

**DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FOURTH
DISTRICT**

Cano, Inc. v. Michel Judet

Cano, Inc. v. Judet, No. 4D20-1509 (Fla. 4th DCA Sept. 22, 2021) · No. No. 4D20-1509 · Decided September 22, 2021

SUMMARY

The Florida Fourth District Court of Appeal affirmed a final judgment awarding Michel Judet \$40,850 against Cano, Inc. after finding that Cano materially breached a construction contract by failing to obtain required permits and substantially perform its obligations. The court held that, because Judet treated the breach as total, he could recover payments made to Cano less the quantum meruit value of Cano's work. The court also upheld the trial court's resolution of the overpayment issue despite the wording of the pretrial stipulation.

CASE DETAILS

COURT	District Court of Appeal of the State of Florida, Fourth District
WRITING FOR THE COURT	Warner, J.; Conner, C.J.; Gross, J.
JURISDICTION	Florida
DECIDED	September 22, 2021
DOCKET	No. 4D20-1509
DISPOSITION	affirmed
PROCEDURAL POSTURE	Cano appealed a final judgment entered after a nonjury trial in favor of Judet on Judet's breach-of-contract counterclaim and against Cano on its construction-lien foreclosure, breach-of-contract, and unjust-enrichment claims.
STANDARD OF REVIEW	Whether the trial court applied the correct measure of damages is reviewed de novo. The court otherwise found no reversible error in the issues raised.
PRECEDENTIAL VALUE	Published Florida District Court of Appeal opinion; precedential value is not otherwise specified in the source.
PARTIES	Cano, Inc. v. Michel Judet

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QUESTIONS PRESENTED

1. What measure of damages applies when an owner treats a contractor's material breach of a construction contract as total and seeks to be restored to the precontract position?
2. Whether the trial court improperly awarded Judet the amount he overpaid Cano when the pretrial stipulation did not expressly list recovery by Judet as an issue.
3. Whether the trial court committed reversible error by entering a final judgment substantially based on Judet's proposed judgment.

HOLDINGS

1. When a contractor commits a total breach, the owner may treat the contract as void and recover damages restoring the owner to the precontract position, or affirm the contract and seek benefit-of-the-bargain damages. Because Judet treated Cano's breach as total, the trial court properly awarded the \$90,000 paid less the \$49,150 quantum meruit value of Cano's work.
2. The trial court could award Judet the overpayment even though the pretrial stipulation did not expressly list recovery by Judet, because the award was necessarily implicit in determining that Cano was entitled only to the quantum meruit value of its services, and Judet had pleaded and argued for that relief without objection.
3. The trial court did not commit reversible error by entering Judet's proposed final judgment because the court had stated findings on the record, considered both parties' proposed judgments, and waited approximately thirty days before signing Judet's proposal, allowing Cano time to object.

KEY QUOTATIONS

"Where a contractor breaches a construction contract, and the owner sues for breach of contract and the cost to complete, the measure of damages is the difference between the contract price and the reasonable cost to perform the contract." (at 2)

"But where there is a total breach of the contract as opposed to a partial breach, an injured party may elect to treat the contract as void and seek damages that will restore him to the position that he was in prior to entering into the contract or the party may seek the benefit of his bargain." (at 2-3)

"To hold otherwise would negate the trial court's determination that Cano was entitled only to the value of his services." (at 5)

FACTUAL BACKGROUND

Judet hired Cano under a written \$300,000 construction contract payable in \$30,000 increments to repair lightning damage to Judet's home. Judet paid Cano \$90,000, but terminated Cano after discovering that Cano

had not obtained required electrical and plumbing permits. At trial, Judet's expert valued the work Cano performed at \$49,150, and the trial court found Cano had committed the first material breach and was entitled only to the quantum meruit value of its work.

PROCEDURAL HISTORY

Judet contracted with Cano to repair lightning damage to his home for a fixed price. After discovering that Cano had failed to obtain required electrical and plumbing permits, Judet terminated Cano. Cano sued to foreclose a construction lien and asserted breach-of-contract and unjust-enrichment claims; Judet counterclaimed for breach of contract and restitution. After a nonjury trial, the circuit court found Cano committed the first material breach, valued Cano's work at \$49,150, and awarded Judet \$40,850, representing the \$90,000 paid minus the value of the work. The district court affirmed.

DISPOSITION

affirmed

CASES CITED

- Perlow v. Berg-Perlow, 875 So. 2d 383 (Fla. 2004)
- Strand v. Escambia County, 992 So. 2d 150 (Fla. 2008)
- DFG Grp., LLC v. Heritage Manor of Mem'l Park, Inc., 237 So. 3d 419, 421 (Fla. 4th DCA 2018)
- Del Monte Fresh Produce Co. v. Net Results, Inc., 77 So. 3d 667, 673 (Fla. 3d DCA 2011)
- Grossman Holdings Ltd. v. Hourihan, 414 So. 2d 1037, 1039-40 (Fla. 1982)
- McCray v. Murray, 423 So. 2d 559, 561 (Fla. 1st DCA 1982)
- Forbes v. Prime General Contractors, Inc., 255 So. 3d 448, 451-52 (Fla. 2d DCA 2018)
- Rector v. Larson's Marine, Inc., 479 So. 2d 783, 785 (Fla. 2d DCA 1985)
- Tubby's Customs, Inc. v. Euler, 225 So. 3d 405, 407 (Fla. 2d DCA 2017)
- Citizen's Prop. Ins. Corp. v. Amat, 198 So. 3d 730, 734 (Fla. 2d DCA 2016)
- Broche v. Cohn, 987 So. 2d 124, 127-28 (Fla. 4th DCA 2008)
- Lotspeich Co. v. Neogard Corp., 416 So. 2d 1163, 1165 (Fla. 3d DCA 1982)
- Federal Land Bank of Columbia v. Brooks, 190 So. 737, 741 (Fla. 1939)

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