IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

SPYROS DOUKAS,	)	
	)	C.A. No. 06L-03-033 JTV
Plaintiff,	)	
	)	
v.	)	
	)	
LA BABOLA BAKERY and RESTAURANT, LLC, DIMITRIOS BAHLITZANAKIS, MARIA BAHLITZANAKIS, WILLIAM A. ROBINSON, CHU PAO ROBINSON, MENG ROBINSON,	)	
	)	
Defendants.	)	

Submitted: October 14, 2010
Decided: January 31, 2011
REVISED: February 7, 2011

Dean A. Campbell, Esq., Georgetown, Delaware. Attorney for Plaintiff.

Gregory A. Morris, Esq., Liguori & Morris, Dover, Delaware. Attorney for Defendants La Babola Bakery and Dimitrios and Maria Bahlizanakis.

Stephan J. Holfeld, Esq., Camden, Delaware. Attorney for Defendants William A. and Chu Pao Robinson.

Upon Consideration of Plaintiff's
Motion for Reargument.
DENIED

VAUGHN, President Judge

Doukas v. La Babola Bakery, et al.
C.A. No. 06L-03-033 JTV
February 7, 2011

ORDER

Upon consideration of the plaintiff's motion for reargument, the defendants' opposition, and the record of this case, it appears that:

1. The plaintiff, Spyros Doukas, has moved for reargument of a July 30, 2007 opinion issued by this Court following a bench trial. In that decision, the Court denied the plaintiff's claim for a mechanics' lien because it was not timely filed.

2. This litigation arises out of certain work performed and materials provided at 654 North DuPont Highway, Dover, Delaware. The owners of that property are defendants William A. Robinson, Chu Pao Robinson, and Meng Robinson – the Robinsons. The remaining defendants, La Babola Bakery and Restaurant, Dimitrios Bahlizanakis, and Maria Bahlizanakis leased the building from the Robinsons.

3. The plaintiff performed labor and provided materials at the order of La Babola in the amount of $72,982.69. Judgment for the full amount of that debt was entered against La Babola in the July 30, 2007 opinion. Additionally, the Court found that Dimitrios Bahlizanakis personally executed a promissory note payable to the plaintiff in the amount of $60,000, and was liable to the plaintiff for that amount plus interest. The Court found that Maria Bahlizanakis was not individually liable and the claims against her were dismissed.

4. The plaintiff also sought a mechanics' lien on the building where the labor was performed and the materials provided. The amount claimed for such lien was $70,067.74. The plaintiff did not make his contract directly with the owner, but instead contracted solely with the tenant, La Babola. A written lease between the

lessor and lessee, however, expressly authorized the lessee to make alterations, additions, and improvements.

5. No written contract between the plaintiff and La Babola was ever signed, but the oral agreement between them was documented by invoices. The dates and amounts of the invoices at issue are as follows: February 9, 2005 $40,000; June 9, $1,700; August 22, $1,500; October 17, $2,500; October 29, $2,550; and November 17, $800. The materials provided are also documented in a series of invoices that range in date from March 18, 2005 to June 17, 2005

6. The plaintiff filed his mechanics' lien on March 17, 2006. In order for the complaint to be filed in a timely fashion, the completion of the labor performed or the last delivery of materials furnished must have occurred on or after November 17, 2005. The dispute which gives rise to the plaintiffs' motion for reargument, pertains to two final activities, one of which occurred on November 17, 2005, the 120th day prior to the filing of the mechanics' lien action. On that day the plaintiff submitted an invoice to the tenant for $800 for cleaning interior and exterior sewer lines and cleaning water out of the building. On December 5, 2005 an on-site structural evaluation of the roof by an engineer was performed. The cost of this service was $250.

7. In my July 30, 2007 opinion, I held that the invoices dated February 9th and June 9th, and the materials described in the invoices dated between March 18th and June 27th, constituted labor and materials provided pursuant to the original contract between the plaintiff and La Babola. Although problems with both the ceiling and sewer were immediately perceived upon taking possession of the property, I

concluded that work performed after June 17th consisted of individual responses by the plaintiff to calls from La Babola to fix immediate problems as they arose separate and apart from the original contract. I also concluded that the work after June 17th was of a trivial nature, not provided for in the contract, done after the contract had been substantially performed, and did not extend the statute of limitations.

8. The standard of review for a Rule 59(e) motion for reargument is a familiar one. A motion for reargument will usually be denied unless the court has "overlooked a controlling precedent or legal principles, or the Court has misapprehended the law or facts such as would have changed the outcome of the underlying decision."[1] A motion for reargument should not be used merely to rehash the arguments already decided by the court, nor will the court consider new arguments that the movant could have previously raised.[2] The movant "has the burden of demonstrating newly discovered evidence, a change in the law, or manifest injustice."[3]

9. Mechanics' liens are strictly construed in the State of Delaware because they are viewed to be in derogation of the common law.[4]

10. The plaintiff contends that the Court erred in concluding that June 27th

---

[1] *Lamourine v. Mazda Motor of Am.*, 2007 WL 3379048, at *1 (Del. Super.).

[2] *State v. Brooks*, 2008 WL 435085, at *1(Del. Super.)(internal quotation marks omitted); *St. Search Partners, L.P. v. Ricon Int'l, LLC*, 2006 WL 1313859, at *1(Del. Super.).

[3] *Brooks*, 2008 WL 435085, at *1 (internal quotation marks omitted).

[4] *King Const., Inc. v. Plaza Four Realty, LLC*, 976 A.2d 145 (Del. 2009); *See also Gantler v. Stephens*, 965 A.2d 695, 703 (Del. 2009).

marked the commencement of the 120 day period within which the mechanics' lien action must be filed; that the Court erred in not calculating the 120 day period from the November 17th and/or December 5th events; that the contract between the plaintiff and the tenant was a continuing one through December 30, 2005; that the Court's opinion ignores the date of a Certificate of Occupancy; that the engineer's work on December 5th was not a trivial event; that the Court overlooked the owners' authorization for the tenants to have work performed on the structure; that the Court overlooked the provisions of 25 *Del. C.* § 2711(b) that the time for filing the action runs from the "date final payment, including all retainage, is due to such person;" that as evidenced by a note from the tenant, final payment for the work completed by June 27, 2005 was not due until March 2006; that the Court classified the plaintiff as a subcontractor, meaning that either the plaintiff or the tenant must be the general contractor, making the 180 days the relevant time frame; that the Court relied upon an authority that pre-dated 1999 revisions to the mechanics lien law, an authority which has been distinguished, if not overruled, by the new law; that the tenant was an agent of the owner; and that a contract made with an agent of the owner is subject to the 180 day time filing period.

11. On July 15, 2009 the Delaware Supreme Court issued an opinion which reaffirms and now firmly establishes that where the contractor makes his contract with a tenant, rather than directly with the owner, the 120 time period applies.[5] Therefore, the plaintiff's contention that the 180 day time period applies is rejected.

[5] *King Const., Inc. v. Plaza Four Realty, LLC*, 976 A.2d 145 (Del. 2009).

12. The plaintiff's contention that the contract between the plaintiff and the tenant was a continuing one through December 30, 2005 is rejected. I reaffirm my previous finding that the labor performed and materials provided pursuant to the original contract between plaintiff and the tenant was substantially completed on June 27, 2005, and that work performed after that was separate from the contract.

13. I find that the date of the Certificate of Occupancy has no probative value helpful to the plaintiff's claim.

14. As mentioned, the plaintiff contends that the date final payment was due was March 2006, based upon a note which La Babola and Mr. Bahlizanakis signed on June 27, 2005. The note provided for monthly payments. However, I found in my July 30, 2007 opinion that no payments were ever made. Thus, the debtors were in default under the note after one month from its date. Under these circumstances, I reject the contention that final payment was not due until March 2006, or that the due date of final payment was extended into the period of 120 days preceding the filing of the complaint.

15. Although it is true that authority cited in the July 30, 2007 opinion predated the 1999 revisions to the mechanics' lien law, I conclude that the citations are appropriate and correct in the context for which they are cited.

16. I continue to conclude that the work performed after June 27, 2005 consisted of individual responses by the plaintiff to calls from La Babola to fix immediate problems as they arose, separate and apart from the original agreement of the parties. I also continue to conclude that the work performed on November 17, 2005 and the roof evaluation on December 5th were trivial in nature in relation to the

substantive work completed by the plaintiff prior to those dates. I add that I do not believe that the original contract contemplated a roof evaluation or replacement of the roof. I find that the plaintiff's remaining contentions are, in substance, a rehash of arguments previously made and considered, and they are rejected.

17. The *King Construction* case, cited in footnote 5, decided after the July 30, 2007 opinion was issued, also established that where the contract is made with a tenant, the complaint or statement of claim must allege that the labor and materials were performed with the prior written consent of the owner.[6] The complaint for mechanics' lien in this case mentions the lease and the service contract, but it does not appear that the complaint alleged that the owner had given prior written consent for the work and labor for which the mechanics' lien was sought. Thus, although the lease did contain such consent, it appears now that the failure to so allege that fact in the complaint was fatal to the mechanics' lien from the beginning.

18. For the foregoing reasons, the motion for reargument is ***denied***.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.
President Judge

oc: Prothonotary
cc: Order Distribution
File

[6] *Id.*