IN THE IOWA DISTRICT COURT IN AND FOR JOHNSON COUNTY
SMALL CLAIMS DIVISION

DAVID NASO, d/b/a DAVID NASO DESIGNS, Plaintiffs, vs. BETHANN TEGGATZ, Defendant.	))))))))))	No. SCSC082776 JUDGMENT ORDER

FILED
2013 APR 19 AM 8: 38
CLERK OF DISTRICT COURT
JOHNSON COUNTY, IOWA

The parties appeared before the Court on November 29, 2012. Attorney Christopher Warnock appeared on behalf of the plaintiff. David Naso personally appeared as the plaintiff and testified on his own behalf. Attorney Joshua Kraushaar appeared on behalf of the defendant. Bethann Teggatz personally appeared as the defendant and testified on her own behalf.

The plaintiff (Mr. Naso) requests the amount of $5000 plus court costs from the Defendant for failure to pay for a custom made entertainment center, according to the terms of an oral agreement executed between the parties. The Defendant counter claims in the amount of $1,200, claiming that she did not receive the piece of furniture for which she contracted with Mr. Naso.

Findings of Fact:

- Mr. Naso and Ms. Teggatz reached an oral agreement in May of 2012 for Mr. Naso to construct an entertainment center for Ms. Teggatz.
- Mr. Naso and Ms. Teggatz agreed that the total cost of the piece would be $7,562.48. Plaintiff's Exhibit 2.
- Ms. Teggatz paid Mr. Naso $1,200 as a down payment on May 22, 2012. Plaintiff's Exhibit 2.
- The elements of the contract included: (1) the dimensions of the entertainment center; (2) the use of pine for construction of the piece; and (3) to match the color of the piece as closely as possible with other pieces Ms. Teggatz had seen at the Dwell furnishings store.
- At no time was wood grain discussed as part of the contract.

- Mr. Naso worked with Ms. Teggatz to achieve the color that she wanted for the piece, creating multiple stained samples for Ms. Teggatz to peruse before the piece was stained and constructed.
- Mr. Naso had stained and constructed the piece by the middle of August 2012. Ms. Teggatz came to view the piece on or about August 15, 2012. Ms. Teggatz indicated at that time that the color was too dark.
- Mr. Naso deconstructed the piece, re-sanded it, and re-stained it, in an effort to achieve the color desired by Ms. Teggatz.
- Ms. Teggatz asked Mr. Naso to pick the wood for the piece. Mr. Naso did so in consultation with Ms. Teggatz and with her approval.
- Ms. Teggatz instructed Mr. Naso to use plywood for the back of the piece after discussing the issue with him.
- Ms. Teggatz viewed the piece three times between August 15, and September 30, 2012.

Discussion:

Pursuant to Iowa Code section 631.11(4), Mr. Naso must demonstrate by a preponderance of the evidence that he has been damaged by the action (or lack of action) of Ms. Teggatz.

Mr. Naso testified at hearing the Ms. Teggatz viewed the piece on three occasions between August 15, 2012, and September 30, 2012. Mr. Naso testified that he was unsure of the exact dates of the viewings. Mr. Naso testified that he had never had any discussion with Ms. Teggatz about wood grain between May of 2012 until her last viewing of the piece in September of 2012.

Mr. Naso testified that Ms. Teggatz viewed the piece for the first time in August of 2012 and it was fully constructed. Mr. Naso testified that Ms. Teggatz felt the color was too dark at that time. Mr. Naso testified that he had deconstructed, re-sanded, and re-stained the piece for Ms. Teggatz in an effort to achieve the color she desired.

Mr. Naso testified that when Ms. Teggatz came to view the piece for the third time, the piece had not been re-constructed. Mr. Naso testified that Ms. Teggatz indicated at the time of the third viewing that the piece was "ok" and then departed. Ms. Teggatz called Mr. Naso twenty minutes after she departed and explained that the wood grain was not acceptable and that

she did not want the piece. Mr. Naso testified that Ms. Teggatz never saw the piece fully constructed with the new stain.

Ms. Teggatz testified that the color of the piece after the re-sanding and second staining was acceptable and that her only objection to the piece was the grain of the wood. Ms. Teggatz testified that there was no discussion of wood grain at the start of the project and that Mr. Naso had made no specific promises as to wood grain for the piece.

Ms. Teggatz testified that even though there had not been discussion about wood grain at the start of the project, she was clear in her desire that the piece "look like" the pieces at the Dwell furnishings store. Ms. Teggatz testified that she had trusted Mr. Naso to pick out the wood for the piece and that she felt the grain on the wood used for the piece made it look "cheap." Ms. Teggatz testified that she did not get the piece for which she had contracted.

Conclusions of Law:

Iowa recognizes the legal doctrine of substantial performance. Mr. Naso bears the burden to show that he has substantially performed on the contract to be eligible to recover on the contract. Central Wisconsin Supply Company v. Johnston Bros. Clay Works, 190 N.W. 961, 963 (Iowa, 1922) and Moore's Builder and Contractor, Inc. v. Hoffman, 409 N.W.2d 191, 194 (Iowa , 1987). In order for Ms. Teggatz to prevail on her counter claim, she must show that Mr. Naso did not substantially perform the contract negotiated between them.

Mr. Naso used pine to construct the entertainment center to the dimensions specified by Ms. Teggatz. Mr. Naso stained the piece to a color that met with Ms. Teggatz' satisfaction. The contract was silent as to the issue of wood grain and contained no specifications concerning wood grain. Mr. Naso made the piece available to Ms. Teggatz and did not withhold it from her.

The Court FINDS the following:

- Mr. Naso substantially performed his portion of the contract negotiated between him and Ms. Teggatz in May of 2012.
- Ms. Teggatz failed to pay the balance due on the contract negotiated between her and Mr. Naso in May of 2012.
- Mr. Naso is entitled to recover on the contract in the amount of $5,000.
- Ms. Teggatz is not entitled to recover the $1,200 she paid as partial performance of her obligations under the contract.

Order:

IT IS THEREFORE ORDERED that judgment is entered in favor of the Plaintiff and against the Defendant in this matter in the amount of $5,000 plus court costs in the amount of $95.00. Court costs are to be assessed to the Defendant.

The counter claim filed by the Defendant is denied and dismissed.

Appeal bond is set in the amount of $5000. It is so ordered.

Clerk to notify.

Dated this 18th day of April, 2013.

Lynn Rose

LYNN M. ROSE
Magistrate Judge
Sixth Judicial District of Iowa

FILED
2013 APR 19 AM 8:38
CLERK OF DISTRICT COURT
JOHNSON COUNTY, IOWA

pk 4/19/13
cc:
C. Larwood
J. Kraushaar