

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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JOSEPH RENKEMA,

Plaintiff-Appellee,

v

SCOTT VANDERHONING,

Defendant-Appellant.

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UNPUBLISHED

October 8, 2002

No. 229657

Kent Circuit Court

LC No. 00-002364-AV

Before: Fitzgerald, P.J., and Holbrook, Jr. and Cavanagh, JJ.

PER CURIAM.

In this breach of contract action arising out of the construction of a home, defendant appeals by leave granted the circuit court order reversing the district court's order granting defendant's motion for summary disposition and costs. We affirm.

While constructing his new house in 1998, defendant sought bids from contractors for the completion of stucco and drywall work on the house. Defendant received a written bid<sup>1</sup> from plaintiff, a licensed residential builder, in the amount of \$10,730 for the drywall work and \$10,000 for the stucco work, for a total of \$20,730. After plaintiff completed the work, he submitted to defendant a bill for \$29,233, reflecting an amount owing on the stucco work of \$14,633 and an amount owing on the drywall work of \$14,600. This billing exceeded the bid by \$8,463.

According to defendant, plaintiff justified the increase by indicating that the original bid was just a hurriedly arrived at estimation, that defendant increased the amount of the stucco work to be done after the bid was submitted and accepted, and that plaintiff misread the blueprints and underestimated the difficulty of the drywall job, not realizing that the home was to have cathedral ceilings. Defendant denies that he increased the amount of the stucco work to be done. Defendant also denies that he agreed to a cost increase of \$3,500 with regard to the drywall job. Plaintiff contends that he informed defendant that the cost of the drywall work would be \$13,500, not \$10,730 as originally projected, and that defendant agreed to pay this amount.

Defendant paid plaintiff the amount of the original bid, but refused to pay plaintiff the additional \$8,643 over and above the original bid amount. Plaintiff commenced the present

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<sup>1</sup> Plaintiff contends that he gave defendant an estimate, not a bid on the project.

action in district court seeking to recover the unpaid \$8,643. The district court granted defendant's motion for summary judgment on the ground that plaintiff violated the Residential Builders & Contractors Act ("RBCA"), MCL 339.2401 *et seq.*, by not reducing the alleged modifications of the contract to writing. Plaintiff moved for reconsideration and defendant moved for costs and attorney fees under the offer of judgment rule, MCR 2.405. The district court denied reconsideration, adding as an additional ground in support of summary disposition a finding that the statute of frauds, MCL 566.1, barred the complaint. The district court granted the motion for costs and taxed costs and attorney fees in the amount of \$1,407 to plaintiff.

Plaintiff filed a claim of appeal in the circuit court, which reversed the decision of the district court. The circuit court found that the district court had no basis for concluding that it could as a matter of law dismiss plaintiff's cause of action for violation of an administrative rule. The circuit court also ruled that the district court prematurely dismissed the action based on the violation of the statute of frauds because there was an issue of fact with regard to whether plaintiff did additional work not originally included in the bid or estimate. In addition, because the circuit court reversed the grant of summary disposition, it also vacated the derivative order imposing sanctions.

## I

Defendant first argues that he is entitled to summary disposition because the RBCA requires licensed builders to reduce all modifications to contracts to writing. We disagree.

The primary goal of statutory interpretation is to give effect to the intent of the Legislature. *In re MCI Telecommunications Complaint*, 460 Mich 396, 411; 596 NW2d 164 (1999). The first step in this determination is to review the statute's language. *Id.* If the statute is unambiguous on its fact, the Legislature will be presumed to have intended the meaning expressed, and judicial construction is neither required nor permissible. *Id.*

The parties agree that plaintiff is a licensed residential builder. Defendant argues that plaintiff's failure to deliver to defendant a written copy of the modification of the original bid bars plaintiff's claim. In support of this argument, defendant relies on § 2411(2)(h) of the RBCA, MCL 339.2411(2)(h),<sup>2</sup> which requires a licensee to deliver to the customer "the entire agreement of the parties including finance and any other charges arising out of or incidental to the agreement . . . ." A violation of this provision subjects the licensee to the penalties of MCL 339.601 *et seq.*, which are set forth in MCL 339.602.<sup>3</sup> A review of § 602 reveals an absence of

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<sup>2</sup> MCL 339.2411 was amended effective July 31, 2001. 2001 PA 113. Thus, the former version of § 2411 is applicable to this case.

<sup>3</sup> MCL 339.602 provides for the following penalties:

a. Placement of a limitation on a license or certificate of registration for an occupation regulated under articles 8 to 25.

b. Suspension of a license or certificate of registration.

(continued...)

any language prohibiting a licensee from suing to recover unpaid compensation allegedly due and owing.<sup>4</sup> Indeed, the clear and unambiguous terms of the act reveal that the act only prohibits an unlicensed party from bringing suit to collect compensation for the performance of work requiring a license under the RBCA. See MCL 339.2412.<sup>5</sup> Because plaintiff is a licensed builder, § 2412 does not apply. Additionally, the administrative rule upon which defendant relies, AACRS R 338.1533, contains no provision barring plaintiff's suit for a breach of either the RBCA or an administrative rule. Thus, the circuit court correctly reversed the district court's grant of summary disposition based on the RBCA.

## II

Defendant contends that because the alleged contractual modifications are not in writing, plaintiff's claim is barred by MCL 566.1, which provides in pertinent part:

An agreement hereafter made to change or modify . . . any contract, obligation . . . shall not be invalid because of the absence of consideration: Provided, That the agreement changing, modifying . . . such contract, obligation . . . shall not be valid or binding unless it be in writing and signed by the party against whom it is sought to enforce the change, modification . . .

This statute does not prohibit oral modifications of agreements where consideration is given for those modifications. *Michigan Nat'l Bank of Detroit v Holland-Dozier-Holland Sound*

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(...continued)

- c. Denial of a license, certificate of registration, or renewal of a license or certificate of registration.
- d. Revocation of a license of certificate of registration.
- e. A civil fine to be paid to the department, not to exceed \$10,000.00.
- f. Censure.
- g. Probation.
- h. A requirement that restitution be made.

<sup>4</sup> Indeed, defendant admits that the act does not explicitly prohibit a suit by a licensed contractor on a contract that violates the act.

<sup>5</sup> Section 2412 provides that:

A person or qualifying officer for a corporation or member of a residential builder or residential maintenance and alteration contractor shall not bring or maintain an action in a court of this state for the collection of compensation for the performance of an act or contract for which a license is required by this article without alleging and proving that the person was licensed under this article during the performance of the act or contract.

*Studios*, 73 Mich App 12, 17-18; 250 NW2d 532 (1976). Additionally, a party may bring suit to collect compensation for construction extras and changes made before the completion of a project and recover for them if the party can prove the existence of a subsequent oral agreement reflecting the modifications or changes. *Bishop Electric, Inc v Simpson*, 7 Mich App 391, 400-401; 151 NW2d 900 (1967).

Here, defense counsel conceded before the trial court that “disputes of fact” exist “regarding whether there’s a change in the scope of the stucco work.” Additionally, defendant admits that plaintiff claims that the parties orally agreed to increase the cost of the drywalling job to be charged defendant by \$3,500. Under such circumstances, the circuit court correctly determined that a genuine issue of material fact exists with regard to whether oral modifications were made and whether consideration was given for those modifications. Accordingly, the circuit court correctly determined that summary disposition was prematurely granted.<sup>6</sup>

### III

Because the circuit court correctly overturned the order granting summary disposition, the circuit court also correctly overturned the derivative order awarding sanctions against plaintiff.

Affirmed.

/s/ E. Thomas Fitzgerald  
/s/ Donald E. Holbrook, Jr.  
/s/ Mark J. Cavanagh

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<sup>6</sup> Defendant’s argument regarding a violation by plaintiff of the Consumer Protection Act was not raised in or considered by the district court and, therefore, this issue is not preserved for appeal. *Fast Air v Knight*, 235 Mich App 541, 549; 599 NW2d 489 (1999).