

**DISTRICT COURT OF NASSAU COUNTY  
SECOND DISTRICT: SMALL CLAIMS PART**

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DECORINTEX CORP.

Plaintiff(s),

**Present:**

**Hon. Michael A. Ciaffa**

- against -

Index No. SC-000962-11

MARK MESNICK and  
OLD WORLD REFINISHING CO.

Defendant(s).

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MARK MESNICK d/b/a  
OLD WORLD REFINISHING COMPANY

Plaintiff(s),

- against -

Index No. SC- 000002-12

HECTOR AVILA and  
DECORINTEX CORP.

Defendant(s).

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DECISION AFTER TRIAL

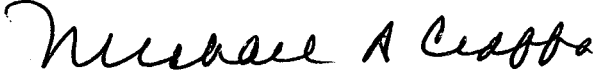
In these consolidated small claims cases, the owners of two businesses each sue the other. Hector Avila's company, Decorintex Corp., sues Mark Mesnick and Old World Refinishing Co. in one action. Mesnick sues Avila in the second action. For purposes of this decision, the corporate forms used by the parties are unimportant.

The testimony presented at trial establishes that Mesnick and his company ("Mesnick") hired Avila and his company ("Avila") to fulfill part of a home decorating contract in which time was "of the essence." Avila's job involved fabricating pillow covers and sofa seat cushion covers with fabric that Mesnick had purchased and provided. Although a sales receipt in evidence lists the general dimensions of the pillow and seat cushion covers, more precise dimensions were needed to properly complete the job. Both parties bear partial blame for not clearly detailing, in advance, the exact dimensions of the seat cushion covers. Due to time pressures and Avila's failure to meet an initial agreed

timetable, the job was rushed. When several seat cushions proved to be unsuitable for the customer's sofa, Mesnick failed to make good on his promise to pay Avila for the balance owed for his work. Avila sues for the balance owed (\$1,220.00), and Mesnick sues for return the pre-payments made to Avila (\$2,220.00), or for the cost of the fabric (\$1,944.00).

Based upon Mesnick's proof that several seat cushion covers were the wrong size and were otherwise ill-fitting, Avila is not entitled to payment for the balance owed (\$1,220.00). However, because Mesnick bears partial blame for failing to provide Avila with sufficiently precise specifications, and failed to prove a more substantial breach, Mesnick is not entitled to damages beyond forgiveness of the balance he otherwise would have owed. Accordingly, the weight of credible evidence, and principles of substantial justice, call for dismissal of all claims.

**So Ordered:**

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**District Court Judge**

Dated: March 21, 2012

cc: Mark Mesnick  
Hector Avila