

SUPERIOR COURT OF VERMONT
WINDSOR COUNTY

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DECISION AND ORDER

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JIM KIEFER d/b/a CHALLENGE COURSE CONSULTANTS v. RICHARD D. HOLLINGSWORTH
Docket No. S129-3-97 Wrcv

Title: Appeal from Decision of Small Claims Court
Filed on: March 20, 1997
Filed by: Jim Kiefer d/b/a Challenge Course Consultants, Appellant

A hearing was held on this appeal on August 21, 1997. William L. Durrell, Esq. was present for Appellant, and Mark Sullivan, Esq. was present for Appellee.

The court has reviewed the entire record of the hearing in Small Claims Court held on February 20, 1997. Based on this review and consideration of the Memoranda of Law filed by the attorneys and the arguments of counsel presented before this court on August 21, 1997, the court concludes that the court below made no errors of law, and the findings of fact and conclusions are supported by the evidence.

Specifically, the court adopted the position of both parties that Mr. Hollingsworth was an independent contractor doing business with the Appellant, and not Appellant's employee. He had contracted with Appellant to be a subcontractor on a series of different jobs. He was seeking payment on a number of these subcontracts. The trial judge below permitted Appellant to introduce testimony of deficient work and claim an offset with respect to the specific contracts for which Appellee was seeking payment (i.e., Hidden Valley), and to introduce testimony concerning an offset for the value of tools Appellee acquired through Appellant while working on these subcontracts, but did not permit Appellant to claim an offset for deficiencies in work on projects previously completed and for which Appellant had already paid Appellee the full contract price. Appellant claims that the reason given by the trial judge was that Appellant's offset claim was not asserted in Appellant's Answer. He claims that he should not be precluded from seeking an offset for these previous work deficiencies because his offset claim involved financial transactions between the parties, and the technical rules of pleading should not apply in small claims actions.

The court agrees with the general principle that rules of pleading should be liberally construed in small claims cases to enable the parties to raise before the court all relevant issues encompassed by the subject matter of a small claims complaint, and that a party to a small claims case must come to court prepared to address all aspects of the claim. Nonetheless, having listened to the tape of the entire proceeding below, the context of the ruling makes clear that the fundamental principle of notice was what was at stake here, and the basis for the court's ruling. The plaintiff was not making any claims for payment in relation to past subcontracts previously completed and paid for. Defendant/Appellant did not assert a cross-claim, and did not provide any notice, in his answer or otherwise, that he sought to go beyond the claims identified by the plaintiff and seek damages on previously-completed contracts. He could have done so, but he did not. He was quite clear in his position that Appellee's position was as an independent contractor who performed a series of independent contracts, as opposed to a contractor who had one long-term over-all subcontract. As a result of not providing notice that he was asserting a counterclaim related to past

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AUG 29 1997

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contracts, there was no reasonable basis for the plaintiff to prepare for a hearing that would address such a claim.

Although Appellant's attorney argues that Appellant was only seeking an "offset" and not a counterclaim, the trial court properly ruled that an offset could be sought with respect to the subcontracts at issue as identified by the complaint, but that with respect to Appellant's request for an "offset" based on damages arising out of completed contracts, Appellant was really asserting a counterclaim, and had not provided the plaintiff with any notice about that.

Appellant's second argument is that the court's denial of his claim for an offset for the costs of dismantling a wall was against the weight of the evidence. This court disagrees. There was sufficient evidence at the hearing to support the decision made by the court on this issue.

Appellant's third argument is that the court's denial of his claim for an offset for travel costs related to the cost of correcting deficiencies was not supported by the evidence. This court disagrees. The state of the evidence was such that the court could reasonably have reached the result that it did that Appellant's claim for travel costs was excessive in relation to the claimed deficiencies.

Finally, Appellant has shown, and Appellee concedes, that an error was made in the arithmetic, and the correct total of the award should be \$10.00 less than entered by the court.

Accordingly, the decision below is AFFIRMED, except that the amount of the judgment is \$1,901.07 plus costs of \$50.00 for a total of \$1,951.07, rather than \$1,961.07.

Mary Miles Teachout
Mary Miles Teachout, Presiding Judge

Date: August 29, 1997

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Date copies sent to: 8/29/97
Copies sent to:

Clerk's Initials db

William L. Durrell, Attorney for Appellant/Defendant Jim Kiefer
Mark Sullivan, Attorney for Appellee/Plaintiff Richard D. Hollingsworth

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