

**SUPREME COURT - STATE OF NEW YORK**

PRESENT: HON. PETER B. SKELOS,  
Justice.

TRIAL/IAS PART 24  
NASSAU COUNTY

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A. O'REILLY PHILLIPS, d/b/a O'REILLY HOME  
IMPROVEMENT,

Plaintiff,

-against-

ACTION # 1

INDEX #: 13147/97

YVONNE BLOUNT, THOMAS L. BLOUNT and  
THE PRUDENTIAL HOME MORTGAGE COMPANY,  
INC. and NORWEST MORTGAGE, INC.,

Defendants.

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NORWEST MORTGAGE, INC.,

Plaintiff,

-against-

ACTION # 2

INDEX #: 27337/97

THOMAS L. BLOUNT, YVONNE BLOUNT, et al,

Defendants.

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Decision after Trial

In the first captioned action, plaintiff A. O'Reilly Phillips, d/b/a O'Reilly Home Improvement (hereafter O'Reilly Phillips") sued the defendants Blount, Prudential and Norwest for breach of contract under the provisions of 12 USC 1709 (k), commonly known as a 203 (k) contract or rehabilitation loan agreement. In addition, O'Reilly Phillips claims damages for breach of contract for certain labor, services and materials (hereafter "extras") delivered to the Blounts outside the 203

(k) rehabilitation loan agreement.

The Blounts counterclaim for damages as a result of breach of contract by O'Reilly Phillips. Yvonne Blount also alleges damages as a result of an assault by O'Reilly Phillips. The counterclaims are dismissed for insufficiency of proof by a preponderance of the evidence.

O'Reilly Phillips served and filed an amended complaint adding Norwest Mortgage, Inc. (hereafter "Norwest") as a party defendant in the first captioned action. The Blounts did not answer the amended complaint. The amended complaint did not change the allegations against the Blounts. Accordingly, the Blounts' answer to the original complaint is deemed to have satisfactorily joined issue. The Prudential Home Mortgage Company did not appear as it had assigned the mortgage herein to Norwest on November 2, 1996 and transferred the 203 (k) rehabilitation escrow funds to Norwest in accordance with the terms of the assignment. Under these circumstances, the plaintiff has no cause of action against Prudential as it was not the mortgagee at the time of the commencement of this action. The action against Prudential is dismissed.

In the second captioned action the plaintiff-mortgagee, Norwest Mortgage, Inc., brings an action to foreclose a mortgage based upon the mortgagor-defendants', Thomas L. Blount and Yvonne Blount (hereafter "Blount" or "Blounts"), failure to make payments as required by a certain note and mortgage.

The Blounts appeared in the action by service of an answer verified by Yvonne Blount. Personal jurisdiction was not raised as a defense. The affirmative defense of lack of subject matter jurisdiction was resolved in favor of Norwest through pre-trial motion practice.

Defendants Yvonne Blount and Thomas Blount admitted in their answer that the subject mortgage, as collateral security on a note, was duly recorded and that the subject premises was

encumbered thereby. Thomas Blount was not present in court for the trial. Yvonne Blount appeared and testified on her own behalf at the trial. She failed to return to court on certain dates. The court granted her counsel's initial requests for adjournments. Later requests were denied upon the failure to submit a satisfactory excuse or basis for the adjournment and further delay.

As a result of a court order, the actions were consolidated for the purpose of a joint trial. The trial was conducted over the course of several days. The trial court required that the parties submit written post trial memoranda by August 28, 2002 with oral argument thereon to be held September 4, 2002.

Defendants, Thomas L. Blount and Yvonne Blount, applied to Community Home Mortgage Corporation for a loan to purchase and rehabilitate the premises at 209 East Dean Street, Freeport, New York. The loan was written pursuant to the Section 203(k) Rehabilitation Loan Insurance Program of the National Housing Act (12 USC 1709[k]). The 203(k) program authorizes the United States Department of Housing and Urban Development to insure loans for the purchase and/or rehabilitation of residential properties (*see* 67 FR 54308-01). The regulations implementing the program are found in 24 CFR 203.50 and 24 CFR 203.440-203.495. As part of this loan, an approved HUD inspector, Gary Westwood, prepared "rehabilitation worksheets," also called "203(k) worksheets," which contained the specifications for the rehabilitation work to be done at the premises. The Blounts consulted with a contractor, Brighton Construction, to do the work according to the 203(k) contract specifications (hereinafter referred to as the "Brighton contract"). The rehabilitation loan agreement provided that payments to the contractor, by the release of escrow funds, were to be made upon the approval of the HUD inspector, Gary Westwood. Brighton Construction was approved as the contractor and retained to do the work. However, due to a dispute

over the payment schedule, Brighton did not perform any work at the premises. Brighton was replaced by BF Hardwick Contracting. The closing took place on November 13, 1995. The Blounts executed the necessary 203(k) rehabilitation loan and mortgage documents and Daniel Silverman, a vice-president of Community Home Mortgage Corporation, executed the documents on behalf of the mortgagee. The total mortgage principal was \$152,350.00. According to the HUD-1 settlement statement, \$77,625.00 was retained by the mortgagee as the "Rehabilitation Escrow". The escrow funds were to be disbursed as the rehabilitation construction progressed and as authorized by the HUD inspector. Mortgage interest accrued on the total loan principal. The rehabilitation escrow was placed in an interest-bearing account held by the mortgagee. The accumulated investment interest was to be applied as an offset against the interest accrued on the loan. After the closing, defendant Thomas L. Blount took no part in any further transactions regarding the subject property or the 203(k) loan. He did not sign any subsequent construction contract documents and did not communicate with the contractors or the mortgagee. At trial it was alleged that Cora Blount, the wife of Thomas L. Blount and the mother of Yvonne Blount, was in possession of a power of attorney to act for Thomas L. Blount. No such document was produced. Yvonne Blount testified that Cora Blount, acting as her agent, took an active role in the 203(k) rehabilitation work at the premises. Again no power of attorney or other agreement evidencing any such agency or authorization to act was produced at trial. Cora Blount did not testify at the trial.

Norwest, through a series of assignments became the successor in interest to the original note and mortgage running in favor of Community Home Mortgage Corporation. Norwest, through the credible testimony of Nikki Cureton and the introduction of supporting bank documents, established that the Blounts' last loan and mortgage payment had been made in March 1997. Defendants do not

deny that they failed to make certain mortgage payments. Defendants failed to present any credible testimony to controvert Norwest's allegations of default. The court finds that the mortgage was in default as of April 1, 1997 and that Norwest has established by a preponderance of the evidence that it is entitled to a judgment of foreclosure and sale.

The Blounts' defense to the foreclosure action is that the work performed by the various contractors did not meet their standards of acceptance and that the work was in violation of certain local building codes. The applicable law does not recognize any such defense to the foreclosure action. There were several contractors who were retained by the Blounts to perform the work at the subject premises. The Blounts created disputes with each of the contractors who worked at the subject premises and or disapproved of the work performed by each of the contractors. It was not until after the Blounts denied O'Reilly Phillips access to the premises in June 1996 and the work was not proceeding at an acceptable pace that the mortgagee exercised its discretion under the terms of the HUD guidelines to take over the completion of the rehabilitation project. Norwest became involved in the completion of the construction approximately 5 months after O'Reilly Phillips had been refused access to the premises by the defendants in June 1996.

In the fall of 1996 a new contractor, Structural Renovations, was brought in by the mortgagee to complete the work. According to the testimony of Joe Sumner, an inspector for the Village of Freeport Department of Buildings, all work performed by Structural Renovations received final approval by the village in March 1997. Joe Sumner testified that all work performed by Structural Renovations had been completed in compliance with the Village Code and that there were no violations. Further, according to Sal Carbone, the independent HUD fee inspector, all work performed by Structural Renovations had been done in a manner satisfactory to HUD requirements.

The court finds that there were no impediments to the release of the rehabilitation escrow to Structural Renovations in payment of the work performed, except to the extent that the bank should have first paid O'Reilly Phillips for the work he performed.

In addition to the testimony of Nikki Cureton, plaintiff's *prima facie* case establishing its entitlement to a judgement of foreclosure and sale included the deed, note, mortgage, rehabilitation loan agreement, demand for payment (notice of impending acceleration of the debt), the recorded notice of pendency and the payoff statement. The *prima facie* elements of the foreclosure are not disputed or contested. Defendants admit that the mortgage was executed as collateral security and that through assignments, which were duly recorded, the plaintiff holds the mortgage. Defendants admit that the subject premises is encumbered by the mortgage and acknowledge the failure to make payments.

Although the defendants deny that they failed to make monthly payments of the principal and interest from April 1, 1997 going forward, they did not offer any evidence to controvert the bank's proof that no payments of principal and interest have been made since March 1997. The Blounts failed to establish proof of payment as a defense to foreclosure. Yvonne Blount acknowledged that at some point she stopped making mortgage payments. However, she did not recall the date of the last payment. Ms. Blount failed to offer testimony or produce a record to contradict the credible testimony of Nikki Cureton as to the date of default. The mortgage and note each provide that the lender may accelerate the debt and upon acceleration the mortgagee is entitled to the principal balance remaining due, accrued interest, costs and expenses, including attorneys fees. The demand for payment or acceleration was made in a letter dated June 23, 1997. Yvonne Blount acknowledged receipt of the demand letter. She turned it over to her attorney.

The Court of Appeals has held that “ [I]n the absence of some act by the mortgagee which a court of equity would be justified in considering unconscionable, he is entitled to the benefit of the covenant” (*Graf v Hope Building Corp.*, 254 NY 1). The default cannot be excused unless there is fraud, unconscionable or oppressive conduct, waiver or estoppel by the lender (*Ferlazzo v Riley*, 278 NY 289). There is no evidence of any conduct by the mortgagee which provides a defense to, or otherwise justifies, the defendants’ default.

In the fall of 1996, a new 203(k) rehabilitation worksheet was prepared by Salvatore Carbone the HUD consultant. The new worksheet included the completion of several items necessary to finalize the rehabilitation project in accordance with HUD standards as well as a budget for certain remedial work. The remedial work included repairs due to rainwater damage, which occurred after O’Reilly Phillips had been removed from the job site and notwithstanding his efforts to protect the premises with a tarpaulin.

The fact that the mortgagee acted pursuant to the rehabilitation loan rider and entered into a contract with Structural Renovations to complete the renovation does not alter or add additional elements to establish a *prima facie* case for foreclosure. Notwithstanding the failure to plead, it appears that the defendants are seeking to assert an equitable defense to the foreclosure based upon the defendants’ perception that they have not been treated fairly and that the renovation work was performed in a less than workmanlike manner. The fact that the defendant/mortgagor is dissatisfied with the renovation is of no import. The mortgagor/defendants failed to provide any credible proof that the work performed by Structural Renovations was not in conformance with either HUD standards or the village code or was otherwise less than workmanlike.

Defendant's defense appears to be that the construction was not performed in accordance with defendants' satisfaction and that defendant mortgagors should be excused from making mortgage payments because the premises was not in satisfactory condition (from the defendants' point of view) when Structural Renovations left the job. The rehabilitation loan agreement offers no such defense. To the contrary, the rehabilitation loan agreement at paragraph "2" provides, as follows:

"Payments required under the mortgage or deed of trust must be made by the borrower, on the date specified, even though the proposed rehabilitation or improvement may not be completed, or the property may not be suitable for occupancy on the anticipated date."

Structural Renovations completed the work as outlined in their contract in and around April 1997. The defendants, allegedly not happy with the work, stopped making payments. The court notes that notwithstanding the mortgagor's professed dissatisfaction with the work performed by O'Reilly Phillips and the other contractors, she continued to make the mortgage payments. It was not until the job was complete that the mortgagors defaulted on their obligation under the note and mortgage.

The court relies on the credible testimony of Joe Sumner, a building inspector for the Village of Freeport and Sal Carbone, the HUD consultant and finds that the improvements made by Structural Renovations were made in a workmanlike manner. No certificate of occupancy was required by the village in connection with the scope of the work performed at the subject location. Sumner testified that all of the work had been signed off on by the village as of March 1997. Sal Carbone and Joe Sumner offered the only credible evidence as to the condition of the premises at the time of the Blounts' default. There is no credible proof that the premises was not habitable at the time of the Blounts' default. Even if there was expert testimony that the premises was not habitable



or that the improvements were incomplete, the Blounts remained obligated to make the monthly payments on the note. By the terms of the rehabilitation loan agreement the alleged condition of the premises cannot be asserted as a defense to the foreclosure action. The Blounts failed to rebut any aspect of Norwest's proof.

The preponderance of the evidence establishes that as of August 1, 2002, the total due on the loan was \$299,366.95 and that the monthly accrual thereafter was \$1,260.00. Accordingly, as of January 1, 2003 the total amount due was \$305,666.95. Plaintiff Norwest Mortgage Inc. shall have a judgment of foreclosure and sale against Thomas L. Blount and Yvonne Blount and a money judgment in the sum of \$305,666.95 plus additional accrued interest, attorneys fees, costs and disbursements against Thomas L. Blount and Yvonne Blount who shall be jointly and severally liable therefore.

Yvonne Blount testified that the owner of Brighton Construction was present at the closing but immediately after the closing stated he would do no work at the premises due to the fact he received no advance monies under the contract. The original (Brighton) rehabilitation contract, which was taken over by BF Hardwick upon the approval of Community Home Mortgage and the HUD Inspector, called for the improvements noted in the first column of the Recapitulation Table set forth below. In that regard, since many of Ms. Blount's complaints about the quality of work address problems in the basement and the sewer and waste pipes, it is important to note that the rehabilitation worksheets governing Hardwick's and O'Reilly Phillips's obligations did not contemplate any improvements to the basement or the sewer and waste pipes. A draw request was submitted for \$16,185.00. On January 4, 1996, the HUD inspector, Gary Westwood, inspected and approved the work and then authorized the release of the escrow, less the 10% holdback. However,

Blount and Hardwick had a dispute. Ms. Blount would not authorize the release of the escrow funds. Finally, Ms. Blount authorized the release of the funds and the bank paid \$14,566.00 of which \$12,807 was distributed by Ms. Blount to Hardwick's workers after she and Hardwick endorsed the check and she deposited the funds into her checking account at the Nassau County Federal Credit Union. She also paid a \$45 inspection fee to Gary Westwood. She claims that she used the balance of the monies to purchase wood and other items for the rehabilitation of the premises, but she failed to produce any receipts for same. The items paid by the first draw request are itemized in the second column of the Recapitulation Table. At trial she contended that none of the work performed by Hardwick or his men was satisfactory. Nevertheless, she attempted to enter into contracts with these men for the completion of the work. However, they were not licensed. Accordingly, they were not qualified to do the work and she had to search elsewhere for a contractor to complete the work.

Following her dispute with Hardwick and his men, Yvonne Blount and Antonio O'Reilly Phillips were brought together by a mutual friend. As she describes their initial encounter, they had a "gentlemen's agreement" wherein O'Reilly Phillips agreed to complete the work required under the 203(k) rehabilitation program and to perform certain additional work. The cost of the extras was to be paid personally by Blount. O'Reilly Phillips was doing business as O'Reilly Home Improvement pursuant to a business certificate filed with the Clerk of the County of Nassau on March 25, 1996. In April 1996 O'Reilly Phillips, d/b/a O'Reilly Home Improvement, tendered to Yvonne Blount a home improvement proposal whereby he agreed to complete the 203(k) rehabilitation work under F.H.A. case number 374-211-811-1-702. He also agreed to perform certain extras requested by Blount which were outside the 203(k) rehabilitation worksheets. On or about April 22, 1996, Ms. Blount signed the proposal and thereby agreed to personally pay for the extra work to be performed. They

later agreed that O'Reilly Phillips would perform the extras for a price of \$6,105.00. Ms. Blount claims that O'Reilly Phillips was not properly licensed and therefore is not entitled to recover for the work performed. The court finds that he obtained a temporary license on or about April 29, 1996 and that a few days later he obtained a home improvement license (H18D2250000) from the Nassau County Department of Consumer Affairs for the period May 1, 1996 to April 30, 1998. The court finds that the only work O'Reilly Phillips did at the premises prior to obtaining his home improvement contractor's license was in the nature of general cleanup the collection of debris, which do not come within the licensing provisions of the Nassau County Administrative Code, title D-1, Article 1 §§21-11.0 to 21.14 as it was then constituted. The actual construction work subject to licensure was not commenced until after he obtained the license. Accordingly, he is not barred from recovery for the quantum meruit value of the work he completed (*see B & F Building Corp. v Leibig*, 76 NY2d 689; *Mindich Developers Inc. v Milstein*, 227 AD2d 536; *Bianchi Construction Corp. V D'Egidio*, NYLJ 8/8/95 p. 25, col. 3; *Klineman v NJS, Inc.*, NYLJ 5/25/93, p. 21, col. 6). O'Reilly Phillips testified that he completed the work except for the final clean-up, the repair of rear half of the roof of the house, the custom painting and the installation of the kitchen cabinets. He contends that the Blounts barred him from access to the premises.

O'Reilly Phillips introduced copies of the invoices for the materials and supplies he used at the premises. On May 16, 1996, as the work was nearing completion, the premises was inspected by Gary Westwood. O'Reilly Phillips, Cora Blount and Yvonne Blount were present for the inspection. By a letter dated May 20, 1996, Yvonne Blount makes reference to Westwood's inspection, reaffirms her agreement with O'Reilly Phillips and implicitly acknowledges that the only work remaining to be completed was the custom color painting, installation of cabinets and the removal of the roof. She made no complaints about the quality of the work performed to that date. She

complained only about the pace of the work. Following the delivery of that letter, O'Reilly Phillips sent a demand to Community Home Mortgage for the release of the escrow.

Pursuant to the inspection it was agreed that additional work beyond that which was originally contemplated in the rehabilitation contract would have to be performed in order to complete the roofing work and to satisfy the village building code. The original Brighton contract, which O'Reilly Phillips assumed but did not negotiate, did not call for the removal of the cedar under shingles or their replacement with 3/4 inch plywood. It was agreed that O'Reilly Phillips would perform the required code work for an additional \$1,000.00. He undertook to complete that work and obtained a permit from the village to do so. However, prior to the completion of the work, the Blounts, as they had done with other contractors, created a dispute with O'Reilly Phillips and refused to allow him access to the premises. O'Reilly Phillips testified that he was barred from the premises on June 12, 1996. On that day, he went to the house to continue his work. The premises had an alarm system which the Blounts customarily disarmed in order to allow him access to the premises. On June 12, 1996, the alarm sounded and the police arrived at the premises. Yvonne Blount told the police that she did not want O'Reilly Phillips on the premises. He was permitted to remove his tools and equipment from the premises that day. His last day at the site was June 13, 1996 when he returned with the intent of finishing his work. The court finds that without just cause Ms. Blount refused to allow him to complete the work, including the completion of the roof, the custom interior painting and the installation of the custom cabinets which he had ordered. Yvonne Blount testified that O'Reilly Phillips took a swing at her with a pipe and that she ducked and the pipe missed her. He denied any such event took place. He contends that they spoke to each other from opposite sides of the street. The court credits the testimony of O'Reilly Phillips and finds that Blount has failed to prove an assault by a preponderance of the evidence.

Since the cabinets were custom made, he remained responsible to the cabinet maker for the full amount of \$3,200 and the court will allow that cost to him. Due to the fact that he had opened part of the roof and had not been allowed to complete the project, O'Reilly Phillips attempted to protect the roof and the premises by placing a tarpaulin on the roof. On June 14, 1996, he sent a letter warning of the potential for damage if the work was not completed. It is apparent that the Blounts took no further action to protect the premises.

O'Reilly Phillips made several demands to the bank for payment. By letter hand delivered to the office of Daniel Silverman on May 20, 1996, and upon the inspection and approval of Gary Westwood, he demanded payment for the work performed to that date. The bank neither refused nor agreed to make payments. On June 14, 1996 he demanded payment by a letter hand delivered to the office of Daniel Silverman. Other demands were sent to the bank and or their counsel. He called Daniel Silverman several times about getting paid and was told that the bank was "looking into it." In October 1996, he called Lisa Arrington, who he identified as an attorney for the bank. He followed that conversation by faxing the contract, worksheets and other documents in support of his claim. At no time did the bank respond in writing to his demands so as to advise O'Reilly Phillips as to their approval or disapproval of the work. In 1997, after he did not receive payment on his claims O'Reilly Phillips commenced this action.

Blount contends that the O'Reilly Phillips's work was substandard and not acceptable. She also contends that the water damage to the premises was caused by his failure to cover or protect the premises. The court does not credit the testimony of Yvonne Blount as to the quality or lack of quality of the work performed at the premises. The court finds that O'Reilly Phillips adequately protected the premises under the difficult circumstances with which he was confronted by the Blounts. Any damage to the premises as a result of the temporary nature of the tarpaulin was caused by the conduct of the Blounts in wrongfully removing him from the premises and failing to take

measures of their own to adequately protect the premises. At that point in time, the bank had not taken over the rehabilitation project and any water damage cannot be attributed to the bank's acts or omissions.

Based upon the credible testimony of O'Reilly Phillips and Sal Carbone, by a preponderance of the evidence, the court finds the value of the work performed by O'Reilly Phillips under the 203(k) contract was \$27,492.00 as set forth in the fourth column of the Recapitulation Table. The court finds that Norwest's predecessor in interest acquiesced to O'Reilly Phillips completing the 203(k) rehabilitation work and that said bank was holding the escrow monies in trust for the contractor (*see Land-site Contracting Corp. v Marine Midland Bank*, 177 AD2d 413). The escrow should not have been paid to Structural Renovations to the prejudice of O'Reilly Phillips. Accordingly, O'Reilly Phillips shall have a judgment in the sum of \$27,492.00 against Norwest, plus interest from June 13, 1996. The amount remaining on deposit as rehabilitation escrow was \$6,747.96. Norwest is ordered to pay that amount plus any interest accumulated on the rehabilitation escrow to O'Reilly Phillips up to the total sum of \$ 27,492.00. The balance shall be paid directly by the bank and not charged to the Blounts.

The court also finds, by a preponderance of the evidence, that all upgrades or extras agreed to by the Blounts and O'Reilly Phillips were completed except the custom color painting. The court finds, by a preponderance of the evidence, that the value of the extras completed was \$4,405.00 as set forth in the last column of the Recapitulation Table. Accordingly, O'Reilly Phillips shall have a judgment against Yvonne Blount in that amount, plus interest from June 13, 1996 together with the costs and disbursements of this action.

### Recapitulation Table

| Construction Item    | Total Escrow (dollars) | 1 <sup>st</sup> Draw Request (percentage completed) | 203(k) work by O'Reilly Phillips | Extra work by O'Reilly Phillips |
|----------------------|------------------------|---|----------------------------------|---------------------------------|
| Masonry              | 1,400                  |   | 1,400                            |                                 |
| Siding               | 3,000                  |   | 3,000                            |                                 |
| Gutters & downspouts | 350                    |   |                                  |                                 |
| Roof                 | 3,800                  | 1,266 (33%)   | 1,000                            |                                 |
| Caulking             | 175                    |   |                                  |                                 |
| Fencing              | 150                    |   |                                  |                                 |
| Windows              | 1,200                  |   | 1,200                            |                                 |
| Doors (ext)          | 4,500                  |   | 900                              |                                 |
| Doors (int)          | 600                    |   | 400                              |                                 |
| Partition wall       | 1,650                  | 1,650 (100%)  |                                  |                                 |
| Plaster/dry wall     | 2,500                  |   | 2,500                            |                                 |
| Decorating           | 1,200                  |   | 1,200                            |                                 |
| Wood trim            | 1,500                  |   | 1,500                            |                                 |
| Stairs               | 400                    | 400 (100%)  |                                  |                                 |
| Wood floors          | 1,400                  |   | 1,400                            |                                 |
| Finished floors      | 2,400                  |   |                                  |                                 |
| Ceramic tile         | 5,600                  |   | 5,600                            |                                 |
| Plumbing             | 5,875                  | 2,937 (50%)   | 2,063                            |                                 |
| Electrical           | 3,250                  | 1,083 (33%)   | 917                              |                                 |
| Heating              | 5,600                  | 3,733 (66%)   | 1,878                            |                                 |
| Insulation           | 5,000                  | 1,666 (33%)   | 334                              |                                 |
| Cabinetry            | 7,035                  |   | 3,200                            |                                 |

|                              |          |              |        |                          |
|------------------------------|----------|--------------|--------|--------------------------|
| Appliances                   | 1,850    |              |        |                          |
| Cleanup                      | 3,450    | 3,450 (100%) |        |                          |
| Miscellaneous                | 1,400    |              |        |                          |
| Total [203(k)]               | \$67,065 | \$16,185     | 27,492 |                          |
|                              |          |              |        |                          |
| Painting custom colors       |          |              |        | 1,700<br>(not completed) |
| Ceramic tile for kitchen     |          |              |        | 1,069                    |
| 4 French doors as an upgrade |          |              |        | 520                      |
| Bathroom tile upgrade        |          |              |        | 1,800                    |
| Bathroom fixtures upgrade    |          |              |        | 1,016                    |
| Total upgrade from 203(k)    |          |              |        | 4,405                    |

The court finds that Yvonne Blount has failed to establish her counterclaim against Norwest and similarly has failed to establish her counterclaims against O'Reilly Phillips. There was no assault and no proof of damages, nor was there a breach of contract. All counterclaims are dismissed.

This constitutes the decision and order of the court.

Submit judgment on ten (10) days notice.

Dated: January 14, 2003

**ENTERED**

**JAN 16 2003**

  
 PETER B. SKELOS, J.S.C.

NASSAU COUNTY  
 COUNTY CLERK'S OFFICE 16