Vermont Superior Court
Filed 09/18/26
Washington Unit

VERMONT SUPERIOR COURT
Washington Unit
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CIVIL DIVISION
Case No. 26-CV-02096

Renee Grzankowski et al v. Hollace Pratt et al

ENTRY REGARDING MOTION

Title: Motion to Dismiss Plaintiffs' Complaint Pursuant to V.R.C.P. 12 (B)(6) (Motion: 1)
Filer: Erin Miller Heins, Esq.
Filed Date: July 21, 2026

The motion is DENIED.

The present motion concerns two discrete challenges to Plaintiff's complaint. First, Defendants seeks to dismiss Plaintiff's claim of consumer fraud for failure to state a claim because the allegations concern future performance on a contract with a change order provision. Second, Defendants seek to dismiss Hollace Pratt as an individual defendant since he was not a party to the contract but merely acted as agent for Pratt Custom Carpentry, LLC. For the reasons set out in this decision, the Court finds that the motion is premature as the facts of the case are susceptible to multiple interpretations, and the Court cannot, as a matter of law rule out the claim of consumer fraud at this juncture. By extension, the Court finds that Defendant Pratt, as an individual, remains potentially liable as an agent is liable in tort for his actions, even if they are performed on behalf of a principal, such as the LLC in this case.

Standard of Review

Dismissal for failure to state a claim upon which relief can be granted is appropriate "where there exist no facts or circumstances that would entitle the plaintiff to relief." *Amy's Enterprises v. Sorrell*, 174 Vt. 623, 623 (2002). The Court must assume that all factual allegations contained in the complaint are true. *Richards v. Town of Norwich*, 169 Vt. 44, 48 (1999). "The purpose of a motion to dismiss for failure to state a claim is to test the law of a claim, not the facts which support it." *Levinsky v. Diamond*, 140 Vt. 595, 600 (1982) (quotations omitted), overruled on other grounds in *Muzzy v. State*, 155 Vt. 279, (1990).

Background Facts

The following facts are derived exclusively from Plaintiff's complaint and any reasonable inference contained therein for the purposes of the present motion to dismiss. *Richards*, 169 Vt. at 48 –49.

Plaintiffs Scott and Renee Grzankowski contracted with Pratt Custom Carpentry, LLC, a limited liability company owned and operated by Hollace Pratt in the early spring of 2022 to perform extensive renovations on their house in East Calais, Vermont. The parties agreed on an extensive scope of work and a fixed price of $679,893. The 8-page contract consists of following documents:

- one-page of terms (standard of work, payment price and change order provisions and deposit requirements);
- one page describing the payment disbursement schedule;
- three pages detailing the job description/breakdown of work;
- one page scope of work description;
- one page breakdown of specific subcontractor and system costs; and
- one page of signatures

Pltf. Ex. A. Plaintiffs characterize this agreement as a "fixed price" contract, and the Court, for purposes of the present motion, draws the same inference based on these terms. The agreement between the parties outlines an entire scope of work for the project, breaks the project into various segments, allocate costs for various stages and subcontractors, and purports on its face to be a "project package."[1] Plaintiffs understood and Defendant appears to have promised that the

[1] The alternative to a fixed price contract is generally a time and materials contract where the parties would agree upon the scope of the project, might include a breakdown of work but would allow the contractor to invoice for all time and materials actually expended. See *Muzzy v. Curtis*, 127 Vt. 516, 518 (1969) (discussing the different implications of the two types of contracts). There is an inherent tension between these two types of contracts. Owners often want a fixed price for budgeting and price control purposes. Contractors tend to favor time and materials as it protects them from being locked into a price that the actual costs may exceed. For courts the difference between the two types of contracts is generally one of risk. In a fixed price contract, the contractor takes the risk that his or her estimates are correct and that the work can be done within the set price. In time and materials, the owner takes the risk that the contractor has made a generally accurate estimate and that they can perform the work in a timely and reasonable manner consistent with that estimate. A third type of construction contract known as "costs plus" contracts exist where the contractor bills time and materials but is incentivized with a percentage of the costs to keep the work within the scope of the estimate. See *Wells v. Carlisle Tire Corp.*, 120 A. 153, 155 (Conn. 1923) (detailing agreement where contractor would receive 25% of any cost savings in addition to his time and materials if he brought in the project under the estimate).

price of $679,893 would be all-inclusive as the start-to-finish price for the renovation project as defined by the scope.

In this respect, the existence of provisions for change-orders does not alter the fixed price nature of the contract but can be seen as consistent with this concept. Renovation projects by their nature always encounter unforeseen issues (a rise in material costs, an unexpected defect, an unexpected issue with an installation). Once the project begins, an owner may change their mind about a feature or elect to alter the build out. In this respect having a change-order provision allowed the parties to shift and alter the scope or nature of the project to address the unforeseeable and unexpected in a consistent manner and minimize the risk either that the owner was locked into one design or that the contractor would be on the hook for unplanned costs. In this case, the language of the change order suggests any deviation from the fixed price would be subject to review and mutual approval. Then key language states: "Unforeseens or changes (ADD ONS) will be charged hourly @ $55/hr. PCC llc will inform clients of reason and proposed cost/time before any *Change Order* work is done." For purposes of the present motion, the Court understands this to have been a limitation on any time and materials work by Defendants and required the parties to effectively have negotiated and come to mutual agreement before such alterations would have been implemented. Such circumstances support the characterization and understanding that this was a fixed-price contract as a matter of fact for purposes of Rule 12(b)(6).[2]

In June 2022, Defendants began work on the renovation. Despite initial representations that the project could be completed by November 2022, Pratt Carpentry was still working on the project into the spring of 2023. In April, Pratt Carpentry stopped work and left the job site. At that time, Plaintiffs estimate that only 75% of the job had been completed. It is unclear from the pleadings precisely how much of the contract price Plaintiffs paid to Pratt Carpentry, but the Court infers that it was a majority of the amount as the contract calls for $495,924 to be paid by the time the project was 70% completed, and Plaintiffs state in the complaint that they made all required payments in a timely manner.

[2] The complaint is silent as to whether any change-orders were executed, and if they were, whether they were reasonable or not. Such facts are the purpose of discovery and can be incorporated into either a renewed Rule 12(b)(6) motion that seeks to incorporate discovery and go beyond the pleadings or a motion for summary judgment.

Following Pratt Carpentry's departure, Plaintiffs completed the renovation themselves with the assistance of other contractors and subcontractors. This work cost $420,969 to bring the project to completion. It is unclear from the complaint how much of this amount constituted work to undo or repair allegedly defective work. It is also unclear the precise amount that this exceeds the original contract price. Conservatively, it appears that $183,969 would have been left on the contract, taking Plaintiffs' representation regarding the payments as true. That would represent $237,000 in overage costs. This calculates out to approximately 34% of the original contract price.

Vermont Consumer Fraud Claim

Plaintiff's consumer fraud claim is premised on the disparity between the contract price and what it actually cost to complete the renovation. Plaintiffs contend that Defendants knew or should have known that the fixed price of $679,893 was insufficient at the time of contract formation and that their representation to the contrary induced Plaintiffs to enter into the agreement. Plaintiffs point to the large difference between Defendants' price ($679,893) and final total price (approximately $916,893) as evidence of a wide disparity, which constitutes a material misrepresentation that caused them to enter into the contract and suffer harm from delays, lack of financing, and other unanticipated costs.

Defendants' motion notes that mere failure to perform on the contract within the timeframe or parameters does not constitute consumer fraud. *Winey v. William E. Dailey, Inc.*, 161 Vt. 129, 133 (1993). The party defaulting on the contract must know or should know at the time that the representation is made that the representation is false. Id. at 133–34; see also *Carter v. Gugliuzzi*, 168 Vt. 48, 56 (1998) (laying out the elements of representation, reasonable interpretation, and reliance in consumer fraud). Therefore, a bid that is markedly lower can constitute consumer fraud if the bidder knows at the time that he or she is materially underbidding in order to win the contract. *Winey*, 161 Vt. at 134 ("In such circumstances [materially understating a bid by $55,000], a misrepresentation of defendant's opinion can be actionable.").

Defendants rest their argument against Plaintiffs' consumer fraud claims as a matter of law on two points. First, they argue that the change-order provision of the contract allowed Defendants to exceed the original price of the contract. This, by extension, modified the contract

from a promise to complete the project for a fixed price to a promise to complete the contract for a fixed price, subject to any change orders. The problem with this first point is two-fold. As noted above, there is no mention of any change-orders in the complaint. While evidence of how the work unfolded may undermine Plaintiffs' contention that Defendants purposely underbid the project (particularly if there is evidence of multiple change-orders reflecting unforeseens and add ons), but at this stage, there is no such evidence. There is only the contention that despite the fixed price, Defendants were only able to complete 75% of the project without asking for more money. The other problem is the size of the disparity. While the Court cannot put a fixed number on what constitutes a material overrun, the contention that Plaintiffs incurred a 34% cost overrun suggests that, short of some modifying evidence, a serious flaw in the original price. Under the standard of a Rule 12(b)(6), the Court cannot conclude as a matter of law that the change-order provision is the modifying provision that Defendants contend it to be, and there is a plausible factual scenario where Plaintiffs can demonstrate these high-cost overruns constitute expenses that should have been included in the original contract price as foreseeable expenses.

Defendants' second argument concerns the lack of any contention in the complaint that the original bid was part of a scheme to defraud. This statement misstates the standard of the consumer fraud act, which only requires a party to make a misrepresentation that is reasonably interpreted by the other party and induces the other party to act or commit to the agreement. *Winey*, 161 Vt. at 134–35; see also *Carter*, 169 Vt. at 56 ("Furthermore, the Act 'does not require a showing of intent to mislead, but only an intent to publish the statement challenged.'") (quoting *Winton v. Johnson & Dix Fuel Corp.,* 147 Vt. 236, 244 (1986)). The portion of *Winey* concerning a scheme to defraud quoted in Defendants' brief concern common law fraud claims. See *Winey*, 161 Vt. at 133 (addressing common law fraud claim). While the Vermont Supreme Court has required evidence of a "scheme to defraud" in the consumer fraud context, it has done so primarily where the underlying conduct was either the proffer of opinion or professional advice, rather than entrepreneurial conduct. *Rodrigue v. Illuzzi*, 2022 VT 9, ¶ 32. In this case, Defendants offered more than opinion. They made a promise to complete a specifically detailed renovation job for a fixed amount. They represented that such work could be done within the parameters in the agreement, and Plaintiffs contend that these parameters were materially misstated. As such, Plaintiffs do not have to allege a scheme to defraud or to place the misrepresentation within such a scheme as the misrepresentation goes beyond professional

advice and opinion into an entrepreneurial action of inducing Plaintiffs to hire and use Defendants as their contractor and builder.

These facts are sufficient as a matter of law to create a limited claim of consumer fraud for purposes of the present motion, the Court understands this claim to be that Defendant Pratt Carpentry materially misrepresented the costs and work needed to perform the renovation project, that Plaintiffs reasonably interpreted the contract price and scope of work as a fixed-price contract that would encompass all of the cost necessary to complete or substantially complete the work, and that they signed the agreement, hired Pratt Carpentry, and obtain only the necessary financing based on these statements. Under *Winey* that is enough to survive a motion to dismiss on the consumer fraud claim. Therefore, Defendant's motion to dismiss Plaintiff's consumer fraud claim is **Denied.**

Hollace Pratt as Defendant

The other relief Defendants seek in their motion is to dismiss Hollace Pratt as a defendant. Defendants note that the contract and all relevant documentation make clear that the contract in this case was between Plaintiffs and Pratt Custom Carpentry, LLC. Since Mr. Pratt was not personally a party to the contract, he cannot be held personally liable since at all relevant times, he was acting as an owner/agent of the LLC who was the real party in interest.

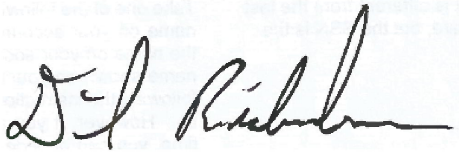
Plaintiffs concede that there is no breach of contract claim against Mr. Pratt. Instead, they contend that the Consumer Fraud claim should extend to him since Mr. Pratt made the statements on which the claim is premised. Even if Mr. Pratt were acting entirely as an agent for Pratt Carpentry, which the complaint does not appear to dispute, he is still, as an agent, liable for tortious actions toward third parties. See Restatement (Third) of Agency § 7.01 ("An agent is subject to liability to a third party harmed by the agent's tortious conduct."); see also *PH West Dover Property, LLC v. Lalancette Engineers*, 2015 VT 48, ¶ 10 (finding a real estate agent can be liable under a consumer fraud claim for misrepresenting or omitting facts); *Polonetsky v. Better Homes Depot, Inc.*, 760 N.E.2d 1274, 1278-1279 (N.Y.2001) (finding corporate officer can be subject to individually liability for consumer fraud committed in his capacity as an agent of corporation).

As with the previous analysis, the Court is limited in this case to strictly the facts of the complaint. To the extent that Plaintiffs have alleged a claim of consumer fraud that survives the motion to dismiss and to the extent that Mr. Pratt participated in such actions, even to the extent that he was acting as an agent of the LLC, he remains potentially liable, and the motion to dismiss Mr. Pratt as a defendant is **Denied.**

ORDER

Based on the foregoing, Defendants' motion to dismiss is **Denied**. The Court will set this matter for a preliminary status conference.

Electronically signed on 9/16/2026 6:45 PM pursuant to V.R.E.F. 9(d)



Daniel Richardson
Superior Court Judge