

STATE OF CONNECTICUT
OFFICE OF THE CLERK
SUPERIOR COURT

DOCKET NO. FBT-CV-21-6124331-S : SUPERIOR COURT
RAPH MANN & SONS, INC. : JUDICIAL DISTRICT OF BRIDGEPORT
v. : AT BRIDGEPORT
ROBERT DUNBAR : MAY 21, 2024

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JUDICIAL DISTRICT
OF BRIDGEPORT

MEMORANDUM OF DECISION AFTER COURT TRIAL

I. INTRODUCTION

This is an action for damages arising out of claims by the plaintiff Ralph Mann & Sons, Inc., a Connecticut corporation and licensed Heating Ventilation and Air-Conditioning (“HVAC”) contractor. The plaintiff claims that it performed certain HVAC work for the defendant to install a geothermal heating system at the plaintiff’s residence in Monroe, CT. The defendant further claims that full payment for the services has not been paid by the defendant and that claim is the basis for this action.

The defendant counters that a contract was not signed, the purported contract does not comport with applicable law, and that the plaintiff failed to perform. The defendant also asserts counterclaims for fraud and violation of CUTPA, which the plaintiff denies. The case was tried before the court on January 17, 2024, and the parties submitted timely post-trial briefs with proposed findings of facts and proposed orders.

Notice sent to all
Counsel & RJD.
5/21/24 *Bliss* Asst. Clerk

II. THE PLEADINGS

The plaintiff brought an action in three counts: to enforce a contract, for quantum meruit, and for unjust enrichment. In its complaint, the plaintiff seeks damages in the amount of \$12,893.48 as the unpaid balance of work allegedly performed for the defendant. Defendant denies signing the contract, and further defends on the grounds that Plaintiff did not complete the contract, the contract violates the Home Solicitation Sales Act and is thus, unenforceable. In the alternative, assuming the contract is enforceable, the plaintiff asserts that the defendant is entitled to offsets for remediation necessitated by plaintiff's failure to perform. Defendant has counterclaimed for fraud and violation of CUTPA, and seeks damages associated with its costs for remedial work and additional work required to be performed, plus attorney's fees, costs, and punitive damages where applicable.

III. DISCUSSION

"It is well established that in cases tried before the courts, trial judges are the sole arbiter of the credibility of witnesses and it is they who determine the weight to be given specific testimony ... it is the quintessential function of the fact finder to reject or accept certain evidence ..." (Citations omitted; Internal quotation marks omitted.) *In re Antonio M.*, 56 Conn.App. 534, 540, 744 A.2d 915 (2000). The trier of fact must evaluate the credibility of both testimonial and documentary evidence. *Coombs v. Phillips*, 5 Conn.App. 626, 627, 501 A.2d 395 (1985) (per curiam). "The fact-finding function is vested in the trial court with its unique opportunity to view the evidence presented in a totality of the circumstances, i.e., including its observations of the demeanor and conduct of the witnesses and parties." (Internal quotation marks

omitted.) *Cavoli v. DeSimone*, 88 Conn.App. 638, 646, 870 A.2d 1147, cert. denied, 274 Conn. 906 (2005).

From the evidence produced at trial, in reaching its conclusions, the court has fairly and impartially considered all the evidence presented, evaluated the credibility of witnesses, assessed the weight, if any, to be given to specific evidence, measured the probative force of conflicting evidence, applied relevant statutory criteria and relevant case law, and has drawn such inferences from the evidence or facts established by the evidence it deems reasonable and logical. The court has considered the arguments of counsel and has taken into account the post-trial briefs, proposed findings of fact and proposed orders submitted by the parties, as well as all operable pleadings filed in this case.

FINDINGS OF FACT

1. Plaintiff, Ralph Mann & Sons, Inc. is a corporation that conducts business from its location in Ansonia, CT.
2. Ralph Mann, who testified on behalf of the plaintiff, has worked for over 50 years for the plaintiff corporation and credibly testified that the plaintiff is a licensed Heating Ventilation and Air-conditioning (“HVAC”) contractor.
3. As a licensed HVAC contractor, the defendant is exempt by statute from the Connecticut Home Improvement Act since it has a specialty license from the State for HVAC services. See, C.G.S. § 20-428 (4).
4. In April 2018 the defendant contacted Plaintiff to have a “geothermal” heating system installed at the defendant’s home in Monroe, CT.
5. Ralph Mann, met with the defendant Robert Dunbar at the defendants’ home and provided an estimate of for the geothermal work to be done for the defendant.

6. The plaintiff sent a written proposal to defendant in order to perform the work. See, Plaintiff's Exhibit #1.
7. Although the defendant denies signing the contract/proposal, the court finds that based on the totality of the evidence presented, including significant deposits being paid followed by financing and additional payments that align with the overall amount of the proposal/contact, (See e.g. Plaintiff Exhibits 2, 3, 4, 5, 6, 8, 9, 10, and 11) that the defendant did sign the contract/proposal and work was performed on the home related to the "geothermal" heating system as outlined in Plaintiff Exhibit 1.
8. The work was performed and completed to the satisfaction of the defendant as evidenced by payments made and the certificate of completion signed off on by the defendant. See, Defendant Exhibit I.
9. Plaintiff sent invoices to the Respondent stating that there was a balance due. (See Plaintiff's Exhibits #13 and #14.
10. The plaintiff performed additional work at the direction of the defendant but has not been paid by the defendant. The plaintiff concedes that the extra work was not included in the contract/proposal. (See Plaintiff's Exhibits #13 and #14.)
11. Through testimony and the submission of full exhibits the plaintiff calculates its damages as \$13,283.78 which is above the amount stated in the complaint, \$12,893.48.
12. Defendant Exhibit H documents an invoice of an outstanding balance of \$8,319.14. This invoice is dated 2-3-2022. As this invoice is many months after the completion of the last work performed by the plaintiff, the court finds this invoice to be a credible summary of the outstanding balance owed to the plaintiff. While the

plaintiff seeks more damages in its complaint (\$12,893.48), and still more at trial (\$13,282), the court is not persuaded that this level of damages has been proven due to the lack of consistent accounting and clarity in the exhibits and testimony presented. As such, the court will rely on the most recent invoice as articulated in Defense Exhibit H as the actual outstanding claim for damages that have been proven to the satisfaction of the court based on the totality of the evidence presented.

13. The defendant claims the need for additional work to be performed on the heating system See, Defendant Exhibits J, M, and N and seeks damages of an offset for these costs as well as costs for repairs that the defendant claims have been made. The plaintiff counters that the claims outlined in Defendants Exhibits J, M, and N are years after the work was performed (August 2022, and September 2023) and appear to be more logically linked to regular maintenance than unfinished work. The court finds that the defendant has not proven these damages and considers them to be more likely the result of system maintenance.
14. The defendant also claims that certain thermostats were articulated in the contract/proposal but not installed. The courts credits this testimony and will consider the amount as an offset to any damages. The defendant estimated the cost of the thermostats ranged from \$135 to \$200 per unit. Taking that estimate into account the court considers the reasonable amount of damages proven as an offset to be \$1,675.
15. The defendant credibly testified that there was a larger project for the property with a General Contractor involved and that any claims or disputes have been resolved.

A. Count One Breach of Contract

“In Connecticut the essential elements of breach of a contract are that: (1) the plaintiff and the defendant made a valid contract; (2) the contract was breached by the defendant; (3) the plaintiff performed; and (4) the plaintiff suffered damages as a consequence of the breach.” *Dowling v. ALIRT Ins. Research, LLC*, 2013 Conn. Super. LEXIS 636, *13-14, 2013 WL 1492983; See Also *Keller v. Beckenstein*, 117 Conn.App. 550, 558, 979 A.2d 1055, cert. denied, 294 Conn. 913, 983 A.2d 274 (2009) (citing *American Express Centurion Bank v. Head*, 115 Conn.App. 10, 15-16, 971 A.2d 90 (Conn.App.Ct. 2009); *Rosato v. Mascardo*, 82 Conn.App. 396, 411, 844 A.2d 893 (2004).

Here, the court finds that a valid contract was entered into for certain HVAC work to be performed by the plaintiff for the defendant. The court rejects the claim of the defendant that the contract is not enforceable under C.G.S. § 42-134 et. seq. As a licensed HVAC contractor, the defendant is exempt by statute from the Connecticut Home Improvement Act since it has a specialty license from the State for HVAC services. See, C.G.S. § 20-428 (4).

Considerable payments toward the contract were made as documented by the evidence. Plaintiff exhibits 2, 3, 4, 5, 6, 8, 9, 10, and 11 total payments of \$159,150.00 toward the contract. Working off the contract, Plaintiff Exhibit 1, the balance remaining after the payments made through the exhibits appears to be \$8,520.30.

While the court understands that the plaintiff claims some additional work was requested and performed, the evidence does not support an amendment to the contract and therefore, the court does not consider full agreement on the terms of any additional work. Likewise, while the defendant claims that certain work was not performed satisfactorily or at all, the court is persuaded by Defendant Exhibit I that the parties each signed off on a certificate of completion,

thus calling into question whether work was undone as alleged. To the extent some additional work was required, the court considers such work more likely to be related to maintenance. Regardless, the defendant has not proven these claims to the satisfaction of the court and thus the court and the court finds that an outstanding balance is owed. Based on all the evidence presented, the court finds Defendant Exhibit H, that the most recent invoice, to be the most credible articulation of the outstanding balance and dispute at \$8,319.14.

As to count one therefore, the court finds in favor of the plaintiff on its contract claim and awards damages in the amount of \$8,319.14.

B. Count Two and Three Quantum Meruit and Unjust Enrichment

Given the decision on count one the court need not consider counts two and three as the court has found the existence of a written contract and the plaintiff has been made whole, in the discretion of the court, through the decision on count one.

C. Defenses and Counterclaims

With respect to the defenses/counterclaims raised by the defendant. The court finds only that the defendant has proven an offset related to the thermostats which the court finds were included in the contract but not installed. Under the terms of the contract "10 Honeywell 8000 Electric Programmable Touch Screen Thermostats" were to be installed. See, Plaintiff Exhibit 1. Based on the testimonial evidence presented through the witnesses, the court finds that the 10 Touch Screens were not installed and therefore the defendant is entitled to an offset. Based on the evidence presented which estimated a range of the value of the screens, the court values these offset damages in the amount of \$1,675.00.

The court finds that the defendant has failed to meet its burden of proof as to its counterclaims and specifically rejects the claim of unclean hands or fraud and CUTPA. Quite

simply this is a case where a significant HVAC related project was performed for a contract price of \$167,670.00. Significant payments were made toward the contract as proven by the evidence and based on those payments, the testimony of the parties and the certificate of completion, the court finds that the project was essentially completed in a satisfactory manner. What remains is a relatively modest dispute about an outstanding balance and some residual minor concerns about the completion of the work which may be more fairly attributed to maintenance of the system.

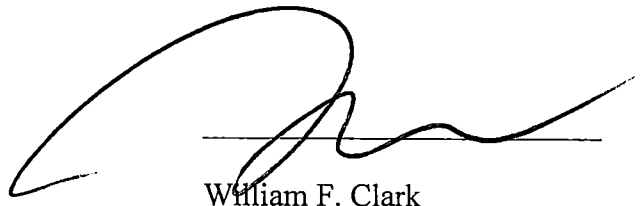
IV. CONCLUSION

Applying the law to the fact as found, judgment may enter in favor of the plaintiff in the amount of \$8,319.14.

Judgment shall be offset in favor of the defendants due to certain work under the contract remaining unperformed. The total offset applicable in favor of the defendant shall be \$1,675.00.

Therefore, the net judgment in favor of the plaintiffs shall be \$8,319.14 minus \$1,675.00 for a total award of damages to the plaintiff of \$6,644.14.

No costs, fees, or interest shall be charged as part of this Judgment.



William F. Clark
Superior Court Judge