In the District Court of the Virgin Islands
Bankruptcy Division
Division of St. Thomas and St. John

IN RE:	)	
	)	
KEITHLY R. JOSEPH and	)	Bankruptcy No. 302-00037
ETHYLN T. JOSEPH,	)	Chapter 13
	)	
DEBTORS	)	

MEMORANDUM OPINION

Before the court is debtors' objection to the amended proof of claim of Joseph Hylton. The court's jurisdiction is not contested. This is a core matter pursuant to 28 U.S.C.§ 157(b)(2)(B). The following constitutes the court's findings of fact and conclusions of law.

Trial was held in St. Thomas on February 14, 2005. The parties have submitted post trial proposed findings of fact and conclusions of law. For the reasons which follow, the objection will be overruled and the claim will be allowed.

Joseph Hylton is a certified architect and contractor who, on April 11, 1997, contracted with the debtors to manage a construction project for them at their home, located at 14A Estate Bolongo, St. Thomas, Virgin Islands. Plaintiff's Exhibit 1 is a copy of the contract. Hylton agreed to the contract after debtors had a stop work order issued against them due to a construction problem regarding a main support pillar for their home. After that work was finished, debtors asked Mr. Joseph to do additional construction management services. That request led to the April 11, 1997 contract. Under the contract, Hylton was to receive the following payments: $2000.00 for architectural plans and $6030.00 as his construction management fee. Thus, Mr. Joseph's fee for his services per this contract was a total of $8030.[1]

As part of his construction management services on the project, Hylton agreed to find contractors to perform certain services at the following costs to debtors: Concrete labor for $32,000.00; block labor for $42,480.00; plaster labor for $25,000.00; and rough carpentry for $21,120.00. The total labor charge was $120,600.00.

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[1] Hylton was also to be paid $968.75 that he would, in turn, pay over to an engineering firm.

Construction had already begun before the contract was signed. As a result, debtors had construction materials on site that were to be used in the performance of this contract. In negotiating Article 14 of the contract, the debtors informed Hylton that they had $213,000 available from their SBA loan to finish construction. Hylton, therefore, estimated certain construction materials costs that would be needed to complete the work so that debtors could determine whether they had sufficient funds to complete the contract. These estimates were listed as "allowances" under the contract and totaled $91,450. If the materials were purchased for less than that amount, debtors would be given a credit. If the materials cost more than the allowance, debtors would have to pay the difference.

A "draw down" schedule was also given to debtors so that they would know when and how much they would have to pay to Hylton as work progressed and to keep the project on schedule. See Plaintiff's Exhibit 2. To facilitate payments that Hylton would have to make to the contractors he managed and to suppliers for goods he purchased for the project, the parties agreed to establish an escrow account. Debtors' funds were deposited into this account and Hylton issued payments from it. Plaintiff's Exhibit 3 is a copy of the escrow agreement. Hylton funded it with $500 of his personal money and later reimbursed himself from funds paid to him by debtors. Debtors initial payment of $30,000.00 was deposited into the escrow. Plaintiff's Exhibit 4 is a copy of the $30,000.00 check.

Plaintiff's Exhibit 5 is the first invoice issued by Hylton and covered the period from April 4 - May 5, 1997. After crediting the $30,000.00 payment, debtors owed an additional $21,998.64 for construction services and supplies in that period. Plaintiff's Exhibit 6 is the second invoice, dated May 19, 1997, and shows that unpaid balance as of that date was $65,817.51 after crediting the $30,000.00 initial payment made by debtors. Hylton personally delivered these invoices to one of the debtors. As of the date of trial, nearly eight years had passed since the contract was signed and nearly seven and a half years had passed since Hylton walked off the job due to non-payment and he was not able to recall which debtor had taken the invoice. On Exhibit 6, Hylton noted his concern that if he did not receive a payment soon, the project would not stay on schedule due to the large balance.

Plaintiff's Exhibit 7 is the third request for payment. This time, after crediting the initial $30,000.00 (which was still the only payment debtors had made) the balance invoiced was $103,274.68. On June 27, 1997, debtors issued a check for $50,000.00 (see Plaintiff's Exhibit 8) but still had not paid the full amount owed. On July 7, Hylton wrote debtors a letter (see Plaintiff's Exhibit 9) memorializing the discussion he had with them during a meeting on July 6 and stating his understanding of what was due, an amount that totaled $52,464.68. On July 9, debtors paid $52,464.00. Plaintiff's Exhibit 10 is a copy of the check given to Hylton. However, as of July 9, Hylton had done more work and purchased additional supplies and debtors still owed $79,103.02. Plaintiff's Exhibit 11 is a copy of the list of expenses he incurred through July 31 on debtor's behalf. In Exhibit 11, Hylton asks the debtors to make a partial payment that day and to pay the balance by August 10, 1997. Rather than pay, debtors attended a meeting with Hylton at his house in early August. Debtors brought an attorney, Wayne Sprauve, with them. As a result of the meeting, during which debtors questioned some charges and reviewed bills received and payments made by Hylton regarding their account, Hylton agreed to reduce the balance to

$71,073.88. He memorialized the changes agreed to by revising Exhibit 11 and faxed the changes to Keithly Joseph. A copy of the agreement is in evidence as Plaintiff's Exhibit 12. Hylton expected immediate payment. Nonetheless, to date, he has not been paid any part of the $71,073.88 negotiated balance due on the contract. As the result of not receiving payment, Hylton pulled the contractors off the job. On or about September 6, 1997, aware that a storm was coming and that materials could be ruined by the rain and wind, Hylton also tried to remove some of the construction materials he had purchased and delivered to the job site so that he could return them to the supplier. He was prevented from collecting most of the items by Ethyln Joseph, who called the police to stop him. Hylton has never been paid for the goods, although in some cases he has paid for them himself and in other cases, he still owes the suppliers. Debtors' contention that they purchased construction materials in June, 1997 and that Hylton removed them and was unjustly enriched thereby is not supported by credible evidence. The court finds that Hylton purchased the items and was prevented from taking back the items by Ethlyn Joseph's actions.

On August 18, 1997, when he still had received nothing from debtors, Hylton caused a notice of claim of construction lien to be issued. See Plaintiff's Exhibit 14. His attorney filed an action to enforce the lien. A copy of the complaint is in evidence as Plaintiff's Exhibit 15. After debtors filed bankruptcy, Hylton filed and then amended his proof of claim, a copy of which can be seen as Plaintiff's Exhibit 18. The demand is for $70,838.62. Before filing the claim, Hylton reviewed his files to verify the amounts he was owed. The $70,838.62 figure is his calculation from that review, conducted over six years after he stopped construction on the job.

Despite the overwhelming evidence presented by Hylton in support of his claim, including specific references in various exhibits to the fact that supporting documents were provided to debtors, debtors now contend that they never knew the basis for the claim. However, debtors produced no evidence to show that they had ever made a contemporaneous written or oral response to Hylton that disputed or disagreed with the representations in Exhibits 11 or 12 and never told him that they did not receive the supporting documents (receipts, invoices and checks) from which Hylton calculated the balances owed by debtors. Debtors' testimony that they did not have the supporting documents available even at the meeting they attended with their attorney, during which the parties negotiated a lower amount to be paid than debtors actually owed, is not credible and is rejected by the court. Hylton's testimony, however, is consistent with the terms of the agreement, the draw down schedule, the format of the payment applications, the checks issued by debtors after receiving the payment requests, and the contemporaneous correspondence between the parties.

At trial, both Keithly and Ethlyn Joseph agreed that they still owed Hylton $24,000 for labor costs. They testified that Hylton agreed to complete construction of the roof of their home for $24,000 and that the $24,000 was all that Hylton agreed to charge. They admit that they did not pay the $24,000. They contended that they were excused from making the $24,000 payment because they had sustained some unspecified damages as the result of the fact that the contractors managed by Hylton did not complete the job due to debtors' failure to pay the agreed upon

contract price. The court finds that debtors did not substantiate to a preponderance of the evidence that any damages they sustained were caused by Hylton or were the result of an improper work stoppage by the contractors. Debtors were in material breach of their payment obligations when the contractors left the job site and have not, to date, paid what they owe. Moreover, seven years have passed since work stopped. In that time, debtors hired other workers and no evidence has been submitted to show that any damages (again, unspecified) were not caused by the superceding and intervening efforts of the more recent worker and work done on debtors' home. In addition, there have been other severe storms in the Virgin Islands over the past seven years and debtors have produced no evidence that any of their unspecified damages are not the result of more recent storm activity.

In Debtors' Proposed Findings of Fact and Conclusions of Law, Docket No. 86, debtors assert in paragraphs 4, 5 and 6 of the Conclusions of Law, that Hylton is entitled to $5,794.83 of the claimed $6,030 for construction management services, plus $19,296 for labor services plus $40,957.88 for materials purchased on behalf of debtors. These three figures total the sum of $71,843.54, is nearly the exact sum Hylton testified was the negotiated amount that debtors agreed to pay him at the meeting on July 6, 1997, and is more than the Proof of Claim filed by Hylton. Despite debtors concession that they owe $71,843.54, I will allow the claim as it was filed, in the amount of $70,838.62.

In summary, Hylton's claim, which is secured by recorded lien, is primarily for payment of expenses he incurred and paid on debtor's behalf from June 4 - July 31, 1997. Debtors presented no credible evidence to support their objection to payment of the obligation. For over seven years, debtors have had the use of materials (now incorporated into the construction of their home) that Hylton paid for and did not recover from the property when he was prevented from removing them by Ethlyn Joseph.

There is no dispute that debtors' house is worth significantly more than the amount of Hylton's secured claim. Under Virgin Islands law, Hylton is entitled to reimbursement for his reasonable costs and attorneys fees and prejudgment and postjudgment interest at the statutory rate of 9% per annum from August 1, 1997. The court accepts the calculation of interest in Hylton's Post Trial Brief, at Docket Number 84, as $48,665.99 from August 1, 1997 to March 10, 2005 and thereafter at a daily rate of $17.52.

Thus, debtors objections to the proof of claim of Joseph Hylton are overruled. Hylton's claim is allowed as a secured claim in the amount of $70,838.62, plus interest of $48,665.99 to March 10, 2005 and $17.52 per day thereafter, plus reasonable costs and attorney fees. The court has no evidence at this time of the costs or attorney fees incurred by Hylton. An order will be issued requiring the filing of an application for attorneys fees and costs.

Judith K. Fitzgerald

April 6, 2005

Judith K. Fitzgerald
U. S. Bankruptcy Judge

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JUDGMENT ORDER

And now, this 6th day of April, 2005, it is ORDERED, ADJUDGED and DECREED:

For the reasons expressed in the foregoing Memorandum Opinion, Debtors' objection to the proof of claim of Joseph Hylton is overruled and the proof of claim is allowed.

It is further ORDERED, ADJUDGED and DECREED that:

Judgment is entered in favor of Joseph Hylton and against Debtors Keithly R. Joseph and Ethlyn T. Joseph, jointly and severally, in the amount of $70,838.62, together with interest at the statutory rate of 9% per annum from and after August 1, 1997.

This Judgment Order will be supplemented with an award of reasonable attorneys fees and costs incurred by and on behalf of Joseph Hylton, after an application for allowance of same has been filed, served on debtors and their counsel for an opportunity to object, and determined by this court. An application shall be filed and served not later than May 11, 2005. Objections must be filed and served by June 13, 2005. The court will hear any objections on June 20, 2005, at 10:00 A.M. (AST) in St. Thomas, U.S.V.I. If no objections are timely filed, the application may be granted without hearing. No extensions of time will be granted.

Judith K. Fitzgerald
U.S. Bankruptcy Judge