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PERSONAL BUSINESS; One Home's Unplanned Addition: A Courtroom

By ROY FURCHGOTT OCT. 1, 2000

BE had done all the right things. We checked the record of the home improvement contractor with state regulators and the Better Business Bureau. We inspected the contractor's jobs in progress. We checked references. And we wrote and signed a detailed contract and an additional written agreement that the contractor would forfeit $100 for each day the job ran late. If the work didn't go smoothly, we thought, we were covered.

Yet, a year later, we were in a Baltimore courtroom, fighting over a project that had run months late and was never finished -- and it was the contractor who was suing us.

The contractor-homeowner relationship is a famously fraught one, of course. Almost everyone has heard horror stories about remodeling projects from hell, and read the usual tips about how to head off trouble.

But what happens when the dispute winds up in litigation is seldom dissected. Our experience disabused us of some cherished notions about day-to-day civil justice and exposed the near-uselessness of many of our precautions, especially when contractors are in such short supply that homeowners have almost no leverage over them.

The story starts with a house that my girlfriend, Guillemette Brouillat, bought in November 1998 in Canton, a mainly industrial area of Baltimore being gentrified with a technology center, stores and waterfront condominiums. She paid $77,000 for a fixer-upper near the tech center on a block that seemed poised for a renaissance. Together, we set out to get the place up to scratch.

After interviewing about a dozen contractors, we chose Russell L. Miller, a friend of a friend of mine. Mr. Miller returned calls promptly, showed up on time for meetings, had good references, no complaints against him on file, and he didn't object to our desire to do the paint and tile work ourselves.

He was not the least-expensive contractor around, but time meant as much to Guillemette as price, because of the high cost of renting space elsewhere while the work was done. Plus, her mortgage agreement mandated higher interest charges during construction, and a six-month deadline for completion.

Demolition started on time, and the framing went quickly. But progress soon slowed, then seemed to come to a halt. The nine weeks specified in the contract elapsed. Nervous, we started doing more of the work ourselves, and barely got the house to a state that would satisfy the bank in time.

As is usual with home improvements, Mr. Miller had been receiving partial payments along the way, with a final payment of $7,314 due on completion, plus $1,899 for work added to the project after it had begun. But by our initial reckoning, the job ran 91 days over, making the late fee $9,100, almost as much as the $9,212 we owed Mr. Miller. We wrote to him, offering to pay $1,899 for the extra work and call the rest even. That was a lot less than he was expecting but, we thought, more than he was strictly entitled to. We awaited a counterproposal.

Instead, Guillemette was served with a legal notice: Mr. Miller's company, M & M Restorations, wanted to put a lien on the house for the entire $9,212, ignoring the late fees, and was suing us to do so.

We hired a lawyer, Thomas A. Baker, a construction industry specialist, who explained to us our first mistake: calling the $100-a-day fee a penalty. As in most other states, Maryland law generally allows "damages" for whatever the delay cost us out of pocket, but not "penalties," so a judge could throw out the whole contract on that technicality, Mr. Baker said.

Financially speaking, mistake No. 2 was plowing ahead with litigation despite Mr. Baker's warning that the cost could rapidly outstrip the amount at issue. But an emotional calculus was at work: Guillemette was losing sleep worrying about the dispute, fighting back

would make us feel better, and lawyers don't charge all that much more than therapists. So we countersued, asking for a delay penalty that we now reckoned at $9,800, plus $4,521 to repair faulty work.

Over the next few months, Mr. Baker had us spend tedious hours amassing an accordion file full of photographs, specification sheets, building codes, timetables and other evidence to support our claim. Meanwhile, we received the specifics of M & M's claim, which basically said the delay was our fault.

(Asked last week to comment for this article, Mr. Miller said: "Delays were caused by the homeowner's inability to complete the work she had charged herself with doing in a reasonable amount of time.")

We were sure that, given our evidence, the court had to back our delay claim. But that was mistake No. 3. Irrespective of proof, Mr. Baker told us, courts generally discard such claims: "Judges tend to say, 'Is the work complete? If so, pay the contractor.' "

On Mr. Baker's advice, we grudgingly switched our sights to more promising legal territory: work defects. Courts, he said, usually support homeowners who hold back from a contractor the amounts they spend to correct poor work. But by fixing some problems ourselves and putting others off, we had made mistake No. 4: The courts, Mr. Baker told us, care only about money actually spent and rarely compensate homeowners for work they do themselves.

(Asked last week to comment on the faulty-work claim, Mr. Miller said, "There were no complaints from the homeowner to myself or any of my employees until after I had brought a lawsuit against them.")

We were learning that at this level, lawsuits are anything but a high-minded contest of evidence and argument. The court's main goal is to clear cases from a crowded docket, and there is little patience for aggrieved homeowners expecting meticulous pursuit of the truth.

When our first court date arrived in May, neither side had budged from an initial meeting in which we had offered to pay $4,000 of the $9,212 Mr. Miller wanted, but he had come down by only $1,000, to $8,212.

Before hearing any arguments or testimony, Judge Richard T. Rombro called the

lawyers into chambers to get the bidding going again. We raised our offer to $5,200, Mr. Miller came down to $7,412, and Mr. Baker told us we seemed headed for a settlement at around $6,000. We thought we could do better in a trial -- mistake No. 5, since each additional day in court added $1,500 to our legal fees. But the emotional math still added up, so we held firm.

The next time around, in mid-June before Judge John C. Byrnes, the settlement tango was reprised. "The judge thinks the case will settle for $6,000," our lawyer told us. Still too high, we thought. But when Mr. Miller unexpectedly agreed to that figure, we were on the spot: refusing might seem unreasonable to the judge, who might find for Mr. Miller in a trial to teach us a lesson. Still, the judge had yet to see our evidence. We decided to roll the dice.

That might have become mistake No. 6, but for a curious turn of events. The judge called Guillemette into chambers -- "to bang her over the head," Mr. Baker told me outside. The judge was polite but firm, Guillemette reported afterward: "He said, 'We are not trying this case over a couple of hundred dollars.' "

Guillemette offered to drop the delay claim, and told the judge, "I just want enough to fix the defects." He asked what proof she had -- any photographs, perhaps?

At last! Guillemette produced our bulging accordion file, starting with holes in water-damaged basement walls where light could be seen streaming in. "They left it like that?" he asked her, amazed. Guillemette was dismissed and Mr. Miller summoned.

We soon settled on a payment of $5,800 of the $9,212 Mr. Miller wanted. All our trouble had won us a reduction of $3,412.

We considered it a moral victory, if a pyrrhic one -- Mr. Baker's bill came to $6,914, even after a generous gift of a day's fees, and the house still needed work. Over sandwiches afterward, we discussed how justice works in a case like ours.

Mr. Baker explained that while our case was unique and all-important to us, judges have seen thousands like it. "The judge first meets with the lawyers to see if he trusts them," Mr. Baker said -- a wash in our case, with experienced local lawyers on each side. Next, the judge might ask a few questions to help steer the parties toward a settlement. Evidence might only enter into the matter to satisfy the judge's curiosity, as in our case, or at a trial, if

settlement talks failed.

Our fight didn't make economic sense in the end, but we thought that we would at least be leaving a record that could guide other homeowners. Again we were mistaken. To complete the settlement, we had to agree to withdraw a complaint we had filed against M & M with the Maryland Home Improvement Commission -- and the Better Business Bureau does not report complaints that have been settled out of court. There is a public record of the suit at the courthouse, but you'd have to know just where to look.

Having learned some expensive lessons, we thought next about the remodeling work that my house needs, and asked Mr. Baker how we could immunize ourselves against winding up in court again.

"You can't," he said, almost cheerfully. He insisted on paying for lunch.
