

STATE OF VERMONT

SUPERIOR COURT
Orange Unit

CIVIL DIVISION
Docket No. 165-7-10 Oecv

Guy O'Tierney
Plaintiff

v.

Daniel J. Boone
Defendant

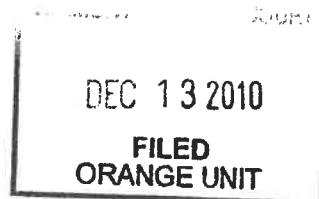
DECISION ON APPEAL

Plaintiff/Appellant claims error in the trial Court's decision awarding him \$802.50 in damages plus costs arising out of a contractual dispute between the parties. On appeal O'Tierney argues the Small Claims Court was in error in finding there was no "time of the essence" term in the contractual agreement; that damages were improperly disallowed; that the Defendant was never instructed to stop working; and that the pre-approval of work was always required under their agreement.

The Court has reviewed the lengthy hearing held in the Small Claims Court and the findings provided on the record by Judge Devine.

It is not for this Court to reweigh the evidence on appeal. *Harrison v. Harrison*, 110 Vt. 254 (1939). The trial court based its determination on the evidence as a whole. The Plaintiff's view of the evidence was contradicted in large part by the Defendant. The Court was correct that no specific contractual document was ever executed by the parties. The Court found a contract existed from the series of emails between the parties, but that some terms were left unspecified. Specifically, the Court determined based upon the evidence that the parties had not agreed to a "time is of the essence" clause, or to an overall budget for the work to be done. This Court's review of the documents does not demonstrate any error in that conclusion. The parties had agreed upon general terms of the contract but the scope of the work became much greater than the parties had originally contemplated. Defendant testified he was told to stop work when Plaintiff ran short of money. That Plaintiff does not agree he ever said that does not mean it was error for the Court to believe Defendant's testimony on that point.

Defendant testified he was told by Plaintiff not to do any additional work beyond lawn mowing after some other painting and repair work had been done. Whether this was a "stop work" order or an exercise of Plaintiff's right to approve of work before performance is a distinction without a difference. There came a point in the relationship between these parties where either Defendant was told to stop all work except mowing or Plaintiff refused to authorize any work except mowing. The end result was the same.



On Plaintiff's claims for additional damages, the Small Claims Court found that Plaintiff had not met his burden of proof to show the damages claimed for work done by him and his family was caused by Defendant's breach. This determination was made based upon the Court's review of the photographic and other evidence and its determination that the work done by third parties alone properly reflected the damages caused by Defendant's breach.

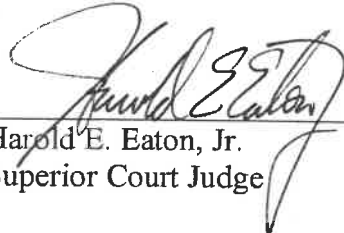
The weight to be given to evidence is a matter for the trial court. *Jeffords v. Poor*, 115 Vt. 147 (1947). The court did not agree with Plaintiff's interpretation of the contract or the evidence he produced to support certain aspects of his damages claim. In finding a breach by Defendant, the Court took a narrower view of the breach by Defendant than Plaintiff did. There was evidence to support the conclusions reached by the Court in this regard, in particular the testimony of Defendant, disputed though it might have been.

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 its interpretation of the contract.

Appellant, in essence, is asking this Court to reject the interpretation of the evidence found convincing by the trial court and adopt an interpretation favorable to him. This Court is not at liberty to do so. Simply stated, the trial court concluded the evidence supported only the extent of breach and damages as found by the Court, not as argued by Plaintiff. As the trial court, such was its province as the evidence was in dispute between the parties. *Landmark Trust (USA) Inc. v. Goodhue*, 172 Vt. 515 (2001).

No error in the Small Claims decision is found to appear. The judgment of the Small Claims Court of July 26, 2010 is **AFFIRMED**.

Dated at Chelsea this 13th day of December, 2010.



Harold E. Eaton, Jr.
Superior Court Judge

