

DOCKET NO: CV-96-0472787-S : SUPERIOR COURT  
WES-MAR CONCRETE CONSTRUCTION: JD OF NEW BRITAIN  
VS. : AT NEW BRITAIN  
STANISLAW JASENCZUK, ET AL : OCTOBER 22, 1998

FACT FINDER'S REPORT

I find the following facts in this case:

1. Stanislaw Jasenczuk and Irene Jasenczuk owed 56 James P. Casey Road, Bristol, Connecticut at all material times.
2. On October 27, 1994, Stanislaw Jasenczuk and Irene Jasenczuk contracted in writing with Ronald T. Forcier d/b/a Classic Homes a/k/a Classic Homes of Forestville to move the location of their house within the lot at 56 James P. Casey Road, Bristol, Connecticut (Plaintiff's Exhibit 1, Plaintiff's Exhibit 2, Defendants' Exhibit A, Defendants' Exhibit J.).
3. It was necessary to move the house because the original foundation was build on unsuitable fill.
4. The fill was rotting, causing the foundation to crack.
5. At the time of the contracting, the maximum

height difference between the diagonal corners of the house was approximately eighteen (18) inches.

6. A new site for the house on the lot was selected by Stanislaw Jasenczuk and Irene Jasenczuk's engineer (Plaintiff's Exhibit 2 and Defendants' Exhibit J).

7. The location was specified and attached to the contract.

8. The process involved jacking up the house, moving it to a new location on the same lot, building a new foundation under it and then putting the house on the new foundation.

9. The contract called for the progress payments totalling \$40,000.00 (Defendant's Exhibit A):

- a. Initial down payment \$2,000.00
- b. building permit, footings and house moved to new location \$12,000.00
- c. House on new foundation \$15,000.00
- d. Rough work kneewall, floor poured and utilities hooked up \$5,500.00
- e. Certificate of occupancy \$5,500.00

10. On October 28, 1994, Stanislaw Jasenczuk and Irene Jasenczuk paid Ronald T. Forcier d/b/a Classic Homes \$2,000.00 (Defendants' Exhibit B).

11. It is not clear when work commenced. It was after October 27, 1994 but before October 31, 1994.

12. Stanislaw Jasenczuk was present on the premises every day and saw the progress of the work on a daily basis.

13. Once work began, it was discovered that the house had to be moved fifteen (15) feet further to the left (as viewed from the street) because the original site the engineer selected also had unsuitable fill under it.

14. None of the parties could have reasonably foreseen the initial site selected by the engineer would have unsuitable fill under it.

15. As work progressed, it was necessary to repeatedly modify the terms of the contract. However, none of these modifications were put in writing.

16. The penalty provision of the contract (Plaintiff's Exhibit 1) entitled "7. Work Schedule" was

implicitly waived by the parties. Some of the actions taken by Stanislaw Jasenczuk and Irene Jasenczuk caused unnecessary delays to the project.

17. On November 7, 1994, Stanislaw Jasenczuk and Irene Jasenczuk paid Ronald T. Forcier d/b/a Classic Homes \$5,000.00 (Defendants' Exhibit C).

18. On November 14, 1994, Stanislaw Jasenczuk and Irene Jasenczuk paid Ronald T. Forcier d/b/a Classic Homes \$7,000.00 (Defendants' Exhibit D). This constituted a default under the contract because \$12,000.00 was due at this time.

19. On November 29, 1994, Stanislaw Jasenczuk and Irene Jasenczuk paid Ronald T. Forcier d/b/a Classic Homes \$10,000.00 (Defendants' Exhibit E). This constituted a default under the contract.

20. On December 13, 1994, Stanislaw Jasenczuk and Irene Jasenczuk paid Ronald T. Forcier d/b/a Classic Homes \$5,500.00 (Defendants' Exhibit F).

21. On January 3, 1995, Stanislaw Jasenczuk and Irene Jasenczuk paid Ronald T. Forcier d/b/a Classic Homes

\$5,500.00 (Defendants' Exhibit G).

22. On January 10, 1995, Stanislaw Jasenczuk and Irene Jasenczuk paid Ronald T. Forcier d/b/a Classic Homes \$5,000.00 (Defendants' Exhibit H).

23. Stanislaw Jasenczuk required Ronald T. Forcier d/b/a Classic Homes to remove the shingles from the roof and replace them. The contract (Plaintiff's Exhibit 1) was silent on this point, but did require the new shingles to be applied over 15# felt. Under the circumstances, a reasonable man would have concluded this required removal of the old roof before the new roof was to be applied.

24. Stanislaw Jasenczuk told Ronald T. Forcier d/b/a Classic Homes that a mover was willing to move the house for \$5,000.00. This mover subsequently went out of business, forcing Ronald T. Forcier d/b/a Classic Homes to use a mover that charged \$8,000.00. However, there were no conditions or contingencies in the contract which indicated the \$40,000.00 price was dependent on the \$5,000 bid identified by Stanislaw Jasenczuk.

25. Stanislaw Jasenczuk required the entire first

floor to be retaped for an additional cost of \$1,000, which Ronald T. Forcier d/b/a Classic Homes did not authorize and refuses to pay. The subcontractors that did the work are left to their own remedies because they are not parties to this action.

26. Stanislaw Jasenczuk requested the plumber do additional work amounting to \$1,500 which Ronald T. Forcier d/b/a Classic Homes did not authorize and refuses to pay. The plumber that did the work is left to the plumber's own remedies because the plumber is not a party to this action.

27. Moving the house fifteen additional feet caused Ronald T. Forcier d/b/a Classic Homes to incurred additional expenses not contemplated by the contract amounting to \$2,500.00 for five foot footings (instead of three feet footings) and for a stronger foundation (which required between eight and ten cubic yards of additional concrete).

28. At all times, Stanislaw Jasenczuk and Irene Jasenczuk knew Ronald T. Forcier d/b/a Classic Homes was

doing the work in question. They never objected to the work being performed when it was being performed.

29. At all times, Stanislaw Jasenczuk and Irene Jasenczuk knew Ronald T. Forcier d/b/a Classic Homes expected to be compensated for his work and the work of his subcontractors.

30. The reasonable value of the additional concrete was \$2,500.00.

31. This additional work was reasonably necessary in light of the circumstances.

32. Although it was not contemplated by the original specification, Ronald T. Forcier d/b/a Classic Homes agreed to build a twelve (12) foot concrete retaining wall.

33. When the house was moved fifteen feet to the left, the retaining wall had to be extended.

34. Stanislaw Jasenczuk asked that the retaining wall be extended.

35. Wes-Mar Concrete Construction, Inc. agreed to extend the wall for \$1,800.00 and Stanislaw Jasenczuk

agreed to pay this amount. Ronald T. Forcier d/b/a Classic Homes refused to pay for this additional work or to authorize it.

36. Stanislaw Jasenczuk has failed to pay Wes-Mar Concrete Construction, Inc. this amount.

37. All of the work was done in a workmanlike manner and in a timely fashion in light of all of the circumstances.

38. The reasonable value of the additional work that Ronald T. Forcier d/b/a Classic Homes performed at the request of Stanislaw Jasenczuk was \$500.00. This included a sidewalk.

39. Wes-Mar Concrete Construction, Inc. filed a notice of claim on the Bristol Land Records on March 8, 1995. It was recorded in volume 1150 at page 447 (Plaintiff's Exhibit 5).

40. Wes-Mar Concrete Construction, Inc. properly served Stanislaw Jasenczuk and Irene Jasenczuk with the notice and mechanic's lien (Plaintiff's Exhibit 6).

41. Wes-Mar Concrete Construction, Inc. filed a



notice of lis pendens on the Bristol Land Records on March 7, 1996. It was recorded in volume 1177 at page 865 (Plaintiff's Exhibit 7).

42. Wes-Mar Concrete Construction, Inc. properly served Stanislaw Jasenczuk and Irene Jasenczuk with the notice of lis pendens (Plaintiff's Exhibit 8).

43. Stanislaw Jasenczuk and Irene Jasenczuk never made written demand upon Wes-Mar Concrete Construction, Inc. to remove its mechanics lien as required by Connecticut General Statutes 49-51.

44. Wes-Mar Concrete Construction, Inc. had a good faith basis to file its mechanic's lien.

45. There is no reason to issue a disciplinary default against Irene Jasenczuk for failure to appear at trial because she was ably represented by counsel. She was not under subpoena and her testimony was not necessary based upon the record before the court.

I therefore recommend that judgment issue:

1. Wes-Mar Concrete Construction, Inc. shall recover

judgment against Stanislaw Jasenczuk and Irene Jasenczuk for \$4,300.00 plus costs.

2. Ronald T. Forcier d/b/a Classic Homes shall recover judgment against Stanislaw Jasenczuk and Irene Jasenczuk for \$500.00 plus costs.

3. Judgment for Wes-Mar Concrete Construction, Inc. on the counterclaim by Stanislaw Jasenczuk and Irene Jasenczuk.

4. Judgment for Ronald T. Forcier d/b/a Classic Homes on the cross-claim by Stanislaw Jasenczuk and Irene Jasenczuk.

5. There was insufficient evidence to allow the remedy of a foreclosure on the mechanics lien because no real estate appraisal testimony was presented.

6. No party shall be entitled to attorneys fees.

Dated at Meriden, Connecticut this 22<sup>nd</sup> day of October, 1998.

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Houston Putnam Lowry  
Fact Finder/Arbitrator

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed on this 22<sup>nd</sup> day of October, 1998 to:

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