

CITATION: *Starr Rogers v Eva Lovas* [2004] NTMC 077

PARTIES: STARR ROGERS

v

EVA LOVAS

TITLE OF COURT: Small Claim

JURISDICTION: Local Court – Alice Springs

FILE NO(s): 20407242

DELIVERED ON: 8 October 2004

DELIVERED AT: Alice Springs

HEARING DATE(s): 30 September 2004

JUDGMENT OF: M Ward

**CATCHWORDS:**

**REPRESENTATION:**

*Counsel:*

Plaintiff: Unrepresented

Defendant: Unrepresented

*Solicitors:*

Plaintiff:

Defendant:

Judgment category classification:

Judgment ID number: [2004] NTMC 077

Number of paragraphs: 10

IN THE LOCAL COURT  
AT ALICE SPRINGS IN THE NORTHERN  
TERRITORY OF AUSTRALIA

No. 20407242

BETWEEN:

**STARR ROGERS**  
Plaintiff

AND:

**EVA LOVAS**  
Defendant

REASONS FOR JUDGMENT

(Delivered 8 October 2004)

Mr M WARD DCM:

1. This is a small claim. The plaintiff claims \$6,885 from the defendant for rendering work done to two of the defendant's accommodation units at the Hillsvue apartments in Bradshaw Drive, Alice Springs.
2. The defendant admits the plaintiff's claim. She counterclaims, however, \$3,700.40 by way of damages, (a) for delays in the work being carried out (\$1,540), (b) cost of clean-up (should have been done by the plaintiff, \$1,340), (c) \$69 to repair (clean) switchboard, (d) \$300 to an electrician to decommission and reinstall (switch on and switch off?) electricity so the switchboard could be cleaned, (e) \$80 water damage to a buffet, and \$35 to clean render slurry from bike racks. She also claims (g) \$336 GST. Since all of the above work has been done, except the switchboard (item (c), (d) and item (f) slurry on bike rack), and no invoices or receipts have been produced to prove the GST claim (item (g)) that item is disallowed. GST is not payable for item (a) in any event. Nor would it be payable for those parts of items (b), (c), (e) or (f) involving only the defendant's labour.

3. The defendant has not produced any evidence to support item (a), the claim for damages for loss of income for 10 days delay caused by the plaintiff.
4. To establish such a claim I would expect evidence of booking sought during the period in dispute but knocked back because the rooms were unavailable. Such evidence might be diary notes, bookings from the bookings book (?), and the like. No such evidence was forthcoming.
5. I am satisfied, on the evidence, that the defendant made time of the essence in the contract. In her evidence, the defendant said:

“I rang him to affirm the dates on the 12<sup>th</sup> of January 2004. Then we agreed that the work was to be done starting on the 9<sup>th</sup> of February 2004 (a Monday) to finish on the 13<sup>th</sup> of February 2004 (Friday). I explained that it was essential to start on time. I explained there were other trades involved. The painter was booked for the (Monday) 16<sup>th</sup> of February 2004... He (Travis Carpenter, the plaintiff’s partner) said he understood, that was ok.”

6. Travis Carpenter, an extremely poor witness, was unable to dispute these assertions made by the defendant. I find as a fact that the plaintiff did not commence the work on the 9<sup>th</sup> of February 2004 as required under the contract, but on the following Monday the 16<sup>th</sup> of February 2004. The defendant obliged to re-book the painter for the Monday following, the 23<sup>rd</sup> of February 2004.
7. The rendering work was completed except for the clean up by the evening of Thursday the 18<sup>th</sup> of February 2004. Travis Carpenter left the apprentice, Judd Rogers (the plaintiff’s brother) to do the clean up on his own. The fact of the matter is, he didn’t do it. He left the site in the middle of Friday the 19<sup>th</sup> of February 2004 without having completed the clean up. I am satisfied that the defendant tried to get Travis Carpenter back on site to complete the clean-up on Friday the 19<sup>th</sup> of February 2004 and Saturday the 20<sup>th</sup> of February 2004. I accept that she succeeded in contacting him on Saturday the 20<sup>th</sup> February 2004 by telephone, and the following conversation took place:

“The job is disgusting. Come to the site and review it, because I’m not accepting it. It has to be cleaned up.”

Travis Carpenter said: “The jobs finished. You can get fucked”. He then hung up.

8. So the defendant was obliged to undertake the clean-up work herself. She engaged a Brett Reiderer to assist her.
9. I am satisfied that her counterclaim for her labour and that of Mr Reiderer is made out. She has proven to my satisfaction items number (b), (c), (d), (e) and (f). Her counterclaim is allowed to that extent. There will be judgement on the counterclaim for \$1,824 (\$1,340, plus \$69, plus \$300, plus \$80, plus \$35).
10. The net amount owing to the plaintiff is \$5,061. Each party is to bear its own costs.

Dated this 8<sup>th</sup> day of October 2004.

-----  
**M Ward**  
DEPUTY CHIEF MAGISTRATE