

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, THIRD DEPARTMENT

Lapenna Contracting, Ltd. v. Mullen

Lapenna Contr., Ltd. v. Mullen, 2020 NY Slip Op 06183 (App. Div. 2020) · No. 528992 · Decided October 29, 2020

SUMMARY

The New York Appellate Division, Third Department, affirmed an order largely awarding damages to homeowners after a contractor failed to comply with statutory home-improvement-contract requirements, performed deficient and incomplete work, and willfully exaggerated a mechanic's lien. The court modified the breach-of-contract counterclaim award from \$43,025.91 to \$29,790.91 to correct duplicative damages, while affirming the remaining awards and the dismissal of the contractor's claims.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Colangelo, J.; Egan Jr., J.P.; Mulvey, J.; Aarons, J.; Pritzker, J.
JURISDICTION	New York
DECIDED	October 29, 2020
DOCKET	528992
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order of the Ulster County Supreme Court after a bench trial involving the parties' construction-contract claims and counterclaims.
STANDARD OF REVIEW	On review of a nonjury verdict, the Appellate Division independently reviews the probative weight of the evidence and reasonable inferences, while according due deference to the trial court's factual findings and credibility determinations.
PRECEDENTIAL VALUE	Published opinion; precedential under New York law subject to subsequent treatment.
PARTIES	Lapenna Contracting, Ltd. v. David L. Mullen, Lynn M. Veluta-Mullen

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QUESTIONS PRESENTED

1. Whether a contractor may enforce a home-improvement contract that fails to comply with General Business Law § 771 (1) (b).
2. Whether the evidence supported the Mullens' breach-of-contract counterclaim and the damages awarded for completion of the construction project.
3. Whether the damages awarded on the breach-of-contract counterclaim were excessive because the trial court counted a \$13,235 credit twice.
4. Whether the evidence supported a finding that Lapenna willfully exaggerated its mechanic's lien and the resulting damages.
5. Whether Lapenna's remaining appellate arguments, including premature termination, improper acceleration, and anticipatory repudiation, were preserved for review.

HOLDINGS

1. A contractor cannot enforce a home-improvement contract that fails to include the approximate or estimated dates when work will begin and be substantially completed, as required by General Business Law § 771 (1) (b).
2. The evidence supported the finding that Lapenna breached the construction contract and supported an award to defendants for the reasonable cost of completing the contemplated construction.
3. The breach-of-contract counterclaim award had to be reduced from \$43,025.91 to \$29,790.91 because the \$13,235 credit for double-billed, inappropriate, or unjustified charges had already been accounted for.
4. The evidence supported the finding that Lapenna willfully exaggerated its mechanic's lien, rendering the lien void and supporting an award of damages and reasonable counsel fees to defendants.
5. Arguments concerning premature termination, improper acceleration, and anticipatory repudiation were unpreserved because they were raised for the first time on appeal.

KEY QUOTATIONS

“When reviewing a nonjury verdict, [this Court] independently review[s] the probative weight of the evidence, together with the reasonable inferences that may be drawn therefrom, and grant[s] the judgment warranted by the record while according due deference to the trial court's factual findings and credibility determinations”

“a contractor cannot enforce a contract that fails to comply with General Business Law § 771”

“the proper measure of damages for breach of a construction contract is the cost to either repair the defective construction or complete the contemplated construction”

FACTUAL BACKGROUND

Lapenna contracted with David and Lynn Mullen to build an addition to their home, but the contract did not include the estimated beginning and substantial-completion dates and other required completion details. The Mullens terminated Lapenna after approximately seven months, when the work was deficient and incomplete, and hired a subcontractor to finish the project. Lapenna had received \$45,865.48, while the trial court credited expert testimony that the reasonable value of the work and materials furnished was approximately \$36,350; Lapenna also filed a mechanic's lien for \$33,870.

PROCEDURAL HISTORY

Lapenna sued to recover amounts allegedly owed under a construction contract, asserting breach of contract, quantum meruit, unjust enrichment, and a mechanic's lien claim. After a bench trial, Supreme Court dismissed Lapenna's breach-of-contract claim, awarded \$645 on quantum meruit, awarded defendants damages on their breach-of-contract counterclaim and for willful exaggeration of the mechanic's lien, and dismissed the remaining claims. The Appellate Division affirmed with a modification reducing the breach-of-contract counterclaim award from \$43,025.91 to \$29,790.91.

DISPOSITION

affirmed

CASES CITED

- Galarneau v. D'Andrea, 184 A.D.3d 1064, 1065 (3d Dep't 2020)
- Grimaldi v. Sangri, 177 A.D.3d 1208, 1209-1210 (3d Dep't 2019)
- Protect the Adirondacks! Inc. v. New York State Department of Environmental Conservation, 175 A.D.3d 24, 27 (3d Dep't 2019)
- Grey's Woodworks, Inc. v. Witte, 173 A.D.3d 1322, 1323 (3d Dep't 2019)
- Marshall of City of Albany, 184 A.D.3d 1043, 1044 (3d Dep't 2020)
- Matter of Amanda YY. v. Ramon ZZ., 182 A.D.3d 662, 664 (3d Dep't 2020)
- Stein v. Kendal at Ithaca, 129 A.D.3d 1366, 1367 (3d Dep't 2015)
- Adirondack Classic Design, Inc. v. Farrell, 182 A.D.3d 809, 811 (3d Dep't 2020)
- Carroll v. Rondout Yacht Basin, Inc., 162 A.D.3d 1150, 1151 (3d Dep't 2018), appeal and lv. dismissed, 32 N.Y.3d 1035 (2018)
- WFE Ventures, Inc. v. Mills, 139 A.D.3d 1157, 1160 (3d Dep't 2016)
- Haber v. Gutmann, 64 A.D.3d 1106, 1108 (3d Dep't 2009), lv. denied, 13 N.Y.3d 711 (2009)
- Feldin v. Doty, 45 A.D.3d 1225, 1226 (3d Dep't 2007)
- DiSario v. Rynston, 138 A.D.3d 672, 673 (2d Dep't 2016)

- Blair v. Ferris, 150 A.D.3d 1365, 1367-1368 (3d Dep't 2017)
- NY Professional Drywall of OC, Inc. v. Rivergate Development, LLC, 137 A.D.3d 1509, 1510 (3d Dep't 2016)
- Pyramid Champlain Co. v. Brosseau & Co., 267 A.D.2d 539, 542-543 (3d Dep't 1999), lv. denied, 94 N.Y.2d 760 (2000)

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