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Judge Boosts Award To Builder in Suit Over Incomplete Home

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A Nassau County judge has multiplied by 38 the amount of money he awarded to a construction company in a breach of contract lawsuit after the firm contested his original award as unsupported by the evidence.

Astoria ophthalmologist Anthony Pilavas hired EMCO Tech Construction Corp. to build a \$1.5 million home in Plandome Manor. In *EMCO Tech Construction Corp. v. Pilavas*, 017967/05, Supreme Court Justice Ira B. Warshawsky ([See Profile](#)) adjusted his computation of the money owed the contractor to \$128,028 from \$3,413.

The decision appears on page 29 of the print edition of today's Law Journal.

It is the latest chapter in a lengthy and complex case that moved the judge in his original decision to quote an ancient Greek playwright to illustrate the opacity of the proceedings.

"Everything will be made clear in the end," Sophocles wrote in "Oedipus Rex," the judge said in [his April 1 decision](#), which capped a 13-day trial held over three months. "Regretfully, in this trial, such clarity was never quite achieved." ([NYLJ, April 15](#)).

In that ruling, the judge held that EMCO was owed only \$3,413 for wrongful termination by Mr. Pilavas, who had an "aversion" to signing contracts and would not provide down payments on principle due to his belief that an "honest contractor" should not need cash up front.

EMCO began work on the home without a down payment in May 2003. As a result of irregular cash flows and other disagreements, the parties ended their business relationship in February 2005 with the house approximately two-thirds complete. By then,

EMCO had been paid \$754,000.

In his April ruling, Justice Warshawsky calculated that only 62 percent of the home had been constructed. He declined to award EMCO a \$177,000 down payment because it had begun work without it. Then, taking into account subsequent modifications to the home, he arrived at a credit to the contractor of \$3,413.

After a motion to reargue, the judge adjusted his arithmetic.

Initially, he rejected a motion by Mr. Pilavas to retry the case and an argument by EMCO, which the judge characterized as being fraught with "aardvarkian" logic essentially aiming to recoup "lost profits."

EMCO's attorney, Robert La Reddol, argued in motion papers that comparing two separate methods of computation was like "comparing apples to aardvarks."

However, the judge considered a "more complex" argument advanced by EMCO in awarding the adjusted amount of \$128,028 to the firm.

Crediting Mr. Pilavas for "work which EMCO contended it completed, but which the court specifically found it did not, would give the defendant a double benefit by taking line by line dollar deductions," Justice Warshawsky wrote.

The work amount billed, but not performed, amounted to \$127,850.

According to the latest decision, witnesses for Mr. Pilavas and for EMCO differed by as much as 35 percent in estimating the level of completion, ranging from a low of 40 percent to a high of 75 percent, leaving the court with a "problem."

That problem was a central point of dispute - the amount of carpentry finished. An exhibit submitted by EMCO listed the carpentry at 75 percent complete and a charge for \$102,750. The invoice was given to Mr. Pilavas in February 2005, around the time the business relationship ended.

At trial, however, none of EMCO's witnesses was asked how they arrived at their estimates, or whether they believed the carpentry was truly three-quarters complete, or whether they took that figure under consideration when rendering their opinion.

"If the answer would have been yes, two revisions would be proper," wrote the judge, detailing the divergent procedures to arrive at the same result. "Either reduce the completion percentage by the percent the value of the work uncompleted has to the total job," or credit Mr. Pilavas for the value of the work not done, but "not both."

Conversely, if the witnesses had not included the percentage of carpentry in their estimates, "then it would be wrong to credit the defendant with this or other similar

amounts," Justice Warshawsky said.

Once again, clarity was at a premium, leaving it up to the court to recalculate the correct amount owed.

"The court's notes do not reflect what the witnesses had in mind when they gave their percentages, what they had reviewed in determining the percentage of completion, and there is no record of their testimony presented to the court," Justice Warshawsky wrote. "[B]oth plaintiff and defendant failed in this area, perhaps it was intentional, perhaps not."

In his initial decision, the judge arrived at the 62 percent completion figure for the entire home by factoring in the carpentry as not complete.

"Thus, it is not appropriate to credit defendant for that amount," wrote the judge in arriving at the final balance. He also allowed a \$25,100 credit to Mr. Pilavas for other items that had not been completed.

"There was no evidence presented that there are any grounds to take any further deductions from the percent completion found by the court," Mr. La Reddola, of Garden City-based La Reddola, Lester & Associates, said in an interview.

He called it "well-settled law" that where there is substantial completion of a contract, the proper measure of damages is calculated by awarding the difference between the value of the total percentage of work completed and the cost to remediate any work that was not done properly.

However, in his original ruling, Justice Warshawsky had awarded an additional deduction to Mr. Pilavas for the cost of work left incomplete.

"The other side didn't prove that the dollars being deducted as incomplete work were not already being considered when calculating the percent completion of 62 percent," said Mr. La Reddola, who acknowledged that the confusion may have been avoided if the court had been provided with a transcript of the trial.

Peter Marinis of Kordas & Marinis in Long Island City represented Mr. Pilavas. He said he may appeal the judge's modification of the award.

John J. Palmeri of Palmeri & Gaven in Manhattan represented the limited liability companies owned by Mr. Pilavas.

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