

Home Improvement Contractor
Recovers on Oral Contract

by

James R. Keller

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The Eastern District Court of Appeals for Missouri recently upheld a trial court's decision to award money to a home improvement contractor for extra work even though there was no written contract for the work. The case is *Best Buy Builders, Inc. v. Siegel*, 409 S.W.3d 562 (Mo. App. E.D. 2013). The case reinforces that oral contracts for construction work can be enforceable in Missouri, but also demonstrates the perils of proving how much the extra work is worth.

Best Buy Builders, Inc. had submitted a proposal to Robyn Siegel to perform various construction work at her home. The proposal included the installation of hardwood flooring, modifications to the kitchen and bathrooms, repairs to the roof and chimney, removing wallpaper, painting, and some other work throughout the house. The original written bid was \$29,592, which Siegel accepted.

As work progressed, Siegel requested significant changes in and additions to the original scope of work, including installing ceramic tile, additional improvements to the kitchen and bathrooms, relocating electrical and plumbing, drywall work, cleaning the gutters, and repairing a leak on the porch. These additions or extra work to the original bid were not reduced to writing.

At trial, William Bartlett, one of Best Buy's owners and employees, testified that the additional changes increased the cost of the project by \$8,978. Bartlett also testified that he did not specifically tell Siegel the cost for these changes. At trial, however, he did introduce into evidence invoices for the additional work.

Bartlett also testified that Siegel requested to do some of the work herself to offset some of the costs. Bartlett extended to Siegel a \$5,000 credit for flooring work she performed and a \$1,000 credit for removing various wallpaper.

Siegel testified that she never agreed to pay more than the original bid amount and that she believed the credits were enough to offset any additional costs for the extra work. She further testified that Bartlett never stated to her that the extra work would cost more than the original bid. Had he so stated, she

testified she would not have allowed Best Buy to perform the extra work because she could not afford to pay for it.

Best Buy completed all the work and requested payment. Siegel paid Best Buy \$29,529, the amount of the original bid, but refused to pay the remaining balance of \$8,978. Best Buy filed a lawsuit for breach of contract.

On appeal, Siegel argued that Best Buy did not prove at trial that she agreed to the increases in the price over the initial bid and that the credits earned by her, when applied, offset any additional amount otherwise owed for the work.

The Eastern District recited established law that an appellate court will view all the evidence and inferences in the light most favorable to the judgment reached by the trial court and will disregard all contrary evidence and inferences. The credibility of the witnesses and the weight of their testimony also are matters within the sound discretion of the trial court and not something that the appellate court will second guess.

The appellate court agreed with the trial court that the actions of Best Buy and Siegel supported a reasonable inference that there was a mutual understanding that Best Buy would perform the extra work and that Siegel would pay for it. Siegel testified that she believed the credit she received would completely offset any additional costs. The appellate court held that the trial court was free to believe Best Buy's evidence and to disregard Siegel's contrary testimony.

Siegel also challenged on appeal the trial court's decision to award \$5,000 for the additional work. She contended that Best Buy did not demonstrate the level of damages with reasonable certainty. She argued that the trial court found there were no clear statements by either side regarding the additional costs for the changes from the original contract.

The Eastern District upheld the trial court's decision on damages. Best Buy had the burden to establish its damages were based on a rational estimate and not speculation. The appellate court decided that the trial court both believed and disbelieved parts of the testimony of each side.

This was evidenced by the award being \$5,000 instead of the \$8,978 that plaintiff had requested. The appellate court concluded that Best Buy presented competent and substantial evidence on damages with reasonable certainty.

James R. Keller is a partner at Herzog Crebs LLP where he concentrates his practice on construction law, complex business disputes, real estate and ADR. He also is an arbitrator and a mediator.