DOCKET NO. FST-CV-21-6053049-S	**: SUPERIOR COURT**
RICHARD PALKIMAS	**: J. D. OF STAMFORD-NORWALK**
	: AT STAMFORD
V.	**:**
EDGAR QUILLI &	**: APRIL 26, 2024**
PABLO PAUTA	

MEMORANDUM OF DECISION

FACTUAL BACKGROUND

This is a lawsuit arising from a written contract for the sale and construction of cabinets for three homes. The plaintiff is a home construction contractor and the defendants are sub-contractors who owned and operated a cabinet shop where they had been engaged in the business of building custom-made cabinets for residential properties. The parties entered into a contract on or about November 7, 2014. The terms of the contract were that the defendants would assemble, paint, and install custom-made cabinets and trim in each of three residential properties that the plaintiff was constructing.

The plaintiff has alleged in his complaint that pursuant to the contract, he was to provide all materials to the defendants and would pay them $12,500.00 for the work completed at each home for a total payment of $37, 500.00. The payments were to be paid in stages so that the plaintiff was to pay fifty percent of the $12, 500.00 payment per home when the defendants had completed assembly of the cabinets and the cabinets were then deemed ready to be painted. The plaintiff would pay the remaining 50% upon completion of painting and installation of the cabinets. The contract terms specified that the plaintiff would examine the work that was

120.00

completed by the defendants and would need to approve the completed work prior to paying the defendants the initial 50% payment. After the contract was executed, the plaintiff made written changes to the contract and provided the defendants with a copy of the amended written contract.

The defendants ceased work on the project after completing the first set of cabinets. The plaintiff has alleged that the work that was done on the first set of cabinets did not meet the requirements specified in the contract, that he repeatedly communicated this to the defendants, and that the defendants failed to remedy this while also continuously demanding payment. The defendants have alleged that they did complete all work on the first set of cabinets, that the work was adequate under the terms of the contract, that the plaintiff failed to pay them as required by the contract, and that this failure to pay them caused them to cease work on the remainder of the project.

PROCEDURAL HISTORY

The plaintiff filed his complaint on August 16, 2021 alleging one count of breach of contract. The defendant filed his answer and special defense on September 30, 2021. A courtside trial was held before the court (*Menon, J.*) on September 26, 2023. During the trial, the plaintiff and defendant Edgar Quilli testified, and the parties placed numerous exhibits into evidence. On that date, the court ordered the parties to submit simultaneous post-trial briefs by January 2, 2024.

The plaintiff filed a post-trial brief and an amended post-trial brief on January 2, 2024. The defendants also filed their post-trial brief on January 2, 2024. On January 9, 2024, the defendants filed a motion for permission to file an objection in response to the plaintiff's amended post-trial brief. The basis of the objection was that the plaintiff had filed an

impermissible document as an exhibit to his revised post-trial brief. The exhibit at issue consisted of a print-out from the City of Stamford website containing evidence of the plaintiff's payment of a tax bill for a residential property. The defendants allege that this exhibit was offered by the plaintiff after evidence was completed and was done so for the purpose of supporting his claim for damages. For the court's purposes, the court agrees with the defendants and will thus disregard this exhibit from consideration.

LEGAL PRINCIPLES

A. CONTRACT FORMATION

"Before deciding if a party has breached a contract, the court must first determine if a valid contract exists." *Berard Associates* v. *Moynahan*, Superior Court, judicial district of Waterbury, Docket No. CV-05-4006208-S (July 26, 2006, *Brunetti, J.*). "The elements of a breach of contract action are the formation of an agreement, performance by one party, breach of the agreement by the other party and damages." (Internal quotation marks omitted.) *Keller* v. *Beckenstein*, 117 Conn. App. 550, 558, 979 A.2d 1055, cert. denied, 294 Conn. 913, 983 A.2d 274 (2009). The Connecticut Supreme Court has determined that: "It is elementary that to create a contract there must be an unequivocal acceptance of an offer. In the case of a bilateral contract, the acceptance of the offer need not be express but may be shown by any words or acts which indicate the offeree's assent to the proposed bargain. . . . The acceptance of the offer must, however, be explicit, full and unconditional. . . . And the burden rested on the plaintiff to prove a meeting of the minds to establish its version of the claimed contract." (Citations omitted.) *Bridgeport Pipe Engineering Co.* v. *DeMatteo Construction Co.*, 159 Conn. 242, 246, 268 A.2d 391 (1970). "Meeting of the minds is defined as mutual agreement and assent of two parties to contract to substance and terms. It is an agreement reached by the parties to a contract and expressed therein,

or as the equivalent of mutual assent or mutual obligation." (Internal quotation marks omitted.) *Sicaras* v. *Hartford*, 44 Conn. App. 771, 784, 692 A.2d 1290, cert. denied, 241 Conn. 916, 696 A.2d 340 (1997). "Whether a meeting of the minds has occurred is a factual determination." *M.J. Daly & Sons, Inc.* v. *West Haven*, 66 Conn. App. 41, 48, 783 A.2d 1138, cert. denied, 258 Conn. 944, 786 A.2d 430 (2001).

Thus, in order for a court to find that a contract is enforceable, the court must find that the parties' minds had truly met to begin with when they entered into the contract. See *Fortier* v. *Newington Group, Inc.*, 30 Conn. App. 505, 510, 620 A.2d 1321, cert. denied, 225 Conn. 922, 625 A.2d 823 (1993); see also *Hoffman* v. *Fidelity & Casualty Co.*, 125 Conn. 440, 443–44, 6 A.2d 357 (1939); *Zahornacky* v. *Edward Chevrolet, Inc.*, 37 Conn. Supp. 751, 753–54, 436 A.2d 47 (1981); *Bridgeport Pipe Engineering Co.* v. *DeMatteo Construction Co.*, supra, 159 Conn. 249. "If there has been a misunderstanding between the parties, or a misapprehension by one or both so that their minds have never met, no contract has been entered into by them and the court will not make for them a contract which they themselves did not make." *Hoffman* v. *Fidelity & Casualty Co.*, supra, 125 Conn. 444-45; *Milford Bank* v. *Phoenix Contracting Group., Inc.*, 143 Conn. App. 519, 527-28, 72 A.3d 55 (2013). "[A]n agreement must be definite and certain as to its terms and requirements." (Internal quotation marks omitted.) *Dunham* v. *Dunham*, 204 Conn. 303, 313, 528 A.2d 1123 (1987).

"When an agreement is reduced to writing and signed by all parties, the agreement itself is substantial evidence that a meeting of the minds has occurred." *Tedesco* v. *Agolli*, 182 Conn. App. 291, 308, 189 A.3d 672, cert. denied, 330 Conn. 905, 192 A.3d 427 (2018). See also *Tsionis* v. *Martens*, 116 Conn. App. 568, 577–78, 976 A.2d 53 (2009) ("[i]n light of the fact that a contract existed in written form that was signed by both parties, the plaintiffs' argument that

a meeting of the minds did not occur is contrary to the evidence provided to the court"); see also *Reid* v. *Landsberger*, 123 Conn. App. 260, 268, 1 A.3d 1149 ("[b]ecause the agreement existed in written form and was signed by all parties, [the defendant's] argument that a meeting of the minds did not occur is not supported by the evidence, at least where there is no mutual mistake as to the fundamental promises"), cert. denied, 298 Conn. 933, 10 A.3d 517 (2010).

In order for a contract to be enforceable, it must also be supported by consideration. See *Schimenti Construction Co., LLC* v. *Schimenti*, 217 Conn. App. 224, 235, 288 A.3d 1038 (2023); see also *Tedesco* v. *Agolli*, supra, 182 Conn. App. 303–04. "The doctrine of consideration is fundamental in the law of contracts, the general rule being that in the absence of consideration an executory promise is unenforceable . . . . Put another way, [u]nder the law of contract, a promise is generally not enforceable unless it is supported by consideration . . . . [C]onsideration is [t]hat which is bargained-for by the promisor and given in exchange for the promise by the promisee . . . . We also note that [t]he doctrine of consideration does not require or imply an equal exchange between the contracting parties . . . . Consideration consists of a benefit to the party promising, or a loss or detriment to the party to whom the promise is made." (Internal quotation marks omitted.) *Kinity* v. *US Bancorp*, 212 Conn. App. 791, 829, 277 A.3d 200 (2022); see also *Willamette Management Associates, Inc.* v. *Palczynski*, 134 Conn. App. 58, 70, 38 A.3d 1212 (2012). Whether a particular set of facts constitutes consideration is a question of law subject to plenary review. *Kinity* v. *US Bancorp*, supra, 212 Conn. App. 830. Moreover, the absence of separate consideration does not inevitably invalidate a contract that otherwise expresses the intention of the parties. See *Coelho* v. *Posi-Seal International, Inc.*, 208 Conn. 106, 118-19, 544 A.2d 170 (1988).

It is axiomatic that the "doctrine of consideration does not require or imply an equal exchange between the contracting parties . . . . The general rule is that, in the absence of fraud or other unconscionable circumstances, a contract will not be rendered unenforceable at the behest of one of the contracting parties merely because of an inadequacy of consideration." (Internal quotation marks omitted.) *Christian* v. *Gouldin*, 72 Conn. App. 14, 23, 804 A.2d 865 (2002). The fact that consideration does not directly flow from the plaintiff to the defendant in the form of a financial or legal benefit does not render an agreement unenforceable. See *Sullo Investments, LLC* v. *Moreau*, 151 Conn. App. 372, 383-84, 95 A.3d 1144 (2014). Courts have found consideration to be adequate even when the benefit was of an intangible nature. See *Deutsche Bank National Trust Co.* v. *Delmastro*, 133 Conn. App. 669, 68-81, 38 A.3d 166, cert. denied, 304 conn. 917, 40 A.3d 783 (2012) (court found that a mortgage was supported by consideration where a mother had received the benefit of trying to help her son and had incurred a detriment by assuming the role of guarantor to the mortgage but did not receive financial benefit).

"As a general rule, in awarding damages upon a breach of contract, the prevailing party is entitled to compensation which will place him in the same position he would have been in had the contract been properly performed...for a breach of construction contract involving defective or unfinished construction, damages are measured by computing either (i) the reasonable cost of construction and completion in accordance with the contract, if this is possible and does not involve unreasonable waste or (ii) the difference between the value that the product contracted for would have had and the value of the performance that has been received by the plaintiff, if construction and completion in accordance with the contract would have unreasonable economic waste." (Internal quotation marks omitted.) *Levasque v. D & M Builders, Inc.,* 170 Conn. 117, 180-81, 365 A. 2d 1216 (1976).

B. CONTRACT INTERPRETATION

In interpreting the terms of a contract, the Connecticut Supreme Court has laid out the well-established principles that provide guidance when reviewing contract provisions. "Our interpretation of these contract provisions is guided by well-established principles of contract law." *Tallmadge Brothers, Inc.* v. *Iroquois Gas Transmission System, L.P.*, 252 Conn. 479, 498, 746 A.2d 1277 (2000). "A contract must be construed to effectuate the intent of the parties, which is determined from the language used interpreted in the light of the situation of the parties and the circumstances connected with the transaction . . . . [T]he intent of the parties is to be ascertained by a fair and reasonable construction of the written words and . . . the language used must be accorded its common, natural, and ordinary meaning and usage where it can be sensibly applied to the subject matter of the contract . . . . Where the language of the contract is clear and unambiguous, the contract is to be given effect according to its terms. A court will not torture words to import ambiguity where the ordinary meaning leaves no room for ambiguity . . . . Similarly, any ambiguity in a contract must emanate from the language used in the contract rather than from one party's subjective perception of the terms." (Internal quotation marks omitted.) *Lawson* v. *Whitey's Frame Shop,* 241 Conn. 678, 686, 697 A.2d 1137 (1997); *Pesino* v. *Atlantic Bank of New York*, 244 Conn. 85, 91–92, 709 A.2d 540 (1998).

C. THE UNIFORM COMMERCIAL CODE

Connecticut General Statutes § 42a-2-102 states in relevant part "Unless the context otherwise requires, this article applies to transactions in goods; it does not apply to any transaction which although in the form of an unconditional contract to sell or present sale is intended to operate only as a security transaction nor does this article impair or repeal any statute regulating sales to consumers, farmers or other specified classes of buyers."

"Article two of the UCC does not provide guidance for contracts that consist of mixed services and goods. Additionally, although there is no Appellate authority on the matter, Connecticut trial courts have held that article two does not apply when the predominant purpose of the contract is for services rather than goods: "It is clear that where the contract is basically one for the rendition of services, and the materials are only incidental to the main purpose of the agreement, the contract is not one for the sale of goods under the UCC." *Connie Beale. Inc. v. Plimpton*, 2010 WL 398903, Superior Court, judicial district of Stamford-Norwalk (January 13, 2010, *Brazzel-Massaro, J.*; see also *Gulash v. Stylarama*, 33 Conn. Supp. 108, 111, 364 A.2d 1221 (1975). "Building and construction transactions which include materials to be incorporated into the structure are not agreements of sale." *Epstein v. Giannattasio*, 25 Conn. Supp. 109, 197 A.2d 342 (1963).

DISCUSSION

A. THE UNIFORM COMMERCIAL CODE DOES NOT APPLY TO THE CONTRACT BETWEEN THE PARTIES

As a preliminary matter, the parties disagree on whether the contract at issue is governed by the Uniform Commercial Code or by the common law. The defendants have alleged in their special defense that the contract is governed by the Uniform Commercial Code and as such, it supplants the common law so that the four year statute of limitations applies to the action and bars recovery for the plaintiff. The defendants allege that because the contract involved a "sale of goods" under the Uniform Commercial Code, specifically, the cabinets, that the common law does not apply. The plaintiff has claimed that because the contract involved the construction and installation of custom-made cabinets and not merely the sale of the cabinets themselves, the contract between the parties is a classic service contract. As this issue determines the law that is applicable to this case, the court will address this issue first.

In reviewing the contract between the parties that was placed into evidence at trial by both parties, the court is guided by the plain language of the contract which expressly states that the defendants will "Build all kitchen cabinetry, 2 bathroom vanities and 2 bathroom cabinets; second floor hallway cabinets; fireplace shelving cabinets; library cabinets (see plans: all woodwork, cabinetry and painting are included" and the parties further included the installation of trim at the homes. The scope of the project listed in the contract further states that the defendants will "build, paint, and install all cabinets, moldings according to plans", "hang interior doors", "trim: windows and door casings, window stool, base board and shoe molding."

The project details also specifically include "Construction Guidelines" that specify what materials are to be used and the type and extent of painting and finishing that must be done. The "Terms & Conditions" also specify that "Subcontractor #2 will construct and paint all cabinets", that "Subcontractor # 2 is responsible for completing the entire cabinet project by 2 months from today", that "Subcontractor #2 is responsible for the delivery of cabinetry", and that "Subcontractor #2 must verify all measurements and will be given a list of appliance specs, and must meet all clearances accurately." The contract further language further states that " A sample lace frame and door will be provided" and "Installation date of no later than 2 months from today. The date must be guaranteed as have a firm move in date."

Based on the plain language of the contract, it is clear that the predominant purpose of the contract is the construction and installation of custom-made cabinets based on the specifications listed in the contract. Thus, the defendants were not merely selling cabinets to the plaintiff. Rather, the defendants were obligated to build and install cabinets per the specifications outlined in the contract. As such, the contract in this case is a service contract and is therefore governed by the common law of contracts and not by the Uniform Commercial Code. Consequently, the

statute of limitations listed in Article 2 of the Uniform Commercial Code does not apply and the plaintiff's claim is not time barred.

With respect to the merits of the plaintiff's claim, the plaintiff has alleged in his complaint that the defendants breached the contract through their defective workmanship and by failing to correct the defective workmanship, in addition to failing to complete construction and installation of all the required cabinets and trim as outlined in their contract. Specifically, he alleges that when he had observed the work done by the defendants in connection with construction of the cabinets for the first home (the "first set of cabinets") the plaintiff informed the defendants that the workmanship had not been completed according to the standards outlined in the contract. He has alleged that "Thereafter, the defendants refused to correct the obvious errors in their work as set forth above, and insisted that they were assembled according to the terms of the contract." Then on March 15, 2015, the defendants allegedly communicated their intention to breach the contract when defendant Edgar Quilli informed the plaintiff that the defendants would do no more work until they received the required 50% initial payment for the work the defendants had done thus far on the first set of cabinets.

It is the plaintiff's contention however that "they had not reached the level of performance that triggers such payment under the terms of the contract." Specifically, in the "Payment Terms" portion of the contract, the language of the contract expressly states "When the cabinets are all assembled owner/Subcontractor #1 will examine for quality and, if satisfied, pay Subcontractor #2 50% of monies owed. The remaining balance will be paid when all the cabinets are painted and installed, beaded face frame (must line up) and joinery are again examined, and all reveals on the doors and drawers must be the same (zero tolerance). If everything is completed in a workman like manner, to the standard of high-end custom cabinetry

(no visible cracking in joinery, no dust in finish, etc.) the remaining balance will be paid.". Thus, it is the plaintiff's assertion that the specific quality and workmanship requirements listed in the contract constitute a condition precedent in the contract so that the plaintiff's obligation to pay the 50% of monies owed for the first set of cabinets is not implicated until and unless the defendants satisfy the quality and workmanship standards outlined in the contract.

The type of contract provision that the parties have included in this case is not unusual and parties often include such provisions when drafting contracts, Typically, parties utilize certain specific contract language to indicate that they are including a condition precedent, as seen in the contract at issue in this case . Parties ordinarily include such a condition precedent in a contract by inserting explicit contract language that indicates that there is a condition precedent that is being intentionally included by the parties. Phrases such as "on the condition that", "provided that", "unless and until", or "if" are normally used in drafting contracts when the parties include such a condition precedent. See *EH Investment Co., LLC, v. Chappo LLC,* 174 Conn. App. 344, 360-61, 166 A. 3d 800 (2017); See also *Zhou v. Zhang*, 334 Conn. 601, 619-20, 223 A. 3d 775 (2020).

In the contract between the plaintiff and the defendants in this case, the language of the contract is very clear in that it makes the payment of the 50% initial payment contingent upon satisfaction by the plaintiff as to the quality of the workmanship that was performed to date. The language not only states "if satisfied" and "if everything is completed in a workman like manner…", it also expressly defines the plaintiff's exact requirements by explaining that he has zero tolerance for workmanship that does not meet the specific standards stated in the contract. Therefore, the court cannot find that there is any ambiguity in the language of the contract nor in the expectations and understanding of the parties.

It is evident that, at least as contemplated by the parties when executing the contract, the workmanship quality requirement listed in the contract clearly constitutes a condition precedent that must be satisfied before the plaintiff is obligated to pay the defendants the initial 50% payment for the work done on the first set of cabinets. Given the existence of this explicit condition precedent in the clear language of the contract, the issue that the court must then decide is what, if any effect this condition precedent had on the parties' duties to fulfill their respective obligations pursuant to the contract.

B. THE DEFENDANTS' PERFORMANCE PURSUANT TO THE CONTRACT

Defendant Edgar Quilli testified at trial and throughout the course of trial he was assisted by the court's Spanish language interpreter. Mr. Quilli testified at trial that there was a language barrier that existed between the defendants and the plaintiff at the time they negotiated the contract and when they entered into the contract. Mr. Quilli testified that it was the plaintiff who drafted the contract, that the contract was written in English, that the plaintiff subsequently made changes to the contract in English in his own handwriting, and that the defendants signed the contract even though they did not understand its contents. He testified that although all his communications with the plaintiff up until that point had been entirely in English, neither of the defendants understood the English language used in the written contract between the parties> he stated that the defendants exclusively relied on the oral explanation of the contract terms that the plaintiff provided to the defendants.

Mr. Quilli further testified that after executing the contract and sometime after the defendants had commenced work on the construction of the first set of cabinets, the plaintiff started to frequently appear in person at the defendants' cabinet shop, often waiting outside for the defendants and hiding until the defendants returned to their shop, and then taking

photographs of the work that the defendants had done on the cabinets. He also stated that the plaintiff made numerous threats towards the defendants, including threatening to kill the defendants, threatening to confiscate the defendants' tools, and threatening to call the police or immigration authorities. However, he also stated that there was no one present to witness these incidents, that although the defendants were fearful of the plaintiff they never called the police about the plaintiff's behavior, and that on at least one of these occasions, the plaintiff appeared at the defendants' shop accompanied by the plaintiff's lawyer.

Despite all this, Mr. Quilli consistently stated throughout his trial testimony that he repeatedly informed the plaintiff that the defendants refused to do any further work on the project until the plaintiff had paid them, even though the defendants felt scared and intimidated by the plaintiff's behavior and feared for their safety. He also testified that the defendants had completed 90% of the work on the cabinets but that the plaintiff expected the defendants to complete all of the work before he would pay them. Mr. Quilli conceded that the plaintiff was angry that the cabinets had not been constructed correctly, however he claimed that any problems with the cabinets were due to the changes made by the plaintiff and not due to any defective workmanship by the defendants. Thus, according to Mr. Quilli, all the work that the defendants had done on the first set of cabinets had been done at the plaintiff's request and was done according to the plaintiff's specifications.

In addition, Mr. Quilli stated that the plaintiff failed to provide the defendants with all the necessary materials needed to build the cabinets for the second and third homes and that because this material was not provided, the defendants were unable to build and install any of the cabinets for the second and third homes. He also stated that the plaintiff never paid the defendants for the construction and installation of the first set of cabinets which the defendants

had completed. Thus, Mr. Quilli's position throughout his testimony was that because the plaintiff failed to pay the defendants for the work that they had completed thus far and because the plaintiff had also failed to provide the defendants with all the necessary materials that the defendants felt that they needed to complete the project, the defendants ceased work and never built cabinets for the second and third homes.

Notably, during his trial testimony, Mr. Quilli did not adequately address the plaintiff's claim that the work done by the defendants on the first set of cabinets was defective and that the defendants failed to remedy this at any time. He also did not offer sufficient evidence to refute the plaintiff's testimony that this deficiency was what purportedly prompted the plaintiff to withhold payment to the defendants as per the terms of the condition precedent listed in the contract. Rather, Mr. Quilli's testimony focused on the plaintiff's alleged conduct and did not in any way address the defendants' obligations pursuant to the contract. However, the plaintiff did address both of these issues in his trial testimony.

During his trial testimony, the plaintiff testified that he appeared at the defendants' shop on multiple occasions and he took photographs and recorded video of the defendants' work on these occasions. At trial, he offered these photographs and videos into evidence. With respect to the defendants' claim that the plaintiff had threatened them on these occasions, the plaintiff denied ever having threatened the defendants in any manner and at any time.

He also stated that he had provided the defendants with the all the necessary materials for them to build the cabinets as they were building them. The only material the plaintiff did not provide was the paint for cabinets. The plaintiff explained that the reason that he had not, as yet, provided the paint for the cabinets was because the defendants had not reached the stage of the construction project where they would have been ready to paint the cabinets. However, the

defendants had access to his account at two different home improvement stores so that they could have purchased the paint for the cabinets when it was necessary to obtain paint to complete the work. He stated that the materials he had already provided cost between $8,000.00 and $12,000.00 and that he had these materials delivered to the defendants at their shop. However, he was concerned that the defendants were using the supplies that he had paid for to do work on other projects for other customers, as evidenced by the defendants' repeated requests for additional primer when they had clearly not even completed assembly of the cabinets. Moreover, the workmanship of the defendants with respect to the first set of cabinets was also extremely deficient, so that the plaintiff had concerns that the defendants were not performing their obligations pursuant to the contract while they were also stealing supplies from the plaintiff at the same time.

Specifically, the plaintiff testified that the cabinet parts were not properly attached because the defendants had used putty to give the appearance that the cabinets had been fully assembled when they were not assembled to completion. He further stated that there were gaps in the cabinet doors, the drawers were not on hinges, the panel had been built so that it was crooked, hinges were missing, plywood backing was not used as required, the opening was not exact and precise as it needed to be, and the defendants had likely used an excessive amount of primer on the cabinets. The plaintiff testified that this last issue was particularly concerning because the defendants had also told him that they had used so much primer that they needed more than what the plaintiff had already provided. This was troubling to the plaintiff because as of that time, the defendants were not even ready to paint the cabinets at that particular stage of construction. Therefore, this alerted the plaintiff to the fact that the defendants were using supplies paid for by the plaintiff to complete projects for other customers.

At trial, the plaintiff also put into evidence photographs and videos of the purportedly deficient workmanship. He played a video of an in-person meeting that he had with the defendants during which time the plaintiff informed the defendants of the various problems that the plaintiff had observed with their workmanship and explicitly told them that he would not pay them until the workmanship was up to the standards stated in the contract. He also testified that he went to the defendants' shop between seven and ten times and confronted them in person about their subpar workmanship and the fact that they were stealing the supplies he was providing them.

The plaintiff explained that as a result of the defendants' incomplete work, the houses remain unfinished to date as the plaintiff cannot complete the remainder of the work until the cabinets have been completed and installed. The plaintiff further testified that he did not pay the defendants for the work they did on the cabinets for the first home since the plaintiffs did not fulfill their obligations under the contract and that this was a prerequisite for payment. He stated that the method used by the defendants in their workmanship was so poor that it jeopardized the structural integrity of the cabinets and that when he confronted Mr. Quilli about the workmanship quality, Mr. Quilli became combative. Furthermore, as the defendants' have since closed their cabinet shop, the cabinets have never been delivered to or installed in the homes as required under the contract.

He further testified that he had paid the mortgage and the property taxes on the three properties for which he had hired the defendants to construct cabinets but that as a result of their breach of the contract, these homes remain unfinished to date. Throughout his testimony the plaintiff consistently testified that the reason that he failed to pay the defendants is because they failed to meet the workmanship quality requirements that were explicitly stated in the contract.

Thus, the plaintiff testified that the defendants did not satisfy the condition precedent that would have triggered the plaintiff's obligation to pay the defendants based on the express language of the contract.

Based on the testimony of the plaintiff and defendant Edward Quilli, the photographs and videos placed into evidence, and the court's review of the contract as placed into evidence, it is clear that the defendants failed to satisfy a condition precedent under the contract. As noted by the Connecticut Appellate Court, a condition precedent is a fact or event which the parties intend must exist or take place before there is right to performance. A condition is distinguished from a promise in that a condition does not create a right or duty in and of itself but is merely a limiting of modifying factor. Thus, if a condition is not fulfilled, the right to enforce the contract does not come into existence. See *Sicaras v. Hartford*, 44 Conn. App. 771, 780, 692 A. 2d 1290, cert. denied, 241 Conn. 916, 696 A. 2d 340 (1997). "Use of the qualifier 'if' in a contract often creates a condition precedent". *Centerplan Construction Company, LLC v. Hartford*, 343 Conn. 368, 385, 274 A. 3d 51 (2022).

Moreover, the Appellate Court has held that the rule of construction regarding the interpretation of contract terms is that the intent of the parties is to be ascertained by a fair reasonable construction of the written words and that the language used must be accorded its common, natural, and ordinary meaning and usage where it can be sensibly applied to the subject matter of the contract. Therefore, where the language of the contract is clear and unambiguous, the contract is to be given effect according to its terms. See *Legg v. Legg*, 44 Conn. App. 303, 306, 688 A. 2d 1354 (1997); see also *DeCarlo and Doll, Inc. v. Dilozir*, 45 Conn. App. 633, 640, 698 A. 2d 318 (1997).

In addition, as the factfinder in a courtside trial, the court must assess the credibility of the witnesses who testify and decide what weight to give the testimony of each witness – the same as would be required of jurors in a jury trial. In doing so, the court may consider a variety of factors. As listed in the standard civil jury instructions used in Connecticut, these factors include whether a witness has an interest in the outcome of the case, a witness' opportunity and ability to observe facts correctly and to remember them truly and accurately, the fact-finder's knowledge of human nature and the motives that influence and control human actions, the reasonableness of what the witness says, the consistency or inconsistency of a witness' testimony, and the relationship of this testimony in relation to facts that the fact finder finds to have been otherwise proven. The factfinder may therefore choose to believe all, some, or none of a witness's testimony. In essence, the factfinder should apply the same considerations and use the same sound judgment and common sense that would be used for questions of truth and veracity in daily life.

Having considered the testimony of both parties as presented at trial and having reviewed the exhibits placed into evidence, the court finds the testimony of the plaintiff to be credible, while also finding numerous inconsistencies with Mr. Quilli's testimony. These inconsistencies serve to undermine Mr. Quilli's credibility and raise significant concerns in the court's mind. Moreover, even if the court were to credit Mr. Quilli's testimony, there are numerous indicators that suggest to the court that the defendants failed to meet their obligations as stated in the contract such that the plaintiff's obligations to pay them had not yet been implicated.

For instance, while the parties disagree about whether the plaintiff provided all the necessary materials as required under the terms of the contract, the court finds that the plaintiff

provided more than sufficient materials needed for the defendants to satisfy their obligations under the contract. In addition, the court finds that the defendants failed to satisfy the contract's condition precedent regarding the requisite workmanship quality and the requirement that the plaintiff must approve the workmanship quality prior to paying the defendants. Therefore, the plaintiff was not obligated to pay the defendants until the defendants' workmanship on the cabinets that had been constructed satisfied the standards expressly stated in the contract.

The court, for several reasons, also does not lend any credibility to the defendants' claim that they did not understand the terms of the contract because it was written in English nor their claim that they feared the defendant. First, the defendants had always communicated with the plaintiff in English and never once indicated a lack of understanding during these communications. As evidenced by Exhibit A, which is a text message written by Mr. Quilli to the plaintiff on June 15, 2015 and written entirely in English, Mr. Quilli's command of the English language was certainly sufficient to communicate clearly and effectively with the plaintiff. In this message, Mr. Quilli made his position very clear by stating that he believed that he had completed all the necessary work on the cabinets as of January 2015 and that he had not received any payment from the plaintiff. He did not mention any need for additional materials in order to complete the work and his only statement regarding why he needed to be paid was because he had to pay the rent for his shop.

In this text message, Mr. Quilli further stated that he would charge the plaintiff a storage fee for the cabinets, told the plaintiff to stop texting him to tell him that the cabinets are incomplete, and stated that he did not understand what part of the cabinets are not done. He ended the message by stating that the plaintiff would have to come to the defendants' shop and explain to Mr. Quilli the nature of the problem with the cabinets, that the plaintiff would have to

sign a document to that effect, and he listed the times during which the plaintiff should come to the defendants' shop. As is very clear from this text message, Mr. Quilli understood the English language more than adequately enough to negotiate with the plaintiff. Moreover, the tone of this message undermines Mr. Quilli's claim that the defendants were in any way fearful of the plaintiff.

Second, even if the defendants did not understand the language of the contract because it was written in English, the defendants could have taken the time and the opportunity to have the contract translated before they signed it. By his own testimony, Mr. Quilli admitted that there was a span of time between when the contract was executed and the defendants commenced work on the construction of the cabinets. Yet, even during this time period, the defendants never had the contracted translated into Spanish. Mr. Quilli also testified that he had been in the business of building cabinets for eighteen years and that he had opened and been running his cabinet business for several months before the plaintiff had approached him about this project. Thus, the defendants certainly could have reviewed the contract with an attorney, a translator, or even the other carpenters who had referred the plaintiff to the defendants. The defendants did none of the above and chose to sign a document that they purportedly did not understand. Subsequently, they have attempted to use this purported lack of understanding to excuse their breach of a contract that they willingly signed, even though all evidence offered at trial established that the defendants understood the terms of the contract when they executed it.

Third, Mr. Quilli repeatedly testified at trial that the defendants ceased work under the contract because they had not been paid as required and that they informed the plaintiff of their position. Mr. Quilli stated that despite the threatening conduct of the plaintiff, he never contacted the police and instead, continued to refuse to complete the work on the cabinets