IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

J.R. PARTNERS LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**C.A. No.: 2004-12-463**
	)	
DIMENSIONAL STONE PRODUCTS, LLC,	)	
	)	
	)	
Defendant.	)	

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DECISION AFTER TRIAL

Plaintiff J.R. Partners LLC brings this action against Defendant Dimensional Stone Products, LLC for breach of a leasing agreement between the parties. Plaintiff alleges that Defendant failed to meet its obligation to surrender the leased premises according to contractually specified conditions, and that Plaintiff is thereby entitled to damages incurred to return the premises to their proper condition. Defendant denies Plaintiff's allegations and brings a counterclaim against Plaintiff for damage to certain granite slabs that remained on the premises after the expiration of the lease. Trial in this

matter was held on April 2, 2007. At the conclusion of trial and after submission of all the evidence, the Court reserved decision. This is the Court's final decision.

FACTS

Robert Stella ("Stella") and Steven Dignan ("Dignan") are the principals of J.R. Partners LLC ("JRP"), a limited liability company of which Stella is the managing member. JRP owns a warehouse located in Redmill Industrial Park in Newark, DE ("the warehouse") and leased a portion of the warehouse to Dimensional Stone Products, LLC ("DSP"), a limited liability company owned by George Laskaris ("Laskaris"). The relationship between the parties was governed by a lease agreement dated on May 1, 1998, as well as by several lease extensions and addendums. DSP was a tenant in the premises described as 14-A Mill Park Court. As a condition of the lease, DSP delivered to JRP a security deposit in the amount of $2,084.00.

According to the last extension of the lease, executed by the parties on August 8, 2003, the lease expired on March 31, 2004. Via a letter dated March 8, 2004, the parties also agreed that DSP would leave in place existing granite tops and counters—part of a formal reception area—in exchange for which JRP would discharge DSP's obligation to close up an opening in the demising wall separating the warehouse's original space from the expansion. The letter stipulated that, in all other aspects, the August 8, 2003 lease extension would continue in full force and effect.

Because the granite reception area was valued at somewhere between $15,000 and $16,000, Laskaris believed that he had made an agreement with JRP that DSP would not be responsible for any repairs other than the filling in of the trenches and holding pit. Stella testified that it was his practice to reduce all agreements with his tenants to an

executed writing. Laskaris countered that he had made other oral agreements with Stella, including an agreement to erect a protective fence around the granite storage area and an agreement to fortify an area of blacktop.

The terms of the lease agreement stated that "Tenant shall restore the premises or any such part or parts thereof as designated by Owner to their original condition, as above, entirely at Tenant's Own cost and expense." Under the heading "Peaceable Surrender of the Premises," the lease also provided as follows:

> On the last day of the lease term as presently written, or on the last day of any renewal or extension thereof, or upon sooner termination by mutual written agreement, Tenant shall peaceably surrender the premises in as good condition as reasonable and proper use will permit. Any personal property left upon the premises shall be deemed abandoned by Tenant.

Paul A. Nickle, Inc. ("PAN"), an electrical contracting business of which Dignan was a principal, was a tenant in the other section of the warehouse, and was to move into the space occupied by DSP after DSP surrendered the premises.

During its tenancy DSP had erected a fence around the slab storage area, but cut this fence down while vacating the premises so that the fence could be used at DSP's new location. Dignan told Laskaris that it wouldn't be a problem for DSP to remove any remaining granite slabs after the March 31, 2004 deadline because the slabs were outside and would not be in PAN's way.

Laskaris hired two men purporting to be union concrete finishers to fill in the trenches and holding pit. The men performed the work on March 31, 2004, but their

work was substandard, leaving an uneven surface. The same day, according to Laskaris, he sent an employee to deliver DSP's keys to PAN's office.

On or about April 1, 2004, after the expiration of the lease, Stella and Dignan personally inspected the premises formerly occupied by DSP. Dignan took pictures depicting the warehouse's disorderly appearance—exposed wires and pipes, debris, damaged drywall, abandoned equipment, and drainage ditches that had been unevenly filled in with concrete. Wood and stone scrap material had been left in the yard outside the warehouse. Moreover, although DSP had moved several slabs of stone from the outside storage area before the lease expired; many other slabs had not been moved. The slabs were standing upright in storage frames. Stella called Laskaris telling him that the concrete job was "horrendous" and that Laskaris needed to get the concrete ground down to an even level. Laskaris was not able to procure a rental grinder until April 5 or 6, 2004. On April 17, 2004 DSP received a certified letter from an employee of JRP claiming that DSP had not satisfied its contractual obligations regarding vacancy and restoration of the premises. It also received a packet of pictures showing the condition of the property.

A short time after Stella and Dignan's initial inspection, Dignan received notice that two unidentified individuals had come to the warehouse at night and were beginning to remove some of the stone slabs. Laskaris testified that he did not send these individuals. In response to this incident, Dignan caused PAN trucks to be parked in front of the entrance in such a way that the slabs could not be loaded and removed. Although the PAN trucks were in use until at least 3:30 PM each day, Dignan caused them to be used as a "blockade" in the afternoon and at night. The parking of the PAN trucks was

done without Stella's knowledge or authorization. Dignan admitted that, at the time he caused the PAN trucks to block access to the stone slabs, PAN had not yet amended its lease with JRP to include control over that section of the premises. DSP attempted to remove the rest of the granite on April 1, 2004—and several times thereafter—but was unable to do so because of the blockade.

When Laskaris first became aware that the PAN trucks were blocking access to the granite slabs he called Stella, who told him that if Laskaris ground and finished the concrete properly, Stella would then make sure the trucks were moved. Laskaris obtained a two-day rental for a concrete grinder. His employees were able to do some of the grinding on April 6, 2004, using an extension cord to power the grinder. However, they were unable to do any grinding when they returned on April 7, 2004, because PAN refused them access to electricity. While the grinding was taking place, DSP employees removed some of the items that had been left inside the building, including the refrigerator. Sometime after this incident but before April 9, 2004, the stone slabs still remaining on the property were damaged by being tipped over or otherwise broken into small pieces. On or around April 9, 2004 Laskaris became aware that the slabs had been broken and took photos of the broken slabs. Stella asked another stone product company to come to the warehouse to remove any usable slab pieces or stored materials, but received no monetary payment for these items. Laskaris sent a letter to Dignan, dated October 28, 2004, claiming to be owed the value of the granite that DSP was unable to remove. Laskaris kept detailed records of each slab's size and value, and estimated the value of the raw materials to be $20,025.00.

JRP submitted several invoices documenting the costs incurred to restore the warehouse to usable condition. One of the invoices submitted by Plaintiff (part of Plaintiff's Exhibit 6D) charged $8,360.00 for a series of repairs purportedly performed by Delaware Interiors Etc. ("DIE"). The original proposal (also part of Plaintiff's Exhibit 6D) submitted by DIE requested a total of $8,160.00 in exchange for the following work on "114 Mill Park Court, Suites A & B":

1. Demo concrete foundations.
2. Level areas where floor drains were filled.
3. Remove area's [sic] of drywall that have mold.
4. Fasten vanity to wall.
5. Remove floor granite fastened to bottom of demise.
6. Properly fasten roof insulation.
9. Remove large pile of concrete from warehouse.
10. Remove pile of concrete dumped in yard.
11. Remove refrigerator, micro, and furniture.
12. Remove plastic draping from ceiling.
13. Replace 201f of demising wall. ($1,500.)
17. Remove duct work from demise [sic] wall and cap off at perimeter wall.

Significantly, both the proposal and invoice reference "Suites A & B". However, the premises leased by DSP are only Suite A. Also, several of the tasks listed on the invoice were either not done or were not DSP's responsibility to repair. As mentioned earlier, under the terms of the agreement in the March 8, 2004 letter, DSP was not responsible for the $1,500.00 cost of closing the demising wall. Moreover, under the terms of the original lease the tenant was not responsible for the maintenance of structural elements such as the roof. No testimony was given explaining why the concrete foundations had to be demolished and what DSP's obligations were in this regard. Also, Dignan testified that the vanity sink was not repaired, and that at least one pile of debris was not removed because it lay outside the boundaries of the property. Laskaris testified

that a sofa and television left outside the warehouse did not belong to DSP, and that the refrigerator inside the warehouse was removed not by DIE, but by DSP employees.

The proposal drafted by DIE gave a total estimated cost for performing all these tasks but did not give itemized estimates for each task individually. Dignan did not know how much each task cost. DIE submitted an invoice for its work on May 14, 2004. The invoice showed that DIE had charged JRP $8,160.00 for all the repairs listed on the original proposal, and also charged $200.00 to "[a]dd 3 vestibule walls." However, no testimony was given as to why these walls were installed, whether they were installed in Suite A or Suite B, or whether DSP was contractually obligated to add these walls before surrendering the premises. Dignan testified that the items for which JRP was seeking reimbursement had nothing to do with PAN.

JRP submitted a series of invoices from BFI Waste Services showing that it had incurred $1,482.90 in dumpster charges. JRP also submitted an invoice from Moon Plumbing Services Inc. showing a charge of $600.00 to remove and cap "old water lines along wall and in ceiling that fed old equipment." Another invoice from Allied Lock & Safe Company charged $96.00 to unlock the warehouse, change the locks, and cut new keys.

DISCUSSION

Delaware permits damages that are reasonable and foreseeable following a breach of contract. *Joseph T. Dashiell Builders v. Andrews*, 2002 WL 31819895, at *1 (Del. Super.). A party must prove claimed damages, and they may not be speculative or conjectural. *Id.*

The record is clear that JRP incurred dumpster charges of $1,482.90, and that these costs were a direct result of DSP's failure to surrender the premises in good condition in accordance with the lease agreement. Therefore, Plaintiff is entitled to damages for this amount. Likewise, JRP is entitled to recover the $600.00 expended to remove the extra water lines that fed DSP's stonecutting equipment. Under the terms of the lease, DSP should have borne the cost of returning the premises to their original condition. However, the Court does not find that Plaintiff is entitled to the locksmith charges, both because DSP gave evidence that it surrendered its keys, and also because the Court finds it reasonable that a landlord should incur the expense of changing the locks after a tenancy of several years has expired.

Furthermore, the Court finds that Plaintiff has not met its burden of proving it is entitled to damages arising from the work performed by DIE. While Plaintiff proved that DSP was liable for some of the tasks performed by DIE, the evidence in the record shows that some of the tasks listed in the DIE proposal were either not performed by DIE or were not DSP's responsibility to fix. First of all, whereas DSP only occupied—and was responsible for the condition of—Suite A of the warehouse, the proposal drafted by DIE contained repairs to "Suites A and B" but did not clarify which repairs were for which suites. According to the agreement commemorated by the March 8, 2004 letter, DSP was not responsible for the $1,500.00 cost of closing up the demising wall. Under the terms of the lease, DSP was also not liable for repairs to the roof.

The record shows that the proposed repair to the vanity sink was never done, and that some of the items to be removed by DIE, including the refrigerator, were ultimately removed by DSP employees. Dignan testified that the pile of concrete to be removed

from the yard was actually not on JRP's property and was not removed. Other items left on the property, including a sofa and television set, did not belong to DSP and were not its responsibility to remove. Lastly, the May 14, 2004 invoice from DIE to PAN included a $200.00 charge to add three vestibule walls, but no evidence was given about whether these walls were in Suite A or B, or whether DSP had any responsibility to add these walls before it surrendered the premises. While the Court agrees with Plaintiff's contention that some of the repairs listed on the DIE proposal and invoice were a direct result of DSP's failure to meet its contractual obligations, neither the documents nor witnesses for Plaintiff provide the Court with a sufficient itemization of the various tasks. Since many of these tasks were either not performed by DIE or were not DSP's contractual responsibility, the Court cannot award Plaintiff either the full amount of $8,360.00 listed on the invoice or the full amount of $8,160.00 listed on the proposal. Because Plaintiff provided no itemized evidence proving damages for any specific task, an award of partial damages would be based purely on speculation by the Court. As such, Plaintiff cannot be awarded damages arising from either the proposal or the invoice.

Regarding Defendant's counterclaim for the broken stone slabs, the terms of the lease agreement state in no uncertain terms that "[a]ny personal property left upon the premises shall be deemed abandoned by Tenant." Therefore, the granite slabs left by DSP after the expiration of the lease were abandoned, and JRP had no liability for them. Laskaris gave some testimony that Dignan told him DSP could remove the slabs after the expiration of the lease, and that Stella later told him that JRP would move the trucks blocking access to the granite if DSP repaired the uneven concrete in the warehouse.

However, for reasons explained below, neither of these conversations produced a modification of JRP's contractual obligations toward DSP.

There was no written modification of the lease relating to the extension of time to remove the slabs, so any changes would have to be oral. The Superior Court has stated: "Delaware law places a high evidentiary burden on parties alleging oral modification of contracts. Alleged changes must be shown with specificity and directness. Mutual assent and consideration must support any claimed amendment, whether written or oral." *Thornton v. Meridian Consulting Engineers*, 2006 WL 1174186, at *1 (Del. Super.) (internal citations omitted). In neither the conversation with Dignan nor with Stella did DSP offer any new consideration in exchange for the right to remove the granite. After the lease had expired in the former case, there was no bargained-for exchange, and in the latter case DSP offered no new consideration because it already had a duty to complete the concrete trenches as part of its contractual obligation to restore the premises to their original condition. Therefore, under the "Peaceable Surrender" clause the concrete slabs left on the premises are deemed abandoned and the Court finds that DSP had no enforceable ownership rights. As such, Defendant's counterclaim fails.

In sum, Plaintiff has proven damages in the amount of $2,082.90 which, by sheer coincidence, is offset by the $2,084.00 security deposit already paid by Defendant. Defendant is not entitled to damages against Plaintiff in that Defendant's counterclaim is denied.

CONCLUSION AND ORDER

For the aforementioned reasons, judgment on Plaintiff's claim is hereby entered for Plaintiff J.R. Partners LLC and against Defendant Dimensional Stone Products, LLC in the amount of Zero Dollars ($0.00) and costs of Seventy-five Dollars ($75.00). On Defendant's counterclaim, judgment is hereby entered for Plaintiff.

IT IS SO ORDERED this 2nd day of August, 2007.

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Joseph F. Flickinger III
Judge