

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

INDEX NO. 25005/2009

LA BELLA HOME IMPROVEMENTS CORP.,
Plaintiff,

NOTICE OF ENTRY

-against -

AVI MANDEL and RIVKA MANDEL,
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.,
as nominee for FIRST MERIDIAN MORTGAGE, LLC,
FIRST MERIDIAN MORTGAGE, LLC, and
"JOHN DOE" and "JANE DOE",
said names being fictitious, it being the intention
of Plaintiff to designate any and all occupants,
tenants, persons or corporations, if any, having or
claiming an interest in or lien upon the
premises being foreclosed herein,

Defendants.

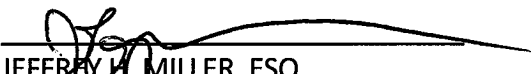
S I R S:

PLEASE TAKE NOTICE, that the within is a true copy of the Decision after Trial signed by the Honorable Michele M. Woodard, J.S.C., on July 18, 2014 and duly entered in the office of the Clerk of the within Court.

Dated: July 22, 2014
Lawrence, New York

MILLER LAW OFFICES, PLLC.
Attorneys for Plaintiff
LA BELLA HOME IMPROVEMENTS CORP.

By:


JEFFREY H. MILLER, ESQ.
141 Washington Avenue
Suite 101
Lawrence, NY 11559
(516) 248.6755

AFFIRMATION OF SERVICE


JEFFREY H. MILLER, ESQ., an attorney duly admitted to practice before the Courts of the State of New York, affirms under penalty of perjury:

That I am over the age of 18 years and reside in Nassau County, New York. I certify that on **July 22, 2014**, I served a copy of the annexed **Decision after Trial** by depositing a true copy of same in a post paid wrapper in an official depository under the exclusive care and custody of the United States Post Office Department within the State of New York, and addressed as follows:

TO:

Jeffrey L. Lewisohn, Esq.
444 Merrick Rd.
Suite 112
Lynbrook, NY 11563

Dated: July 22, 2014
Lawrence, NY



JEFFREY H. MILLER

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

-----X
LA BELLA HOME IMPROVEMENTS CORP.,

Plaintiff,

-against-

**MICHELE M. WOODARD
J.S.C.
TRIAL/IAS Part 8
Index No.: 25005/2009**

AVI MANDEL and RIVKA MANDEL, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., as nominee for FIRST MERIDIAN MORTGAGE, LLC, FIRST MERIDIAN MORTGAGE, LLC, and "JOHN DOE" and "JANE DOE," said names being fictitious, it being the intention of Plaintiff to designate any and all occupants, tenants, persons or corporations, if any, having or claiming an interest in or lien upon the premises being foreclosed herein,

DECISION AFTER TRIAL

Defendants.

-----X

"La Bella Home Improvements Corp." ("La Bella") seeks damages and to foreclose on a Mechanic's Lien against the defendant homeowners for monies due and owing from the construction of the defendants' new "four" story home on a pleasant avenue of equally beautiful homes in Lawrence, New York. The defendants challenged the lien and counterclaim for breach of contract.

The defendants, Avi and Rivka Mandel, ("homeowners") graciously allowed the Court to convene twice at the premises for a visual inspection of the work performed, for which La Bella claims are the result of numerous oral changes to the homes details, but, not without defendants' consent.

The Mandels pointed out many areas of complaint, including wrong building material, improper drainage, grade level placement of the dry well and the omission of the subterranean outdoor staircase. The homeowners also pointed out that the paint utilized for the home was not the contractual Benjamin Moore paints, there was a missing outside window in a walk in closet and, faulty doors and closets. Defendants contend that it is La Bella who breached the contract and failed to build the home to their satisfaction as requested by the contractor and other oral agreements.

The two visits to the Mandels' home, which is the subject of this breach of contract case, were heavily considered by the Court in reaching its decision. A bench trial was thereafter held in the Supreme Court of the State of New York, County of Nassau before the Honorable Michele M. Woodard, J.S.C., with all parties represented by counsel. There were sixteen days of testimony.

The only credible expert to testify with respect to new housing construction was plaintiff's representative, Andrew Spadafora. Homeowner, Avi Mandel, (a plumbing business owner) testified on behalf of the homeowners. Mrs. Mandel did not testify even though she had pointed out many of the aesthetic complaints during both court visits.

The Court adopts the plaintiff's credible statements of fact as follows:

La Bella is, and was during the relevant time, a licensed home improvement contractor in Nassau County, State of New York. Rivka & Avi Mandel ("Homeowners") are the owners of the premises known as 73 Margaret Avenue, Lawrence, NY (the "Premises"). Defendants retained La Bella to construct a new house for the contract price of: \$849,000.00. Prior to executing the contract, drafted by defendant Ari Mandel, defendants knew or should have been aware of the

existence of a subsurface water table that would materially alter the scope of the construction work. Defendants did not disclose and plaintiff did not anticipate the subsurface water conditions to La Bella prior to executing the Contract. La Bella learned of the subsurface water after the Contract was executed. The presence of subsurface water materially altered the construction project. Thereafter, the parties agreed to numerous change orders which altered the total cost of one contractor by over 25% of the original cost. Mr. Spadafora testified that such cost "over runs" are typical in the residential construction market. After the subsurface water was exposed during the excavation phase, Defendants provided La Bella with new drawings which were provided to the Court.

Undeniably there are many differences from the original written contract and what stands as the defendants newly built home. The entire case turns upon the credibility of the witnesses and the dearth of help provided to the Court to interpret the site planning submitted before or after the project was complete. Mr. Spadafora stated the home was built as either originally planned, or modified on consent or request of the homeowner. The general rule with respect to compliance with contract terms where the contract is made for an agreed exchange of two performances, one of which is to be rendered first is not strict compliance, but substantial compliance.

For example, La Bella included \$30,000 of electrical work in the \$849,000 contract price. The parties agreed to deduct \$30,000 from the contract price, and Defendants agreed to hire and pay for its own electrical subcontractor. The Defendants' electrician, "Mittman Electrical" caused certain damages that required La Bella to perform and charge for additional work with the consent of Defendants. The original plans called for an unfinished attic. At the direction of

Defendants, La Bella constructed a finished attic. Avi Mandel admitted going to view the building site daily. Defendants accepted the La Bella work, including extras for which payment was expected, agreed upon, and remains due and owing. Defendants breached the contract by failing to pay La Bella the full contract price, as amended. There remains a balance owed to La Bella from Defendants, jointly and severally, the sum of \$273,50.96 with interest. The reasonable value of the unpaid work due performed by La Bella for the benefit of Defendants is \$273,350.96. The labor and materials furnished by La Bella for the construction of the house were incorporated into the defendants' premises with the knowledge, permission and consent of the Defendants. La Bella timely filed and served a Mechanic's Lien, which lien complied with the statutory requirements.

CONCLUSIONS OF LAW:

Foreclosure of Mechanic's Lien

Plaintiff proved the elements necessary to recover on its Mechanic's Lien claim. The Mechanic's Lien is facially valid, was duly served and docketed. La Bella is entitled to a judgment declaring the Mechanic's Lien valid in the amount of \$273,350.96, plus interest, costs and disbursements.

Breach of Contract

La Bella substantially performed its obligations in accordance with the terms of the Contract, as amended.

Defendants Avi & Rivka Mandel breached the Contract by failing to pay La Bella the sum of \$273,350.96. La Bella claims it is entitled to a money judgment against Defendants Avi

& Rivka Mandel, jointly and severally, in the amount of \$273,350.96, plus interest, costs and disbursements.

Quantum Meruit

La Bella claims it performed the work complained of in good faith. La Bella expected to be compensated by the Mandels for said work. The Mandels requested the work, accepted the work rendered, and agreed to pay La Bella for the work. La Bella is entitled to a money judgment against Defendants Avi & Rivka Mandel, jointly and severally, in the amount of \$273,350.96, plus interest, costs and disbursements.

The defendants neglected to provide any evidence as to the cost of the changes to the original plans. On the other hand, Mr. Spadafora's testimony regarding the quality of the construction project was found to be credible in determining the nature of the changes and additional charges. Mr. Spadafora had testified that he has been in the construction business for over 30 years and with La Bella for 12 years. However, based on the Town of North Hempstead's determination that the porch/deck was not suitable for obtaining a certificate of occupancy, the County must grant the defendant a credit for the portion of their home which was condemned.

As such, the Defendants are only entitled to a credit of \$30,000. The Defendants failed to provide a construction expert or home architect to explain voluminous site plans, to establish a *prima facie* breach of a contract. The four story, possibly eight bedroom new construction home is built on a significant water table. Experts would have been extremely helpful to the Court. Without expert testimony, the Court is unable to establish that there existed a loss of value to the work on what the impact had on the value of the home.

Now, upon the pleadings, testimony, evidence presented, pre-trial submissions and post-trial submissions of the parties, and upon all prior motions and papers hereto had herein, it is hereby

ORDERED and DECREED, that plaintiff LA BELLA HOME IMPROVEMENT CORP. does hereby recover on its claims for foreclosure on the Mechanic's Lien, Breach of Contract and Quantum Meruit against defendants, AVI and RIVKA MANDEL, jointly and severally, the sum of \$243,350.96, with prejudgment interest of 9% from May 22, 2013, plus costs and disbursements.

Settle Judgment on Notice.

DATED: July 18, 2014
Mineola, N.Y. 11501

ENTER:


MICHELE M. WOODARD
J.S.C.

F:\DECISION - AFTER TRIAL\La Bella v Avi Mandel 7-16-14.wpd