SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF LAVAL

No.: 540-17-013719-199

DATE: May 4th, 2022

BY THE HONOURABLE STÉPHANE LACOSTE, J.S.C.

9341-4753 QUÉBEC INC.
Plaintiff/Cross-Defendant
v.
LUCY (LOUKIA) GRIGOROPOULOS
Defendant/Cross-Plaintiff

JUDGMENT

OVERVIEW

[1] This case is about a dispute between a general contractor (Plaintiff[1]) and its client (Defendant) for unfinished work, damages to property, defects and poor workmanship.

[2] It is not disputed that the work was not completed by the contractor, nor that damages were caused to Defendant's pool, fence, furniture and car.

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[1] To simplify the text, I will designate 9341-4753 Québec inc. as "Plaintiff", and Lucy (Loukia) Grigoropoulos, as "Defendant".

[3] Plaintiff sues Defendant for work it claims was done but remains unpaid. Defendant denies Plaintiff's claim and counterclaims for the cost of completing the work contracted to Plaintiff and damages and defects caused by poor workmanship. Plaintiff denies any responsibility and also argues that Defendant failed to notify it of defects before taking her action, thereby losing the right to claim damages for all such defects.

[4] Some admissions were made by the parties in their *Request for setting down for trial and judgment by way of a joint declaration*:

1- Plaintiff is a construction company specializing in the construction and renovation of immoveable properties;

2- Defendant is the owner of the property located at 5215, Binet Street in Laval;

3- On or about June 29th, 2016, Plaintiff's services were retained to complete a major renovation of her property;

4- Defendant made a payment in the amount of $484,000.00;

5- The parties agreed on the second quotation of June 29th, 2016, for a total sum of $114,000.00 plus taxes;

6- The nature of the renovation consisted of the following:

- Construction of a rear extension to the property of two (2) floors which included a roof whose height would reach 26 feet high;
- Construction to add a garage next to the existing one;
- Construction of the cabinets and central island in the Property's kitchen;
- Construction of a wardrobe in the bedroom (extra concluded after the 29th of June)

7- The renovation work commenced in October 2016;

8- The initial renovation work was supposed to take approximately three (3) months;

[sic]

ANALYSIS

[5] This case raises many different questions that the Court finds best addressed as follows:

1- What is the contract between the parties and is Plaintiff entitled to be paid for extras?

2- Defendant's claims for damages to her property;

3- The kitchen cabinets;

4- The problems with the new roof and trusses;

5- How did the project end?

6- Defects and poor workmanship;

7- Moral damages, troubles and inconveniences;

8- Is Plaintiff entitled to payment for work done but not paid?

1. WHAT IS THE CONTRACT BETWEEN THE PARTIES AND IS PLAINTIFF ENTITLED TO BE PAID FOR EXTRAS

1.1 Conclusion

[6] The content of the contract is presented in Exhibit P-3-B, the June 29th quotation. The parties also agreed to some changes thereafter. Plaintiff has an obligation of result and other obligations provided for in the *Civil Code of Québec* ("*CCQ*").

1.2 Facts relevant to the issue

[7] Defendant owns a house located in the city of Laval where she resides with her husband, Simeon Giannopoulos ("**Giannopoulos**"[2]). In early 2016, they form the project of enlarging the house and the existing garage.

[8] Defendant contacts Christos Petsinis ("Petsinis") who had been recommended to her by someone else in the Greek community.

[9] Plaintiff is a corporation that operates in the construction and renovation industry. It does not hold a R.B.Q. (Régie du bâtiment) licence. It is represented at all times by Christos Petsinis ("Petsinis"). He is the heart and soul of Plaintiff. Petsinis has many years of experience in construction. He also controls and operates another corporation who holds an R.B.Q. licence. Plaintiff also operates under the name of "Rénovations & Construction Groupe S.I.S."

[10] In his testimony, Petsinis explained that the business card he gave to Defendant is the one he uses for the residential projects, through Plaintiff. He used a different card

[2] The Court uses surnames or first names only to lighten the text, not out of disrespect.

for the commercial work done through his other corporation. When asked if he had told Defendant that Plainttiff did not actually hold a R.B.Q. licence despite what was written on his business card, Petsinis simply answered that she had not asked him[3].

[11] In early 2016, Petsinis meets Defendant and Giannopoulos to discuss Defendant's project and they visit the house together to see what was to be done. Petsinis gives his business card to Defendant[4]; that card indicates that it holds an R.B.Q. licence. He also informs Defendant that she will need to obtain plans from a structural engineer before he can submit a quotation for the project. He suggests two or three names.

[12] Defendant contacts one of those, Tony Beliotis ("**Beliotis**") and they agree on a mandate.

[13] Beliotis does not provide the plans within the agreed delay and then only in 2D versions although he had agreed to provide 3D plans too. The relationship between Defendant and Beliotis is negatively affected by those delays and failures.

[14] In June 2016, having received Beliotis's plans, Defendant sends them to Petsinis to obtain a quotation.

[15] Three quotations are submitted:

15.1. A first quotation[5] of $139 000 plus taxes, on June 27th;

15.2. A second quotation[6] of $114 000 plus taxes, on June 29th;

15.3. A third quotation[7] of $96 000 plus taxes, on July 3rd.

[16] Each of the quotations includes slight variations on the project to reflect defendant's desires and available budget.

[17] The parties agree on the Second Quotation, annexed to the judgment.

[18] During the course of the construction project, there were some changes made to the project:

18.1. the addition of a walk-in closet (referred to in the admissions quoted above as the wardrobe in bedroom) in the attic over the garage;

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[3] This is one of many instances where Petsinis was less than candid with Defendant. This instance is a clear violation of Plaintiff's duty of good faith and information discussed infra. Not a good way to start a business relationship.
[4] Exhibit D-21.
[5] Exhibit P-3A.
[6] Exhibit P-3B.
[7] Exhibit P-3C.

18.2. Installation of railing provided for by Defendant;

18.3. The addition of a noise barrier, a nosing, wooden steps joist over the garage, an extra window.

[19] Despite the above, Plaintiff also claims[8] payment for some work done that was not included in the Second Quotation nor agreed to thereafter. Defendant claims she never agreed to pay for that work.

1.3 Legal principles

[20] A contract is formed by the exchange of consent between the parties. A construction contract can be in writing or not. A written contract is easily proven contrary to an oral one.

[21] The party who alleges the existence of a contract or amendments to a contract bears the onus of proof by a balance of probability.

[22] In the end, the contract is the law of the parties and they are bound by it and any applicable statute or regulation.

[23] The *Civil Code of Québec* imposes a certain number of obligations on Plaintiff:

23.1. Before the contract is concluded, it must inform Defendant "with any useful information concerning the nature of the task he undertakes to perform and the property and time required for that task"[9];

23.2. It must act in good faith[10], and;

23.3. In the best interests of Defendant[11], and;

23.4. In accordance with the rules of the art, and[12];

23.5. It has an obligation of result to deliver the work provided for in the contract, which;

23.6. Must be free of defects;

23.7. For the price agreed with Defendant.

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[8] Exhibit P-5.
[9] Art. 2102 *CCQ*.
[10] Art. 6 *CCQ*.
[11] Art. 2100 *CCQ*.
[12] Idem.

1.4 Discussion

[24] Since the parties admit that the contract is the June 29th 2016 quotation, I must decide whether the alleged changes to the contract are proven.

[25] I dismiss Plaintiff's allegations as to the painting of the cathedral ceiling. It was done by mistake by its employees and never agreed to by Defendant. Defendant owes nothing to Plaintiff for that painting work.

[26] On the issue of the installation of the railings, I find that Defendant knew very well she would have to pay for that work that she agreed to.

[27] Plaintiff's claim[13] for extras will be granted in part for $5 788.99 ($5 035 plus taxes).

2. DEFENDANT'S CLAIMS FOR DAMAGES TO HER PROPERTY

[28] During the course of the construction project, there were damages caused to Defendant's property by Plaintiff or by persons for which it is responsible (either employees or subcontractors).

2.1 Facts relevant to the issue

[29] The work started in early October 2016. It progressed slowly over the following months. Contrary to what he had represented to Defendant before they concluded the contract, Petsinis was not present at the site at all times, not even every day if even for a short time. Petsinis had other construction projects going on at the same time and also some family problems during a short time[14]. Plaintiff relied on a number of subcontractors and employees to fulfil its legal obligations.

[30] Defendant claims compensation for damages caused to her property:

30.1. The wooden fence located on one side of the property was damaged;

30.2. In February and March, 2017, a number of the new roof shingles installed by Plaintiff's crew flew off the roof and fell on Plaintiff's car parked in the driveway[15];

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[13] Exhibit P-5.

[14] On the issue of delays, he gave a different version in his testimony at the trial than at his out of court examination.

[15] The shingles had been installed by Plaintiff's employees. They were not heated enough and many flew off the roof twice. The first time, Plaintiff had its employees removed all the shingles and replace them. It did the same thing after those shingles were not installed properly and some flew off. The third time, Plaintiff hired a subcontractor recommended by Defendant and had all the shingles removed and replaced properly. Petsinis says he chose to hire a subcontractor to do it instead of having its own employees to it because they did not have time to do the work. Petsinis takes pride in the fact that he did it without any charge to Defendant. I find that he really had no choice. He either had to remove and replace the shingles or pay for

30.3. Bedroom furniture was broken;

30.4. The alarm system's wire was cut.

[31] Defendant had the pool removed. She says it could not be repaired[16]. This pool was already quite old. Petsinis, who saw the damage, does not believe that the damage was serious enough to necessitate a replacement of the pool. He estimates the damage to $500 and says he credited Plaintiff for that amount. She denies she received that credit and Plaintiff did not convince me otherwise.

[32] The fence was made of wood and was old. Defendant replaced it with a brand-new nice metal fence that went all along the side and back of the property. Plaintiff argues that the damaged part of the fence could have been repaired for a much lower cost and without replacing the whole fence.

[33] As to the shingles that fell on the car, they caused damage that Plaintiff compensated by paying 500 $ cash to Defendant as is evidenced by Exhibit D-22.

[34] During the work in the house, the furnitures in Defendant's bedroom were pushed to the side in order to put them out of the way of the workers. Despite that measure, Defendant testifies that she found one of Plaintiff's workers standing on her bed at one time and that, damages were caused to the furniture at a later date. Photographs of the furniture show important damages that do not appear to be easily repairable. Defendant claims the damages were caused by Plaintiff's employees. Plaintiff denies the extent of the damage and says it can easily be repaired.

2.2 Legal principles

[35] A party whose property is damaged through the fault of another person is entitled to obtain compensation for that damage. The defendant needs only prove that Plaintiff, through a person or subcontractor under its responsibility, committed a fault that caused the damage. She must also prove the extent of the damages and a causal link. She is not entitled to obtain compensation over and above the actual damages suffered. She is not entitled to enrich herself or replace existing properties with new or improved ones where a repair is possible at a lower price or when it was only worth a depreciated value because of its age or condition.

[36] Plaintiff bears the burden to prove that there was an agreement on the value of the damages and that a credit was indeed given and accepted by Defendant.

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someone else to do it. He can certainly be proud that he did the right thing in this issue, but it does not change the fact that Plaintiff is responsible for other issues.

[16] Two objections to the filing of exhibits relating to the replacement of the pool were taking under reserve at the hearing. I dismiss the objections in so far as the document are concerned but maintains the objection insofar as they do not constitute evidence that the pool needed to be replaced.

2.3 Discussion

[37] The evidence convinces me that the pool needed to be replaced and Plaintiff is responsible for the residual value of the pool. Since it was already old at the time, I arbitrate its value at $500 since it is the amount offered by Plaintiff.

[38] I am also convinced that Plaintiff is responsible for the damage to the fence. The fence was already very old and could be repaired at a reasonable price. Since the parties did not present evidence as to the cost of a repair, I arbitrate it at $200 judging from the testimonies and photographs of the damages.

[39] No compensation is owed regarding the damage to the car because $500 was already paid and I conclude that it was what was agreed to by the parties.

[40] Plaintiff is clearly responsible for the damage to the bedroom furniture. That furniture was out of the way; neither Plaintiff nor its employees or Petsinis complained otherwise before the damage occurred. Plaintiff had agreed that Defendant and Giannopoulos continue to live in the house during the period of the construction work. I accept Defendant's allegation that the damage was caused by Plaintiff's employees; it is probable.

[41] The value of the damage is again difficult to establish on the basis of the evidence presented. Defendant did not have the furniture repaired and did not present a quotation to establish what it would have cost to repair the furniture. I arbitrate the value of the damage to $300 bearing in consideration the cost of the bedroom set when it was bought new in 2010 and depreciation.

[42] Plaintiff fails to convince the Court that it had already paid for any of the damages claimed except for the $500 for the car. More generally, I have doubts about Petsinis' credibility because of changes or hesitations in his versions and the general way that he testified, including vague affirmations on some issues such as what he calls "choice words" or insults (more on that below) and his argumentative attitude towards counsel both at trial and at the out of court examination. He also maintains his position that all the work was done at a higher standard than the construction industry when the overwhelming evidence is to the contrary. Defendant testified in a more convincing way, even though she also had some trouble remembering some details.

[43] The repair to the alarm system cost $109,23.

[44] To summarize, I will order Plaintiff to pay Defendant $1 109,23 in damages.

3. THE KITCHEN CABINETS

[45] I find that Plaintiff is not responsible for the defects of the kitchen cabinets. It must nevertheless credit Defendant for the amount of 5 500 $ provided for in the Second Quotation.

3.1 Facts relevant to the issue

[46] The project involved replacing the existing kitchen cabinets. The Second Quotation provided that "kitchen cabinets budgeted at $5 500.00". In fact, it was found that the cabinets's doors were no longer available in the market and new ones would have to be manufactured.

[47] Petsinis's brother, Dennis Petsinis ("**Dennis**"), operated a kitchen cabinet business under the name Trojan Commercial Furniture. Petsinis recommended him to Defendant.

[48] Defendant contacted Dennis and ordered cabinets from him. Those cabinets were installed. She paid Dennis $13 000 directly.

3.2 Legal principles

[49] Defendant has the burden to prove that Plaintiff was responsible for the cabinets.

3.3 Discussion

[50] The contract between the parties only provided for a budget, or credit, for the kitchen cabinets. Plaintiff's obligations are limited to that.

[51] I do not find that Plaintiff in any way coerced Defendant to do business with Dennis. There is no proof that Plaintiff knew or ought to have known that Dennis would manufacture and deliver defective cabinets. Plaintiff did not commit a fault in recommending Dennis.

[52] Defendant's recourse is against Dennis only and her claim against Plaintiff will be dismissed.

[53] I will deduct the $5 500[17] from the $114 000 plus taxes provided for in the Second Quotation. His obligation is limited to that.

4. THE PROBLEMS WITH THE NEW ROOF AND TRUSSES

[54] I deal with this issue separately from the rest of the defects and uncompleted work because it was the object of many problems and discussions at the time of the construction and they are part of the reasons for the deterioration in the parties' relationship.

4.1 Facts relevant to the issue

[55] The project required building a new roof over the extension at the rear of the house.

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[17] In his testimony at trial, Petsinis admitted that this sum had to be deducted.

[56] Plaintiff subcontracted the manufacture of the trusses to Barrette Structural Inc. ("**Barrette**") a specialized manufacturer.

[57] According to the Beliotis plans, the rear roof was supposed to arrive at a two feet high vertical wall above the front's roof in a small vertical wall pierced with air vents. In fact, the trusses manufactured and installed ended five feet over the front roof. When Defendant saw the result, she found it ugly (having seen photographs, I share her opinion) and complained to Petsinis and asked that he corrects the situation. Petsinis also found the result ugly. He agreed to make changes to correct it. The evidence does not reveal if the issue was due to the manufacturing if the trusses or their installation.

[58] Petsinis contacted Barrette to ask for changes. According to Petsinis, Barrette employs its own engineers to review such work. In fact, Barrette does not. Petsinis also testified that Beliotis approved those changes. Beliotis (Plaintiff's own witness) denies it.

[59] There were some difficulties in the varying versions of what was done by whom. I conclude that Petsinis made changes to the trusses without obtaining a proper and exact authorization from either Beliotis or Barrette. He did submit a drawing to Barrette and received a plan from them that showed questions[18], but he did not comply with Barrette's instructions or provide answers. Also, Petsinis admitted that he needed written plans from an engineer[19] and to obtain a new authorization for the city but decide to forgo these obligations[20].

[60] Plaintiff's employees made changes to the trusses decided by Petsinis and Defendant was satisfied with the end result, at least with what she saw from the outside.

[61] The evidence presented convinces me that the work was defective and even dangerous. The trusses were modified *in situ*, their heels do not rest on a bearing wall. Some of the existing trusses that support the front roof were cut short and no longer rest on a bearing wall. I can see it from photographs and conclude to that without any expertise. It is such shoddy work that it is easily apparent event to an untrained eye.

[62] Moreover, the expert evidence establishes that those trusses are dangerous and not at all built according to the rules of the art. This expert evidence is not contradicted by anyone but Petsinis himself who did not testify as an expert.

4.2 Legal principles

[63] A general contractor has the obligation to deliver a construction project in accordance with its contract with a client. The work must be done according to the rules of the art and in conformity with the Law and the plans and the city's permit.

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[18] Exhibit D-27.

[19] This is also explained by expert evidence.

[20] He did it without informing Defendant of what was required, failing in his duty to inform and act in the client's best interest.

[64] Any variation from those obligations engages the contractor's liability. It is responsible to correct the defects or pay for the work required to do it.

4.3 Discussion

[65] The work done by Plaintiff is clearly defective. It tried to wiggle its way out of legal liability by claiming that Beliotis had approved the work done and that it had been approved by Barrette and its own engineers. Both claims are false. Petsinis may have been mistaken in good faith in his belief that Barrette employed engineers and had had one review the changes proposed or had simply approved it. He certainly did not hold any such good faith when he testified that Beliotis had approved the work.

[66] Good faith alone does not matter anyway. Plaintiff violated its legal and contractual obligation of result.

5. HOW DID THE PROJECT END ?

[67] Plaintiff argues that it was Defendant who resiliated the contract by her letter of demand P-6. Subsidiarily, it argues that it had sufficient cause to resiliate under art. 2126 *CCQ*.

[68] I find that Plaintiff resiliated the contract in September 2017 without a sufficiently serious cause.

5.1 Facts relevant to the issue

[69] A project that was originally planned to take approximately three months, maybe a bit longer in case of weather issues, was not completed a year after it started. This was not without problems for Defendant who, along with Giannopoulos, lived in the house throughout and who had to move somewhere else the events related to her son's wedding in May 2017.

[70] Petsinis provided an explanation for approximately a month's delay due to weather conditions in October and November 2016. He gave no explanation for the other delays.

[71] During the project, Defendant and her husband often complained to Petsinis for the delays and damages, his absence from the site, the poor workmanship and lack of competence of his employees[21] and defects, including the roof height issue.

[72] Plaintiff claims that Defendant and Giannopoulos created a toxic work environment for Petsinis and its employees is not proven. The evidence is vague[22] and contradicted by Defendant's denials. Petsinis himself did not give details, not even the actual words used and none of the employees or subcontractors were called to testify.

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[21] Most of the time, there were only two apprentices on site.
[22] The mention of "choice words" does not mean anything.

[73] On September 20th, 2017, Plaintiff's employees went to the house and picked up all the tools that were still there and left with them.

[74] Defendant and Gioannopoulos called Petsinis many times. Petsinis did not take the calls until September 29th when he said he would not be going back.

[75] Defendant concluded that Plaintiff had decided to abandon the project and to resiliate the contract even though the work had not been completed.

[76] On October 12th, 2017, Defendant sent a letter of demand to Plaintiff. The letter identified a list of damages, defects and incomplete work. It also states:

> Moreover, it must be noted that since September 20th, 2017, any and all work has been left unattended as you and your subcontractors failed to return to the Property. You even stopped returning our client's phone calls, abandoned the work and informed our client that you were not going to complete the Agreement. As a result, our client resiliated the Agreement as of September 29th, 2017 and you acknowledged our client's demand. Therefore, as of the present date, it is our client's understanding that you will not ne returning to the Property.

[77] At that time Defendant had lost all confidence in Plaintiff.

[78] Petsinis testified that he had not decided to stop the work, but simply to suspend it temporarily to let things cool down and end the toxic work environment. Yet, this version is contradicted, and Plaintiff did not respond to the P-6 letter until January 25th, 2018, in a response letter[23] that was really a letter of demand to claim $41 086,33. In this letter, Plaintiff offers to return in the condition that Defendant first pay the amount claimed and provide that Defendant be absent from the Property.

5.2 Legal principles

[79] The legislator provides clients with a broad and unlimited right to resiliate a contract[24], in which case they remain liable to pay for the work done. The contractor does not enjoy a similar right. Article 2126 *CCQ* provides:

> **2126**. The contractor or the provider of services may not resiliate the contract unilaterally except for a serious reason, and never at an inopportune moment; otherwise, he is bound to make reparation for injury caused to the client as a result of the resiliation.
>
> Where the contractor or the provider of services resiliates the contract, he is bound to do all that is immediately necessary to prevent any loss.

[80] A contractor who argues that this article applies to his situation bears the burden of proof. There can be situations where a client behaves in such a way toward a contractor

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[23] Exhibit P-7.
[24] Art. 2125 *CCQ*.

as to constitute a serious cause to resiliate a contract. It is an issue of context, degree, frequency and seriousness[25]. The simple fact that a client complains about the contractor's violation of its obligations cannot, in and of itself, constitute a serious reason to resiliate the contract.

[81] Except in the most serious situations, the contractor must notify the client that it finds that the situation is unacceptable, and it will resiliate the contract if the client does not correct it. Good faith cannot be satisfied with less.

5.3 Discussion

[82] I find that Plaintiff decided to stop all work and never return to finish it. It resiliated the contract by its actions and by Petsinis' words. This finding is based on my evaluation of the witnesses' credibility and the following:

82.1. The work was actually interrupted in July 2017, no work was done after that;

82.2. Tools were left on the site;

82.3. Plaintiff did not inform Defendant that it was simply suspending work and would return to finish it later;

82.4. Petsinis failed to take Giannopoulos's calls and finally responded that he would not return;

82.5. Plaintiff's failure to respond quickly to the P-6 letter from Defendant;

82.6. The bad faith conditions expressed in Plaintiff's P-7 letter;

82.7. Defendant did not resiliate the contract. On the contrary, she wanted Plaintiff to return and finish the work. The mention in her P-6 letter did not resiliate the contract because it had already been resiliated by Plaintiff.

[83] Petsinis had had enough of Defendant's and Giannopoulos's demands and complaints. He decided that finishing the work was not worth the trouble and presented an offer[26] in bad faith that he knew would be rejected and cannot be used against Defendant[27].

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[25] *Baralis* c. *Prekatsounakis Goncalves & Associés*, 2010 QCCS 6024; *Nantel* c. *Moulures Quatrième Dimension (1992) inc.*, B.E. 99BE-267*T.D.* c. *Centre de la petite enfance Au petit nuage*, 2019 QCCQ 3669; Deslauriers, Jacques, *Vente, louage, contrat d'entreprise ou de service*, 2e éd., Montréal, Wilson & Lafleur, 2013, 991 p., at para. 2206 to 2210;

[26] Exhibit P-7.

[27] A contractor cannot invoke a client's refusal to pay in advance sums that are not already owed 9054-0006 Québec inc. (Constructions Gilles Lanoue et Fils) c. Leblanc, 2008 QCCQ 5326; *Korda-Mahady* c. *Construction DNM inc.*, 2006 QCCQ 13374.

[84] Defendant's and Giannopoulos's dissatisfaction with Plaintiff was entirely justified. They had a right to complain and demand that Plaintiff respects the contract. It is probable that the relationship between them and Petsinis deteriorated over time. It is also probable that at least some insults and swear words were used towards Petsinis. But I conclude that Plaintiff failed to prove that the situation was so bad that it could not complete the contract. Plaintiff did not notify Defendant, either by a written letter of demand or otherwise, that it found the situation untenable and that it would end the contract unless she took measures to stop what it considered insults and harassment.

[85] Plaintiff failed to prove that the situation constituted a serious cause to end the contract.

6. DEFECTS AND POOR WORKMANSHIP

[86] The work done by Plaintiff suffers from many defects.

[87] Defendant bears the burden to prove the defects that she alleges and the cost associated to correct them.

[88] I have already discussed the issue of the roof trusses. But there are many other defects.

6.1 Facts relevant to the issue

[89] The evidence as to the many defects is made of expert reports and testimony and photographs.

[90] I find that the defects identified in the expert reports are proven. Plaintiff failed to follow Beliotis' plans, did not build and install the proper support beams, did not install proper and safe trusses and cut and damaged existing ones, the garage was not capped, its exterior was not completed, the floors of the house's extension moved and are not level and doors were left difficult to operate, the garage drain and floor were defective, etc.

[91] The contract also provided for some masonry work on the garage and for the installation of a concrete slab under the house's extension. This is apparent from P-3B, when compared with P-3A and P-3C. In his testimony at trial, after having denied it. Petsinis finally admitted that these elements were included in the contract.

[92] Plaintiff failed to contradict the expert evidence[28]. Petsinis testified as to facts and not as an expert. I do not believe his testimony insofar as it is contradicted Defendant's experts.

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[28] Or even the testimony of Spiro Rassias, a person with a long experience in construction who testified as a witness of facts and whose testimony supports the experts opinions.

[93] Defendant had lost trust in Plaintiff's competence and willingness to complete the work and correct the defects. She hired other contractors to do it or submit quotations.

6.2 Legal principles

[94] As mentioned above, the general contractor has a legal obligation to complete the work he agreed to do by contract and do it in compliance with the Law and the rules of the art. Any defect is his responsibility. Plaintiff argues that Defendant has lost her right to claim damages because she failed to notify it before hiring a third party to complete the work and correct the defects.

[95] Article 1590 of the *Civil Code of Québec* provides that:

> **1590**. An obligation confers on the creditor the right to demand that the obligation be performed in full, properly and without delay.
>
> Where the debtor fails to perform his obligation without justification on his part and he is in default, the creditor may, without prejudice to his right to the performance of the obligation in whole or in part by equivalence,
>
> (1) force specific performance of the obligation;
>
> (2) obtain, in the case of a contractual obligation, the resolution or resiliation of the contract or the reduction of his own correlative obligation;
>
> (3) take any other measure provided by law to enforce his right to the performance of the obligation.

[96] As a general rule, a client that finds a defect in work done by a contractor, must notify him in writing or lose his right to sue and obtain damages. Articles 1594 to 1597 of the *Civil Code of Québec* provide:

> **1594**. A debtor may be in default for failing to perform the obligation owing to the terms of the contract itself, when it contains a stipulation that the mere lapse of time for performing it will have that effect.
>
> A debtor may also be put in default by an extrajudicial demand to perform the obligation addressed to him by his creditor, a judicial application filed against him or the sole operation of law.
>
> **1595**. An extrajudicial demand by which a creditor puts his debtor in default must be made in writing.
>
> The demand must allow the debtor sufficient time for performance, having regard to the nature of the obligation and the circumstances; otherwise the debtor may perform the obligation within a reasonable time after the demand.

1596. Where a creditor files a judicial application against the debtor without his otherwise being in default, the debtor is entitled to perform the obligation within a reasonable time after the demand. If the obligation is performed within a reasonable time, the costs of the demand are borne by the creditor.

1597. A debtor is in default by the sole operation of law where the performance of the obligation would have been useful only within a certain time which he allowed to expire or where he failed to perform the obligation immediately despite the urgency that he does so.

A debtor is also in default by operation of law where he has violated an obligation not to do, or where specific performance of the obligation has become impossible through his fault, and also where he has made clear to the creditor his intention not to perform the obligation or where, in the case of an obligation of successive performance, he has repeatedly refused or neglected to perform it.

1598. The creditor shall prove the occurrence of one of the cases of default by operation of law notwithstanding any statement or stipulation to the contrary.

[My emphasis]

[97] Author Vincent Karim writes:

1371. L'entrepreneur ou le prestataire de services peut être en demeure de plein droit lorsque le client n'a plus aucune confiance en lui en raison de son incompétence. La jurisprudence a déjà reconnu que, dans le cas où l'entrepreneur est incompétent, la mise en demeure n'est pas nécessaire puisque le client, en raison du manque de confiance, est justifié de ne plus laisser cet entrepreneur faire les travaux correctifs nécessaires et requis pour avoir un ouvrage de qualité et conforme aux règles de l'art et aux stipulations contractuelles. Ce manque de confiance peut aussi avoir lieu lorsque suite à une mise en demeure l'entrepreneur intervient pour corriger les vices de construction et la non-conformité des travaux, mais son intervention ne donne aucun résultat ou démontre qu'il n'a pas la compétence ou l'expérience requise pour le faire.

1372. Il existe, cependant, certaines situations où la mise en demeure n'est pas requise. Il en est ainsi en as de réparations urgentes ou en cas de refus catégoriques de l'entrepreneur d'effectuer les corrections (art. 1597). Une mise en demeure n'est pas, non plus, exigée lorsque l'entrepreneur cause un dommage à l'occasion de l'exécution du contrat ou qu'il ne respecte pas les règles de l'art.[29]

[References omitted]

[98] Sébastien Grammond, Anne-Françoise Debruche and Yan Campagnolo[30] write :

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[29] *Contrats d'entreprise (ouvrages mobiliers et immobiliers : construction et rénovation) — Contrat de prestation de services (obligations et responsabilité des professionnels) et l'hypothèque légale*, 4e éd., Montréal, Wilson & Lafleur, 2020, 1 300 p.

[30] Grammond, Sébastien, Debruche, Anne-Françoise and Campagnolo, Yan, *Quebec Contract Law*, 3rd ed., Montréal, Wilson & Lafleur, 2020, 356 p.

> **562**. A debtor can be in default by the sole operation of the law without any intervention by the creditor and without any stipulation to that effect in the contract (art. 1597 C.C.Q.) As an exception to the principle that a notice of default should be sent to the debtor, the situations of default by the sole operation of law must be narrowly construed. The onus is on the creditor to prove the occurrence of one of the cases of default by operation of law (art. 1598 C.C.Q.). If one of the events described below occurs, the debtor is immediately in default. The various events that may put the debtor in default by operation of law can be grouped into four categories:
>
> [...]
>
> **c**. The third category concerns *anticipatory breaches.* A debtor is in default by operation of law if he or she clearly announces his or her intention not to perform the obligation. In such a case, a notice of default would be futile. This principle was imported from the common law notion of "anticipatory breach of contract", which permits the creditor to enforce performance of the contract as soon as the debtor has expressed his or her intention not to perform it.
>
> **d**. The fourth category pertains to the *clear incompetence of the debtor to perform his or her obligation.* A debtor is in default by operation of law where three conditions are met: (i) the debtor is unable to perform his or her obligation as a result of his or her incompetence; (ii) the debtor is aware that the creditor is unsatisfied with his or her performance; and (iii) the creditor has lost confidence in the debtor's ability to perform his or her obligation. In these circumstances, it would be useless for the creditor to send a notice of default to the debtor given that the latter is alive to the problem but unqualified to fix it.
>
> [References omitted]

6.3 Discussion

[99] Defendant did not have to give Plaintiff notice of the defects found before she had them corrected by someone else and she is entitled to obtain compensation from Plaintiff because Plaintiff was then in default by operation of law.

[100] Plaintiff has repeatedly shown that it was not competent to complete the work or repair it. It failed to even comply with the Beliotis's plans, had to remove and replace the roof shingles twice[31], and hire a subcontractor, referred by Defendant, to do the work a third time (properly this time), Petsinis efforts to repair the leaking gutters were not successful, it did not respect the rules of the art, even in ways easily visible to an untrained eye. Defendant made it clearly known to Plaintiff that she was unsatisfied with Plaintiff's performance, so much so that Plaintiff decided to abandon the project and resiliate the

[31] The fall of some of those shingles damage the car. The second time, there was an important water leak from a rainfall. Defendant and Giannopoulos had to mop and dry the floors; Petsinis was even called in to help them which he did.

contract. Defendant had clearly, and understandably so, lost confidence in Plaintiff's competence or even willingness to complete the work or fix any defect.

[101] Plaintiff made it plain that it was not interested in doing any further work for Defendant. It would have been futile to send it a notice of default, or letter of demand. Both through its actions and failure to respond to phone calls or text message until he said he would not return.

[102] The situation falls under both the third and fourth exceptions identified by Grammond, Debruche and Campagnolo in the above quoted extract from their book. Defendant had no obligation to notify Plaintiff of the numerous defects before taking measures to have them fixed by another contractor.

[103] I am convinced that the damages claimed by Defendant for all the work done to fix the many defects are well founded, except for the deck terrace (it was not part of the contract and I find no evidence it was damaged by Plaintiff or someone it is responsible for) and the kitchen cabinets and the related work.

[104] Defendant is also not entitled to damage for the work that was not completed.

[105] The invoices and quotations filed in evidence[32] do not always allow for an easy distinction between the claims allowable or not.

[106] I will order Plaintiff to pay Defendant $70 200,58 (West Island Construction adjusted to $60 000, AKTON Injection $10 200,58) for the work required to correct the defect and $36 563,20 for work already done (Construction IJS $2 874,37, Adams Eaves $920,95, RASSCO construction $32 767,88) for a total of $106 763,78.

7. MORAL DAMAGES, TROUBLES AND INCONVENIENCES

[107] I find that Defendant is entitled to $10 000 in moral damages and for troubles and inconveniences. A project that was supposed to cost $114 000 plus taxes and be completed in a few months took way longer, there remains work to be done to correct all the defects, and cost her more along the years.

8. IS PLAINTIFF ENTITLED TO MORE MONEY FOR THE WORK DONE?

[108] Defendant has already paid $84,000. The contract was at a fixed price ("contrat à forfait") that did not provide itemized costs.

[109] Plaintiff claims that approximately 85% to 90% of the work stipulated by the contract had been completed[33] at the time the contract ended. This evaluation is vague.

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[32] Exhibits D-14, D-15 and D-32 (an updated quotation from Akton)

[33] That version changed. At one point in his testimony, Petsinis said only 3 000 $ worth of work was left to be done.

[110] What is clear is that Plaintiff sent invoices to Defendant as the work advanced. The last such invoice is dated August 30th, 2017, it was paid on the following day. Absolutely no work was done after July 2017. In testimony, Petsinis said that Plaintiff was left with nearly $40 000 in debt towards subcontractors for work done. This may well be, but Plaintiff is responsible for that situation; it chose to pocket the money paid by Defendant instead of paying the subcontractors.

[111] I take into account the $5 500 budget for the kitchen cabinets. Therefore, the contract was for $108 500 ($114 000 minus $5 500) plus taxes, which makes a total of $124 747,88. I arbitrate the work completed at 85% of the contract. This means that Plaintiff was entitled to receive $106 035,70 (taxes included). Since it had already received $84 000, it is entitled to receive a further payment of $22 035,70 and I will render judgment accordingly.

CONCLUSION

[112] In total, I find that Plaintiff is entitled to receive from Defendant a sum of $27 824,69 ($22 035,70 for the work completed under the contract and $5 788,99 for the extras). Interest and the additional indemnity will run from the date of the letter of demand P-7.

[113] I also find that Defendant is entitled to receive $117 873,11 ($116 763,88 for the defects plus $1 109,23 for the damage to property) from Plaintiff. Interest and the additional indemnity will run from the date of the letter of demand P-6.

[114] I will also condemn Plaintiff to pay Defendant $10 000 in moral damages and $5 516,59 for the experts reports and testimony and related work[34]. Interest and the additional indemnity will run from the date of the judgment.

FOR THESE REASONS, THE COURT:

[115] **GRANTS** in part Plaintiff's claim;

[116] **CONDEMN** Defendant to pay Plaintiff $27 824,69 with interest and the additional indemnity from January 25th 2018;

[117] **GRANTS** in part Defendant's cross-claim;

[118] **CONDEMNS** Plaintiff to pay Defendant $117 873,11 with interest and the additional indemnity from October 12th, 2017;

[119] **CONDEMNS** Plaintiff to pay Defendant $10 000 in moral damages with interest and the additional indemnity from the date of this judgment;

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[34] Exhibits, D-30, D-31, D-33, D-34.

[120] **CONDEMNS** Plaintiff to pay Defendant $5 516,59 with interest and the additional indemnity from the date of this judgment;

With judicial costs in favor of Defendant.

Honorable Stéphane Lacoste, J.C.S.
JL 5020

STÉPHANE LACOSTE J.S.C.

Me George Tsanoussas
Me Chiara Kakavas
Tsanoussas avocats inc.

For Plaintiff

Me Sylvan Schneider
Schneider avocats
For Defendant

Hearing dates: November 1, 2, 3, 4 and 5, 2021