

STATE OF MAINE
KENNEBEC ss

DISTRICT COURT
LOCATION: AUGUSTA
DOCKET NO. CV-05-116
NM - KEN - 11/1/2006

MARC RODRIGUE,

Plaintiff

v.

JUDGMENT

GERALDINE TOULOUSSE,

Defendant

DONALD E. GARBRECHT
LAW LIBRARY

JAN 16 2007

Jury-waived trial on the plaintiff's complaint and the defendant's counterclaim was held on 9/28/06. The court has considered the testimony, the exhibits, and the arguments and submissions of counsel.

Facts

The plaintiff is a self-employed contractor. In November 2004, he and the defendant entered a contract for the construction of a gambrel-style garage on the defendant's property. Pl.'s Exs. 1, 5. The firm contract price was \$47,000.00. Pl.'s Ex. 1. The plaintiff performed an additional \$250.00 of work at the defendant's request. Pl.'s Ex. 6. The plaintiff began work on the garage in November 2004 and saw the defendant at the construction site everyday he was there.

Before 1/23/05, the defendant complained to the plaintiff that the garage was not big enough and was not what she and her sister wanted. Def.'s Ex. 5. The loft area was accessible in December 2004 because the stairs to the loft area were in place by then.

When Patricia Tabor, the defendant's sister, contacted the plaintiff, he e-mailed defendant's exhibits 6, 7, 9, and 10 in an effort to explore what could be done with the

layout of the building. The garage was attached to the defendant's residence and could not be expanded in the direction of the adjacent property.

When the vinyl siding arrived, the plaintiff told the defendant he required payment in order to continue the job. The defendant told the plaintiff she would not pay any additional money and told him to leave the job. In fact, she called the police and refused to let the plaintiff take his tools. The plaintiff was willing to complete the work until the lawsuit was filed. He was given no opportunity to remedy the claimed defects or complete the job. Def.'s Ex. 12.

Although the defendant did not get what she apparently wanted, she got what she contracted for. At the time the plaintiff's services were terminated by the defendant, she had paid \$25,000.00. The plaintiff had paid for all materials and subcontractors and had performed 142 hours of work at \$30.00 per hour. When he was terminated, he was owed \$7410.19. Pl.'s Exs. 3, 7. The plaintiff sent to the defendant an invoice dated 2/7/05 for \$7410.19 but has not been paid the remaining amount due. Pl.'s Ex. 7. In March 2005, the plaintiff filed a mechanic's lien for the amount he was owed and notified the defendant of the lien. Pl.'s Exs. 8, 9.

The defendant has not been damaged by any act of the plaintiff. Further, the defendant did not prove damages for the alleged failures of the plaintiff.

Conclusions

The defendant has breached her contract with the plaintiff. The plaintiff itemized the work performed as of the date he was told to stop work and charged the usual contractor hourly rate. See Paffhausen v. Balano, 1998 ME 47, ¶¶ 6-8, 708 A.2d 269, 271.

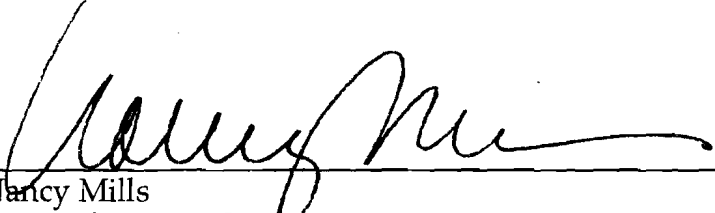
The defendant has failed to prove her counterclaims. See Pettee v. Young, 2001 ME 156, ¶ 20, 783 A.2d 637, 642; 10 M.R.S.A. §§ 1487 & 1490 (2005); 5 M.R.S.A. § 213 (2005); Tungate v. MacLean-Stevens Studios, Inc., 1998 ME 162, ¶ 9, 714 A.2d 792, 797.

The entry is

Judgment is entered in favor of the Plaintiff and against the Defendant on Counts I and II of the Plaintiff's Complaint in the amount of \$7410.19, attorney's fees of \$5722.50, a penalty of \$666.92, prejudgment interest of 7.36%, postjudgment interest of 10.36%, and costs to be documented in a bill of costs. Judgment is entered in favor of the Defendant and against the Plaintiff on Count III of the Plaintiff's Complaint.

Judgment is entered in favor of the Plaintiff and against the Defendant on Counts I, II, and III of the Defendant's Counterclaims.

Date: November 1, 2006



Nancy Mills
Justice, Superior Court

MARC RODRIGUE - PLAINTIFF
23 GAGNE STREET
AUGUSTA ME 04330
Attorney for: MARC RODRIGUE
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DISTRICT COURT
AUGUSTA
Docket No AUGDC-CV-2005-00116

DOCKET RECORD

vs
GERALDINE TOULOUSE - DEFENDANT
23 GAGNE STREET,
AUGUSTA ME 04330
Attorney for: GERALDINE TOULOUSE
STEPHEN BOURGET - RETAINED
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Filing Document: COMPLAINT Minor Case Type: CONTRACT
Filing Date: 03/28/2005

Docket Events:

03/28/2005 FILING DOCUMENT - COMPLAINT FILED ON 03/28/2005

03/29/2005 Party(s): MARC RODRIGUE
ATTORNEY - RETAINED ENTERED ON 03/28/2005
Plaintiff's Attorney: C H SPURLING

04/11/2005 Party(s): GERALDINE TOULOUSE
SUMMONS/SERVICE - CIVIL SUMMONS SERVED ON 03/29/2005

05/11/2005 Party(s): GERALDINE TOULOUSE
ATTORNEY - RETAINED ENTERED ON 04/19/2005
Defendant's Attorney: STEPHEN BOURGET

05/11/2005 Party(s): GERALDINE TOULOUSE
RESPONSIVE PLEADING - ANSWER & COUNTERCLAIM FILED ON 04/19/2005

05/11/2005 Party(s): MARC RODRIGUE
MOTION - AFFID & REQUEST DEFAULT/JUDG FILED ON 04/21/2005
Plaintiff's Attorney: C H SPURLING

05/11/2005 Party(s): MARC RODRIGUE
RESPONSIVE PLEADING - ANSWER FILED ON 04/28/2005
Plaintiff's Attorney: C H SPURLING
TO COUNTERCLAIM

05/20/2005 Party(s): GERALDINE TOULOUSE
DISCOVERY FILING - NOTIFICATION DISCOVERY SERVICE FILED ON 05/18/2005
Defendant's Attorney: STEPHEN BOURGET

06/22/2005 Party(s): MARC RODRIGUE
DISCOVERY FILING - NOTIFICATION DISCOVERY SERVICE FILED ON 05/26/2005