

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

WASHINGTON, SC.

SUPERIOR COURT

[Filed: March 21, 2016]

JACK SCOTT WEEDON, doing :
business as EAGLE MARINE SERVICE :

VS.

C.A. No. WC 2013-0398

STEPHEN BURCHETT :

DECISION

DARIGAN, J. This matter was heard by the Court in the nature of binding arbitration agreed to by the parties.

The hearing began on February 4, 2016 and continued to and concluded on February 8, 2016.

The Plaintiff Jack Scott Weedon, d/b/a Eagle Marine Service (Plaintiff) has sued Defendant Stephen Burchett (Defendant) for breach of contract and for substantial performance of certain work done on the Defendant’s vessel, the “Caroline.”

The Defendant counterclaimed for breach of contract, breach of implied covenant of good faith and fair dealing, fraud (false representation of qualifications to perform the task in a competent manner), and negligent misrepresentation of the Plaintiff’s qualifications.

The case arises from a desire of the Defendant to make upgrades to his vessel, the “Caroline,” to outfit it for year-round on board living by Defendant.

The “Caroline” is a 35’ trawler or lobster-type boat built in 1998 which the Defendant purchased in March 2012 for \$49,000. The Defendant is a retired firefighter with twenty-two years of service and has for eight years operated a dive service business, serving divers and the

hulls of vessels as a scuba diver. The Defendant had previously lived on a sailboat year-round for eight years and was familiar with life on board a vessel.

To prepare the vessel for year-round living, the Defendant needed to install a generator, an air-conditioning system and a heating system, and other items such as more electrical outlets and lights in various locations.

The Plaintiff lived in Florida from the late 1970's to 2000 where he was employed in marine installations, i.e., engines, was a boat builder, rigger, and worked on race boats. Coming to Rhode Island in 2000, the Plaintiff continued to work in the marine industry in various positions with Rhode Island marine businesses. In these capacities, he installed HVAC equipment and refrigerators on various types of vessels.

In 2007, the Plaintiff started Eagle Marine Service and has performed these services for various marinas in the East and West Bays of Rhode Island. He is certified by Cruise Air for air-conditioning installation and in 2002 and 2003, was certified by the Mass. Maritime Academy in marine AC and refrigeration.

He at one time was also certified by American Boat and Yacht Council (ABYC), but that had not been renewed at the time of this hearing.

The parties first met aboard the "Caroline" in October 2012, having been introduced by one Anthony Porcino who was present at the meeting.

Mr. Porcino had with him some brochures from a recent boat show relating to a Wallace Heater which he recommended be installed on board as part of the project.

The parties discussed the scope of the proposed work consisting of rewiring the boat, the installation of a heater, air-conditioning and a generator. The Plaintiff outlined an oral contract for time and materials, billing his time at \$75 per hour and his assistant at \$45 per hour.

The Defendant avers he asked Plaintiff for an estimate for the work to be done and was told by the Plaintiff it would cost about \$10,000 to \$15,000.

The Plaintiff denies telling the Defendant any estimate of cost, indicating he always works on time and materials and never gives an estimate for a job because of “add-ons” or the vagaries in working on boats and dealing with boat owners.

The parties apparently came to an agreement. The Plaintiff surveyed the boat, took measurements and planned where the new installations would go aboard the “Caroline.” The new components had to be fitted in the relatively small vessel.

The Plaintiff presented the Defendant with an estimate of what the air-conditioning system, heater and generator would cost to purchase from various suppliers. The amount needed was \$7,728.33 (Ex. 4). The Defendant gave the Plaintiff a check for \$6000 so Plaintiff could purchase the items.

Work commenced on or about November 12, 2012, and continued to February 13, 2013 by Plaintiff and his assistant. Because the Defendant was living on the boat during this period, he was often present when much of the work was being done.

The testimony of the Plaintiff and the Defendant differ on several salient points. The Plaintiff testified that many “add-ons” were requested by the Defendant as work commenced, such as additional electrical outlets, lights in the engine room, and V-berth of the boat, etc.

The Defendant testified that all of the so-called “add-ons” were requested by the Defendant before the work began in the initial discussions.

Another difference in testimony is the Defendant’s insistence that the Plaintiff provide a written contract for the work to be done and timely reports of what had been done and the cost of the work to date. Defendant says he continually, throughout the duration of the job, asked for

this paperwork. The Plaintiff insists that no requests of this nature were ever made by the Defendant.

Both parties agree that the original Wallace Heater 30 DT was removed and replaced by a 40 DT model.

The Plaintiff has averred that when the job was substantially complete in February 2013, all installations were tested by the Plaintiff in the presence of the Defendant and that all were in good working order and that there were no complaints voiced by the Defendant.

On January 19, 2013, the Plaintiff presented a bill to the Defendant of \$18,491.25 which the Plaintiff agreed to discount by \$1,121.25 at the request of the Defendant, leaving a balance of \$17,370. Plaintiff requested 50% of that figure or \$8685 which was paid by the Defendant (Ex. 7). The Plaintiff had gone on vacation with the Defendant's knowledge from January 19, 2013 to February 13, 2013.

The Plaintiff indicated to the Defendant that upon his return, there were a few additional "loose ends" that had to be finished. The Plaintiff ultimately presented an additional bill of \$2,249.94 to the Defendant dated February 28, 2013 (Ex. 5). The Defendant indicated he was surprised by this supplemental bill and that in the intervening time period he had several severe problems with the work done by the Plaintiff. The Defendant testified that the generator failed to work, that the generator battery continued to discharge, that the heater as installed was inadequate, among other complaints encompassing most of the work performed by the Plaintiff.

The Defendant was also critical of the work ethic of the Plaintiff and his assistant, noting on several occasions he found them "lounging around" on the boat, not working, leaving early and taking frequent breaks which dragged out the completion of the job to late February. The Defendant testified that despite the lack of a written contract, periodic reports on progress and

costs by the Plaintiff—despite the Plaintiff’s promise to produce these items—the Defendant knew winter was coming and he needed to get the work complete so he allowed the Plaintiff to continue making the installations.

As indicated supra, the Plaintiff denies all of these allegations and complaints about workmanship made by the Defendant, stating that all installations were performed diligently and in a workmanlike manner and were tested by the Plaintiff in the Defendant’s presence.

During this time frame, the Plaintiff attempted to make corrections and meet the concerns of the Defendant in some of these areas. The A/C pump was itself defective and replaced under manufacturer’s warranty by the Plaintiff at least twice.

Things came to a final impasse between the parties in March of 2013 when the parties met on board with Plaintiff, Defendant and one Mark DePasquale who told Plaintiff he was the “project manager.” The meeting was held on or about March 20, 2013 to discuss Plaintiff’s bills and invoices.

By this time, the Plaintiff had produced some handwritten calculations for time and materials for the Defendant which were later produced in litigation in “QuickBooks” form, neatly typed and easily legible. The Plaintiff avers that both versions contained the same information.

At the meeting Plaintiff was asked to discount his bill, and Mr. DePasquale demanded all receipts, bills, invoices from the Plaintiff for the entire job.

Plaintiff offered a \$1000 deduction of his bill which Plaintiff testified was refused by Mr. DePasquale saying, “the bill was whacked we are going to court.”

This lawsuit and hearing is the result.

In this case the Plaintiff and the Defendant, the Counterclaimant in this case, are charged with the burden of proving their asserted claims by a fair preponderance of the credible evidence in each case.

The Plaintiff has testified that he is a small businessman with years of experience in the field of marine HVAC and electrical installation, and that he approached this job in a serious and workmanlike manner. He testified to various certifications in different aspects of marine installation, some of which are current and some of which have not been renewed. He has testified about the problems that were presented regarding the installation of a generator, heating and air-conditioning system, and the wiring of a small and older vessel.

He has testified that he was mindful of cost to the Defendant and that Defendant approved his placement of the various components. The Defendant was onsite frequently, if not daily, to monitor the installation.

The Defendant has testified regarding his eight years' experience of living on a vessel, his work experience as a former U.S. Marine and retired firefighter, the nature of his business of serving divers and performing repairs underwater on the hulls of vessels of various sizes, and his desire to outfit the "Caroline" for year-round on board living.

He has testified to his constant request for a written contract from Plaintiff and regarding an estimate he received from Plaintiff for \$10,000 to \$15,000 to complete the job.

He readily paid \$6000 to allow the Plaintiff to make the major purchases to install on the vessel, and was aware of the hourly rate of the Plaintiff and his assistant. He testified to his incessant requests for a written contract and for periodic reports and invoices from the Plaintiff, which he never received.

He testified that he relied on the expertise of the Plaintiff in the planning and installation of the components that were installed, indicating he was very unfamiliar with the items installed by the Plaintiff.

He testified that just about every aspect of the work done by the Plaintiff was defective and had to be replaced—his counterclaims for damages exceed \$40,000.

The Plaintiff and Defendant each presented one witness, each with extensive education and experience in the installation of HVAC equipment, generators, engines and heaters and refrigeration on vessels. Both witnesses were qualified by the Court to testify in these matters without objection by counsel.

The Plaintiff presented Mr. James Thompson and the Defendant presented Dwight Escalera. Both witnesses were highly credentialed, both educationally and by work experience, to testify in this case.

Mr. Escalera was an advocate and representative of ABYC, an organization which promulgates standards for the manufacturers of small craft in the design, construction, equipage and maintenance of small crafts. These standards, while not mandatory or legally required, are recognized and highly regarded as an aid to boat manufacturers and the marine community. Mr. Escalera holds all eight certifications offered by the ABYC, and lectures and instructs on its behalf around the country.

Mr. Thompson, a member of ABYC, does not have any current certification by ABYC but acknowledges the council as a recognized entity in the maritime industry; however, clearly testifying that while authoritative, its standards are not legally binding on anyone and its standards are often not adopted by major boat manufacturers and installers because of the cost involved in meeting ABYC standards.

Mr. Escalera's testimony was couched in terms of whether or not the work done by the Plaintiff was done in accordance with ABYC standards.

Mr. Thompson's testimony and opinion was not wedded to ABYC standards, but based on his knowledge and experience and applying recognized industry standards of workmanship and safety concerns, etc.

The Defendant, between February 13, 2013 and sometime in 2015, engaged several marine contractors to, as he testified, repair or replace the faulty installation he alleged was done by the Plaintiff.

The Defendant employed Ocean Options, Inc. of Tiverton, Rhode Island to replace the generator installed by the Plaintiff. The new generator was an upgrade from the original installation and cost \$12,587.75 (Def.'s Ex. JJ, Nov. 27, 2012). NorEast Marine Systems of Fairhaven, Massachusetts installed a Webasto AT5500 Air Top Heater which cost \$4200 and with installation and related costs came to \$7000 (Ex. GG, Dec. 30, 2014). Cay Electronics, Inc. of Portsmouth, Rhode Island installed a new A/C panel, a new D/C panel, a Victron Energy Quattro, inverter and much more for a total expense of \$25,963.14 (Def.'s Ex. HH, Jan. 30, 2015). Total expenses of the Defendant exceeded \$40,000.

Both experts testified exhaustively about every aspect of the Plaintiff's installation. They testified as to the wiring, the generator, the heater, the A/C Panel (with and without a voltage meter), the D/C Panel, the bonding of the bronze fittings through hulls, the generator exhaust, air-conditioning vent locations, batteries and their straps or lack thereof, corrosion if any, and other items as well.

In just about every instance, Mr. Thompson believed all work was done in an efficient and workmanlike manner, and Mr. Escalera testified that just about everything that was done was not in accord with ABYC standards and was not properly installed.

There was agreement on the fact that the A/C panel should have had a back cover, that there was no clear evidence of corrosion of the brass fittings, and that the location of the air-conditioning vent near the stairs was not a problem.

The Court felt that the evidence showed the generator exhaust vent location forward of the salon door posed more of a health and safety concern than did Plaintiff's expert Mr. Thompson. (It was later moved by the Defendant to a more aft position as recommended by Mr. Escalera.)

The Plaintiff in his Complaint seeks to recover over \$20,000 from the Defendant for the work done on the "Caroline." His suit is based on Book Account, Breach of Contract, Breach of the Covenant of Good Faith and Fair Dealing, and Unjust Enrichment.

In the summation of both counsel after a day and a half of testimony, each argued that the credibility of the Plaintiff and Defendant were paramount considerations for the Court in this case. Credibility is always important in every case and certainly is in this case.

The Court finds that the Plaintiff Jack Scott Weedon was a qualified marine equipment installer and was competent to perform the tasks contracted for with the Defendant. The Court believes he was not the best business manager, who applied himself to this task in a somewhat haphazard manner with regard to time management, business accounting and communication with the Defendant. The Court finds it is more probable than not that the Plaintiff did give some idea of the total cost of the job and estimate of time needed to the Defendant, despite the Plaintiff's testimony to the contrary. It is hard to imagine the Defendant engaging the Plaintiff

on this sizeable job without some indication of total cost and time needed to complete. The case is further complicated by the lack of a written contract and by the handwritten, somewhat jumbled, indication of time and materials finally given to the Defendant. The QuickBooks typed reports (Exs. 1-8) were not provided by the Plaintiff until litigation commenced. The Court finds that the extensive length of time to complete the project on the “Caroline” was occasioned by the Plaintiff’s sporadic work shifts, absences and vacations. The Court finds that the installation of the major items on the vessel was done in a workmanlike manner and was substantially performed by the Plaintiff by the final completion of the installation. The size of the vessel and the upgrades requested by the Defendant made installation of several major components difficult to place in small quarters.

The Court has noted some areas which required attention and remedy by the Defendant.

The Defendant Stephen Burchett, the Court finds, possessed more knowledge and had more experience with regard to the issues in this case than he acknowledged in his testimony. The Defendant lived year-round on a sailboat for eight years, was deeply involved in maritime industries for a long time, was an accomplished professional scuba diver operating a successful dive-related business.

He was assisted at the beginning of this case by one Anthony Porcino and later by Mr. Mark DePasquale, two individuals who, while not produced or further identified, were employed in some capacity in boatyards and the boating industry. Mr. DePasquale, it appears, was a so-called “project manager” who represented the Defendant in negotiations with the Plaintiff and who declared the bill of the Plaintiff to be “whacked” and drove this matter into a lawsuit. This allegation was not contested by the Defendant in this case.

It is also troubling that the Defendant on several occasions “whited out” the new market value and replacement value on surveys commissioned by the Defendant to increase insurance coverage on the “Caroline.” It is notable that after the installations by the Plaintiff, the vessel’s value more than tripled in market value and even more in replacement value, depending on which survey is considered (Ex. 4).

The Court believes the Defendant did ask for periodic bills and invoices and for a written contract from the Plaintiff; however, it is highly doubtful the requests were “incessant” and did not cause the Defendant to halt work or otherwise demand the contract from the Plaintiff. It is uncontested that the Plaintiff paid \$6000 initially to purchase the major components, including the heater recommended by Mr. Porcino. It is further agreed that when presented with the bill of \$17,370 which the Plaintiff discounted, the Defendant paid \$8685 for Plaintiff’s labor (Ex. 7).

Once the relationship between the Plaintiff and Defendant broke down, the Plaintiff engaged three major marine contractors, not to repair any deficiencies of the Plaintiff’s work, but to completely retrofit, replace and upgrade each of the major components installed by the Plaintiff including new batteries, A/C and D/C panels, heater, generator, inverter and Victron Energy Quattro, among many other items.

The activity took place between 2013 and 2015. The Court finds as a fact and as a conclusion of law that there is no credible evidence in this case to justify such a major overhaul and intrinsic upgrade of the components originally installed on the Defendant’s vessel.

The Court has concluded that the initial installations done by the Plaintiff were done in a workmanlike manner and the items installed were fit for the purpose for which they were intended. The Court has found that there were some problems in some areas of the work done by the Plaintiff, and that will be addressed by the Court.

There is no credible evidence offered in this case to support or justify the numerous changes and the expensive upgrades done to the Defendant's vessel. These changes and improvements, the Court finds, are the result of changes elected by the Defendant. It would be unconscionable to attribute these changes to the work of the Plaintiff. In effect, the "Caroline" went from the "African Queen" to the "Queen Mary" at the choice of the Defendant.

The Court finds that the credible evidence in this case and the preponderance thereof shows that the Defendant has paid to the Plaintiff \$6000 for the items purchased for installation on the vessel and \$8685 against a bill for labor on the vessel.

The Court finds as a fact that the amount due to the Plaintiff, taking into account the amounts already paid to the Plaintiff, amounts to \$19,625 (Exs. 1-8).

The Court finds that amount to be awarded to the Plaintiff, minus a setoff or credit to the Defendant in the amount of \$5000 to compensate for those items the Court found deficient in the Plaintiff's installation. Therefore, the final award to the Plaintiff is \$14,625 plus interest and costs.

The award to the Plaintiff is based on the Breach of Contract count. All other counts are denied and dismissed. The Counterclaims of the Defendant are denied and dismissed.

The request for attorneys' fees is denied in this case. This was a case in which reasonable minds may differ.

The parties may enter an order consistent with this Decision.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: Jack Scott Weedon, doing business as Eagle Marine Service v. Stephen Burchett

CASE NO: WC 2013-0398

COURT: Washington County Superior Court

DATE DECISION FILED: March 21, 2016

JUSTICE/MAGISTRATE: Darigan, J.

ATTORNEYS:

For Plaintiff: Maurice J. Cusick, Esq.

For Defendant: Giovanni La Terra Bellina, Esq.; Catherine A. Shaghalian, Esq.; Theodore Orson, Esq.