein, and that plaintiff admitted to same. The plaintiff argued that the defendant never told him

² Plaintiff said defendant offered him \$1,356.42 to resolve all claims.

³ Adam Green is defendant's brother.

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that he would not pay him because his work was defective, that he has been a licensed plumber for 40 years, that he always does very good work, and that defendant's basement was not up to code.

Discussion

“A small claims court is generally ‘not bound by statutory provisions or rules of practice, procedure, pleading or evidence,’ and all that is required is that proceedings be conducted ‘in such manner as to do substantial justice between the parties according to the rules of substantive law’ (CCA 1804)” (*Buvis v. Buvis*, 38 Misc.3d 133[A] [App Term, 2d 11th & 13th Jud Dists [2013]; see also, *Williams v. Roper*, 269 A.D.2d 125, 126 [1st Dept. 2000]). Further, the determination of a trier of fact as to issues of credibility is given substantial deference, as a trial court's opportunity to observe and evaluate the testimony and demeanor of the witnesses affords it a better perspective from which to evaluate their credibility (see, *Vizzari v State of New York*, 184 A.D.2d 564 [2d Dept. 1992]; *Kincade v. Kincade*, 178 A.D.2d 510, 511 [2d Dept. 1991]). Unless the fact-finding trial court's conclusions could not be reached under any fair interpretation of the evidence, its determinations are usually left undisturbed by appellate courts (see, *Claridge Gardens v Menotti*, 160 A.D.2d 544 [1st Dept. 1990]). This standard applies with greater force to judgments rendered in the Small Claims Part of the court (*Williams v. Roper*, 269 A.D.2d at 126).

“The essential elements of a cause of action to recover damages for breach of contract are (1) the existence of a contract, (2) the plaintiff's performance pursuant to the contract, (3) the defendant's breach of its contractual obligations, and (4) damages resulting from the breach” (*Arnell Constr. Corp. v. New York City School Constr. Auth.*, 144 A.D.3d 714, 715 [2d Dept. 2016]; *Dee v. Rakower*, 122 A.D.3d 204, 208-209 [2d Dept. 2013]; *Canzona v. Atanasio*, 118 A.D.3d 837, 838 [2d Dept. 2014]). Based on the testimony presented at trial and the exhibits marked into evidence, the Court finds that the parties entered into a contract for services, that the plaintiff performed his contractual obligations under the contract, that the defendant breached his obligations under the contract, and that the plaintiff was damaged thereby. The issue in this case is whether the plaintiff negligently installed an operable pump on March 6 or properly installed a defective pump. In the case of the former, the defendant has produced no credible evidence that the plaintiff negligently installed a new pump in his basement on March 6. In fact, the evidence is undisputed that the installation was in all respects professional and proper, and that the toilet was

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in good working order when the plaintiff left the premises. In the case of the later, the plaintiff is not liable for the installation of a defective pump since defendant failed to prove that the flooding was caused by the pump; that the damage occurred because the pump was defective; that the pump was unfit for the purpose intended; and that the pump was defective when it left the hands of the manufacturer (*Bradley v. Earl B. Friden, Inc.*, 30 A.D.3d 709 [3d Dept. 2006], aff'd as modified on other grounds, 8 N.Y. 3d 265 [2007] (refrigerator defrost timer); *Codling v. Paglia*, 38 A.D.2d 154 [3d Dept. 1972], judgment aff'd in part, rev'd in part on other grounds, 32 N.Y.2d 330 [1973]).

Further, in a Small Claims action, a defendant who seeks to assert a claim against the plaintiff must do so by filing a counterclaim (UCCA 1803-A(d)). Here, the defendant did not file a counterclaim in this action. However, as a set-off against any potential award in favor of the plaintiff, the defendant testified that his insurance company assessed the water damage to his basement in the sum of \$100,000.00. He also introduced photos of the alleged damage to his basement (Deft's "A"). The Court finds defendant's proof insufficient because he never introduced any evidence from his insurance company confirming that he sustained \$100,000.00 in damages to his basement. Further, the photos of damages introduced by the defendant were equally unavailing as the items shown in the photos were neither categorized and assigned a replacement value by defendant, nor evaluated by two independent itemized estimates (UCCA 1804-A).

The Court finds in favor of the plaintiff in the sum of \$2,712.83 plus costs.

Based on the aforesaid, it is

Ordered that plaintiff be awarded a judgment in the sum of \$2,712.83 plus \$20.00 costs for a total judgment of \$2,732.83.

This constitutes the decision and order of the Court.

Reginald J. Johnson

Hon. Reginald J. Johnson
Peekskill City Court Judge

DATED: Peekskill, New York
April 24, 2020

Entered: _____

Concetta Cardinale, Chief Clerk

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To: Clark Plumbing & Heating, Inc.
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Brewster, New York 10509

Jason Green
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