

IN THE CIRCUIT COURT OF SHELBY COUNTY, ALABAMA

Kerry Kelley, et al.,

Plaintiffs,

v.

William P. (Bill) Sheppard, et al.,

Defendants.



20080328000125340 1/3 \$17.00
Shelby Cnty Judge of Probate, AL
03/28/2008 10:16:11AM FILED/CERT

CASE NO.: CV 2005-1339

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MARY H. HARRIS

JAN 28 2008

CIRCUIT & DISTRICT
COURT CLERK
SHELBY CO.

ORDER

This case came before the Court for jury trial at which time all parties and counsel agreed to waive the trial by jury and to go forward with a non-jury, bench trial. The case proceeded to trial on Plaintiff's original complaint, claiming breach of contract, fraud, negligence, breach of warranty, and professional malpractice against defendant William Sheppard; and upon Plaintiff's First Amended Complaint which added defendant Robert Summers d/b/a Summers Construction as a party to the case. Plaintiffs' claims against Summers were predicated upon the undisputed fact that Summers' contractors license was used to secure permitting for the construction project made the basis of this suit.

At the close of Plaintiffs' case, based upon the evidence before the Court at that time, defendant Summers challenged the sufficiency of the Plaintiffs' evidence as would be appropriate under Rule 50 had the case proceeded as the originally intended jury trial, or whether by motion for involuntary dismissal pursuant to Rule 41(b). The Court granted Defendant's motion, and defendant Summers was dismissed with prejudice as to all claims asserted by Plaintiffs against this defendant.

Based upon the evidence before the Court at that time, the similar motion made by defendant Sheppard was summarily denied as to all counts, except for Plaintiffs' claims of professional malpractice. Plaintiffs proffered no proof of the standard of care required of an architect, and this claim was dismissed with prejudice. The trial proceeded to conclusion on the remaining claims against defendant Sheppard.

Having considered the ore tenus testimony and the demeanor of the witnesses, the documentary evidence presented, the arguments and submissions of counsel, and the applicable law, the Court finds that the undisputed facts in this case exemplify the

rationale for the public policy that building contractors and certain tradesmen must meet minimum competency standards as established by licensing requirements. The evidence is undisputed that Sheppard had no contractor's license or any other trade certifications, and that he obtained the building permit for the Kelley project through false pretenses. Summers did absolutely nothing in furtherance of the project, and all of the work was performed under Sheppard's direct supervision - or the lack thereof. The permit application submitted by Sheppard covered only exterior work, the removal of EIFS and replacement with brick. Sheppard knowingly omitted from the permit the remodeling interior work which had previously been planned and which included both plumbing and electrical work. Consequently, there was no permit for this work and none of this work was performed by a licensed contractor. The result was jackleg work of exactly the type that licensing and permitting requirements are designed to prevent.

The project was wrought with difficulty even at the conceptual stage, primarily caused by Sheppard's convoluted estimate and bids, and nebulous description of the scope of work. Nevertheless, in reliance upon Sheppard's reputation, expertise and salesmanship, the Kelley's proceeded with the renovation project. There was no timetable, no firm design, no definite scope of work, no adequate pricing, no bookkeeping, and most injurious to Plaintiffs, no licensed subcontractors to perform the work. Other than the kitchen cabinet installation, the majority of work on project was performed by an employee of Sheppard - Javier Lopez. A master of all trades, but licensed in none, Javier is able to prepare foundations, bend steel in his bare hands (tie re-bar), perform carpentry work, and act as both electrician and plumber. Under Sheppard's direction Javier's expertise was the direct cause of much of the damage done to the Kelley home, resulting in additional costs, aggravation and distress to the Kelleys.

While the Court found Sheppard's testimony generally lacked credibility, his testimony concerning his financial dispute with the Kelleys was at best fanciful. Sheppard's machinations with the project costs and his accounting methods provide no basis for matching payments made by the Kelley's to the actual work performed. Sheppard's bookkeeping on this project is so abysmal that the Court can only conclude that the paucity of records was intentional. Sheppard has virtually no record of invoices that he received for the project or payments that he made. As he had full control over the

project accounting, the Court finds that the lack of records shall not inure to Sheppard's benefit. Nevertheless, the Court has considered the fact that the Kelleys apparently received the benefit of a new roof for which they made no payment.

In short, the Court finds that Sheppard failed to fulfill his obligations under the parties' construction contract¹; that Sheppard undertook the Kelley project under false pretenses; that he made intentional misrepresentations to them upon which they relied; that the work performed and the supervision and project management was, at the very least, conducted in a negligent manner.

Based upon the foregoing findings of fact and conclusions of law, the Court finds that judgment is due to be, and it hereby is, entered in favor of plaintiffs, Kerry and Beverly Kelley, and against defendant William P. Sheppard in the amount of \$225,000.00. Said judgment is comprised of compensatory damages in the amount of \$75,000.00 as a result of Defendant's breach of contract and negligence, and punitive damages in the amount of \$150,000.00 as a result of Defendant's knowing and intentional misrepresentation, fraud and deceit which has been shown by clear and convincing evidence.

The costs of court are taxed to Defendant.

DONE and ORDERED this 11th day of January, 2008.

Certified a true and correct copy

Date: 3-28-08

May H Harris
May H. Harris, Circuit Clerk
Shelby County, Alabama

Hub Harrington
Hub Harrington, Circuit Judge

¹ Though Mrs. Kelley testified that the work was not performed to her satisfaction, the Court finds that the contract between these parties is not a satisfaction contract, and that the work performed by Sheppard is to be held to a standard of reasonableness. The Court further finds that Sheppard failed to meet a reasonable standard by most any measure.