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Lowell E. Parrish v. Theodore H. Tahtaras and Josephine Tahtaras : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT

of the

STATE OF UTAH

UNIVERSITY UTAH

JAN 28 1957

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LOWELL E. PARRISH,

Plaintiff and Respondent,

vs.

THEODORE H. TAHTARAS,
and JOSEPHINE
TAHTARAS,

Defendants and Appellants.

Case No. 8514

BRIEF OF RESPONDENT

FILED
OCT 29 1956

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Clerk, Supreme Court, Utah

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LOWELL E. PARRISH,
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and JOSEPHINE
TAHTARAS,
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} Case No. 8514

BRIEF OF RESPONDENT

STATEMENT OF FACT

The Respondent adopts the Statement of Facts set forth by the appellants, but adds thereto the following material facts:

In addition to the income from the operation of a restaurant, appellants also had income from real estate rentals (R. 164). No evidence was adduced by appellants as to their income or financial ability to finance a home of the size and style dictated and approved by them.

The appellants had Mr. Parrish, as an archi-

tect and friend, help them select a lot in Indian Hills at 1510 Ute Drive. They had very definite ideas as to the size of the house and the number of rooms. Mr. Tahtaras testified:

“Q. I see. Now when you went up on the hill, what conversation, if any, took place between Mrs. Tahtaras and Mr. Parrish?

A. Well we were on the lot — do you mean at home or on the lot?

Q. On the lot.

A. On the lot?

Q. Yes.

A. We stood on some part of the lot there and Mrs. Tahtaras started telling Mr. Parrish about wanting three bedrooms and a utility room upstairs and a nice kitchen of course, and a living room and a dining room and two and a half baths, I remember, two and a half baths. So they talked about it a little while. I wasn't saying much, they were doing the talking about what the Mrs. wanted.”
(R. 270)

Mrs. Tahtaras advised Mr. Parrish as to the minimum rooms in the house:

“A. In substance Mrs. Tahtaras said she desired three bedrooms on the main floor, that she desired her living and dining room combined and that

she wanted a breakfast room or a dinette off the kitchen, and her utility room upstairs and a two car garage, and a recreation room downstairs that must be completed when the house was completed.” (R.28)

These requirements were in addition to the one that the dwelling be designed like Mr. Parrish’s own home. See Exhibit 9.

Exhibits 10 and 11 are the final specifications and drawings on the dwellings as finally approved by the appellants and then used as the basis for taking the first bids. The areas and details had all been approved step by step by appellants through the preliminary drawings, schematics and final working plans. (R. 12 to 30)

Appellants themselves suggested two contractors to whom drawings and specifications were sent for bidding. (R. 47). The record is undisputed on the testimony of Mr. Parrish that the reasonable cost of construction of the dwelling as designed was \$12.00 to \$14.00 per square foot; that his own home of comparable size and design cost \$62,000.00 (R. 51), and that a very similar house built at the same time cost \$12.35 per square foot. (R. 174).

The very significant facts must be included regarding the excessive bids because of appellants’ “legal involvements” (R. 86) and their credit problems. (R. 173 and 177).

Also the record shows the continuing willingness of Mr. Parrish to cut down the plans to reach lower bids for appellants, as reflected in the testimony of Mrs. Tahtaras:

“A. Yes, he says, “Well, I am revising the plans” he said. He said, “I can cut it way down for you to meet your price.”, and so then we agreed with him. He thought he would, you know—and then I guess that’s all that was said.” (R. 257)

STATEMENT OF POINTS

POINT I

THE APPELLANTS REQUESTED THE ARCHITECTURAL SERVICES OF MR. PARRISH, APPROVED THE DESIGN, DRAWINGS AND SPECIFICATIONS FOR THEIR HOME AND ARE LEGALLY BOUND TO PAY FOR THE SAME.

POINT II

THE APPARENTLY EXCESSIVE BIDS RESULTED FROM THE LAWSUITS AND CREDIT DIFFICULTIES OF THE APPELLANTS.

POINT III

THE COURT’S FINDINGS AND JUDGMENT ARE FULLY SUPPORTED BY THE RECORD.

POINT IV

THE COURT DID NOT ERR IN FINDING JUDGMENT IN FAVOR OF THE PLAINTIFF FOR THE VALUE OF THE ARCHITECTURAL SERVICES RENDERED.

ARGUMENT

POINT I

THE APPELLANTS REQUESTED THE ARCHITECTURAL SERVICES OF MR. PARRISH, APPROVED

THE DESIGN, DRAWINGS AND SPECIFICATIONS FOR THEIR HOME AND ARE LEGALLY BOUND TO PAY FOR THE SAME.

The record, as testified to by all parties, shows that the appellants had been neighbors to Mr. Parrish for several years and were familiar with his work as an architect and particularly with the new home designed and built by him on "I" Street. They visited at this new home and decided that they wanted one like it.

To this end, they had Mr. Parrish assist them in the selection of a sloping view lot in Indian Hills and then requested that he design for them a two level house "as good as" his. In fact, they were very definite as to what this house must contain, including three bedrooms on the main floor, along with two tiled bathrooms, living room, dinette, kitchen. Then they required that the lower floor have a large recreation room, a sewing room and a half bath with the usual appurtenances. Step by step as the planning developed, Mr. Parrish met with the appellants and reviewed the design, size and placement of the required rooms and finally came up with a full set of drawings and specifications to meet their demands. Mrs. Tahtaras was particularly anxious for certain details and Mr. Tahtaras seemed agreeable to letting her have anything she wanted.

This actual planning process covered a period from the latter part of May, 1954 when the first schematic drawings were submitted until November 1954 when the finished drawing were approved and ready for the taking of bids. This period allowed the parties mature reflection upon the proposed undertaking and does not show a hasty ill-conceived venture. Mrs. Tahtaras wanted a home as good as the one occupied by Mr. and Mrs. Parrish and she visited in their "I" Street house, had conferences there concerning the design of her own house and suggested revisions to meet her own requirements.

Can the appellants now be heard to say that they should not pay for this professional service rendered at their instance and request and solely for their benefit? Yet that is their position. The sole excuse offered for their refusal to pay is that the bids for the construction exceeded their desired maximum cost. No complaint is made as to the style of design, the number of rooms, their placement or the materials as obviously such are the items that they desired and that they insisted upon and required to be a part of the drawings and specifications.

On the issue of maximum cost, the Court found that:

"Defendants employed plaintiff to draw

plans for a building, not to exceed \$65,000, including the architects' but not the cost of the lot.

Plaintiff could have cut the plans to get bids of \$65,000 less fees or \$60,185.18.

Defendants abandoned their house building project.

Defendants are not entitled to any return of fees paid.

Plaintiff is entitled to judgment, damage calculation on quantum meruit.

Fee if work had been completed 8% of \$62,579 is \$5,207.12 reduced to maximum of 8% of \$60,185.12	\$4,814.82
-----------------------------------------------------------------------------------------------------	------------

Less $\frac{1}{4}$ allocated to building suspension	1,203.70
-----------------------------------------------------	----------

Less $\frac{1}{8}$ allocated to reducing the plans to secure bids @ \$60,185.18	601.85
---------------------------------------------------------------------------------	--------

Less amount paid	1,300.00
------------------	----------

Judgment for plaintiff and against defendants	\$1,709.27
-----------------------------------------------	------------

(R. 324).

The law relating to a quasi-contracts is based upon the equitable principle that a person shall not be allowed to enrich himself unjustly at the expense of another, and on the principle that whatsoever it is certain that a man ought to do, that the law supposes him to have promised to do. (17 C.J.S. 324)

The Court had before it the record of extensive architectural services rendered in the design of a fine dwelling to meet the demands of the appellants. The record that the appellants approved of these drawings and specifications and requested Mr. Parrish to assist them by seeking out contractors to build the dwelling. They selected two such contractors to whom invitations for bids were sent. All of this part of the services by Mr. Parrish was of a special nature in accommodating the appellants.

Even after the bids came in and were considered too high by the appellants (we shall touch upon the reasons later) they still requested Mr. Parrish to perform more professional services in the modification of the plans and specifications to come within the \$65,000.00 maximum figure imposed by the appellants after they had already dictated and approved of the general size, number and style of the rooms and exterior of the dwelling. Once again bids were requested and again rejected by appellants, and Mr. Parrish was willing and ready to further reduce the design and specifications and to seek lower bids (R. 257 & 259) but appellants withdrew and decided to purchase a house. (R. 260)

The Court's decision appears to be based upon the reasonable value of the services on a quantum meruit theory, there are numerous facts which sustain the legal premise for this:

Appellants orally hired Mr. Parrish, consulted with him, approved the designing and dictated the general size, style and content of the proposed residence;

Appellants on two occasions recognized their employment of Mr. Parrish by paying to him \$300.00 and \$1,000.00 respectively on account;

Appellants signed a written contract with Mr. Parrish after his work had already been partially performed, which contract confirms the intention to use his services, and then compensate for the same;

Mr. Parrish testified as to the reasonable value of the services rendered and no contradictory evidence was adduced;

Appellants, because of their own credit problems, discharged Mr. Parrish and withdrew from the proposed construction of the dwelling in January of 1955.

This problem has been considered by the courts on other occasions. The general rule is stated: If an architect renders services and there is no agreement respecting compensation, he is entitled to be paid the reasonable value of his services. 3 AM. Jur. 1004, Annotation, 20 A.L.R. 1357.

The crux of the matter seems to turn on the question of whether or not the appellants, by refusing to pursue the modification and re-bidding on the house, could then eliminate their accrued obligation to pay Mr. Parrish for his services render-

ed up to that time. It is the attitude of appellants that Mr. Parrish acted at his own peril in taking bids when the same exceeded the expectations of the appellants. They seem to forget that Mr. Parrish was acting as their agent and as an accomodation in the taking of bids. They had dictated two of the prospective contractors and he selected the others to whom invitations to bid were offered.

The record shows that it is not uncommon for plans to be revised by elimination of areas and details to reach lower prices. An architect attempts to get the very most he can for a client at the inception and if the bids are too high, then the process of gradual elimination starts by reduction of the drawings and specifications to seek out lower bids from contractors. Appellants have not alleged or contended that they imposed any time limits or date restrictions upon Mr. Parrish either as to original design or the revisions, but now seek to evade their just liabilities by changing their minds and discharging him in the course of his services and prior to completion.

Have appellants been fair in this matter? We think not. They were the ones that invited Mr. Parrish to design a house for them as beautiful as the Parrish home on "I" Street. (R. 196). The appellants had familiarized themselves with the Parrish home and selected a beautiful view lot location in

a new subdivision, Indian Hills, for a similar home. In addition, they imposed upon Mr. Parrish minimum requirements such as three bedrooms on the main floor, a breakfast area adjoining the kitchen overlooking the view, similar types of materials to the Parrish home, recreational areas downstairs, "a beautiful home, one that people would look at, something that people would be attracted toward as they drove by they would stop and look at." (R. 201)

Now they are unhappy because such a home was designed for them, but the cost exceeded their expectations. It was not until the home had been fully designed and the working drawings approved that the appellants imposed the \$65,000.00 maximum figure upon their architect. (R. 45 and 206) This restriction having been so lately imposed after the basic design, materials, style and details had been agreed upon, should be considered by the court in determining whether or not it was reasonable for appellants to cut short Mr. Parrish in his efforts to scale such down to where acceptable bids could be procured. Mr. Tahtaras had told Mr. Parrish to "keep working on it." "The sooner the better". (R. 284)

Appellants' appetite for a beautiful home apparently far exceeded their willingness to pay for what they wanted. Just what is the responsibility

of an architect to the client when the client dictates the requirements and approves the drawings at each step of the way? "Good faith and loyalty to his employer constitute a primary duty of the architect." 3 Am. Jur. 1000.

"An architect, by every contract, implies that he possesses skill and ability, including taste, sufficient to enable him to perform the required services at least ordinarily and reasonably well, and that he will exercise and apply in the given case his skill, ability, judgment, and taste reasonably and without neglect. The duty owing to his employer is essentially the same as that which is owed by any person to another where such person holds himself out as possessing skill and ability in some special employment and offers his services to the public on account of his fitness to act in the line of business for which he may be employed. The skill and diligence which he is bound to exercise are such as are ordinarily required of architects. He must provide for reasonable strength and for proper material and character of construction, and he must keep abreast of the improvements of the times. The architect's undertaking, however, in the absence of a special agreement, does not imply or guarantee a perfect plan or satisfactory result, but he is liable only for failure to exercise reasonable care and skill. * * *"
3 Am. Jur. 1001.

Your court considered a somewhat similar problem on architectural fees in *Headlund v. Daniels*, 167 Pac. 1170, 50 Ut. 381. After work had been

done by the architect and some drawings produced, he estimated the costs of remodeling the theatre would not exceed \$30,000.00. The actual remodeling cost was \$77,000.00. The owner refused to pay the architectural fees because of the tremendous increase in costs. The judgment of the lower court in favor of the architect for his fees was affirmed. There the architect's plans were used and the remodeling completed. But the court seemed to emphasize that the excessive cost was not due to the carelessness, negligence or incompetency of the architect.

“A contract may be made in which the sum named is only by way of estimate, and where the instructions given require the preparation of plans and specifications for the construction of a building according to the expressed wishes of the owner as to size, method, and details of construction, and mere nonconformity in the cost of construction under the plans and specifications with the amount so estimated does not prevent a recovery.” 6 C.J.S. 310

See also *Schwender v. Schraft*, 141 N.E. 511, 246 Mass. 523.

POINT II

THE APPARENTLY EXCESSIVE BIDS RESULTED FROM THE LAWSUITS AND CREDIT DIFFICULTIES OF THE APPELLANTS.

The evidence in the record shows that nearly four and one-half months of architectural services had been rendered before appellants, when inspect-

ing the working drawings, finally came up with the restriction of \$65,000.00 maximum cost. They would have you think that Mr. Parrish, who proceeded in good faith in his professional services, had done something wrong in not procuring a declaration on price at the outset. The friendly, neighborhood relationship of the parties did not dictate such a contractual condition when the appellants had told him to design a home as good as his on "I" Street. He and they knew the materials, style and details in that home. They had watched its construction and had viewed it and visited in it when completed. Also they dictated the size and character for incorporation in their new house.

What is there in the record that would have advised Mr. Parrish of their unexpressed price restrictions prior to this time? Appellants, in a play for sympathy, have emphasized that they own a small restaurant on West 3rd South where he works one shift as a cook and Mrs. Tahtaras works part time as a waitress. They omitted any reference to the fact that appellants owned "certain real estate rentals," (R. 164) and that they had bought two different homes in very desirable neighborhoods during the course of the matters testified to, one on upper Sheridan Road and one at 2559 East 13th So. In addition they had purchased the view lot in Indian Hills upon which the new dwelling was to be erected.

These were not people unfamiliar with property and money. At no time did they tender a financial statement of their assets and income to support the intimation that they could not afford the house they asked Mr. Parrish to design for them.

Now let us look at the bids that were received, in light of this background and the fact that Mr. Tahtaras was then involved in litigation in the District Court in two lawsuits over commissions and contracts on the sales of some of his real estate holdings. (R. 70 and 294) Mr. Tahtaras reiterated that he was having some credit difficulties.

The first bids received on the original design with all of the details were:

Earl Belknap	\$62,589.00
Stewart L. Carlson	80,562.00
Hamer Culp, Jr.	82,500.00
Alan E. Fors	92,500.00

Then Mr. Parrish revised the drawings and specifications after consultation with appellants, reducing the square footage from 4500 feet to 3800 feet. The bids on this reduced house ran, \$73,280.00 and \$75,987.00. These were undoubtedly too high because of the legal involvements and credit problems of appellants. A contractor cannot be blamed for bidding excessively high when he is to do business with a man who was already in court on two alleged breaches of contract.

The only proper rule in such a case seems to be to ascertain what would be the reasonable cost of constructing such a dwelling. Mr. Parrish testified, without contradiction, that from his years of experience, and from records of construction of a similar house at the same time, the reasonable cost of construction of such a home as he had designed would be between \$12.00 to \$14.00 per square foot. Let us multiply the 3800 square feet on the revised plan by \$14.00 per square foot. We get \$53,200.00, a figures well within the limit of \$65,000.00 which the court found had been imposed by the appellants. Apparently the two contractors bidding the revised plans had added \$20,000.00 "scare" money as a hedge against possible litigation with Mr. Tahtaras should they have to sue him for breach of contract.

Notwithstanding these difficulties, Mr. Parrish was ready and willing to cut down to meet appellants' price. (R. 257) However, Mr. Tahtaras had called Mr. Belnap, the original low bidder who had withdrawn his bid, and asked him to bid on the revised plans. Still he could not get bids as low as he wanted them. When he met with Mr. Parrish and discussed the last bids, Mr. Taharas said, "Now you will have to forget it." (R. 287)

The equities of this matter certainly predominate in favor of Mr. Parrish and against the appellants. It is about like the situation which might

exist if a client requested his lawyer to prepare, revise and amend an extensive trust agreement to assist him in the disposition of his properties. Then because one of his sons has offended him, the client refuses to execute the trust and then refuses to pay his lawyer.

Here too, because of the “wild” bidding of the contractors evidently because of their knowledge of the two pending law suits with appellants on alleged breach of contract, appellants will not build their house and will not pay for the professional services rendered. It would appear that the proposed contractors were more prudent than Mr. Parrish in recognizing appellants’ apparent penchant for breaching contracts and involving in litigation.

POINT III

THE COURT’S FINDINGS AND JUDGMENT ARE FULLY SUPPORTED BY THE RECORD.

POINT IV

THE COURT DID NOT ERR IN FINDING JUDGMENT IN FAVOR OF THE PLAINTIFF FOR THE VALUE OF THE ARCHITECTURAL SERVICES RENDERED.

The trial court filed a memorandum of his decision (R. 324), and then signed and entered the Findings of Fact and Judgment. (R. 13-16) There is substantial evidence in the record to support each and all of the Findings of Fact. As we read the brief of appellants, they only take issue with the court on the following Findings:

No. 4 and No. 10. The first finds the \$65,000.00 limitation of cost and the second denies a \$45,000.00 cost limitation. Both briefs in the statement of facts affirm the existence of testimony to establish the court's findings. Mr. and Mrs. Parrish testified as to the \$65,000.00 limit and Mr. and Mrs. Tah-taras admitted the conference, but claimed that they restricted the cost to \$45,000.00. The trial court saw and heard the witnesses and for good cause elected to believe Mr. and Mrs. Parrish.

No specific exceptions have been taken as to the other Findings. As indicated above, the trial court has the prime opportunity to see and hear the witnesses, examine the exhibits and study the attitudes expressed by the words and actions of each one. Upon this premise, he has found in favor of the plaintiff and ample evidence exists to sustain each Finding.

From a legal viewpoint the appellants attempt to assail the judgment on two major fronts:

- (a) Appellants claim that the court erred in permitting recovery on quantum meruit.
- (b) Appellants assert that when Mr. Parrish failed to so revise the plans the first time to procure bids under the \$65,000.00 level, then he cannot further revise them or recover for his services rendered.

On the issue of quantum meruit we not that defendants' answer denied the express contract between the parties and then by way of counterclaim set up a different purported oral agreement and alleged failure to perform. (R. 3) In the course of trial it appeared to the court that recovery, if any, must be based upon the theory of quantum meruit. (R. 119) The defendants and their counsel were there and then advised that the proceedings would continue upon that theory and plaintiff was given leave to amend the complaint in conformity therewith. A second cause of action on quantum meruit was then alleged. In connection with appellants' motion for new trial an affidavit was filed by Mr. Rose alleging those facts and stating that he was incapable of meeting the issues fully and fairly. However, no allegations were made as to what different or any evidence would have been tendered, hence no real value can be assigned to this motion and affidavit.

In the supplement page #19 filed by appellants for their brief, they refer to two recent Utah cases, both of which sustain our position, rather than that of appellants. *Morris v. Russell*, 236 Pac. (2d) 451, 120 Utah 531 involved an action for services rendered. A specific contract was alleged by plaintiff and denied by defendant. The count for quantum meruit was first stricken and then restored:

“The essence of the defendants’ admission of an express contract here is in fact a denial of the express contract alleged by the plaintiff; they merely admitted that the plaintiff was to work for them, but denied that they were to pay for the same. That being so, it was not error for the plaintiff to have his case submitted both on the express contract which he claimed and the defendants denied, and also on quantum meruit, the same as if there had been a general denial both of the services rendered and also the obligation to pay therefor.

* * * “The adding of the quantum meruit count, was the equivalent of permitting an amendment to conform to the proof. The defendants were in no worse position than if the quantum meruit count had not been there in the first place. There is no showing that the defendants were mislead or prevented from presenting all their evidence or in any way prejudiced by reinstating the count.”

In *Taylor v. E. M. Royle Corp.* 264 Pac. (2d) 279, 1 Utah 2d. 175, the situation is somewhat different. Therein again there was a dispute as to the terms of compensation for an employee. The trial and complaint were under the theory of an express agreement. Judgment was on the basis of quantum meruit. This judgment was reversed because “No effort was made to amend the complaint to conform to any different proof nor any proof affirmatively offered to establish a quantum meruit theory.” The *Morris v. Russell* case (*supra*) was

discussed and differentiated on the basis that the defendant in the Taylor case had not been called upon to meet the issue of quantum meruit.

These and other cases affirm Utah's acceptance of the quantum meruit theory of recovery in actions for services rendered, as in ours. Here the parties were advised early in the trial that quantum meruit was the theory of the case. Opportunity was afforded all to present evidence on this. The plaintiff did so and established the reasonable value of the services rendered. The defendants, now appellants, fail to state what, if any, different evidence they would have adduced. Amendment of the complaint in conformance with this quantum meruit theory and the proof was duly allowed.

The last theory of appellants to be considered is their claim that the failure of Mr. Parrish to modify the drawings and specification to procure sufficiently low bids before appellants decided not to build, robs plaintiff of any right to recover. The case of *Schwender v. Schraft* (supra) 141 N.E. 511 involved architectural services. The owner was ready to spend \$40,000.00 but insisted that special features be incorporated in the structure. Bids exceeded the proposed \$40,000.00; revision of the plans to eliminate some features were made and still the bids were too high; again the plans were revised downward in a futile effort to reach the price; and then

defendant decided not to proceed. Recovery was awarded to the architect for his fees. The reasoning was based upon the premise that the design was "according to the expressed wishes of the owner as to size, method and details of construction. In such a case, mere non-conformity in the cost of construction under the plans and specifications with the amount so estimated does not prevent a recovery."

A general statement of the law is found at 6 C.J.S. 328 referring to the rule of damages to an architect where the owner has breached his obligation as here:

"and, in an action on a quantum meruit in the case of part performance, it is the reasonable value of the services rendered."

Supporting cases are cited. The evidence of the plaintiff showed the many details of the services rendered and the reasonable value thereof. Not one item of the services was denied by the appellants.

CONCLUSION

Whether the contract is specific, implied or quasi, the undisputed rule is that:

"one who prevents performance of a contract by the other party may not avail himself of the wrong and the other party is excused from fulfilling the contract." 17 C.J.S. 966

Here we have Mr. Parrish ready and able to further reduce the drawings and specifications so as to

meet the price requirements, but appellants just decided not to bother and terminated his employment. They cannot by such arbitrary unilateral action escape liability for the reasonable value of the services rendered to that date. There is no pretense on appellant's part that they had prescribed a time limit beyond which Mr. Parrish could not go. No violation as to type, style, detail or appearance of design is asserted by them. They have impetuously decided not to take further bids or permit Mr. Parrish to adjust the details of the house to accomodate their pocketbook and their whims at the same time.

If the rule were otherwise, great injustice would be done to professional men, laborers, technicians and other employees. The caprice of the employer would measure the compensation rather than the reasonable value of the services.

It is submitted that the judgment of the lower court is fully sustained in law and in equity and should be affirmed.

Respectfully submitted,

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