

AMERICAN ARBITRATION ASSOCIATION  
Construction Industry Arbitration Tribunal

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In the Matter of the Arbitration between

CHARLES FERGUSON,

*Claimant,*

v.

AAA Case No. 01-16-0003-3854

ROBERT CREMEN, III and

DAVINE RESTORATION & CONSTRUCTION LLC.

*Respondents.*

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**FINAL AWARD**

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement entered into by the above-named parties and dated January 8, 2013, and having been duly sworn, and having fully reviewed and considered the written documents submitted to me and the evidence presented in this matter, in which the parties were accorded full opportunity to present their claims and defenses, do hereby, AWARD, as follows:

The AAA's Arbitration Construction Industry Arbitration Rules and Mediation Procedures, Fast Track Procedures, effective July 1, 2015 apply to this arbitration.

On January 8, 2013 Claimant Ferguson and Respondent Davine Restoration & Construction ("Davine") entered into a contract for the partial demolition and renovation construction of Claimant's house which had been damaged in a fire. The contract called for three equal payments of \$34,287.63 totaling \$102,862.90, with construction to be completed within 180 days from the "start date" *i.e.*, January 8, 2013. For whatever reason, after the first such payment, Davine stopped work sometime in or around March 2013. Claimant attempted to have Davine

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resume work. On August 20, 2013 Claimant sent Davine a Cure Notice, demanding that Davine complete the project. The Arbitrator finds credible that Davine performed about half of the value of the first payment, *i.e.*, \$17,143.81 in conformity with the contract. Claimant eventually sold the house at auction, filed suit in District Court in Prince George's County (disposition of which was not addressed by the parties at the hearing), and filed this arbitration on August 15, 2015.

As Arbitrator I therefore: (1) DENY Respondents' motion to dismiss the arbitration on grounds of limitations. I am persuaded that a Maryland court would likely find that Sec. 5-101 of the Courts Article would not apply to arbitration. Moreover, Claimant did not rest on his claim rights, having filed an action in the District Court. Nor did Davine establish prejudice by any lateness in Claimant's filing the arbitration. (2) GRANT Respondent Cremen's motion to dismiss the arbitration against him in his personal capacity. Cremen was not a party to the January 8, 2013 contract and Claimant offered no evidence establishing his liability. (3) DENY Claimant's claim for lost rent. This was not part of Claimant's claim. *See* Scheduling Order No. 1 para. 1.

#### AWARD

Accordingly, for the reasons stated above, I AWARD as follows:

1. Within thirty (30) days from the transmittal of this Final Award to the Parties, Respondent Davine shall pay Claimant Ferguson the sum of US \$17,143.81.
2. The administrative fees of the American Arbitration Association, totaling US \$1,550.00, and the compensation of the Arbitrator, totaling US \$900.00, are to be borne equally by the parties. Therefore, Respondent Davine shall reimburse Claimant Ferguson the additional sum of \$775.00, representing said fees previously incurred by Claimant Ferguson.
3. This Final Award is, after full and complete consideration, in full and complete settlement of any and all claims which were submitted or which could have been submitted in

this arbitration, any and all claims between the parties not expressly granted herein are hereby DENIED.

I hereby certify that, for the purposes of Article 1 of the New York Convention of 1958, on the Recognition and Enforcement of Foreign Arbitral Awards, this Final Award was made in Bethesda, Maryland.

**Signature on File**

Nov. 7, 2016  
Date

\_\_\_\_\_  
William Karl Wilburn, Esq.  
Arbitrator

State of Maryland

County of Montgomery

} SS:

I, William Karl Wilburn, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which

**Signature on File**

Nov 7, 2016  
Date