DAVID SCOTT RODGERS : NUMBER: 534,041-B

AND TARA RODGERS

VERSUS : FIRST JUDICIAL DISTRICT COURT

CHRIS BARNETTE, RON : CADDO PARISH, LOUISIANA

GIPSON, AND RON GIPSON

CONSTRUCTION, INC.

 **REASONS FOR JUDGMENT**

 **ON LIABILITY**

Trial was held on November 9, 2011. The Court heard testimony from David Scott Rodgers, Tara Rodgers, Chris Barnette, Ron Gipson and David Leeth. Numerous exhibits were admitted as evidence, particularly for consideration of the liability analysis are the contract between the Rodgers and Mr. Barnett, photographs of the construction, permit of the City of Shreveport, and an extract of the Shreveport, Louisiana, Code of Ordinances, Article VI, Sections 42-151 through 42-159. In addition, the undersigned judge, along with the attorneys, inspected the house located at 460 College Lane. For reasons which follow, the Court concludes that the plaintiffs have carried their burden of proof in establishing liability of Christopher Barnett, Ron Gipson and Ron Gipson Construction, Inc.

 **LIABILITY OF CHRIS BARNETTE**

The causes of action asserted by the plaintiffs against Chris Barnette are in contract and tort. They seek rescission of their contract with Barnette, a return of all money paid to him as well as damages due to Barnette’s fraudulent conduct–specifically that his fraud vitiates their consent in the formation of the contract. They further allege breach of contract because of the extremely shoddy workmanship by Barnette. Finally, they allege intentional tortious conduct– particularly, fraud. The law demands–and this Court absolutely expects–a plaintiff alleging fraud to specifically plead it and to then prove it. This Court is convinced that the plaintiffs have proven fraud by Barnette from both a contract perspective as well as a tort context. The Court fully accepts the testimony of the plaintiffs as to what Mr. Barnette told them in January 2009 and their reliance thereon. Mr. Barnette’s fraudulent conduct continued throughout the spring of 2009, including his misrepresentations to the City of Shreveport, Department of Operational Services, on March 18, 2009 and thereafter included refusal to pay subcontractors, such as Bevel Plumbing Company (as reflected by the lien demand letter of July 30, 2009) and refusal to obtain appliances and other items for which the plaintiffs had previously paid Barnette.

After hearing the testimony and inspecting the premises, this Court is convinced that Barnette’s performance, as reflected by the extremely poor and shoddy workmanship, also constitutes a breach of contract entitling the plaintiffs to a return of the purchase price. Finally, Barnette’s pattern of conduct constitutes tortious fraud under our law.

The Court concludes that the contract between the Rodgers and Chris Barnette should be rescinded.

 **LIABILITY OF RON GIPSON**

 **AND RON GIPSON CONSTRUCTION, INC.**

 A much more difficult question is presented as to Ron Gipson and/or his corporation. As stated by the Court in its reasons following the directed verdict motion, Ron Gipson appears to be a good guy who made a serious error in judgment.

There was no contract between the plaintiffs and Ron Gipson or his corporation and therefore the stated cause of action with respect to Gipson is in tort: (1) the intentional tort of fraud and (2) general negligence. Unlike Mr. Barnette, Mr. Gipson is deemed credible by this Court. His actions were not intentional nor were his actions fraudulent. However, the Court believes that his actions constitute negligence which caused the plaintiffs damage. In March, 2009, Mr. Gipson agreed to let Chris Barnette obtain a permit in his and his corporation’s name. This act violates several sections of Shreveport Code of Ordinances, Sections 42-151, et seq. The evidence further reflects that Mr. Gipson was found responsible and fined $1,500.00 for misconduct by the State Board.

The acts of Gipson allowed Barnette to resume work in or about April and to complete the majority of the construction on the Rodgers home. By mid-summer, the Rodgers were justifiably troubled as to the events and particularly the shoddy workmanship which led to their discovery of Gipson’s involvement and later their contact with him. After examination of the premises in early August 2009, Gipson contacted the City and removed his name from the permit, the result of which was a second shut-down of the work.

While the Court feels that Gipson was well-intentioned, his actions violated the City Ordinances–the purpose of which are to protect the public and individuals like Scott and Tara Rodgers. While Mr. Gipson did not engage in fraudulent acts, he did assist and facilitate Mr. Barnette in Barnette’s fraudulent act. Without Gipson’s involvement, Barnette’s contractual and tortious violations would have ceased in March, not August, of 2009, and the majority of the defective workmanship would not have occurred. Thus, Ron Gipson Construction, Inc. is vicariously liable for the negligence of Ron Gipson, which caused the Rodgers’ injury. Because the Court has concluded negligence, not intentional tortious conduct, by Gipson, the lawyers shall address whether Mr. Gipson individually should be deemed liable or whether he is shielded from personal liability due to corporate status. Further, Counsel shall file post trial briefs on quantum issues (return of contract price only or mental anguish damages as well) by December 2, 2011.

Signed this 15th day of November, 2011 in Shreveport, Caddo Parish, Louisiana.

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SCOTT J. CRICHTON

DISTRICT JUDGE

DISTRIBUTION:

J. Todd Benson, Counsel for David Scott Rodgers and Tara Rodgers

Michael A. Marino, Counsel for Christopher Barnette

Mark W. Odom, Counsel for Ron Gipson and Ron Gipson Construction, Inc.