

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-2021-138

ANSWER AND COUNTERCLAIMS

INTRODUCTION

THE PARTIES

4. Defendants admit the allegations contained in paragraph 4 of the Verified Complaint.

5. Answering paragraph 5 of the Verified Complaint, Defendants admit that Southern Maine Construction, LLC has a principal place of business in Westbrook, Maine and that Anthony Michael Rinaldi is the owner and sole member of Southern Maine Construction, LLC. Defendants deny the remaining allegations contained in paragraph 5 of the Verified Complaint.

6. The allegations contained in paragraph 6 of the Verified Complaint comprise legal conclusions and/or standards to which no answer is required by Defendants. To the extent a response is required, Defendants deny the allegations contained in paragraph 6 of the Verified Complaint.

FACTS COMMON TO ALL COUNTS

7. Defendants admit the allegations contained in paragraph 7 of the Verified Complaint.

8. Defendants admit the allegations contained in paragraph 8 of the Verified Complaint.

9. Defendants admit the allegations contained in paragraph 9 of the Verified Complaint.

10. Answering paragraph 10 of the Verified Complaint, Defendants admit that Anthony Michael Rinaldi executed said Contract, which Contract speaks for itself. Defendants admit that Anthony Michael Rinaldi is the owner and sole member of Southern Maine Construction, LLC. Defendants deny the remaining allegations contained in paragraph 10 of the Verified Complaint.

11. Answering paragraph 11 of the Verified Complaint, Defendants admit that Anthony Michael Rinaldi executed said Contract, which Contract speaks for itself. Defendants deny the remaining allegations contained in paragraph 11 of the Verified Complaint.

12. Answering paragraph 12 of the Verified Complaint, Defendants admit that Anthony Michael Rinaldi executed said Contract, which Contract speaks for itself. Defendants deny the remaining allegations contained in paragraph 12 of the Verified Complaint.

13. Defendants admit the allegations contained in paragraph 13 of the Verified Complaint.

14. Defendants admit the allegations contained in paragraph 14 of the Verified Complaint.

15. The allegations contained in paragraph 15 of the Verified Complaint comprise legal conclusions and/or standards to which no answer is required by Defendants. To the extent a response is required, Defendants deny the allegations contained in paragraph 15 of the Verified Complaint.

16. Answering paragraph 16 of the Verified Complaint, Defendants admit that Anthony Michael Rinaldi executed said Contract, which Contract speaks for itself. Defendants deny the remaining allegations contained in paragraph 16 of the Verified Complaint.

17. Defendants admit the allegations contained in paragraph 17 of the Verified Complaint.

18. Defendants deny the allegations contained in paragraph 18 of the Verified Complaint.

19. Defendants admit the allegations contained in paragraph 19 of the Verified Complaint.

20. Answering paragraph 20 of the Verified Complaint, Defendants admit that Anthony Michael Rinaldi executed said Possession Prior to Closing Agreement, which document speaks for itself. The remaining allegations contained in paragraph 20 of the Verified Complaint comprise legal conclusions and/or standards to which no answer is required by Defendants. To the extent a response is required, Defendants deny the remaining allegations contained in paragraph 20 of the Verified Complaint.

21. Defendants admit the allegations contained in paragraph 21 of the Verified Complaint.

22. Answering paragraph 22 of the Verified Complaint, Defendants admit that Anthony Michael Rinaldi assisted Drew Pierce with moving some personal property into the garage of the Residence. Defendants deny the remaining allegations contained in paragraph 22 of the Verified Complaint.

23. Defendants admit the allegations contained in paragraph 23 of the Verified Complaint.

24. Defendants admit the allegations contained in paragraph 24 of the Verified Complaint.

25. Defendants deny the allegations contained in paragraph 25 of the Verified Complaint.

26. Defendants deny the allegations contained in paragraph 26 of the Verified Complaint.

27. Defendants deny the allegations contained in paragraph 27 of the Verified Complaint.

28. Defendants deny the allegations contained in paragraph 28 of the Verified Complaint.

29. Defendants deny the allegations contained in paragraph 29 of the Verified Complaint.

30. The allegations contained in paragraph 30 of the Verified Complaint comprise legal conclusions and/or standards to which no answer is required by Defendants. To the extent a response is required, Defendants deny the allegations contained in paragraph 30 of the Verified Complaint.

31. Defendants deny the allegations contained in paragraph 31 of the Verified Complaint.

32. Defendants deny the allegations contained in paragraph 32 of the Verified Complaint.

33. Defendants deny the allegations contained in paragraph 33 of the Verified Complaint.

34. Defendants deny the allegations contained in paragraph 34 of the Verified Complaint.

35. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 35 of the Verified Complaint and therefore deny them.

36. Answering paragraph 36 of the Verified Complaint, Defendants admit Plaintiffs' counsel contacted Anthony Michael Rinaldi on or about March 12, 2021. The remainder of the allegations contained in paragraph 36 of the Verified Complaint comprise legal conclusions and/or standards to which no answer is required by Defendants. To the extent a response is

required, Defendants deny the remaining allegations contained in paragraph 36 of the Verified Complaint.

37. Defendants deny the allegations contained in paragraph 37 of the Verified Complaint.

38. Answering paragraph 38 of the Verified Complaint, Defendants admit that Anthony Michael Rinaldi re-listed the Property with a new real estate agent as available for sale for the \$475,000. Defendants deny the remaining allegations contained in paragraph 38 of the Verified Complaint.

39. Defendants admit the allegations contained in paragraph 39 of the Verified Complaint.

40. Defendants deny the allegations contained in paragraph 40 of the Verified Complaint.

41. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 41 of the Verified Complaint and therefore deny them.

42. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 42 of the Verified Complaint and therefore deny them.

COUNT I
Breach of Contract

43. Defendants repeat and reassert their answers to paragraphs 1 through 42 of the Verified Complaint as if fully set forth herein.

44. The allegations contained in paragraph 44 of the Verified Complaint comprise legal conclusions and/or standards to which no answer is required by Defendants. To the extent

a response is required, Defendants deny the allegations contained in paragraph 44 of the Verified Complaint.

45. Answering paragraph 45 of the Verified Complaint, Defendants admit that Anthony Michael Rinaldi executed said Contract, which speaks for itself. To the extent a response is required, Defendants deny the allegations contained in paragraph 45 of the Verified Complaint.

46. Defendants deny the allegations contained in paragraph 46 of the Verified Complaint.

47. Defendants deny the allegations contained in paragraph 47 of the Verified Complaint.

48. Defendants deny the allegations contained in paragraph 48 of the Verified Complaint.

49. Defendants deny the allegations contained in paragraph 49 of the Verified Complaint.

50. Defendants deny the allegations contained in paragraph 50 of the Verified Complaint.

51. Defendants deny the allegations contained in paragraph 51 of the Verified Complaint.

52. Defendants deny the allegations contained in paragraph 52 of the Verified Complaint.

WHEREFORE, Defendants Anthony Michael Rinaldi and Southern Maine Construction, LLC respectfully request that the Court dismiss Count I of Plaintiffs' Verified Complaint, award

Defendants their fees and costs and award such other and further relief as the Court deems just and proper.

COUNT II
Illegal Eviction (14 M.R.S. § 6014)

53. Defendants repeat and reassert their answers to paragraphs 1 through 52 of the Verified Complaint as if fully set forth herein.

54. Defendants deny the allegations contained in paragraph 54 of the Verified Complaint.

55. Defendants deny the allegations contained in paragraph 55 of the Verified Complaint.

56. Defendants deny the allegations contained in paragraph 56 of the Verified Complaint.

57. Defendants deny the allegations contained in paragraph 57 of the Verified Complaint.

58. Defendants deny the allegations contained in paragraph 58 of the Verified Complaint.

59. Defendants deny the allegations contained in paragraph 59 of the Verified Complaint.

60. Defendants deny the allegations contained in paragraph 60 of the Verified Complaint.

WHEREFORE, Defendants Anthony Michael Rinaldi and Southern Maine Construction, LLC respectfully request that the Court dismiss Count II of Plaintiffs' Verified Complaint, award Defendants their fees and costs and award such other and further relief as the Court deems just and proper.

AFFIRMATIVE DEFENSES

1. Plaintiffs' Verified Complaint, and each and every count therein, fails to state a claim upon which relief may be granted.

2. Plaintiffs' Verified Complaint is barred by the statute of limitations, statute of frauds, laches, waiver, estoppel, and/or unclean hands.

3. Defendant Southern Maine Construction, LLC is not a proper party to this action.

4. Plaintiffs' Verified Complaint is barred by Plaintiffs' own breaches of contract including, but not limited to, failure to perform and/or timely perform and Plaintiffs' anticipatory breach of contract.

5. Plaintiffs' Verified Complaint is barred due to fraud and/or negligent misrepresentation.

6. Plaintiffs' Verified Complaint is barred by failure of consideration.

7. Plaintiffs' Verified Complaint is barred by a failure of a meeting of the minds.

8. Defendants adopt and incorporate herein by reference any and all applicable affirmative defenses available, pursuant to Rule 8 of the Maine Rules of Civil Procedure, to the extent that the facts known at this time would make any of said defenses available, or facts developed in the future would make the same available. Defendants do not waive any affirmative defenses.

9. Defendants hereby give notice that they intend to rely upon such other and further defenses as may become available or apparent during pretrial proceedings in this action and hereby reserves all rights to amend this Answer and all such defenses.

WHEREFORE, Anthony Michael Rinaldi and Southern Maine Construction, LLC respectfully request that the Court dismiss Plaintiffs' Verified Complaint, award Defendants their fees and costs and award such other and further relief as the Court deems just and proper.

COUNTERCLAIMS

Defendant/Counterclaim-Plaintiff Anthony Michael Rinaldi, by and through counsel, for his counterclaims against Plaintiffs/Counterclaim-Defendants Drew Pierce and Janice Lariviere (collectively, "Plaintiffs"), alleges and states upon personal knowledge as to himself and his own acts, and upon information and belief with respect to all other matters, as follows:

Parties

1. Anthony Michael Rinaldi ("Rinaldi") is an individual and resident of City of Westbrook, State of Maine.
2. Rinaldi is the owner and sole member of Southern Maine Construction, LLC ("Southern Maine Construction"), a Maine limited liability company, with a principal place of business in Westbrook, Maine.
3. Drew Pierce is an individual and resident of the Commonwealth of Massachusetts.
4. Janice Lariviere is an individual and resident the Commonwealth of Massachusetts.

Facts Common to all Counts

5. By virtue of a warranty deed recorded February 28, 2017, in the Cumberland County Registry of Deeds at Book 33848, Page 220, dated February 23, 2017 (the "Warranty Deed"), Rinaldi is the owner of real property located at 451 Cape Road in Raymond,

Cumberland County, Maine, also identified as Lot 20 on Raymond Tax Map 2 (the “Property”). The Property had a previous mailing address of 0 Raymond Cape Road, Raymond Maine.

6. In or about April 2020, Rinaldi began work on the construction of a 3-bedroom, 2.5-bath, 1,908-square foot home on the Property (the “Residence”), which Rinaldi intended to sell.

7. On or about August 17, 2020, Rinaldi entered into a Purchase and Sale Agreement to sell the Property and Residence to Plaintiffs Drew Pierce and Janice Lariviere for the purchase price of \$385,000.00 (the “P&S Agreement”).

8. At the time Plaintiffs and Rinaldi entered into the P&S Agreement, the Residence was still under construction. The Residence was to be completed prior to the closing date agreed upon in the P&S Agreement.

9. Plaintiffs and Rinaldi agreed to extend the closing date to March 5, 2021.

10. The P&S Agreement expressly incorporates by reference an attached “Spec Sheet,” which sets forth the material specifications for the Residence and the work to be performed by the Builder and provided by the Seller at closing.

11. The Spec Sheet calls for the construction of a 3-bedroom, 2.5-bath, 1,908-square foot home.

12. During construction of the Residence, Plaintiffs, through their agent, requested numerous changes to the specifications in the Spec Sheet. These changes resulted in substantially more work for Rinaldi.

13. The upgrades requested by Plaintiffs included, but were not limited to, an additional bonus room/bedroom, a farmer’s porch, a finished garage, rearranged utilities in the basement, and hardwood floors on the second floor.

14. The Residence actually constructed on the Property consists of four bedrooms, three baths, and is 2,200 square feet.

15. Rinaldi expected to be compensated for the additional work and upgrades. However, no increase in the purchase price was ever agreed to between Rinaldi and Plaintiffs.

16. The value of the additional work performed at the request of Plaintiffs was approximately between \$80,000.00 and \$90,000.00.

17. Pursuant to the Spec Sheet, the paving basecoat for the driveway was to be completed prior to closing, weather permitting.

18. A paving basecoat for a residential driveway consists of laying down finish gravel on top of which the asphalt topcoat is to be installed.

19. The gravel basecoat for the driveway was completed in or about February 2021.

20. Pursuant to the Spec Sheet, Plaintiffs were to pay for the asphalt topcoat at their own expense.

21. Plaintiffs' real estate agent, Andrew S. Lord, told Rinaldi that Rinaldi was obligated to pay for the asphalt topcoat of the drive and requested that Rinaldi obtain a quote for the cost to complete the driveway.

22. Rinaldi obtained a quote from a paving company for the cost of completing the asphalt topcoat for the driveway, said work was quoted at \$6,400.00.

23. On March 4, 2021, prior to the closing date, Rinaldi was provided with a closing statement.

24. The March 4, 2021 Closing Statement provided that \$24,000.00 was to be held back from the \$385,000.00 purchase price and placed in escrow.

25. That escrow amount was for construction items that were not completed prior to the closing date.

26. Upon information and belief, when calculating the amounts to be placed in escrow for uncompleted work, lenders typically require 150% of the estimates for the work be placed in escrow in order to account for any overages.

27. After receiving the March 4, 2021 Closing Statement, Rinaldi reviewed the P&S Agreement and Spec Sheet to understand what work was being included in the escrow amount.

28. Rinaldi determined that he was not obligated to pay for or provide the asphalt topcoat for the driveway under the terms of the P&S Agreement and Spec Sheet.

29. On March 4, 2021, prior to closing, Rinaldi was willing to accept no additional payment for the time and materials expended on the additional work he performed at Plaintiffs' request, but Rinaldi was not willing to pay for the asphalt topcoat that he never agreed to, and was not obligated to provide, under the P&S Agreement or Spec Sheet.

30. Rinaldi told Andrew S. Lord that he was not obligated to provide the asphalt topcoat under the P&S Agreement and that the \$24,000.00 to be held back in escrow must be reduced by \$9,600.00 to remove the amount being held back for completion of the driveway.

31. Upon information and belief, Plaintiffs were informed on March 4, 2021, that the \$24,000.00 to be placed in escrow incorrectly included the \$9,600.00 estimate for the asphalt topcoat, and that the escrow amount must be reduced by \$9,600.00 prior to closing.

32. Plaintiffs refused to reduce the escrow amount and remove the \$9,600.00 for asphalt paving.

33. On the March 5, 2021, the closing date, Rinaldi was told that Plaintiffs had agreed to remove the \$9,600.00 estimate for asphalt topcoat from the escrow amount.

34. In the afternoon of March 5, 2021, Rinaldi was provided with a revised Closing Statement.

35. The March 5, 2021 Closing Statement still provided that \$24,000.00 was to be held back from the \$385,000.00 purchase price and placed in escrow.

36. The escrow amount had not been reduced and still contained the amount of \$9,600.00 for asphalt topcoat.

37. Rinaldi considered Plaintiffs' refusal to remove the \$9,600.00 estimate for asphalt topcoat from the escrow amount to be a breach of the P&S Agreement by Plaintiffs, entitling him to terminate the P&S Agreement.

38. Rinaldi informed Plaintiffs' real estate agent, Andrew S. Lord, that because the \$9,600.00 was not removed from the escrow amount, he was terminating the P&S Agreement.

Counterclaim I
Declaratory Judgment – 14 M.R.S. § 5951 *et seq.*
Purchase and Sale Agreement is Invalid and Unenforceable

39. Rinaldi repeats and incorporates by reference the allegations contained in paragraphs 1 through 38 as if fully set forth herein.

40. Any person interested under a written contract or other writings constituting a contract, or whose rights, status, or other legal relations are affected by a contract may have determined by the Court any question of construction or validity arising under the contract to obtain a declaration of rights, status, or other legal relations thereunder.

41. The Spec Sheet incorporated by reference in the P&S Agreement calls for the construction of a 3-bedroom, 2.5-bath, 1,908-square foot home.

42. Rinaldi performed substantial additional work on the Residence at Plaintiffs' request.

43. The Residence actually constructed on the Property is not the house described in the Spec Sheet, consisting of 4-bedrooms, 3-baths, and 2,200 square feet.

44. Plaintiffs and Rinaldi never agreed on Rinaldi's compensation for the additional work performed.

45. There was no meeting of the minds between Plaintiffs and Rinaldi on March 5, 2021, in order to demonstrate an enforceable contract on the closing date.

WHEREFORE Defendant/Counterclaim-Plaintiff Anthony Michael Rinaldi respectfully requests the court grant his counterclaim and declare in his favor that the August 17, 2020 Purchase and Sale Agreement between Plaintiffs and Rinaldi, and all subsequent amendments and addendums thereto, to be invalid and unenforceable and award Rinaldi his costs, fees, and any other further relief as the Court deems just and appropriate.

Counterclaim II
Declaratory Judgment – 14 M.R.S. § 5951 *et seq.*
Purchase and Sale Agreement was Lawfully Terminated by Rinaldi
Due to Plaintiffs' Anticipatory and Material Breach

46. Rinaldi repeats and incorporates by reference the allegations contained in paragraphs 1 through 45 as if fully set forth herein.

47. To the extent the August 17, 2020 P&S Agreement between Plaintiffs and Rinaldi remains an enforceable contract, the P&S Agreement states that Plaintiffs' failure to fulfill any of their obligations shall constitute a default, entitling Rinaldi as the seller to employ all legal and equitable remedies, including without limitation, termination of the P&S Agreement and forfeiture of Plaintiffs' earnest money deposit.

48. Under the terms of the P&S Agreement and Spec Sheet, Rinaldi was not obligated to pay for or provide the asphalt topcoat for the driveway.

49. Plaintiffs were to pay for the asphalt topcoat at their own expense.

50. Plaintiffs were made aware of the erroneous escrow charge for the asphalt topcoat, but refused to remove the \$9,600.00 charge from the escrow amount prior to closing.

51. Plaintiffs' refusal to remove the charge for the asphalt topcoat constituted a definite, unequivocal, and absolute refusal to perform their obligation and is a material breach of the P&S Agreement.

52. Under the terms of the P&S Agreement, Rinaldi was entitled to declare the P&S Agreement terminated.

53. Accordingly, Rinaldi lawfully declared the P&S Agreement terminated on March 5, 2021.

WHEREFORE Defendant/Counterclaim-Plaintiff Anthony Michael Rinaldi respectfully requests the court grant his counterclaim and declare in his favor that Plaintiffs' refusal to remove the \$9,600.00 charge from escrow for the asphalt topcoat constituted an anticipatory and material breach of the August 17, 2020 Purchase and Sale Agreement between Plaintiffs and Rinaldi; that as a result of Plaintiffs' breach, Rinaldi was entitled to declare the P&S Agreement terminated; that Rinaldi lawfully declared the P&S Agreement terminated; and that Plaintiffs have forfeited their earnest money deposit. Rinaldi further requests that the Court award him his costs, fees, and any other further relief as the Court deems just and appropriate.

Dated: May 12, 2021

/s/ Jason J. Theobald

Jason J. Theobald, Bar No. 5605

Richard P. Olson, Bar No. 7275

CURTIS THAXTER LLC

One Canal Plaza, Suite 1000

P.O. Box 7320

Portland, Maine 04112-7320

(207) 774-9000

jtheobald@curtisthaxter.com

rolson@curtisthaxter.com

service@curtisthaxter.com

Counsel for Defendants

Anthony Michael Rinaldi and

Southern Maine Construction, LLC

Anthony Rinaldi
Westbrook
LD 1022

Uploading the entire record of CV-2021-138