

WOMBLE v. HICKSON & FINDLEY.

(Supreme Court of Arkansas. July 12, 1909.)

1. CONTRACTS (§ 166*)—BUILDING CONTRACT—PLANS AND SPECIFICATIONS—CONDITION.

Where a house was to be a duplicate of a certain other house in the town, with certain specified changes, the provision for the attachment of plans and specifications was not a condition of the contract, and hence a failure to do so through no fault of the contractor was immaterial.

[Ed. Note.—For other cases, see Contracts, Cent. Dig. § 749; Dec. Dig. § 166.*]

2. DAMAGES (§ 124*)—CONTRACT—BREACH.

Where contractors, who had agreed to perform the carpenter work on a house for \$155, were not permitted to do the work by the owner, they were entitled to recover the difference between such amount and what they were able to earn at other employment during the time that would have been consumed in constructing the house by the use of reasonable diligence.

[Ed. Note.—For other cases, see Damages, Cent. Dig. §§ 326-338; Dec. Dig. § 124.*]

Appeal from Circuit Court, Montgomery County; Jas. S. Steel, Judge.

Action by Hickson & Findley against O. O. Womble. Judgment for plaintiffs, and defendant appeals. Affirmed.

J. I. Alley, for appellant. Gibson Witt, for appellees.

BATTLE, J. The following is the complaint filed in this action (omitting caption):

"Comes the plaintiffs, John C. Hickson and Joe Findley, and state that on or about the 15th day of January, 1908, they, as carpenters, entered into a contract with the defendant, O. O. Womble, to build a residence for the defendant on his lot in the town of Womble, Ark., and that according to said contract the said defendant was to pay them the sum of \$155 for the carpenter work, in a manner and at such times as was to be agreed upon at a later date. The said O. O. Womble was to furnish all material for the construction of said residence. The said contract, together with the specifications and drawings, as provided for, are filed herewith and marked 'Exhibits A and B.'

"That the contract was entered into in good faith by all parties and signed in the presence by both plaintiffs and defendant.

"They state further: That the defendant, O. O. Womble, has refused to furnish them (the plaintiffs) the said carpenter work. That according to agreement they were to begin the work on or about January 18, 1908. That said defendant has placed other carpenters to work on said residence.

"That plaintiffs have been ready and willing to begin work on said house at all times since the contract was entered into, and that they have been hindered by virtue of said contract from taking other contracts

or jobs of work, and that they have been damaged thereby.

"They pray judgment for \$155 and for costs."

The following is a copy of the contract on which the action is based:

"This agreement entered into this day by and between John C. Hickson and Joe Findley, house carpenters, and O. O. Womble, all of Womble, Ark., is and shall be as follows:

"The said Hickson & Findley agree to build a residence out of the material furnished by Womble which will be a duplicate of the Monroe Rowton house in Womble, with the exception that they will build the hall 7 feet wide, will make the cornice 'square style' and build the front and back porches with flat roof to be covered with tin, and it is understood and agreed that Womble is to furnish all lumber, nails and shingles, tin and all other necessary material for the construction of said house.

"Hickson & Findley agree to put only first-class workmanship in this building and agree to sandpaper and smooth all finishings such as baseboards, casings, etc.

"Womble agrees to pay for the carpenter work on said house to Hickson & Findley the certain sum of one hundred and fifty-five dollars (\$155.00) in a manner and at such times, as will be agreed on later, which subsequent agreements will be attached and become a part of this instrument. A drawing and specifications of said house is to be attached and become a part of this contract.

"Signatures: John C. Hickson,
Joe Findley,
Carpenters.
"O. O. Womble."

The contract was written by Womble and signed by all the parties. It was not dated. The place where the residence was to be constructed was not specified, nor the time when it was to be built; but that was understood and agreed upon. A drawing and specifications of the house was to be attached and become a part of the contract, but was not done through no fault of the plaintiffs. This was not a condition of the contract, and was not necessary. The house to be built was to be a duplicate of the "Monroe Rowton house" in Womble, with certain specified exceptions, which itself furnished the plans and specifications required. Plaintiffs offered to perform their part of the contract, but were not allowed by the defendant to do so. They made diligent efforts to obtain work in the time required to build the house of the defendant, but were unable to earn in that time exceeding \$48. The jury impaneled to try the issues in the case returned a verdict in favor of the plaintiffs for \$107. It was more favorable to defendant than he was entitled to.

Judgment affirmed.

*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes