

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR CHARLOTTE COUNTY, FLORIDA

CAPITOL BUILDING & CONSTRUCTION CO.,
a Florida corporation,

Plaintiff,

vs.

CASE NO. 24002082CA

GARY MANOS and
TRACY MANOS,

Defendants.

_____ /

FINAL JUDGMENT

THIS CAUSE came before the Court following Court-ordered non-binding arbitration on Plaintiff's, Capitol Building & Construction Co. ("Capitol") Amended Complaint against Defendants, Gary Manos and Tracy Manos ("Manos"), and Manos' Answer, Affirmative Defenses and Counterclaim against Capitol [DIN 10, 11, & 44], pursuant to this Court's Case Management Plan and Order Referring Case to Non-Binding Arbitration dated March 5, 2025 [DIN 21] and Florida Rule of Civil Procedure 1.820.

After reviewing the Court file, and the Arbitrator's Decision dated and served January 26, 2026 ("the Decision") [DIN 46], and no motion for trial de novo having been filed or served by any party within twenty (20) days of service of same, the Court hereby confirms and adopts the Decision in all respects and enters judgment in conformity therewith.

ORDERED AND ADJUDGED that:

1. The Arbitrator's Decision, by Arbitrator C. Berk Edwards, Esq. dated January 26, 2026 [DIN 46] and attached hereto as **Exhibit "A,"** is hereby confirmed in its entirety and adopted herein.

2. The Clerk is directed to close this case and remove same from the Court's April 2026 trial docket.

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Geoffrey H. Gentile, Circuit Court Judge 8aMG-TsN 24002082CA
03/17/2026 16:40:41

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IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR
CHARLOTTE COUNTY, FLORIDA CIVIL ACTION

CAPITOL BUILDING & CONSTRUCTION CO.,
a Florida corporation,

Plaintiff,

v.

Case No. 24002082CA

GARY MANOS and TRACY MANOS,

Defendants.

_____ /

ARBITRATOR'S DECISION

THIS CAUSE came before the undersigned Arbitrator, C. Berk Edwards, Esq. presiding, for an arbitration hearing on Tuesday, January 20, 2026 at 9:00 a.m. The Arbitrator has jurisdiction over this proceeding pursuant to the Notice of Non-Binding Arbitration filed November 7, 2025.

Having reviewed the operative pleadings, having carefully considered the proffered evidence and argument of counsel during the hearing, and being otherwise fully advised in the premises, the Arbitrator makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

Plaintiff, CAPITOL BUILDING & CONSTRUCTION CO. ("Capitol"), is a certified general contractor qualified by its President, Scott A. Knapp. Capitol builds single-family homes in Charlotte and Sarasota Counties.

Defendants, GARY MANOS and TRACY MANOS (collectively "Manos"), entered into a Construction Contract ("Contract") with Capitol executed on September 3, 2020 for the construction of a home on property located at 4264 Hollybrook Street, Port Charlotte, Florida. The Contract was for a fixed price of \$390,556.50 to be payable pursuant to the following draw schedule tied to completion milestones or work performed:

EXHIBIT "A"

A. <u>\$39,055.65</u>	10% when contract signed.
B. <u>\$39,055.65</u>	10% when permit is issued.
C. <u>\$78,111.30</u>	20% when slab is poured.
D. <u>\$78,111.30</u>	20% when roof is dried in.
E. <u>\$78,111.30</u>	20% when drywall is hung.
F. <u>\$39,055.65</u>	10% when cabinets are installed.
G. <u>\$39,055.65</u>	10% when certificate of occupancy is issued.

This draw schedule was to fluctuate depending on the terms of the financing obtained by Manos.

Manos obtained a construction loan from Truist Bank for funding in the amount of \$411,758.50.

The Contract provided that a building permit application would be submitted within 90 days of contract signing, subject to changes, customization, options, upgrades, pool installation, site preparation, or mortgage financing which all could lengthen the time of the application. *Contract*, § 17. Construction was “estimated to be complete 270 days from the date of actual commencement, but the Contractor makes no representation that the house will be completed on such dated, as the date is contingent on availability of materials and labor and other forces beyond the control of Contractor such as, acts of God, strikes, and any natural catastrophes.” *Id.*, § 18. Commencement was defined as the day the foundation footers were poured. *Id.* “Notwithstanding anything in this Construction Contract to the contrary, Contractor shall be obligated to complete the home no later than two years after the date Buyer signs this Contract, except for delays caused by acts of God or other matters that qualify under impossibility of performance principles recognized under the laws of the State of Florida, in which case the completion date shall be delayed by an amount of time equivalent to the delay.” *Id.*

On September 9, 2020, Manos paid Capitol via personal check the sum of \$39,055.65 representing the first 10% due under the Contract pursuant to the above draw schedule.

2 EXHIBIT "A"

The parties executed various change orders to the Contract which added the sum of \$44,939.00 to the Contract. All change orders were paid by Manos to Capitol via personal check.

The following draws were paid by Truist Bank as evidenced by Draw Tickets that were proffered:

- \$43,205.65 as a "Closing Draw" on or about January 11, 2021. This was disbursed by Truist to Manos to reimburse Manos for the 10% down payment of \$39,055.65 and \$4,150.00 for pool shell completion.
- \$31,560.94 as "Draw #1" on or about February 9, 2022. This was disbursed to Capitol in full.
- \$11,117.49 as "Draw #2" on or about April 19, 2022. This was disbursed to Capitol in full.
- \$54,146.24 as "Draw #3" on or about June 27, 2022. This was disbursed to Capitol in full.
- \$57,242.91 as "Draw #4" on or about October 25, 2022. This was disbursed to Capitol in full.
- \$81,354.66 as "Draw #5" on or about March 16, 2023. \$1,600.00 of this draw was disbursed to Manos and \$79,754.66 disbursed to Capitol.
- \$57,763.90 as "Draw #6" on or about May 12, 2023. This was disbursed to Capitol in full.
- \$60,631.58 as "Draw #7" on or about May 17, 2023. \$5,750.00 of this draw was disbursed to Manos and \$54,881.58 disbursed to Capitol.
- \$13,855.77 as "Draw #8 – Final Draw – from Restricted Escrow" on or about September 6, 2023. This was disbursed to Manos leaving a balance on the construction loan in the

amount of \$879.36.

A review of the draw tickets establishes that Truist Bank disbursed \$410,879.14. From this amount, Manos was disbursed \$64,411.42 (\$43,205.65 from Closing Draw, \$1,600.00 from Draw #6, \$5,750.00 from Draw #7, and \$13,855.77 from Draw #8 – Final Draw). Capitol was disbursed \$346,467.72, but was paid directly by Manos \$43,205.65 for the 10% down payments and \$44,939.00 for change order work. Capitol was paid \$434,612.37, excluding the sums paid to it by Manos for Hurricane Ian remediation work outlined below.

On June 23, 2023, Capitol issued an invoice to Manos in the amount of \$94,234.09. The proffer was that this invoice was a result of “having to adjust the final amount to reflect increases in labor and materials.” *See, e-mail from Capitol to Manos dated April 27, 2023 at 2:45 p.m.* The Contract did reserve to Capitol the right to change pricing in response to market conditions “with no obligation to Buyer.” *Contract*, § 6. In other words, the Contract price could not be unilaterally increased by Capitol. This invoice was not accompanied by any details or description of the price increases.

The testimony that was proffered by Capitol evidenced that the site plan was delayed as a result of tortoises and scrub jays on the property, which delayed the issuance of the building permit. This was in part also documented by Change Order 4 for \$2,500 dated August 26, 2021 for “Gopher Tortoise Permitting & Excavation.” It was not until on or about December 14, 2021 that Capitol poured the slab.

Hurricane Ian struck on September 28, 2022. The home was not completed and suffered damage to drywall and insulation. Manos made an insurance claim which resulted in a payment to Capitol in the amount of \$14,637.50 for remedial work.

On July 10, 2023, a Certificate of Occupancy was obtained by Manos for the home.

OPERATIVE PLEADINGS

Plaintiff filed a two-count Amended Complaint for breach of contract and defamation per se. Counsel for Capitol agreed that Count II for defamation per se was withdrawn from the Arbitrator's consideration. Defendant filed its Answer and Affirmative Defenses to Plaintiffs' Amended Complaint, and Counterclaim that denied liability and raised various affirmative defenses. This matter is at issue.

ANALYSIS AND CONCLUSIONS OF LAW

Count I of the Amended Complaint is an action for breach of contract against Manos. It alleges in pertinent part as follows:

11. Capitol performed as specified under the Contract.
12. The Contract established a draw schedule providing for payment in specified increments as the project progressed.
13. In accordance with the Contract, Capitol sent an invoice for a \$94,234.09 draw on or about July 19, 2023.
14. Defendants breached the Contract by failing to pay the invoice. The invoice remains unpaid as of the date of this filing.

"The elements of an action for breach of contract are: (1) the existence of a contract, (2) a breach of the contract, and (3) damages resulting from the breach." *Rollins, Inc. v. Butland*, 951 So. 2d 860, 876 (Fla. 2d DCA 2006). The Second District later identified the three elements for a cause of action for breach of contract as: "(1) a valid contract, (2) a material breach, and (3) damages." *Havens v. Coast Fla., P.A.*, 117 So. 3d 1179, 1181 (Fla. 2d DCA 2013); accord *Nat'l Collegiate Student Loan Tr. 2006-4 v. Meyer*, 265 So. 3d 715, 719 (Fla. 2d DCA 2019); *Ferguson Enters., Inc. v. Astro Air Conditioning & Heating, Inc.*, 137 So. 3d 613, 615 (Fla. 2d DCA 2014).

“To establish a material breach, the party alleged to have breached the contract must have failed to perform a duty that goes to the essence of the contract and is of such significance that it relieves the injured party from further performance of its contractual duties.” *Burlington & Rockenbach, P.A. v. Law Office of E. Clay Parker*, 160 So. 3d 955, 960 (Fla. 5th DCA 2015). “Thus, trivial noncompliance and minor failings do not constitute material breaches.” *Id.*

Here, there is no question the parties entered into the Contract. The first question for the Arbitrator’s consideration is whether Manos breached the Contract by failing to pay the invoice in the amount of \$94,234.09. It is Capitol’s burden to establish that Manos failed to perform a duty that goes to the essence of the Contract by failing to pay this invoice. In other words, did Manos fail “to do something essential which the contract required [Manos] to do?” *See, Fla. Std. Jury Instr. (Cont. & Bus.) 416.4.*

I find that Capitol failed to establish a prima facie case of breach by Manos. There was no competent substantial evidence that was proffered which could serve as the predicate for a finding that Manos’ failure to pay the \$94,234.09 invoice could rise to the level of a material breach. The invoice was not issued pursuant to the Contract’s draw schedule and appears to have been issued based on alleged price increases. However, the Contract does not permit unilateral price increases and there was nothing proffered that suggested Manos agreed to \$94,234.09 in price increases. Capitol failed to establish that that Manos’ failure to pay this invoice violated an obligation required by them under the Contract.

The breach of contract claim also fails because nothing was proffered as to the scope of what the \$94,234.09 entails. Capitol is required to provide damages with a degree of reasonable certainty, and nothing was proffered detailing the nature of the \$94,234.09 in accrued price

increases other than the invoice itself. The invoice standing alone does not prove damages the reasonable certainty required.

Capitol also alleges the following as to an alleged breach by Manos:

16. Defendants failed to close on the Property upon notice by Capitol of the closing date; pursuant to the terms of the Contract, Capitol is entitled to a penalty of \$250.00 (related to Capitol's financing of the project) for each day closing is extended.

17. Defendants have not closed on the Property, resulting in Capitol's damages for Defendants' breach of the Contract to be an estimated \$272,500.00 to date, exclusive of any lost profits, attorney's fees, costs, and interest.

The Contract does provide that "[i]f Buyer requests, and Contractor agrees, to extend the closing date, Buyer shall face a penalty of \$250.00 for each day the Closing is extended. If Buyer fails to close on the extended closing date, Buyer shall be deemed to be in default." *Contract*, § 22. However, it fails to entitle Capitol to a penalty of \$250.00 for each day closing is extended as Capitol alleges in its Amended Complaint. The \$250.00 per diem penalty only arises if Manos requested, and Capitol agreed, to an extension of the closing date, and only then for each day of the extension. Nothing is alleged or proffered to give rise to a \$250.00 per diem penalty as provided for in Section 22 of the Contract.

CONCLUSION

Based on the arguments and proffers before me, I find in favor of Manos. Capitol shall take nothing by its Amended Complaint and Manos shall go hence without day.

ARBITRATOR's DECISION submitted this 26th day of January, 2026.

BY: 
C. Berk Edwards, Esq.
Arbitrator

CERTIFICATE OF SERVICE

I certify that a copy of the Arbitrator's Decision was served upon counsel via e-mail through the e-portal this 26th day of January, 2026.

BY: 

C. Berk Edwards, Esq.
Arbitrator