

COURT OF APPEALS FOR THE SEVENTH DISTRICT OF TEXAS AT
AMARILLO

Danny Vaughan and Kathleen Vaughan v. Ross Phillips d/b/a Ready-Built Homes and On-Site Construction

Vaughan · No. 07-06-0208-CV · Decided April 30, 2008

SUMMARY

In this concurring opinion, Justice Pirtle agrees that the Vaughans were not entitled to attorney’s fees because they did not prevail on their contract claim. The opinion clarifies that, if Phillips establishes the Vaughans’ breach on remand, his damages should be based on the contract price less amounts paid and expenses avoided, rather than the Vaughans’ cost of completing the construction project.

CASE DETAILS

COURT	Court of Appeals for the Seventh District of Texas at Amarillo
WRITING FOR THE COURT	Patrick A. Pirtle; Quinn, Chief Justice; Campbell, Justice; Pirtle, Justice
JURISDICTION	Texas
DECIDED	April 30, 2008
DOCKET	07-06-0208-CV
DISPOSITION	other
PROCEDURAL POSTURE	Appeal from a judgment of the 110th District Court of Briscoe County involving breach-of-contract claims, attorney's fees, and the measure of damages after partial performance.
PRECEDENTIAL VALUE	Published opinion; the extracted text is a concurrence in the result.
PARTIES	Danny Vaughan, Kathleen Vaughan v. Ross Phillips d/b/a Ready-Built Homes and On-Site Construction

TOPICS

- material breach
- breach of contract
- damages
- remedies
- appellate procedure

PRACTICE AREAS

- contracts
- construction law
- damages
- remedies
- appellate procedure

QUESTIONS PRESENTED

1. Whether the Vaughans were entitled to attorney's fees under section 38.001 of the Texas Civil Practice and Remedies Code after the jury found that they materially and without excuse breached the contract.
2. Whether the cost of completion incurred by the Vaughans is equivalent to Phillips's cost of completion or otherwise establishes the amount of Phillips's contractual recovery after partial performance.

HOLDINGS

1. Because the Vaughans were found to have materially and without excuse breached the contract, they did not prevail on their contract claim and were not entitled to recover attorney's fees under section 38.001 of the Texas Civil Practice and Remedies Code.
2. If Phillips establishes the Vaughans' breach on remand, Phillips's recovery should be measured by the contract price, less amounts already paid and expenses Phillips will avoid because he is excused from further performance; the Vaughans' cost of completion is not necessarily the same as Phillips's cost of completion.

KEY QUOTATIONS

"It is a fundamental principle of contract law that when one party to a contract commits a material breach of that contract, and the breach is not otherwise excused, the other party is discharged or excused from further performance." (Vaughan's Appeal—Issue Two)

"In a suit for breach of contract after partial performance, the party who has partially performed the contract is entitled to recover an amount that would place the party in a position equivalent to that which he would have occupied if the contract had been fully performed." (Phillips's Appeal—Issue One)

"Phillips's cost of completing the construction project is not the same thing as Vaughan's cost of completion because Vaughan's 'cost of completion' would necessarily include a reasonable profit, including a reasonable return on investment to the completing contractor." (Phillips's Appeal—Issue One)

FACTUAL BACKGROUND

The Vaughans and Phillips entered into a construction contract. The jury found that the Vaughans breached the contract, that the breach was material, and that it was unexcused. Phillips had partially performed the contract, and the appeal concerned, among other matters, the Vaughans' entitlement to attorney's fees and the proper measure of any recovery available to Phillips.

PROCEDURAL HISTORY

The case was appealed from the 110th District Court of Briscoe County. The jury found that the Vaughans materially and without excuse breached their contract with Phillips. The concurrence states that the majority overruled the Vaughans' second issue concerning attorney's fees and joined the majority's result, while clarifying the proper conceptual distinction between the parties' costs of completion and Phillips's contractual damages.

DISPOSITION

other

REMAND INSTRUCTIONS

The concurrence indicates that, if the matter is remanded and Phillips proves breach, the damages analysis should distinguish Phillips's avoided expenses from the Vaughans' cost of completion and should not treat the Vaughans' completion cost as Phillips's cost of completion.

CASES CITED

- Mustang Pipeline Co., Inc. v. Driver Pipeline Co., Inc., 134 S.W.3d 195, 196 (Tex. 2004)
- Mays v. Witt, 387 S.W.2d 688 (Tex. App.—Amarillo 1965, no writ)
- Arthur Andersen & Co. v. Perry Equipment Co., 945 S.W.2d 812, 817 (Tex. 1997)

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/texas-court-of-appeals-for-the-seventh-district-of-texas-at-amarillo/2008/danny-vaughan-and-kathleen-vaughan-v-ross-phillips-d-b-a-31j6od0b>