IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA

CIVIL ACTION

HENRY E. PETRITSCH d/b/a	:	
PETRITSCH LAWNS LANDSCAPING,	:	
Plaintiff	:	
vs.	:	**NO: 09-1016**
	:	
GIUSEPPI GIACALONE,	:	
Defendant	:	

Holly A. Heintzelman, Esquire — **Counsel for Plaintiff**
David A. Martino, Esquire — **Counsel for Defendant**

AND NOW, this 15th day of March, 2011, after a Non-Jury Trial, and upon consideration of the submissions by the parties, the Court hereby enters the following

FINDINGS OF FACT

1. The Plaintiff, Henry E. Petritsch, d/b/a Petritsch Lawns Landscaping, a sole proprietorship, is engaged in the business of providing landscaping and lawn services and, in conjunction therewith, the construction of patios and blacktopping of driveways.

2. The Defendant, Giuseppi Giacalone, is the owner of a single family residence located in the Indian Mountain Lakes subdivision with an address at 49 Red Ridge Trail, Albrightsville, Pennsylvania 18210. The property is approximately a half acre in size.

3. On or about early March, 2008, after finding Plaintiff's business advertisement in the yellow pages, Defendant telephoned Plaintiff to inquire about Plaintiff's landscaping services. During this telephone conversation, the parties arranged for the Plaintiff to visit Defendant's property so that Defendant could explain the work he desired to have performed. Other than to arrange a meeting on-site for the purposes indicated, the parties did not discuss in further detail what work Defendant was considering.

4. On March 3, 2008, Plaintiff met with Defendant at Defendant's home. On this date, Plaintiff and Defendant walked around the outside of Defendant's property and Defendant explained the work he wanted to have done. As this was done, Plaintiff took various notes and also took measurements.

5. Defendant's home had recently been constructed on a wooded lot which was not landscaped. In general, Defendant wanted to have various trees removed and new trees planted, a lawn installed, a patio constructed, and his driveway surfaced, either with paving stone or blacktop.

6. After meeting with Defendant and gaining an understanding of the scope and quantity of the work Defendant desired to have done, Plaintiff explained that he needed to review the information he had received and would get back to Defendant with a quote for the work they had discussed.

7. On March 13, 2008, Plaintiff spoke with Defendant by telephone and quoted a price of $32,535.00. This quote including surfacing Defendant's driveway with paver stones.

8. Upon receiving Plaintiff's quote of $32,535.00, Defendant advised Plaintiff that this was more than he could afford. In a follow-up discussion, the parties agreed that Defendant's driveway would be blacktopped rather than surfaced with paver stones and a total price for the project of $25,500.00 was agreed upon.

9. Plaintiff offered to prepare a written contract but Defendant said this was not necessary. At no time did Plaintiff present Defendant with a written estimate nor was a written contract prepared or executed by the parties.

10. The contract entered between the parties is not the result of or in connection with a contact or call on the Defendant at his residence, but rather was the result of Defendant having contacted the Plaintiff and Defendant's request for Plaintiff to provide a quote for the scope and quantity of work desired by Defendant. This quotation was prepared by Plaintiff at Defendant's request after meeting at Defendant's home and was presented to Defendant by Plaintiff by a telephone call which occurred ten days after that meeting.

11. Plaintiff began work on Defendant's property in mid-March, 2008. This initial work consisted of site

preparation, including taking down and removing trees and stumps, digging out and picking up rocks, providing fill and grading, as well as beginning work on the patio.

12. Defendant made an initial payment of $5,000.00 to Plaintiff on April 12, 2008. A second payment of $5,000.00 was made on April 18, 2008.

13. On April 28, 2008, Plaintiff began trucking topsoil onto Defendant's property. This was graded and seeded. Additionally, 30 Douglas Fir trees were brought in and planted.

14. On May 5, 2008, Plaintiff obtained a permit from Indian Mountain Lakes for the blacktopping of Defendant's driveway with this work to begin the following day.

15. Plaintiff had subcontracted the blacktopping of Defendant's driveway to a third party. This subcontractor failed to appear on May 6, 2008, and advised Plaintiff later that same date that he would be unable to do the work for personal reasons.

16. On May 7, 2008, Plaintiff advised Defendant the difficulty he had encountered with the driveway subcontractor and explained that he would make arrangements with another subcontractor to do the work. Defendant became extremely upset upon being told of this development.

17. On May 10, 2008, Plaintiff advised Defendant that he had made arrangements with another subcontractor to perform

the blacktopping of Defendant's driveway and that this work would begin within the next two weeks. Defendant became furious upon being told of this delay and fired Plaintiff.

18. Prior to firing Plaintiff, Defendant expressed no dissatisfaction with the work Plaintiff had performed.

19. At the time Plaintiff was fired, the work which remained to be completed by Plaintiff was surfacing of the driveway, and final landscaping on the side of Defendant's home and around the edges and center of the driveway.

20. The cost which Plaintiff had arranged for to blacktop Defendant's driveway was $5,000.00. The driveway was in the shape of a horseshoe and approximately 10 feet wide by 150 feet in length.

21. On or about May 15, 2008, Plaintiff mailed Defendant a bill for the work Plaintiff had performed prior to being fired. The total amount of this bill was $15,850.00, less a credit of $10,000.00, for a balance due and owing of $5,850.00.

22. Defendant has refused to pay Plaintiff the remaining balance claimed by Plaintiff.

23. In Plaintiff's complaint filed on May 13, 2009, Plaintiff claims damages of $5,850.00 for Breach of Contract (Count I) and $6,283.25 for Unjust Enrichment (Count II).

24. In Defendant's answer to the complaint, Defendant denies that any monies are due and owing to the Plaintiff and further alleges by counterclaim that Plaintiff was in violation of Section 201-7 of the Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et. seq.* ("UTPCPL"), for failing to provide Plaintiff with a notice of cancellation and the right to rescind the contract. Defendant seeks nominal damages in the amount of $300.00 pursuant to 73 P.S. § 201-9.2 and $1,400.00 to complete unfinished work, together with reasonable attorney fees.

CONCLUSIONS OF LAW

1. On or about March 13, 2008, Plaintiff and Defendant entered a verbal contract for Plaintiff to provide agreed upon landscaping services at a total cost of $25,500.00.

2. All material terms of the contract were agreed upon by the parties.

3. The doctrine of quasi-contract, or unjust enrichment, is inapplicable where a written or express contract exists. Northeast Fence & Iron Works, Inc. v. Murphy Quigley Co., Inc., 933 A.2d 664, 669 (Pa.Super. 2007). Accordingly, Plaintiff has no valid claim for unjust enrichment.

4. Under the circumstances surrounding the formation of the parties' contract, Section 201-7 of the UTPCPL is inapplicable to these proceedings. Botti Construction v.

Harbulak, 760 A.2d 896, 898 (Pa.Super. 2000) (quoting In re Saler, 84 B.R. 45 (Bank. E.D.Pa. 1988)).

5. On May 10, 2008, after Plaintiff had substantially performed the verbal contract between the parties, Defendant terminated the contract.

6. Plaintiff is entitled to recover from Defendant the fair and reasonable value of the work performed by Plaintiff. Tinney v. Hershock, 258 A.2d 331, 332 (Pa.Super. 1969).

7. The fair and reasonable value of the work performed by Plaintiff for Defendant is $15,850.00.

8. There is presently due and owing to Plaintiff from Defendant the unpaid principal balance of $5,850.00.

9. Neither party is entitled to an award of attorney fees on their respective claims.

BY THE COURT:

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P.J.