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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION
MORTGAGE FORECLOSURE/ MECHANICS LIEN SECTION

MHD Builders, Inc.,

Plaintiff,

v.

Kimberly Douglas, an individual;
Dr. Frank Apantaku, an individual;
Unknown Owners and Non-record
Claimants,

Defendants.

Case No. 13 CH 3993

Calendar 54
Judge Lisa R. Curcio



Doc# 1915818079 Fee \$88.00

RKSP FEE: \$9.00 RPRF FEE: \$1.00

EDWARD H. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 06/07/2019 03:02 PM PG: 1 OF 9

OPINION AND JUDGMENT ORDER

This case arose from a contract between MHD Builders, Inc. (MHD) and Frank Apantaku (Apantaku) for MHD to demolish and renovate the property owned by Kimberly Douglas (Douglas) located at 5519 S. Dorchester Avenue, Chicago, IL 60637 (the Property).

The case went to trial on MHD's Complaint for breach of contract, foreclosure of mechanics lien, and, in the alternative, unjust enrichment. Douglas filed affirmative defenses and a counterclaim. On June 2, 2015, the Court granted MHD's motion for partial summary judgment as to Count III of Defendant's counterclaim. At the conclusion of trial, the Court entered judgment in favor of MHD and against the Defendants on Count IV and V of Defendant's Counterclaim. The only pending claims on Defendant's counterclaim are Count I, breach of contract and Count II, unjust enrichment.

The Court, having heard and considered the testimony, having received and reviewed the evidence, having heard the final arguments of counsel, makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The parties have appeared by and through counsel and are subject to the jurisdiction of the Court, which also has jurisdiction matter over the premises.
2. MHD is an Illinois Corporation engaged in the business of construction.

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3. During the period from September 22, 2011 and after, Douglas was the owner of the property commonly known as 5519 S. Dorchester Avenue, Chicago, IL 60637. The legal description for the Property is:

LOT 6 IN THE RESUBDIVISION OF LOTS 13 TO 19 IN JOCELYN'S SUBDIVISION OF LOT 1 TO 24, THE NORTH HALF OF LOTS 2 AND 23 THE WEST 100 FEET OF LOTS 20 TO 22 AND THE WEST 100 FEET OF THE SOUTH HALF OF LOT 23 ALL IN BLOCK 58 IN HYDE PARK IN THE NORTHEAST QUARTER OF SECTION 14, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY ILLINOIS;

Permanent Index No.: 20-14-203-011-0000.

4. The Court has considered the testimony of the following witnesses: Piotr Filipek (Piotr), Kazimierz Grobajny (Casey), Frank Apantaku (Apantaku), and Douglas. For each witness, the Court considered his or her ability and opportunity to observe, his or her memory, manner, interest, bias, qualifications, experience, and his or her testimony in light of all the evidence in the case.

5. On September 22, 2011, MHD and Apantaku entered into a written contract for renovation and construction work on the inside of the Property in the amount of \$345,791.00. Although the document stated that contract documents would be properly executed before the commencement of work, the last line of the document signed by both parties stated: "Note: This Proposal is becoming a contract after signing by both sides."

6. Apantaku did not have an ownership interest in the Property. He agreed to pay for the work as compensation to Douglas for work she did for his company.

7. Douglas was aware of the contract and, by her actions, authorized Apantaku to enter into the agreement for work at the Property. Douglas also employed a "project manager", Ebony Patterson, to work at her direction with MHD.

8. The contract listed trades with the respective cost for the work. The contract also listed that the owner would be responsible for the following items: windows & skylights material and installation, ComEd connection fees, exterior connection cables material, light fixtures, plumbing fixtures allowance.

9. MHD started renovation work on the Property in October 2011 after the permit was issued. Douglas brought the permit to the job. MHD stopped working at the Property on February 20, 2012.

10. During the course of the work, Douglas changed the scope of the construction contract and asked MHD to perform extra work.

11. MHD submitted a total of nine change orders, labeled Change Order #1, 3, 4, 5, 7, 8, 9, 10, and 11 for the extra work.

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12. All nine change orders list Douglas as the owner, 5519 S. Dorchester Avenue as the Property address followed by Douglas' email and phone number.

13. Change orders # 1, 3, 4, 5, 7, 8 were signed and approved by Apantaku with some, but not all signed by Casey as well. Change Orders # 9, 10, and 11 were signed and approved by both Douglas and Casey.

14. The change orders increased the price of the contract sum to \$518,424.13. MHD was paid \$172,000.00.

15. The final Invoice #12-5489 dated February 17, 2012 shows an outstanding balance of \$78,338.73.

16. MHD seeks damages in the amount of \$65,303.60, which is \$78,338.73 less \$13,035.15 for the cost of plumbing fixtures that MHD did not pay for.

17. The final invoice was created by Piotr based upon Casey's review of the portions of the job that were completed and allocation of payments to those items accordingly. Piotr was responsible for recording the incoming and outgoing payments on the Project. Once he received a payment assigned to the Project, he would make a copy of the check and record it in the quick books. For payments made from MHD to its subcontractors, Piotr would review the invoice to see if the items matched the work, record it in the quick books and issue a check.

18. Casey testified that the percentages under the column titled "Total %" on the final invoice indicate the portions of each job completed at the time the invoice was created. The amounts under the column titled "Est Amt" indicate either the original contract price or the change order price. The amounts under the column titled "Prior..." indicate the money previously paid to MHD. The column titled "Amount" is the amount of money outstanding and owed to MHD on this invoice.

19. The following items on the final Invoice include work contemplated under the original contract:

<u>Description</u>	<u>Amount</u>
• Dumpsters/Debris [sic] Removal	\$2,500
• Interior Demolition	\$5,000
○ Remove all existing walls, ceilings, floors and exterior wall furring to expose existing structure.	
○ Haul away all debris to the dumpsters.	
• Lumber Materials Allowance	\$9,000
• Rough Carpentry	\$15,000
○ Level all floors and repair roof structure	
○ All necessary structural repairs	

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- Frame new new [sic] partition walls on all floors
- Rear Porch Demolition and Replacement \$11,500
- General conditions (portable toilet and temporary fence) \$1,200
Allowance based on 6 months construction duration
- General Contract Fee (5%) \$6,000

20. The following items on the invoice reflect extra work outside the scope of the original contract:

<u>Description</u>	<u>Amount</u>
● Basement Concrete Floor	\$5,000
● Electrical	\$7,253.60
○ New electrical circuits as per drawings	
○ Price includes new 200A overhead electrical service (price doesn't include)	
○ Price does not include electrical fixtures.	
● Masonry Work	\$2,800
○ New masonry opening for ne double patio door	
○ Kitchen window rebrick	
○ Fireplace rework to allow new prefabricated fireplaces installation	

21. Casey testified to specific change orders. Change Order # 4 corresponds to the "basement concrete floor" charge on the Invoice in the amount of \$5,000. Casey testified that the basement floor had to be redone. Concrete basement was not part of the original contract. He learned about this change after the permit was issued. New plumbing had to be installed in floor. The work was done by one of Casey's subcontractors. This change order was signed and approved by both Apantaku and Casey on November 11, 2011.

22. Change order # 5 corresponds to the "electrical" work charge on the Invoice in the amount of \$7,253.60. Casey testified that electrical work was not part of his original contract. In fact, the contract specifically provides that the "owner" would provide the electrical. However, Douglas was unable to reach the electrician she had hired and asked Casey to do the work. Casey gave the drawings to the electrician he usually used and got a price. Casey added the cost to the contract. Casey testified that he discussed the work with Douglas. This change order was signed and approved by Apantaku on November 22, 2011.

23. Change order # 10 corresponds to the "masonry work" charge on the Invoice in the amount of \$2,800. This change order only reflects that MHD was to "provide and install new prefabricated fireplaces with gas logs." It makes no mention of the other items listed under Masonry work in the invoice. This change order was signed and approved by Douglas and Casey on February 14, 2012.

24. Casey testified that on February 14, 2012, he had a meeting with Douglas and Apantaku to discuss funding and change orders. Douglas had been pushing to get work done and Casey was expecting \$50,000 to help move the project along. He did not receive any funding that day.

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Casey also testified that Douglas did not raise any problems or issues with MHD's work at the meeting.

25. Casey testified that on February 16, 2012, he received a call from Douglas telling him he was no longer allowed on the Property. Douglas did not explain why and Casey still had equipment and tools on the site. He testified that he tried calling a couple days later to see if MHD could be reinstated, but he was told no and so he went to the Property to pick up his materials.

26. Casey learned that Douglas had hired an independent inspector to review his work. Defendant's Exhibit 3 is the inspector's report. Casey testified that he read the report and agreed with everything the inspector reported. The inspector reported that there were no issues with work done by MHD, "the workmanship of the rehab was very good," and that only 45 % of the work on the original contract was completed.

27. Casey testified that all the rough work was done in the house at the time that MHD was let go. It took MHD approximately four weeks to do the demolition work. MHD had to strip plaster, demolish by hand, remove plank flooring by hand. Basement, window work, electric, HVAC, plumbing was all done at the time MHD left the job. Casey testified that MHD's work had passed all of city's inspections and they were ready to move on to insulation.

28. Casey testified that he would see Douglas once a week or every two weeks at the Property. He communicated with Douglas five or six times directly. He testified that he did not receive any complaints about his workmanship or delays from Douglas. He testified that he believed MHD performed in a workmanlike manner.

29. Douglas testified at trial about her understanding of the progress and communications with Casey. She testified that she was concerned the work was not getting done and that payments to subcontractors were not being made in a timely manner. She did not, however, point to any specific document or piece of evidence in support. Her testimony was based upon statements from others rather than personal knowledge.

30. Douglas signed the change orders voluntarily. At the time she believed the price was fair and reasonable. She later said she did not think the price on the change orders was fair and reasonable, but signed them because work had to be done.

31. She testified that MHD did not come back to work after February 15, though the subcontractors continued to work. She denied that she ever told MHD that they were fired. She testified that MHD stopped working on their own because she asked for receipts and they could not provide her with any. She did not identify which receipts or what exact information she asked of MHD. She further denied that MHD asked her for payment or sent her any invoices indicating that a balance was due.

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32. On February 23, 2012, Douglas had an inspection done to make review of the work that MHD had done. She first testified that the report accurately described the condition of the house on February 23, 2012, and that she agreed with the conclusions in the report. She later testified that she did not find the report credible. She disagreed with the statement that MHD's workmanship was good because she could not move into her house when MHD left.

33. She testified that a contractor emailed her on February 21, 2012 with an unsolicited proposal to finish the pending work. She accepted the proposal on March 8, 2012. Douglas testified that the new contractor started working two weeks after the proposal was submitted and it took him seven months to complete the work.

34. Douglas claimed she did not have any contact with MHD between February 15 and March 20, 2012. On March 20, 2012, she received an email from Piotr, which essentially informed her that MHD noticed construction activity at her house in their absence. The email further stated that MHD had not received an "official termination" of their contract, and that MHD would not be responsible for any damage to the existing structure of the building as a result of the new contractor's work.

35. MHD's last day of work at the Property was February 20, 2012. On May 18, 2012, MHD recorded its mechanics lien with the Recorder of Deeds of Cook County as document number 1213716002.

36. The Court finds the testimony and evidence presented by MHD to be credible. The Court further finds that the testimony presented by Douglas was contradictory and not based upon personal knowledge, therefore it was not credible.

CONCLUSIONS OF LAW

1. This Court has jurisdiction of the subject matter and parties. Plaintiff is a general contractor as contemplated under the Mechanics Lien Act.
2. The Plaintiff filed an Original Contractor's Lien and recorded it with the Cook County Recorder of Deeds on May 18, 2012. This lawsuit was timely filed.
3. The purpose of the Act is to permit a lien upon premises where a benefit has been received by the owner and where the value or condition of the property has been increased or improved by reason of the furnishing of labor and materials. *R.W. Dunteman Co. v. C/C Enters.*, 181 Ill. 2d 153, 164 (1998).
4. To assert a valid lien claim under the Act, a contractor must prove: (1) a valid contract; (2) with the owner of the property, the owner's agent, or one knowingly permitted by the owner to contract for the construction of the improvements; (3) for providing services or materials; and (4) performance of the contract or a valid excuse for nonperformance. *Fieldcrest Builders v. Antonucci*, 311 Ill. App. 3d 597, 609 (1st Dist. 1999) (citing *Delaney Electric Co. v. Schiessle*, 235 Ill. App. 3d 258, 265 (1st Dist. 1992)).

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5. The Court finds that the contract between MHD and Apantaku was valid and enforceable and that Douglas, as the owner was aware of, consented to, and knowingly permitted Apantaku to enter into a contract with MHD for the improvements made on her Property. 770 ILCS 60/1(a) *et seq.* (West 2010); *Armco Steel Corp. v. La Salle National Bank*, 31 Ill. App. 3d 695, 698 (2nd Dist. 1975); *Miller v. Reed*, 13 Ill. App. 3d 1074, 1077 (5th Dist. 1973); *Construx of Illinois, Inc. v. Kaiserman*, 345 Ill. App. 3d 847, 858 (4th Dist. 2003).
6. A contractor or subcontractor claiming a mechanics' lien must show performance of the contract or an excuse for nonperformance, such as breach of the contract by the other party. *Miller*, 13 Ill. App. 3d at 1077. In the latter case, under section 4 of the Mechanics' Liens Act, the contractor is entitled to abandon the work and enforce a lien for the value of the work performed. *Contract Builders Service Corp. v. Eland*, 101 Ill. App. 3d 366, 372 (2nd Dist. 1981); *Luczak*, 116 Ill. App. 3d at 300.
7. Douglas failed to provide any proof that MHD abandoned the Project before completion and the portion of the work completed before abandonment was defective. The inspector she hired to review MHD's work concluded that while only 45% of the contract work had been completed, it was done in a workmanlike manner and was free of defects. Douglas told MHD not to return to the Property and refused to pay it for work completed.
8. Even though MHD had only finished 45% of its contract work when it left the job, MHD did not "willfully and intentionally" abandon the Project. Rather, Douglas breached the contract by failing to make payments for the work actually performed and by terminating the contract without cause. MHD was justified in not continuing work due to nonpayment. *Luczak*, 116 Ill. App. 3d at 301. MHD is entitled to recover for the work actually performed.
9. To recover for extra work, a contractor has the burden of proving by clear and convincing evidence that 1) it performed work outside the scope of the contract; 2) the owner requested the extra item; 3) the owner agreed to pay for the extra, either expressly or impliedly; 4) it did not furnish the extra gratuitously; and 5) the extra was not required due to the fault of the contractor. *Watson Lumber Co. v. Guennewig*, 79 Ill. App. 2d 377, 389-90 (5th Dist. 1967). Like an oral contract, where an agreement for extra work is oral, its terms and conditions are questions of fact to be determined by the trier of fact. *A.W. Wendell & Sons v. Qazi*, 254 Ill. App. 3d 97, 105 (2nd Dist. 1993).
10. MHD's final invoice includes three items of extra work for the total amount of \$15,053.60. All of the extra work was supported by change orders that were signed and approved either by Apantaku or Douglas. The Court finds that MHD has proven that the extra work was requested either directly by Douglas or with her knowledge, she admitted agreeing to pay for the extra work because she found the prices to be reasonable, and MHD did not do the work gratuitously or due to any fault of its own. Accordingly, this Court finds that extras in the amount of \$15,053.60 have been proven by clear and convincing evidence. The extras are included in MHD's total mechanics lien claim of \$65,303.60.

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11. Plaintiff, having proved the material allegations in Counts I and II of its complaint, is entitled to judgment for foreclosure of its mechanics lien and breach of contract in the amount of \$65,303.60. As for Count III, there was a contract and therefore, the Plaintiff cannot recover for unjust enrichment.

12. The Defendant has not proved the allegations of Counts I and II of Defendant's counterclaim, nor has she presented any evidence to support her twelve affirmative defenses.

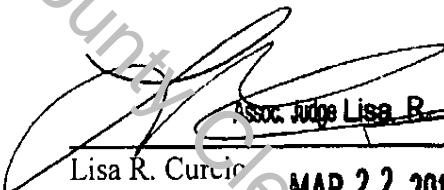
13. Plaintiff is entitled interest at the rate of 10% per annum from the time the amount became due under the provisions of the Mechanics Lien Act 770 ILCS 60/1 *et seq.* (West 2010). The contract was terminated on February 16, 2012 and the final invoice was dated February 17, 2012. Interest is calculated to be \$39,827.50.

IT IS HEREBY ORDERED:

MHD is entitled to a judgment of foreclosure on its Mechanics Lien in the amount of \$105,131.10 and on its breach of contract in the amount of \$65,303.60. Judgment is entered against MHD and in favor of Douglas on the unjust enrichment claim.

Judgment is entered in favor of MHD and against Defendants on Defendant's Counterclaim and Affirmative Defenses.

ENTERED:


~~Assoc. Judge Lisa R. Curcio~~
 Lisa R. Curcio
 Associate Judge

MAR 22 2018

Circuit Court 1864

DATED: March 22, 2018

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COOK COUNTY
RECORDER OF DEEDS

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I hereby certify that the document to which this certification is affixed is a true copy

DOROTHY BROWN JUN 07 2019

Date *Dorothy Brown*

Dorothy Brown
Clerk of the Circuit Court
of Cook County, IL

