LARRY GILBERT : NUMBER: 555,284-B

VERSUS : FIRST JUDICIAL DISTRICT COURT

NATHAN EAST : CADDO PARISH, LOUISIANA

 **REASONS FOR JUDGMENT**

Trial was held on March 14, 2013. The Court heard testimony from Larry Gilbert, Nathan East, A.D. Taylor, Robert Abraham, Brian Leslie and received into evidence Plaintiff’s Exhibits 1-14. In closing arguments, plaintiff counsel argued that a money judgment should be granted in the amount of $9,130.00 ($3,550.00 return of the price and $4,750.00 and $830.00 for the corrective work).

For reasons which follow, the Court concludes that judgment should be granted in favor of Plaintiff Larry Gilbert and against Defendant Nathan East and monetary damages set in the amount of $2,000.00.

**FINDINGS OF FACT**

**AND CONCLUSIONS OF LAW**

(1) Prior to commencement of work at 6819 Vail, Mr. Gilbert advised Mr. East that he desired his newly installed kitchen cabinets to have the same color as those in his game room. Gilbert showed East a bucket of stain which he was to use – Minwax Wood Finish penetrating stain.

(2) Mr. East, a painting contractor for 16 years, did not think that Minwax was appropriate and instead began work the following work day (on or about March 14) and used Old Masters Wiping Stain, starting with the kitchen cabinets as reflected in the left side of the kitchen in Exhibit 5.

(3) Mr. Gilbert came home about noon of that first day and advised Mr. East that the stain was not the right color and tone; consequently, East began using the Minwax on the right side cabinets, as reflected in Exhibit 5, and told Gilbert that he could correct the Old Masters stain as to the cabinets previously stained.

(4) There was no written contract; however, East provided an invoice on March 21, 2011 (Exhibit 14) which was for the entire job, including completion of the work on the following week, and Gilbert paid East (Exhibit 2) on that day.

(5) Notwithstanding that East told Gilbert he could correct the stain and would finish the job, Gilbert terminated the relationship shortly after the March 21 payments, testifying that he had lost faith in East’s ability to competently handle the job.

(6) The Court believes both Gilbert and East were at fault for the total lack of communication between them starting with their first communication, throughout the work and after the March 21 payment. Furthermore, midday on the first of six work days and in accordance with Gilbert’s instructions, East used the Minwax stain and ceased use of the Old Masters Wiping Stain.

(7) Gilbert should not have paid the total amount agreed upon for the job on March 21, 2011 as the job was not complete by that date.

(8) Gilbert did not give East the opportunity to (a) finish the work; (b) correct the areas of misapplied stain; and (c) clean the drippings and smears. Because Gilbert did not allow East the opportunity for completion, he exacerbated the situation incurring additional costs [$4,750.00 paid to Abraham Painting (Exhibit 12) and $830.00 paid to Taylor Painting Contractor (Exhibit 13)]. From a legal standpoint, Gilbert failed to mitigate his damages by his premature and over-reactive termination of East.

(9) Because East was prematurely terminated, at that point without sufficient cause, it is impossible for this Court to find that corrective costs are due. Therefore, the Court concludes the amount sought for remedial work ($5,580.00) has not been proven.

(10) Regarding the work done by East – particularly as reflected by Exhibits 6 and 7 (drippings where cobblestone back splash was to be placed), Exhibit 8 (reflecting smudges on ceiling) and Exhibit 9 (reflecting masking bleed-through), Exhibit 10 reflecting ceiling and molding smudge, the Court concludes that defective workmanship has been proven.

(11) The Court concludes that due to the defective workmanship regarding Exhibits 6-10, the price should be significantly reduced.

**CONCLUSION**

Accordingly, there shall be Judgment rendered in favor of Plaintiff Larry Gilbert and against Nathan East in the amount of $2,000.00 plus legal interest from date of judicial demand. All court costs are assessed against defendant Nathan East.

It should be noted that the Court deems both Mr. Gilbert and Mr. East to be good men who had a serious communication problem for which they are both at fault. Mr. East should be responsible for the sloppy work reflected in Exhibits 6-10 but not the stain miscommunication. Mr. Gilbert should be responsible for his premature and, at that time, unjustified termination of Mr. East, which greatly exacerbated his damages.

The lawyers shall submit a formal Judgment consistent with this conclusion and in accordance with La. Dist. Ct. R. 9.5.

Signed this 2nd day of April, 2013, in Shreveport, Caddo Parish, Louisiana.

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 SCOTT J. CRICHTON

 DISTRICT JUDGE

DISTRIBUTION:

James E. Bolin, Jr., Counsel for Plaintiff Larry Gilbert

H. Lyn Lawrence, Counsel for Defendant Nathan East