

<b>DISTRICT COURT, TELLER COUNTY, COLORADO</b> Court address: <b>P.O. Box 997</b> <b>101 West Bennett Ave.</b> <b>Cripple Creek, CO 80813</b> <b>(719) 689-0450</b>	
<b>RALPH T. WOODS, et. al., Plaintiffs,</b>  vs.  <b>NORTHSTAR DESIGN, et. al., Defendants</b>	<b>Court Use Only</b>  Case Number 00CV127  Division 11
<b>ORDER AND JUDGMENT</b>	

THIS MATTER came before the Court for trial on October 26 & 27, 2004. The Court has heard the evidence and arguments, and being fully advised, Orders as follows:

This case proceeded to trial solely on the claims brought by the Plaintiffs against Barbara Robbins. According to the trial management certificate, the Plaintiffs' claims were based upon fraud, breach of contract, and deceptive trade practices. At trial, however, the evidence primarily related to the claim for breach of contract. The Court finds that the Plaintiffs failed to meet their burden of proof on the claims relating to fraud and deceptive trade practices, and those claims are therefore dismissed. The remainder of this Order will address the claims for breach of contract.

Each of the Plaintiffs entered into a project management agreement with the Northstar defendants. The Court has previously ruled that Northstar was not a legally constituted LLC; therefore the Robbins' defendants were individually liable for the acts of Northstar. The Plaintiffs generally allege that the actual costs greatly exceeded the estimates; that the projects took considerably longer than reasonable; and in some cases Robbins did not provide all that was required by the terms of the contract. Robbins argued that the contracts contained only estimated costs rather than fixed costs; that there was no time for completion contained in the contracts; and that either she provided all that was required or was fired by the Plaintiffs before she could complete the contracts.

The Court would begin by noting that every contract contains an implied covenant of good faith and fair dealing. Clearly in this case Robbins breached that covenant as to every Plaintiff. She had an obligation to clearly explain the terms of the agreement and to keep the parties advised as changes arose during construction. While the Court would agree in some cases unforeseen events arise during construction over which no one has control, such events should be the exception and not the norm as appears to have happened in these cases. For example, hidden obstacles may affect excavation costs. Rarely should other cost exceed the estimate. The documents prepared by the Defendants are nearly incomprehensible; the numbers vary from one to the next; and draw requests can not be easily matched with the original contract. For those reasons, the Court finds that Barbara Robbins breached the covenant of good



faith and fair dealing as to all Plaintiffs. The Court will address the claims of the individual Plaintiffs separately.

#### Woods Plaintiffs

The Woods claim that Robbins breached the contract by failing to complete the contract in a reasonable time; by failing to complete the garage in a good and workmanlike manner; by failing to include a roof which would comply with Park County requirements; and by failing to complete the installation of a solar electrical system. The Court agrees and finds that Ms. Robbins breached the contract with the Woods. The bigger difficulty is in accessing damages. The contract price was slightly more than \$147,886. However, the Woods refused at least two draw requests, and it appears that amounts they actually paid as draws were approximately \$122,000. Additionally they had to pay off the claim of Hardrock Paving which was approximately \$3308. Finally, exhibit 24 sets forth another \$7000 which the Woods paid. Their total investment into the project was therefore \$132,308. In order to obtain a certificate of occupancy, the Woods must expend \$17,556 to construct a code approved roof, which would bring their total expenditures to \$149,864. They are entitled to the benefit of their bargain, and the Court will therefore award to the Woods the difference of \$1978. The evidence also indicated the garage and pad were not properly constructed. However, the Woods did not request damages in connection with the garage. Also, the status of the solar electrical system is unclear, but again, no damages were sought. Finally, the Woods have sought damages in connection with the lien filed against their property. The Court finds that the Defendants filed the lien knowing that the amounts claimed were not due. Pursuant to C.R.S. 38-22-128, the Woods are therefore entitled to recover their costs and attorney fees. Within 30 days, the Woods shall submit an affidavit in support thereof.

#### Seals Plaintiffs

The Seals claim that Robbins breached the contract by failing to complete the contract in a reasonable time and by far exceeding the estimated completion costs. The Court finds that Ms. Robbins breached the contract with the Seals by far exceeding the contract price without obtaining a signed change order. The length of construction was longer than expected, but not necessarily unreasonable. The Seals claim as damages the difference between what they paid and the contract price. The purchase price of the home with tax and setup was \$76,971. The construction costs were estimated at \$35,764. However, that contract also included \$2420 for setup and \$1650 for a deck which was not provided. The contract price more accurately was therefore \$31,694. The Seals testified they actually paid \$51,353. Judgment shall therefore enter in favor of the Seals and against Ms. Robbins for the difference, \$19,659. The Seals also requested reimbursement for excess interest paid. Based upon the Court's conclusion that the length of construction was not unreasonable, that request is Denied.

#### Naredo/Thomas Plaintiffs

Mr. Naredo and Mr. Thomas claim that Robbins breached their contract by failing to complete the contract in a reasonable time, in failing to construct the home in compliance with the contract and in a workmanlike manner, and in exceeding the contract amount. The Court finds that Ms. Robbins breached the contract with Mr. Naredo and Mr. Thomas for those reasons. Calculation of damages is again problematic. It appears that Mr. Naredo and Mr. Thomas made a down payment of \$65,000 and had a construction loan for \$83,366, for a total



expenditure of \$148,366. It appears that most, if not all, of the construction defects were rectified by Blue Rose, the builder. Mr. Naredo and Mr. Thomas seek damages for items not provided by Robbins, even though included in the contract, totaling \$24,478. They also seek damages for lost interest of \$2996 which the Court finds to be appropriate under the circumstances. Judgment will therefore enter in favor of Mr. Naredo and Mr. Thomas and against Ms. Robbins in the amount of \$27,474.

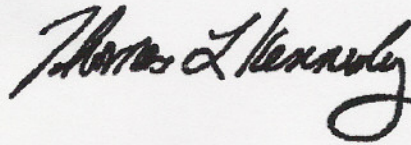
**Kraemer Plaintiffs**

The Kraemers claim that Robbins breached the contract by failing to complete the project in a timely fashion and in accordance with the terms of the contract. The Court finds that the length of construction was not unreasonable. However, the Court agrees that the project was not completed in accordance with the terms of the contract. The primary defects were the failure to provide a roof which complied with the covenants and the failure to include a deck. The cost for the roof was \$14,500, and the cost of the deck was \$1680. Judgment will therefore enter in favor of the Kraemers and against Robbins for \$16,180. The remaining claims for damages are Denied.

As noted above, the Court previously found Douglas Robbins to be in default. Judgment will therefore enter against Mr. Robbins for the same amounts set forth above against Ms. Robbins. Liability shall be joint and several.

SO ORDERED November 2, 2004.

BY THE COURT

A handwritten signature in black ink, appearing to read "Thomas L. Kennedy", written in a cursive style.

Thomas L. Kennedy  
District Court Judge

This Order has been served electronically in accordance with C.R.C.P. 121, section 1-26. Counsel shall serve all unrepresented parties.