Vermont Superior Court
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Windham Unit

VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case No. 22-CV-03302

Sprague Stonework, LLC v. Seth Jacoby

DECISION ON THE MERITS

Plaintiff seeks to recover an unpaid balance on a fixed price contract for stone work done on Defendant's real estate. Defendant claims that one part of the work called for in the contract was not done, and that there were deficiencies in the work.

A bench trial was held on October 5 and 15, 2026. Plaintiff LLC was represented by Attorney Lance C. Shader. Steven Sprague, principal of the Plaintiff, was present. Defendant Seth Jacoby was present and represented himself.

Based on the evidence the court finds credible, the court makes the following Findings of Fact and Conclusions of Law.

Findings of Fact

Steven Sprague has been a dry stone wall builder for 45-48 years. He does between 100 and 150 projects a year, mostly in the Mount Snow area although also in Brattleboro and New Hampshire, and operates through his business Sprague Stonework LLC. His business has a shop and an office. He has other people working on various aspects of the projects, including at times his son Steven, who grew up working with his father and has been building stone walls for 28 years. Steven[1] is not an employee of Sprague Stonework LLC; he is self-employed. He and his father help each other periodically with their respective projects as needed, as they previously worked together and are family. When Steven does work on his father's projects, he sometimes does it for no pay, sometimes he is paid as an independent contractor, and sometimes he receives in-kind benefits such as use of a truck or equipment.

Seth Jacoby, a resident of Massachusetts, purchased a property with a dwelling house in Wilmington in 2021. The front of the main level of the house had a wooden deck that extended away from the house and was one story above the ground. One exited the central door onto the deck and there were stairs leading from the deck down to the ground. On the south side of the

[1] Hereinafter Steven Sprague the father who owns the LLC will be referred to as Mr. Sprague. The son Steven Sprague will be referred to as Steven.

house there was a door that led from the main level to a portion of the deck that wrapped around the corner from the front. On the north side of the house there was no deck. There was a door to the house on the north side. The photos in evidence are unclear but it appears that the door was at ground level leading out from the lowest level of the house to the outside.

Mr. Sprague and Mr. Jacoby met in January of 2022 at the property. There was snow on the ground. Mr. Jacoby was interested in replacing the wooden deck with a stone patio fronted by a two-tiered stone wall with stone steps leading down to the ground at the front of the house. The patio would wrap around to the door on the south side with a shorter wall and shorter steps leading to the ground on that side where the ground level was higher than in the front. There would be a hot tub on the patio in front of the house at the northerly end of the patio. Because of the snow the ground was not exposed so it was difficult to be exact about a plan. There was discussion about a stone walkway leading to the door on the north side of the house.

After their meeting, Mr. Sprague had a proposed contract prepared by a third party service used by Sprague Stonework. It was sent to Mr. Jacoby electronically. The total cost would be $80,000.

On January 28 Mr. Jacoby texted Mr. Sprague as follows: “Hey Steve. Thanks for the quote. I don’t think I can afford all of this at one time. What do you think about doing everything but the patio stone and I’ll just plant grass for a year or two and we’ll get to the stone done at a later date?”

Mr. Sprague responded, “We can do that. I removed the patio and sent updated version.”

[A revised contract was sent with a total cost of $40,500. (Exhibit 2).]

Mr. Jacoby followed up with this message: “Thank. So this proposal basically wraps around the house to each side door with about the same footprint as the current deck?”

Mr. Sprague responded, “It does. It also includes the wall up steps in both locations, it includes the steps, it includes the wall around the hot tub. The pad, the demo, the backfill and drainage; electrical conduit.”

Mr. Jacoby wrote “Sounds like a good plan.”

The “patio stone” Mr. Jacoby wanted eliminated was very expensive flagging stone to be used for the surface of the patio that replaced the deck. Mr. Sprague testified credibly that it was also originally planned to be used for stone steps leading to the door on the north side of the house.

At no time was a design plan, or even a sketch, prepared showing the proposed work in relation to the house. The contract is one page with approximately only a half-page of content that refers generally to demolition (of deck), retaining walls in two-tier system, including around hot tub, retaining walls including drainage, backfill, pouring concrete. There is no complete

description of the design of the work. Mr. Jacoby signed it on January 28, 2022. Both parties consider it a fixed price contract.

Mr. Sprague ordered the necessary material and Mr. Jacoby paid a deposit of $20,000.

In the spring Sprague Stonework did the demolition of the deck. Mr. Sprague, Mr. Jacoby, and Steve all met on site. They discussed and agreed to add 6 feet of stone wall, not in the original plan, at the front. They discussed the location of the hot tub on the patio and that access to it for the mechanicals would come from the north side. There is no evidence that they discussed any stone wall work on the north side of the house where there had been no decking. Steven took measurements and put paint on the ground to define the location of the work. Mr. Jacoby assumed responsibility for installing a gas line within the stone wall for a fireplace.

Work on the project began and took place in June, July, and August. During the work, Sprague Stonework employees or subcontractors met with Mr. Sprague at the shop every morning before going to the property to work. Steven met with or talked with Mr. Sprague as needed. He went to the site often and was the only person to do the building of the stone walls, although he also did other work described below. Neither Mr. Sprague nor Mr. Jacoby visited the property during the period the work was done.

Mr. Sprague had received from Mr. Jacoby a set of specifications from the hot tub company and then a second revised set of specs, which he shared with Steven. The Sprague Stonework crew built a frame for the hot tub, after which Steven poured concrete to create the pad that needed to be underneath the hot tub, making it much thicker than the specifications called for due to the cold winter Vermont weather. He also installed a drain pipe, called for in the specs, in the pad. He was not involved in building the vault to house the hot tub. He installed the gas line for the fireplace. Mr. Jacoby did not do that as promised but it needed to be done during the work.

On August 19, Mr. Jacoby texted Mr. Sprague and asked how the work was going. Mr. Sprague responded by sending three photos, to which Mr. Jacoby responded, “Wow, this is looking great.” At the end of the month, Mr. Sprague sent Mr. Jacoby the final bill, which was for $26,094.88. Mr. Jacoby texted back, “we need to discuss a few things.” He also communicated with the Sprague Stonework office indicating he was not happy with the work.

Mr. Jacoby came to Vermont and Steven went over to the site to meet with him. Mr. Jacoby raised two issues: that the hot tub was located 2” off, and something about stone steps which Steven could not recall when he was deposed. Mr. Jacoby did not provide testimony about that conversation. Following this conversation Steven and other workers went to the site to try to resolve the complaints. Mr. Jacoby saw them on a camera he had installed on site and was angry they were there and told them to leave and not come back.

On September 2, Mr. Sprague texted Mr. Jacoby offering to come and make requested changes. On September 7, Tracy from the Sprague Stonework office texted Mr. Jacoby asking

for a specific plan about what he would like remediated. Mr. Jacoby did not provide that information and prohibited anyone from Sprague Stonework from coming to his property. He later had the hot tub dug out and he and his son moved it to a preferred location. Mr. Jacoby testified that he paid $2,000 for excavation work to dig out the hot tub.

Mr. Jacoby claims the following omission and deficiencies in the work:

- Failure to wrap the stone wall around the north side of the building
- Improper location of the vault
- Improper location of installation of the drain pipe in relation to the hot tub
- A bow in one of the stone walls

Alleged failure to wrap the stone wall around the north side of the building

Mr. Jacoby alleges that the $80,000 proposed contract included the stone wall wrapping around to the north side of the house (as well as to the south side). No copy of that contract was put in evidence. Mr. Jacoby claims that the language in the above-quoted text exchange refers to and incorporates reference to stone wall work on the north side that was included in that proposed contract: "So this proposal basically *wraps around the house to each side door* with about the same footprint as the current deck." (Emphasis added.) Mr. Sprague denies that any stone wall work on the north side of the house was part of the project and relies on the following portion of the Jacoby question, which he confirmed in the exchange, to mean that the contract was only for stone work that would replace the decking: "So this proposal basically wraps around the house to each side door *with about the same footprint as the current deck*." (Emphasis added.) In a followup text in the exchange he referred to work on steps "in both locations," by which he claims reference to the two sets of steps on the front and south sides. Mr. Sprague testified that when the "patio stone" was eliminated, that automatically eliminated the "patio stone" (expensive flagging) stone walkway leading to the door on the north side of the house.

The court finds that the meaning of the text exchange is ambiguous. The ambiguity is created in the first instance by the lack of a written design plan for the project but also by a lack of clarity about which doors were meant by the phrase "each side door" in the text exchange that was supposed to provide clarification. Mr. Jacoby construes it to refer to the side doors at the north and south sides of the house. Mr. Sprague construes it to refer to doors on the two sides of the house that led to the deck. His followup text appears to refer to steps from *two* doors (use of the word "both") and the two doors that opened on to the deck were those on the front (west) and south sides of the house.

Other evidence supports Mr. Sprague's position. First, the essential project was to replace the wooden decking with a stone patio fronted by a stone wall and related steps. There was no decking on the north side of the building at the time the agreement was made. To add stone wall work on the north side would have been to add an additional component to the essential project of replacing the wooden deck with a stone patio. No credible evidence shows that any such work

was part of the agreed upon plan. The words following "each side door" in Mr. Jacoby's sentence in the text are "*with about the same footprint as the current deck*." This favors construing the sentence to refer to stone work that would replace the "footprint" of the deck, and does not suggest that the new stone patio or a stone wall would expand the area beyond what the deck had been.

Second, when Mr. Sprague and Mr. Jacoby and Steven met on site after demolition and prior to the beginning of the work, they reviewed what the project would be on site and Steven marked paint on the ground to show locations of various points. There is no evidence that he placed marks consistent with stone wall work on the north side of the building. Mr. Jacoby offered no evidence to contradict Steven's evidence on this point.

Third, the parties agreed that access to the mechanicals for the hot tub would be on the north side. Because of the location of the door, the grade of the ground, and the need to access hot tub mechanicals from the north side, a plan taking all those factors into account would have been needed if stone wall work was intended on the north side. There is no evidence of any discussion of such a plan, nor of any stone work to be done at that location or how it related to the work off the front of the house. By contrast, there was clearly specific discussion of extending one of the stone walls by 6 feet, location of the hot tub, and the addition of a conduit for a gas line.

Mr. Jacoby's position that there was a contractual obligation on the part of Sprague Stonework to wrap the stone wall around the corner to include the north side of the house relies wholly on his interpretation of the text exchange. Other evidence supporting such an interpretation is lacking. The evidence shows that when the parties met on site and reviewed the project as it would be on the ground, there was no plan made for stone wall work on the north side. Mr. Sprague's testimony that elimination of the expensive "patio stone" included elimination of patio stone steps leading to the door on the north side is credible.

For those reasons, the court finds that the contract did not include an obligation to do stone wall work on the north side of the house.

Alleged improper location of the vault

When Mr. Sprague, Mr. Jacoby, and Steven met before the work began, they discussed and determined the location of the hot tub. After Mr. Jacoby came to the property and saw the completed project, he claimed that it was located 2" off. The court has reviewed all of the evidence and cannot conclude that Mr. Jacoby has proved that Sprague Stonework improperly located the vault for the hot tub. Mr. Jacoby's claim on this issue is simply vague.

Alleged improper location of installation of the drain pipe in relation to the hot tub

When Steven poured the concrete for the pad for the hot tub, he installed a drain pipe in the pad. The pad is apparently larger than the vault or hot tub. When the project was complete,

the tub was not directly over the drain pipe. Mr. Jacoby claims that the specs from the hot tub company specify that the drain pipe should be directly under the hot tub. The court cannot find that the specs are as specific about that as Mr. Jacoby alleges. They show vault drainage located on a surface that appears to be what Steven constructed as the pad, and the picture shows the "vault drainage" mechanism on an underlying pad but offset from the "spa frame." (Exhibit AAM, page 2.) It is not proven that it was in an improper location.

Mr. Sprague, Steven, and Plaintiff's expert John Hall are all highly experienced stone wall builders with extensive knowledge of drainage and the relationship between drainage and stone, as good drainage is needed in order to maintain the integrity of stone walls. They all testified credibly that as constructed, drainage from the hot tub would function well, especially because the entire area under and surrounding the hot tub consisted of crushed stone that facilitates drainage.

For these two reasons, the court cannot find that Mr. Jacoby has proved that the installation of the drain pipe was faulty or likely to malfunction. Moreover, as to the location of the vault and drainage pipe, Mr. Jacoby rebuffed Sprague Stonework's offer to return to the property to accommodate his dissatisfaction. It does not make sense for him to be entitled to a financial offset from the cost of work performed under those circumstances.

Bow in one of the stone walls

It is undisputed that one of the constructed stone walls has a bow or curve of up to 5 inches. Mr. Jacoby alleges that this was faulty workmanship. When the parties met on site before project work began, they observed an object in the ground at a spot where one of the stone walls would be. It is unclear exactly what it is, as it has been variously described by different people as a culvert, PVC pipe, well head, cistern, or vent. In any case, it was a structure in the ground with some apparent functional purpose that would have to be accommodated in connection with constructing the stone wall designed for that location, and there was discussion about that need for accommodation. Mr. Sprague testified credibly that in the discussion about how to handle it, Mr. Jacoby said "use your judgment." Mr. Jacoby did not refute this. As to the result that there is a curve in one of the walls, expert witness John Hall testified credibly that a bend in a stone wall is not a defect and can actually strengthen the integrity of a stone wall. Given the fact that this item in the ground was known to all parties in advance as a situation that would have to be accommodated and there is no evidence that it is a defect and it may even enhance the integrity of the wall, Mr. Jacoby has not proved that this condition is a defect of construction.

Conclusions of Law

The parties agree that they had a fixed price contract, although they disagree as to whether any stone wall was to be constructed on the north side of the house. The Vermont Supreme Court has ruled that "[w]hen construing a contract, we must look to the intent of the contracting parties, 'which we presume is reflected in the contract's language when that language

is clear.'" *Madowitz v. Woods at Killington Owners' Ass'n,* 2010 VT 37 at ¶¶ 12-13. Citation omitted.)

In this case the written contract itself is sketchy and unclear on the issue and there is no design plan depicting the work to be done. There are differing interpretations of the meaning of a sentence in a text message seeking clarification about the effect of a modification to a prior proposed version of the parties' contract, the terms of which are unknown and therefore unclear.

The Vermont Supreme Court established guidelines for addressing ambiguity in contract documents in the key case of *Isbrandtsen v. N. Branch Corp.*, 150 Vt. 575 (1988):

> The question of whether a contract term is ambiguous is a matter of law for the court to decide. *Trustees of Net Realty Holding Trust v. AVCO Financial Services of Barre, Inc.,* 144 Vt. 243, 248, 476 A.2d 530, 533 (1984). A provision in a contract is ambiguous only to the extent that reasonable people could differ as to its interpretation. *Id.* . . .Before extrinsic evidence may be used to aid in the construction of a written instrument, ambiguity must first be found."

Isbrandtsen at 577. (Citations omitted.)

The Court then reviewed approaches and reasoning adopted by other courts and commentators and concluded as follows:

> we believe it appropriate, when inquiring into the existence of ambiguity, for a court to consider the circumstances surrounding the making of the agreement. Ambiguity will be found where a writing in and of itself supports a different interpretation from that which appears when it is read in light of the surrounding circumstances, and both interpretations are reasonable. . . .If ambiguity is found on that basis, the court may then rely on subordinate rules of construction in order to interpret the meaning of the disputed terms. . . . If, however, no ambiguity is found, then the language must be given effect in accordance with its plain, ordinary and popular sense.

Id. (Citations omitted).

The Court proceeded with its analysis in that case, concluding that "[i]n making its determination as to ambiguity in the instant case, the trial court properly considered evidence as to the circumstances under which the conveyance was made." *Id.* at 580.

The contract in this case does not have sufficiently clear language or design portrayal to give it effect "in accordance with its plain, ordinary and popular sense." It is ambiguous for two reasons: first, there is no sketch or design plan or text that specifically describes or visually portrays the work to be done nor any complete written description with specifications, and second, the text exchange that was apparently intended to constitute clarification is itself ambiguous about what is meant by "to each side door."

As described above, the court resolves the ambiguity through analysis of the facts and circumstances surrounding the making of the contract as called for in *Isbrandtsen.* Accordingly, based on the specific evidentiary findings, the court concludes that the contract did not include the obligation to construct any stone wall on the north side of the house.

In addition, Mr. Jacoby has not shown with evidence that the hot tub was located in the wrong place or that there were any deficiencies with respect to the hot tub drainage or bow in one of the stone walls.

Summary

Accordingly, Plaintiff has proved its claim for breach of contract and is entitled to judgment in the amount of $26,094.88. This is a sum certain so Plaintiff is entitled to interest from the date the payment was due.

Prompt Pay Act:

The court finds that the balance due on the contract was wrongfully withheld from October of 2022 to the present, and therefore Plaintiff is entitled to a penalty of one percent per month on the above amount. 9 V.S.A. § 4007 (b).

Plaintiff is the substantially prevailing party and is therefore entitled to recover attorney's fees. 9 V.S.A. § 4007 (c). Any request for attorney's fees shall be filed within 14 days, supported by time and billing records. Any objection shall be filed within 14 days of such filing.

Plaintiff's attorney shall prepare a proposed form of judgment. Any objection shall be filed within 14 days of such filing.

Electronically signed November 12, 2026 pursuant to V.R.E.F. 9 (d).

Mary Miles Teachout
Superior Judge (Ret.), Specially Assigned

Carolyn Partridge
Assistant Judge