UNITY CONSTRUCTION AND : NUMBER: 536,039, “B”

REMODELING, INC.

VERSUS : FIRST JUDICIAL DISTRICT COURT

RICKEY LEE FARRIS, AND TRACY

YVETTE HARDMAN FARRIS : CADDO PARISH, LOUISIANA

**REASONS FOR JUDGMENT**

 The Court has for consideration a “Petition for Breach of Contract Due to Nonpayment” filed by Unity Construction Remodeling, Incorporated (Unity) in which Unity requests Judgment for the balance it contends is owed, $35,252.18 plus attorney’s fees[[1]](#footnote-1); a reconventional demand filed by Rickey Lee Farris and Tracy Yvette Hardman Farris in which they assert claims under the New Home Warranty Act; and, a third party demand by the Farrises in which they assert claims against Melvin Nelson, Individually, as well as Curtis Wright. The reconventional demand, as it asserts claims under the New Home Warranty Act, was met by an Exception of No Cause of Action by Unity (in its capacity of defendant in reconvention), and the third party demand was also met by a peremptory exception of no cause of action filed by Mr. Nelson and Mr. Wright. The Court finds those peremptory exceptions meritorious and therefore sustained. As to the trial on the merits, held January 25, 2011, the Court concludes the following:

1. On the petition, the Court grants Judgment in favor of Unity and against Rickey Farris and Tracy Farris in the amount of $33,393.05;
2. On the reconventional demand, the exception is sustained, with Judgment therefore being rendered in favor of Unity; and
3. On the third party demand, the Court grants judgment in favor of Melvin Nelson and Curtis Wright.

**FARRIS CLAIM FOR APPLIANCE CREDIT**

 The Farrises claim a credit of $15,064.44 against the amount due of $35,252.18 to Unity for appliances which they individually purchased for that amount. In support of their position, they cite subparagraph 1 of the Residential Construction Agreement which provides as follows:

Builder and Purchaser agree as follows:

1. Builder agrees to furnish the necessary permits, inspections, labor and material, including tools, implements and appliances to complete the project.

In this project, the heated square footage of which amounted to approximately 6,500, the Farrises bought:

1. Frigidaire 30 inch double wall oven $ 2,603.59
2. GE microwave oven $ 198.00
3. Frigidaire dishwasher $ 460.00
4. Frigidaire freezer less refrigerator $ 715.00
5. Frigidaire freezer $ 715.00
6. Trim kit for freezer and refrigerator $ 200.00
7. Jenn-Air 48 inch oven, vent hood and

Backsplash $ 7,804.65

1. Frigidaire freezer less refrigerator $ 825.00
2. Frigidaire freezer $ 825.00
3. Frigidaire electric oven $ 495.00
4. Samsung oven the range microwave $ 223.20

In his post-trial brief, counsel for Unity has written:

The historical use by Unity in all agreements of the term “appliance” obviously is intended to mean and refer to the definition as provided in the Merriam-Webster Dictionary as “a piece of equipment for adapting a tool or machine to a special purpose” when appearing with “tool” (“a handheld device that aids in accomplishing a task…something (as an instrument or apparatus) used in performing an operation or necessary in the practice of a vocation or profession”) and “implement” (“such things as are used or employed for a trade…particularly applied to tools, utensils, instrument of labor; as the implements of trade or of farming.) Farris should not be permitted to hide in any ambiguities of the agreement his attorney prepared to further delay payment.

Given the context of the sentence – that builder furnishes the “necessary permits, inspections, labor and material, including tools, implements and appliances to complete the project” - the only common sense interpretation is that argued by Unity’s counsel: that the parties are referring to equipment customarily used in building which is necessary for accomplishing the construction objective.

Furthermore, counsel for the Farrises drafted the agreement; and in the event of any ambiguity, such should be construed against the one who drafted it. In that regard, it is significant that trial counsel for the Farrises chose not to call the attorney draftsman of this contract, Scott Chafin.

Moreover, subparagraph 1 should be considered in light of the previous arrangement which Farris had with Gafford Design’s which had a ceiling allocation on kitchen appliances in the amount of $3,500.00.

Finally, it would be absurd for Mr. Nelson to have left the appliance allocation wide open, given the price range of various grades and makes of kitchen appliances and the possibility of a homeowner choosing as many as he wanted, of whatever make and grade at his complete whim and fancy. Such a construction would lead to an absurd consequence.

Accordingly, for these reasons, the Farrises’ claim for $15,064.44 credit or offset against the amount of $35,252.18 claimed by Unity as owed is denied.

**FARRIS CLAIM FOR CREDIT FOR MATERIALS**

 The Farrises claim that they should also receive a credit or offset in the amount of $13,156.97 against the amount of $35,252.18.

In the post-trial brief, Farrises’ counsel bases this figure of $13,156.97 on amounts paid by Mr. Farris for the “water well, granite, travertine and glass tiles, grout, caulk, paint rollers, doors and other supplies and materials which are not plumbing fixtures…” Counsel for the Farrises has also argued at trial and in brief that the attachment to Unity Exhibit 3 was not part of the Residential Construction Agreement Addendum. The Court concludes that the document titled “Invoice” on Unity Construction Remodeling letterhead is the “attached Estimate” referenced on the Addendum. Specifically, the agreement provides,

This cost ($195,928.00) does not include the figures included in the attached estimates which represents additional costs necessary to complete the house. Such costs included in the attached Estimate represent costs and expense which have been paid to the previous contractor for work that the previous contractor has either not performed, or for repairs necessary to such work.

 As was the case regarding the “appliance” discussion, Attorney Scott Chafin was not called to provide testimony or to present any documents in his file. Again, assuming there to be an ambiguity, such should be resolved against the one who drafted the addendum and surely

examined the “estimate” referenced therein. Accordingly, the claim for an offset of $13,156.97 is denied.

**FARRIS CLAIM FOR WOOD AND TILE CREDIT**

The Farrises also claim a credit of $7,375.00 against the amount claimed to be due Unity, $35,252.18, for wood and tile. The Residential Construction Agreement Addendum, signed by Melvin Nelson on behalf of Unity provides as follows:

 ALLOWANCES FOR FLOORING

 Wood $1.25 sq. ft.

 Tile $1.00 sq. ft.

 As pointed out by the Farrises’ counsel “…the particular notations covering the allowance for flooring were given a special location all alone on the page of the contract and were written in all caps”. The evidence reflects that Farris paid more than that amount for the wood and tile. Considering all of the circumstances of this case, the Court concludes that the Farrises should receive a credit of $7,375.00 as an offset against the amount owed to Unity.

**FARRIS CLAIM FOR AIRCO CREDIT**

 In its pretrial brief, Unity concedes that on November 10, 2009 Mr. Farris paid AIRCO the amount due of $4,025.00 and, indeed, that payment is referenced by Farris check no. 4850, Plaintiff 6. Therefore, the Farrises are entitled to a credit of $4,025.00 against the amount claimed due by Unity.

**FARRIS THIRD PARTY DEMAND AGAINST MELVIN NELSON**

By third party demand, the Farrises have sued Melvin Nelson individually in which they assert intentional tort claims. Because there is extremely scant evidence of any tortious conduct by Mr. Nelson, the Court concludes that judgment on the third party demand should be rendered in favor of Mr. Nelson.

**ATTORNEY’S FEES**

Unity’s counsel claims that this Court should assess attorney’s fees in the amount of $22,277.50. He bases the recoverability of attorney’s fees on paragraph 13 as follows:

Purchaser agrees to pay reasonable attorney fees and costs incurred by Builder associated with the collections arising from the Agreement made necessary by Purchaser’s breach or non-payment. In the event that Purchaser fails to pay Builder at the time required in this contract, all sums due under this contract shall accrue interest at the rate of 12 percent per annum (or such rate which is the maximum permitted by law, whichever rate is less) from date due until paid.

 In addition to this matter, Unity’s counsel includes work on two other suits, *Rick Farris, et ux v. Gary Loftin, Unity Construction, et al*, no. 535,490 and *Rickey Lee Farris, Sr. v. Melvin Ray Nelson, Sr.*, no. 540,877, and he notes that he had to deal with “3 separate counsel”. The Court declines to include in its assessment of “reasonable attorney fees” work performed on the other cases, 535,490 and 540,877. However, the Court does accept the fact that this suit has been made needlessly complex and time-consuming by the actions of Mr. Farris[[2]](#footnote-2). The Court notes the involvement of several different attorneys, Scott Chafin, Charles Neupert and Ree Casey prior to the Farrises decision to self-represent and ultimately the retainer of present counsel, Don Weathersby. Based on the entire record, the circumstances and guided by the term “reasonable”, as used in the contract, the Court sets attorney’s fees in the amount of $9,540.87 (40% of $23,852.18).

**12% INTEREST**

 Based on the contract, the Court determines that there should be an additional award of 12% on $23,852.18, from the date owed, which the Court deems to be October 1, 2009, the date Unity completed the work and presented a final invoice to the Farrises.

**CONCLUSION**

 In summary, the amounts at issue are as follows:

Amount sought: $35,252.18

Less offset: ($ 7,375.00)

Less offset: ($ 4,025.00)

Principal amount owed: $23,852.18

Attorney’s fees: $ 9,540.87

(40% of $23,852.18)

Thus, for the assigned reasons there will be judgment in favor of Unity and against Rickey Lee Farris and Tracy Yvette Hardman Farris in the amount of $23,852.18 at 12% from October 1, 2009 until paid. In addition, there will be judgment in favor of Unity and against the Farrises in the amount of $9,540.87, representing attorney’s fees, at 12% from date of rendition of formal Judgment until paid. All court costs are assessed against the Farrises.

 In the event of any calculation issues (or any other issues) counsel shall request a conference with the Court.

 Counsel shall submit a formal Judgment in accordance with La. Dist. Ct. R. 9.5.

 Signed this 11th day of February, 2011 in Shreveport, Caddo Parish, Louisiana.

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 SCOTT J. CRICHTON

 DISTRICT JUDGE

DISTRIBUTION:

Donald A. Weathersby, II, Counsel for Rickey Farris and Tracy Yvette Hardman Farris

Jeff R. Thompson, Counsel for Unity Construction and Remodeling, Inc.

Richard Ray, Counsel for Unity Construction and Remodeling, Inc.

1. Unity has argued that it is entitled to an award of $55,863.45 while counsel for the Farrises has argued that the amount of overpayment by them to Unity is $15,878.16. [↑](#footnote-ref-1)
2. The Court recognizes that Rickey Lee Farris is a captain and respected member of the Caddo Parish Sheriff’s Office. He is a defendant in this case and has prevailed on two points; however, he has fired off a meritless reconventional demand and third party demand as well as filing suit in two other related matters. The Court is a bit bewildered by the number of lawsuits emanating from the construction work at 5642 Cashmere Circle as sell as and the number of lawyers enrolled on his behalf, and later withdrawn. The combination of multiple lawsuits with multiple lawyers sometimes suggests a problem. [↑](#footnote-ref-2)