

THE STATE OF SOUTH CAROLINA
In the Court of Appeal

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Krista L. Harrington, Circuit Court Judge

Case No.: 2011-CP-18-1684
Appellate Case No. 2013-001357

Walters Construction, Inc.....Respondent

vs.

Stanley J. Sledziona and Sharon Sledziona.....Appellants

vs.

Stephen D. Walters and Walters
Realty.....Respondent

INITIAL BRIEF OF RESPONDENTS

This 2nd day of March, 2014

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STATEMENT OF THE CASE

Walters Construction, Inc., (hereinafter "Walters") commenced this action on August 31, 2011 against the Defendants, Stanley J. Sledziona and Sharon Sledziona (hereinafter "Sledzionas") for breach of contract (Complaint). On or about November 15, 2011, Sledzionas answered Walters' Complaint and filed a Counterclaim against Walters and a Third Party Complaint against Third Party Defendant, Stephen D. Walters and Walters Realty alleging breach of contract and breach of fiduciary duty. (See Answer Counterclaim and Third Party Complaint). The Third Party Defendants filed their Reply and Answer to the Sledziona Counterclaim and Third-Party Complaint on or about December 3, 2011 (See Reply).

The case was tried before Judge Krista L. Harrington on March 21, 2013. Judge Harrington ruled in favor of Walters and awarded judgment against the Sledzionas in the amount of \$121,900.00 by Order dated March 24, 2013. (Order).

Sledzionas filed a motion for reconsideration on April 5, 2013 which Judge Harrington denied by Order of May 6, 2013 (Motion for Reconsideration and Order dated May 6, 2013).

Sledzionas notice of appeal was served on counsel for Walters and Third-Party Defendants on June 7, 2013.

STATEMENT OF THE FACTS

Walters started construction of a home on lot 35,5489 Clearview Drive, North Charleston ("the home") in 2007 as a spec house speculating on selling it in the future (Tr p.14-15, L.23-6).

Walters financed the construction of the residence through a construction loan with Regions Bank which totaled approximately \$500,000.00 (Tr. P.15, L7-14).

On October 25, 2008, the Sledzionas entered into a Construction Sales Contract

("Contract") with Walters to purchase the home that was presently under construction for the sum of \$599,900.00 (Construction Sale Contract, Plaintiffs' Exhibit 1). The Sledzionas ultimately paid a \$15,000.00 earnest money deposit to Walters. (Tr.p.17, L.17 to Tr.p.18,L.1)

Pursuant to the Addendum to the Contract, Walters agreed to make 27 changes and additions to the home (Addendum to Contract Tr p. ____). Walters did not plan to make the changes and additions referenced in the Addendum to the Contract before the contract was signed by the Sledzionas. (Tr. p.19, L.25-p.20, L.10).

At the time the contract was signed the home was sheetrocked; was bricked; shingles were on the roof; and doors and windows had been installed. Before the contract was signed Walters had stopped work on the house as Stephen Walters did not want to put anymore money into it until it was sold and he had a buyer to pick out the finishes. (Tr.p 16, L.15-p.17, L.10).

The contract that Walters entered into with the Sledzionas was not contingent upon the Sledzionas obtaining financing for the purchase of the home. (Tr.p.27, L.4-8; Tr.p. 132,L.2-13;Contract). Prior to entering into the contract with the Sledzionas, Mr. Sledziona told Stephen Walters that he did not need to sell his current house before he purchased the home and that his house was paid for. (Tr.p.27, L.9-18 ;Tr.p 18,L.11-16.) Stephen Walters knew the Sledzionas as Walters had previously built a house for them in 2001 or 2002 (Tr.p. 18, L.20-24).

After the contract was signed Walters started working on the 27 changes and additions set forth in the Addendum to the Contract.(Tr.p.20, L.11- p.25,L.6). Mr. Sledziona acknowledges that Walters made the changes on the addendum. (Tr.p. 138, L.7-9)

On January 6, 2009 after Walters had completed the majority of the changes and additions contained in the Addendum to the Contract, Mr. Sledziona told Stephen Walters that he

was not going to buy the house (Tr.p.25, L.7-p.25, L.13). At that time Walters was on schedule to complete the house within the time frame referred to in the contract. (Tr.p. 19, L.8-10)

At the time of the January 6th meeting, Mr. Sledziona presented Stephen Walters with a Statement of Credit Denial signed by Heritage Trust Federal Credit Union, (Credit Union) dated January 6, 2009 which indicated that the loan to purchase the home was not approved based on Mr. Sledziona's "Temporary or Irregular Employment". (Tr.p.25, L.7-p.26, L.11, Plaintiff's Exhibit 3). Steve Walters told Sledziona that if he didn't buy the home then this was going to finish doing him in. (Tr.p.25, L.9-16). After Walters received the Statement of Credit Denial from Mr. Sledziona and was told that the Sledzionas were not going to buy the home Walters stopped working on the house except to secure everything so that nothing could be damaged. (Tr.p.26, L.19-p.27, L.3)

Walters then put the home back on the market and attempted to sell it. (Tr.p27, L.21-p.28, L.1). Walters was unable to sell the home and it ultimately went into foreclosure and the bank took it over and sold it to someone else. (Tr. P. L.2-10) Walters' construction lender, Regions Bank, obtained a judgment against Walters for \$135,000.00. (Tr.p.70, L.6 to P.71, L.1) In addition , a material supplier, Builders FirstSource obtained a judgment against Walters for a \$25,000.00 for materials that Walters had purchased to do the changes and additions called for in the Addendum to the Contract. Walters also owed \$23,0000.00 to the cabinet company who installed the cabinets chosen by the Sledzionas. (Tr.p28, L.11-p.29, L.13).

Walters incurred expenses of \$73,086.90 for labor and materials for work performed on the home after the Sledzionas signed the contract. (Tr.p.31, L.17-24; Plaintiff's Exhibit 2). Out of the \$73,086.90 in costs Walters spent \$44,566.25 associated with performing the work relative

to the 27 items on the Addendum to the Contract.(Tr.p.31,L.25-p.32,L.9 Walters would not have done any of the work if Walters had not entered into the contract with the Sledzionas. (Tr.p.33, L.3-7).

In addition to the costs of \$73,086.90, Walters lost profits from the sale of the home to the Sledzionas of \$48,800.00. (Tr.p.36, L.15 to p.47, L.11).

Walters did not finish the construction of the home because the Sledzionas told him they were not going to buy the home. Stephen Walters was not going to continue making the changes when the Sledzionas told him they were not going to buy the home as somebody else might not want the changes. (Tr.p.65, L.19-14).

ARGUMENT

I. The trial Court did not err in awarding a monetary judgment to Walters for breach of contract as the Sledzionas repudiated the contract when they told Walters that they were not going to close on the purchase of the home because they could not obtain financing.

A. SCOPE OF REVIEW

Walters sought damages against the Sledzionas for breach of contract alleging that it lost profits expected from the sale of the home to the Sledzionas and also incurred numerous expenses in making changes and additions to the residence referred to in the contract.

(Complaint)

“In an action at law, the trial judge’s factual findings will not be disturbed unless a review of the record discloses there is no evidence which reasonably supports the [judge’s] findings.” (*Culler v. Blue Ridge Elec. Co-op., Inc.* 309 S.C. 243, 246; 422, S.E.2d 91, 93 (1992).

The Sledzionas argue that the language of the contract precludes Walters from recovering damages for breach of contract as Walters failed to complete the construction of the home. This argument ignores the fact that there was a repudiation and an anticipatory breach of the contract by the Sledzionas which entitles Walters to claim damages for the total breach of contract.

“A repudiation is:

(a) a statement by the obligor to the obligee indicating that the obligor will commit a breach that would of itself give the obligee a claim for damages for a total breach (*Ralph King Andreson, Jr., South Carolina Requests to Charge-Civil, 202 §19-18*) citing *17A Am. Jur. 2d Contracts §719 (1991)*.

“ A repudiation of a contract before the time for performance, which amounts to a refusal to perform it at any time, gives the adverse party the option to treat the entire contract as broken and to sue immediately for damages as for a total breach. In other words, if one party to a contract repudiates his duties thereunder prior to the time designated for performance and before he has received all of the consideration due him thereunder, such repudiation entitles the nonrepudiating party to claim damages for total breach. There is no necessity in such case for a tender of performance, or compliance with conditions precedent, or waiting for the time of performance to arrive, although this is optional. No notice need be given that the repudiation is treated as a breach.

“The elements of repudiation necessary to exercise the election of suing immediately are that the plaintiffs had performed all of the conditions up to the time of the repudiation and were ready, able, and willing to complete performance pursuant to the contract except for defendant’s expressed unequivocal repudiation that has not been retracted, and that as a result of defendant’s repudiation, plaintiffs have suffered damage” (*Ralph King Andreson, Jr., South Carolina Requests to Charge-Civil, 202 §19-19*) Citing *17A Am. Jur. 2d Contracts §§ 737-38, 740 (1991)*.

Approximately seventy-three (73) days after the Sledzionas entered into a contract with Walters and paid the \$15,000.00 earnest money deposit, Mr. Sledziona told Steve Walters that he was not going to buy the house because he could not obtain financing from the Credit Union.

The contract that Walters entered into with the Sledzionas was not contingent upon the Sledzionas obtaining financing for the purchase of the home. (Tr.p.27, L.4-8; Tr.p. 132, L.2-13; contract). Prior to entering into the contract with the Sledzionas, Mr. Sledziona told Steve Walters that he did not need to sell his house before he purchased the home and that his house was paid for. (Tr.p.27, L.9-18 ;Tr.p 18,L.11-16.)

After the contract was signed Walters started working on the 27 changes and additions set forth in the Addendum to the Contract.(Tr.p.20, L.11- p.25,L.6)

On January 6, 2009 after Walters had completed the majority of the changes and additions contained in the Addendum to the Contract, Mr. Sledziona told Steve Walters that he was not going to buy the house (Tr.p.25, L.7-p.25, L.13).

At the time of the January 6th meeting, Mr. Sledziona presented Steve Walters with a Statement of Credit Denial signed by Heritage Trust Federal Credit Union, (Credit Union) dated January 6, 2009 which indicated that the loan to purchase the home was not approved based on Mr. Sledziona's "Temporary or Irregular Employment". (Tr.p.25, L.7-p.26, L.11, Plaintiff's Exhibit 3). Steve Walters told Sledziona that if he didn't buy the house then this was going to finish doing him in. (Tr.p.25, L.9-16). After Walters received the Statement of Credit Denial from Mr. Sledziona and was told that the Sledzionas were not going to buy the home Walters stopped working on the house except to secure everything so that nothing could be damaged. (Tr.p.26, L.19-p.27, L.3)

Mr. Sledziona went to great lengths to try and convince Walters that they could not purchase the home due to Mr. Sledziona's temporary and irregular employment. Although, the statement of credit denial issued by the credit union on January 6, 2009 states that the loan

application was denied due to temporary or irregular employment, as shown by the 2008 and 2009 tax returns of the Sledzionas there was actually an increase in income between 2008 and 2009. Mr. Sledziona testified that his income for 2008 was \$117,553.00 and that his income for 2009 was \$118,651.00. (Tr.p. 130-131, L.22, Plaintiff's Exhibits 32 and 33).

As it turns out, the January 6, 2009 statement of Credit Denial for "Temporary or Irregular Employment" was not contained in the records maintained by the Credit Union. The Statement of Credit Denial dated January 7, 2009 which was contained in the Credit Union's records indicates that the reason for credit denial was that it was "withdrawn". (Tr.p. 141, L.11 to p.143, L.1).

After Steve Walters was told by Mr. Sledziona that the Sledzionas were not going to purchase their house, Walters attempted to mitigate its damages.

Walters then put the home back on the market and attempted to sell it. (Tr.p.27, L.21-p.28, L.1). Walters was unable to sell the home and it ultimately went into foreclosure and the bank took it over and sold it to someone else. (Tr. P. L.2-10) Walters construction lender, Regions Bank, obtained a judgment against Walters for \$135,000.00. (Tr.p.70, L.6 to P.71, L.1) In addition, a material supplier, Builders FirstSource obtained a judgment against Walters for a \$25,000.00 for materials that Walters had purchased to do the changes and additions called for in the Addendum to the Contract. and Walters also owed the cabinet company, who installed cabinets chosen by the Sledzionas, \$23,000.00. (Tr.p.28, L.11-p.29, L.13).

Walters incurred expenses of \$73,086.90 for labor and materials for work performed on the home after the Sledzionas signed the contract. (Tr.p.31, L.17-24; Plaintiff's Exhibit 2). Out of the \$73,086.90 in costs Walters spent \$44,566.25 associated with performing the work relative

to the 27 items on the Addendum to the Contract.(Tr.p.31,L.25-p.32,L.9 Walters would not have done any of the work if Walters had not entered into the contract with the Sledzionas. (Tr.p.33, L.3-7).

In addition to the costs of \$73,086.90, Walters lost profits from the sale of the house to Sledzionas of \$48,800.00. (Tr.p.36, L.15 to p.47, L.11).

The trial court's finding that the Sledziona breach the contract is reasonably supported by the record.

II. The trial court did not err in awarding damages of \$121,800.00.

In Austin v. Specialty Transportation Services, Inc., 358 S.C. 298, 310-11, 594 S.E.2d 867, 873 (Ct. App. 2004) The Court of Appeals set forth the standard of review of a damages award and stated as follows:

“The trial judge has considerable discretion regarding the amount of damages, both actual or punitive. *Collins Entm't Corp. V. Coats & Coats Rental Amusement*, 355 S.C. 125,584 S.E.2d 120 (Ct. App. 2003); *Kuznik v. Bees Ferry Assocs.*, 342 S.C. 579, 538 S.E.2d 15 (Ct. App. 2000). Because of this discretion, our review on appeal is limited to the correction of errors of law. *Kuznik*, 342 S.C. at 611, 538 S.E.2d at 32; *311 *Welch v. Epstein*, 342 S.C. 279, 536 S.E.2d 408 (Ct. App. 2000). Our task in reviewing a damages award is not to weigh the evidence, but to determine if there is any evidence to support the damages award. See *Hutson v. Cummins Carolinas, Inc.*, 280 S.C. 552, 314 S.E.2d 19 (Ct. App. 1984).”

“The question on appeal is whether the amount of the verdict falls within the range of damages testified to a trial.” *Hyload, Inc. v. Pre-Engineered Products, Inc.*, 308 S.C. 277, 281 417 S.E.2d 622, 625 (1992).

Stephen Walters testified that he was unable to sell the home and it ultimately went into foreclosure and the bank took it over and sold it to someone else. (Tr. P. L.2-10) Walters construction lender, Regions Bank, obtained a judgment against Walters for \$135,000.00.

(Tr.p.70, L.6 to P.71, L.1) In addition , a material supplier, Builders FirstSource obtained a judgment against Walters for a \$25,000.00 for materials that Walters had purchased to do the changes and additions called for in the Addendum to the Contract. Walters also owed the cabinet company, who installed cabinets chosen by the Sledzionas , \$23,000.00. (Tr.p28, L.11-p.29, L.13).

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In addition to the costs of \$73,086.90, Walters lost profits from the sale of the house to Sledzionas of \$48,800.00. (Tr.p.36, L.15 to p.47, L.11).

Stephen Walters testified at the trial that as a result of Sledzionas failing to purchase the subject property, Walters was sued by its construction lender and the material supplier which resulted in judgments totaling approximately \$160,000.00. In addition, Walters was indebted to its cabinet company in the amount of \$23,000.00. Walters also incurred expenses of \$73,086.90 for labor and materials to perform the work on the home and lost profits of \$48,800.00.

It is respectfully submitted that the trial judges finding as to damages was supported by the record and was within the range of damages testified to at trial.

CONCLUSION

Based upon the foregoing it is respectively requested that the trial courts order granting Walters judgment for breach of contract in the amount of \$121,900.00 should be affirmed.

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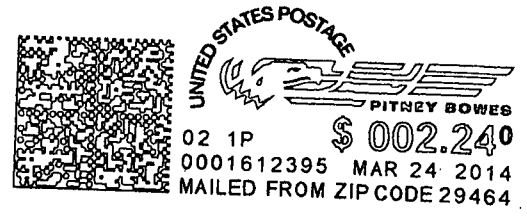
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