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VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 5th day of November, 2015.

Michael Wilburn, Appellant,

against Record No. 141681
Circuit Court No. CL13-2563

Heartwood Rebuilding Services, Inc., Appellee.

Upon an appeal from a judgment rendered by the Circuit Court of Henrico County.

Upon consideration of the record, briefs, and argument of counsel, the Court is of opinion that there is error in the judgment of the Circuit Court of Henrico County.

On June 12, 2012, a residential property owned by Michael Wilburn ("Wilburn")was severely damaged by a fire. After Wilburn notified his insurance company, Erie Insurance ("Erie"), it recommended that Heartwood Rebuilding Services, Inc. ("Heartwood") perform the repair work on the property. On June 14, 2012, Wilburn met with representatives from Heartwood and Erie at the property. After the representative from Erie left the property, Wilburn signed the document at issue in the present case (the "Agreement").

According to the Agreement, Heartwood was to commence work on the property within two weeks, and the work would be performed "as per [Heartwood's] repair estimate." The Agreement further provided that in exchange for providing the necessary materials and labor, Heartwood would be compensated "[a]s per agreed proposal/insurance estimate with Heartwood Rebuilding Services, Inc."[1] Heartwood subsequently began work on July 6, 2012.

On August 21, 2012, Erie sent Wilburn a letter stating that it estimated the cost of repairs needed to restore Wilburn's property at $209,172.49. The letter also informed Wilburn that he

[1] As the record makes clear, the terms "repair estimate" and "proposal/insurance estimate" refer to the same document, hereafter referred to as the "Estimate."

was free to choose his own contractor. On August 23, 2012, Erie issued a check to Wilburn and Heartwood for $27,062.74 to cover Heartwood's demolition costs.

In late August or early September, Wilburn received a copy of the Estimate.[2] On September 7, 2012, Wilburn informed Heartwood that he did not want Heartwood to finish the repairs on the house.[3] As a result, on September 13, 2012, Heartwood sent a letter to Wilburn, acknowledging his request to stop work and informing him that Heartwood had "terminated" the Agreement. The letter also sought payment for the work Heartwood had already performed ($13,294.51) as well as the overhead and profit Heartwood would have realized under the Agreement ($33,111.33).

On September 27, 2013, Heartwood filed an action for breach of contract and quantum meruit[4] against Wilburn. After hearing evidence and argument, the trial court ruled that the Agreement was a valid and enforceable contract between Heartwood and Wilburn. According to the trial court, the Agreement "contemplates that Heartwood would negotiate with Erie." The trial court awarded Heartwood $46,395.84 on the breach of contract claim. Additionally, it awarded attorney's fees in the amount of $15,465.73.

On appeal, Wilburn argues the trial court erred in finding that the Agreement was a valid and enforceable contract.[5] Specifically, Wilburn contends that the Agreement fails to contain essential terms regarding the scope and price of the work to be performed. Therefore, according to Wilburn, the Agreement is merely "an agreement to agree."

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[2] There is some dispute as to when, exactly, Wilburn received the Estimate from Heartwood. However, the record demonstrates that the Estimate did not exist prior to August 23, 2012, but that Wilburn had received copy of the estimate prior to September 7, 2012.

[3] The parties' differing reasons for why Wilburn did not want Heartwood to complete the work are not germane to our decision in this matter.

[4] In its quantum meruit claim, Heartwood sought payment for the work already performed ($13,294.51) as well as the value of its work preparing a detailed estimate and negotiating with Erie ($21,196.25).

[5] Wilburn further argues that the trial court erred in awarding Heartwood damages under the Agreement's liquidated damages clause because Heartwood failed to give the required notice before it terminated the Agreement. In light of our ruling on the enforceability of the Agreement, we need not address this argument.

This Court has long recognized that

> an agreement for service must be certain and definite as to the nature and extent of service to be performed, the place where and the person to whom it is to be rendered, and the compensation to be paid, or it will not be enforced.

Mullins v. Mingo Lime & Lumber Co., 176 Va. 44, 50, 10 S.E.2d 492, 494 (1940).

Here, it is clear that the Agreement does not contain language expressly defining the extent of the services to be performed (i.e., the scope) or the compensation to be paid (i.e., the price). Indeed, by arguing that the Agreement was a contract "to negotiate the price and scope . . . of repairs with [Erie]," Heartwood implicitly concedes that these terms were missing from the Agreement. Although the Agreement does not contain express language defining the scope and price, it does clearly provide the means for defining these terms. Specifically, both the scope of the work and the price are defined by the Estimate.

Although the plain language of the Agreement expressly incorporates the Estimate for the purpose of defining the scope of work to be completed, it does not expressly incorporate the Estimate for the purpose of defining the price. Notably, the language incorporating the Estimate with regard to price is prefaced by the word "agreed." As there is nothing in the Agreement that obligates Wilburn to agree to the price contained in the Estimate, it is, by definition, an agreement to agree. See Preferred Sys. Solutions, Inc. v. GP Consulting, LLC, 284 Va. 382, 403, 732 S.E.2d 676, 687 (2012) (characterizing an agreement that gives a party the opportunity to receive work from a second party but does not obligate the second party to provide work as an "agreement to agree").

Heartwood, however, disagrees with this characterization of the Agreement. According to Heartwood, Wilburn does not need to agree to the Estimate. Rather, Heartwood asserts that the Agreement allows it to negotiate the Estimate with Erie. Therefore, according to Heartwood, Erie's agreement to the Estimate is sufficient to establish the price and create an enforceable contract. The flaw in this argument is that neither Erie nor any other insurance company is a party to the Agreement. The Agreement only contains two references to insurance companies, neither of which has anything to do with engaging in negotiations of any sort or agreeing to the Estimate. Indeed, one of the references to insurance companies indicates that the Agreement is not even premised on Wilburn having insurance, as it uses the conditional phrase "[i]f the

proposed repairs are covered by insurance." (Emphasis added). Thus, under the plain language of the Agreement, any negotiations between Heartwood and Erie are irrelevant in our determination of whether the Agreement is an enforceable contract or an unenforceable agreement to agree.

As it is undisputed that Wilburn objected to the Estimate, no enforceable contract was created. Therefore, the trial court erred in awarding damages to Heartwood under the Agreement. Wilburn, however, agrees that Heartwood is entitled to payment of $13,294.51 for the work Heartwood had performed before Wilburn stopped Heartwood from doing any further work. Accordingly, we reverse the decision of the trial court and enter final judgment in favor of Heartwood in the amount of $13,294.51 with interest at the judgment rate from August 13, 2014 until paid.[6]

This order shall be certified to the said circuit court.

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Teste:

Clerk

[6] We note that Heartwood failed to present any evidence of the monetary damages related to the value of its work preparing a detailed estimate and negotiating with Erie. Therefore, because Heartwood effectively abandoned this portion of its quantum meruit claim and the parties agree as to the value of the work performed, there is no need for us to remand the matter to the trial court for further proceedings.