

APN: 1220-17-615-002

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KAREN ELLISON, RECORDER

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JUSTIN M. TOWNSEND, ESQ.

JUDGMENT

Case No.: 18 CV 232

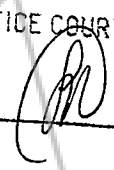
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EAST FORK JUSTICE COURT

BY _____



IN THE JUSTICE COURT OF EAST FORK TOWNSHIP

DOUGLAS COUNTY, NEVADA

A & C LANDSCAPING, INC., a Nevada Corporation,

Plaintiff,

vs.

RICHARD FERKO and ELIZABETH FERKO,

Defendants.

JUDGMENT

This matter came before the Court for trial on December 18, 2018. The Plaintiff was represented by Allison MacKenzie, Ltd. and Justin Townsend, Esq. Defendant Richard Ferko was present, and because Defendant Elizabeth Ferko entered her appearance in the responsive pleadings, the claim against her is subject to proof. The Court will consider the argument, evidence and defenses raised by Richard Ferko as having been presented on Elizabeth Ferko's behalf as well. Reference herein to Defendants will include them both. The Court, having considered the evidence and, being otherwise fully advised, determines that it has jurisdiction of the parties and the subject matter, and, being otherwise fully advised, finds and concludes as follows:

This is an action for damages on a contract for landscaping services performed on the front yard at Defendants' residence at 1136 Kingston, Gardnerville, Nevada in the Spring of 2016. This work followed previous work on the back and side yards in 2015. Plaintiff is a licensed landscaping contractor; Mark Dudley is co-owner and principal. The design, cost and billing for the work followed the same pattern as Defendants' engagement of Plaintiff to landscape the back and side yards.

1 At Defendant Richard Ferko's request, Mr. Dudley provided him with an estimate, Exhibit 1, Tab
2 5, in the amount of \$38,484.00. When Mr. Ferko told him it exceeded their budget, some changes were
3 made. Defendants purchased most of the trees and other plants, and there were some minor modifications
4 of the scope of the work, which, together with the corresponding reduction in profit and overhead,
5 resulted in a bill for \$28,522.00. Defendants made a deposit of \$15,000 in April of 2016; the balance due
6 and claimed herein is \$13,522.00. (Exhibit 1, Tab 7).

8 The Court finds the Defendants were familiar with the Plaintiff's work and billing practices prior
9 to engaging the Plaintiff for the front yard landscaping, and that this work was done at Defendants'
10 request and direction. Defendants have received the benefit of having purchased their own plants,
11 modified the scope, and the corresponding reduction in the claimed profit and overhead. They also
12 received the benefit of the work done by Plaintiff at their request and direction. Having received the value
13 of the work, the Defendants cannot now be heard to deny that they hired the Plaintiff to perform it.

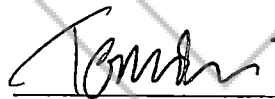
15 The Court finds that the delay in billing does not operate to the prejudice of the Defendants. The
16 work was performed in the Spring of 2016, and the first bill was delivered in December, following the
17 active season for landscaping. The lack of a paper record does not persuade the Court; Plaintiff's
18 witnesses were credible on the timing of the first billing.

20 Defendants raise complaints about workmanship and materials, and suggest that they were, at
21 times, billed for work the crews assigned to their project performed at other sites. Witnesses explained
22 how combining deliveries for materials with other projects worked to reduce the cost to Defendants.
23 These complaints are not credible or supported by proof. Most of the complaints about the finished work
24 are in the nature of easily performed warranty work, or characteristic of landscaping, which requires
25 ongoing maintenance. In either case, to the extent that warranty work remains unperformed, Plaintiff
26 would be excused by Defendants' breach for nonpayment.
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1 The Court finds that there was in fact an agreement, and that the work proceeded in accordance
2 therewith. The price charged reflects the reasonable value of the work performed and is consistent with
3 the price charged for the previous two projects.
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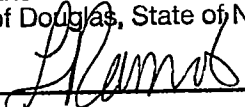
5 IT IS THEREFORE ORDERED that judgment is entered in favor of the Plaintiff and against the
6 Defendants, jointly and severally, in the amount of \$13,522.00, plus costs, and interest at the statutory
7 rate. Plaintiff's claim for attorney's fees is granted. Plaintiff will file an application, with supporting
8 documentation, within ten days of the date hereof, with service on the Defendants. Defendants will have
9 5 days, plus 3 days for service by mail, for a total of 8 days after service to respond and comment on the
10 application, after which it will stand submitted for further action by the Court.
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12 Date: 12/27/18

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16 JUSTICE OF THE PEACE
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The Document to which this certificate
is attached is a full, true and correct
copy of the original on file and of record
in my office.

6-20-19
Date: Clerk of the East Fork Justice Court
County of Douglas, State of Nevada
(Seal)

By: 
Deputy Clerk