

Judge triples arbitration award against contractor

Fails to complete addition to house; \$451,640 judgment

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The plaintiffs were homeowners who, in October 2002, hired the defendant's construction company to build an addition to their single-family home in Weymouth.

The defendant was the individual responsible for the construction under the home improvement contractor statute, G.L.c. 142A. As the project proceeded slowly into the winter of 2002-2003, numerous disagreements arose between the homeowners and the contractor.

"On March 9, 2003," the judge stated, "without any written or verbal warning, the contractor packed up and left the job," even though the "plaintiffs had paid for more work than was satisfactorily completed by the contractor."

An arbitrator found in 2005 that the plaintiffs sustained \$125,371 in damages as a result of the defendant's abandonment of the project.

Plaintiffs' counsel sent the defendant a demand letter pursuant to G.L.c. 93A, section 9. The defendant not only refused to tender any settlement offer, but also threatened to sue the plaintiffs for abuse of process.

The judge found that that response letter "borders on the absurd The basis of the arbitrator's decision could not have been more clear. To respond by threatening to sue if the plaintiff sought enforcement of the award in court is frivolous."

In 2007, the plaintiffs filed a complaint to confirm the arbitration award and seeking multiple damages under 93A. The complaint eventually was amended to add a declaratory judgment count seeking a declaration that the defendant was the sole beneficial owner of several real

estate properties that he held in trust for the purpose of shielding them from creditors. The complaint sought to reach and apply the trust properties to satisfy the plaintiffs' judgment.

In addition to confirming the arbitration award, the judge granted the plaintiffs' partial summary judgment with respect to liability for violation of the home-improvement contract or statute, or a per se violation of the consumer protection law.

The issues remaining for trial were whether the defendant's conduct warranted imposition of multiple damages under 93A and whether "five realty trusts were essentially sham trusts ... [and] therefore available to satisfy creditors' claims."

The plaintiffs obtained the defendant's financial documents and loan applications, which established at trial that the defendant represented to lenders that the trust properties were his own personal assets. The defendant also transferred the trust properties into his own name in order to refinance them and obtain loans for himself. The judge found that all the trust properties were available to creditors and to the plaintiffs to satisfy the judgment.

The judge trebled the plaintiffs' \$125,371 arbitration award to \$376,113 for the defendant's "knowing, bad faith, refusal to grant the relief to which the plaintiffs were entitled." The court also awarded the plaintiffs \$75,527 in attorneys' fees and costs.

Action: Contract

Injuries alleged: Breach of contract

Case name: Heinrichs v. Ricciardi, et al.

Court/case no.: Norfolk Superior Court, No. 2007-cv-0359

Jury and/or judge: Patrick F. Brady

Amount: \$451,640

Date: July 22, 2011

Attorneys: Leonard A. Frisoli and Zaheer A. Samee, Frisoli Associates, Cambridge (for the plaintiffs)



