

STATE OF VERMONT
WINDSOR COUNTY, SS

William C. Berg
Plaintiff

v.

Richard Crocker Builders, Inc.
Defendant

SUPERIOR COURT
Docket No. 500-7-08 Wrcv

DECISION ON APPEAL

The above matter came on for hearing on appeal of a small claims judgment on September 18, 2008. Plaintiff/Appellant was present, pro se. Defendant/Appellee was represented by Amanda Rundle, Esq.

This appeal follows a decision of the Small Claims Court entered June 11, 2008 by Acting Judge Barry Polidor. The dispute arises out of the construction of a home on Andover Ridge in Andover, Vt. In the Small Claims Court the Plaintiff was seeking damages for defective construction of the roof. Defendant had counter-claimed for sums claimed to be due. Judge Polidor ruled in favor of Defendant on the defective construction claim and in favor of Plaintiff on the claim for unpaid sums. Plaintiff appealed the defective roofing claim. No appeal was taken on the counter-claim.

Appellant argues essentially two points on appeal. First he claims he was not afforded adequate time or opportunity to introduce evidence on the roofing claim. Second, he claims the court was in error in not finding the installation of the roofing shingles to be contrary to industry standards. This Court will address each of these contentions.

The hearing in the Small Claims Court took over one and one half hours. A majority of that time was spent on the counter-claim, which required attention to approximately 14 contract change orders and consideration of monies allegedly due pursuant to the contract as affected by the change orders. By necessity, consideration of those documents and related testimony was time consuming.

That a majority of the hearing time was spent on the counter-claim does not mean the Appellant's claim was given less than fair consideration. Appellant was allowed to introduce letters from the shingle manufacturer asserting failure to comply with industry standards, despite the hearsay nature of those documents. The introduction of those letters was within the discretion of the trial judge under rules pertaining to non-jury small claims matters. Appellant presented no expert testimony on the defective roofing claim.

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aside from these letters. The roofer who performed the shingle installation testified on Appellee's behalf that the shingles were installed correctly. The Court did not allow the introduction of an exhibit, apparently made by the shingle manufacturer, demonstrating proper shingle installation techniques or of certain photographs taken by Appellant.

Consistent with due process concerns, it is incumbent that the opportunity for a full and fair hearing be afforded. Notice and an opportunity to be heard are the essence of due process of law. *In re Hanrahan's Will*, 109 Vt. 108 (1937). Here, Appellant feels his claim was not given fair consideration. However, the lower court did consider all of Appellant's positions carefully. It was within the province of the trial court to control the method and manner of presentation of the evidence. *Children's Home v. State Highway Board*, 125 Vt. 93 (1965). The limitation or exclusion of some evidence does not equate with a denial of due process. Appellant was afforded a full opportunity to present his case.

There were irregularities with respect to the introduction of certain exhibits. It can not be determined whether certain documents in the Court's file were introduced by the trial court. For purposes of this appeal, this Court has considered those documents to have been introduced. In particular, the Court has reviewed and considered a document from Misty Pond Design, Inc. as if properly introduced.

The decision by the trial court not to admit photographs was with its discretion. Those photographs depicted the condition of shingles which had blown off the Appellant's house. That the shingles had blown off was not contested. The manner of their application also was not contested. As a result, the photos were not relevant to any fact in dispute.

The trial court also seemed concerned with the timing of inspection by the shingle manufacturer and with the timing of the writing and disclosure of those letters. Review of those documents clearly suggests to this Court that inspection of the Appellant's roof by the shingle manufacturer was conducted prior to removal and replacement of the roof in 2006. Further, that those documents were not provided to the contractor prior to the hearing, or that they may have been dated after the roof was actually replaced, does not impact upon their credibility in this Court's view. Appellant was under no obligation to provide those documents to anyone before the hearing and their writing need not be concurrent with the inspections they recount. However, even without those concerns, the trial court was free to find the testimony of the roofer more convincing.

It is not for this Court to reweigh the evidence on appeal. *Harrison v. Harrison*, 110 Vt. 254 (1939). The trial court based its decision concerning the roofing claim upon its finding that the roof was installed to industry standards. There was evidence in the record to support that finding, specifically the testimony of the roofer that he used standard industry practice to install the shingles in this instance. The weight to be given to evidence is a matter for the trial court. *Jeffords v. Poor*, 115 Vt. 147 (1947).

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That this Court might have decided an issue differently than the trial court is not the appropriate test; a trial court's findings must stand unless they are clearly erroneous. *In re Nash*, 158 Vt. 458 (1991). This means that findings must stand unless, taking the evidence in the light most favorable to the prevailing party, without modifying evidence, there is no evidence to support the findings. *Hoover v. Hoover*, 171 Vt. 256 (2000). Here there was evidence to support the court's findings concerning the installation of the roofing shingles.

Appellant, in essence, is asking this Court to reject the opinion found convincing by the trial court and adopt an opinion favorable to him. This Court is not at liberty to do so. Simply stated, the trial court believed the opinion of the roofer and did not believe the opinion of the shingle manufacturer. As the trial court, such was its province. *Landmark Trust (USA) Inc. v. Goodhue*, 172 Vt. 515 (2001).

For the reasons stated herein, the decision of the Small Claims Court denying the defective roofing claim and entering judgment for the Defendant/Appellee on that issue is **AFFIRMED**.

Dated at Woodstock this 18th day of September, 2008.



Harold E. Eaton, Jr.
Superior Court Judge

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WINDSOR COUNTY CLERK