

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

STEPHEN P. LAMB
VICE CHANCELLOR

New Castle County Court House
500 N. King Street, Suite 11400
Wilmington, Delaware 19801

Submitted: December 6, 2005

Decided: January 6, 2006

Donald L. Logan, Esquire
Tighe, Cottrell & Logan, P.A.
First Federal Plaza, Suite 500
Wilmington, DE 19801

Robert J. Sampson, Sr.
1679 Westville Road
Marydel, DE 19964

Just-In Construction, Inc.
c/o its registered agent
Incorporating Services, Ltd.
3500 S. duPont Highway
Dover, DE 19901

Rhonda Thomas
1679 Westville Road
Marydel, DE 19964

***RE: Richard Y. Johnson & Son, Inc. v. Just-In Construction, Inc., et al.
C.A. No. 1735-S***

Dear Mr. Logan, Mr. Sampson, and Ms. Thomas:

The plaintiff in this case, Richard Y. Johnson & Son, Inc., hired the defendant, Just-In Construction, Inc., in July 2004 to provide construction services for the State of Delaware Department of Motor Vehicles Inspection Facility in Georgetown, Delaware. After having been notified of unpaid claims against Just-In by lower tier contractors, Johnson filed a complaint and an application for a temporary restraining order (“TRO”) at 4:55 p.m. on October 26, 2005, seeking to restrain a public sale of the goods and effects of the defendants scheduled to take place on Saturday, October 29, 2005.

The complaint alleges that Just-In Construction failed to pay certain of its subcontractors and suppliers at least \$32,214.29 out of funds paid to it by Johnson for that purpose and this failure constituted a breach of fiduciary duty justifying the imposition of a constructive trust on the defendants’ property pursuant to 6 *Del. C.*

§§ 3501 *et seq.* That statute treats moneys paid by Johnson to Just-In for work on the DMV project as trust funds in Just-In's hand, required to be applied first to the payment of its subcontractors and suppliers on that job.

The court scheduled a hearing on the TRO application for 4 p.m. October 27, 2005 and directed that notice be given to the defendants. The defendants did not appear at the hearing, either in person or through counsel. Nevertheless, the court was furnished with a copy of a facsimile transmission from defendant Robert J. Sampson, Sr. sent to the plaintiff's counsel in response to the motion asserting that no moneys had been misappropriated.

Following the hearing, by order entered on October 28, 2005, the court denied the motion to restrain the sale due to the absence of any evidence that the sale itself, as opposed to the dissipation of the proceeds of the sale, posed any threat of irreparable harm. The court's order, nonetheless, impressed a constructive trust on the proceeds of the sale "for the benefit of the plaintiff and the subcontractors and suppliers of Just-In Construction in connection with the [DMV facility]." The court ordered this relief as a step to preserve the sale proceeds from dissipation long enough for the court to decide the substantive issues alleged in the complaint. The court anticipated that its order, entered in such hurried circumstances, would remain in effect only a short time. If, as Mr. Sampson's facsimile transmission argued, the court concluded that the allegations of the complaint were not correct, the order could be dissolved and the proceeds released from trust.

Despite notice of this court's order, the defendants paid over the net sales proceeds to the Internal Revenue Service in partial satisfaction of a tax lien placed on all of Just-In's property in August 2005. The plaintiff learned of this and promptly moved, on November 4, 2005, for a Rule to Show Cause why the defendants should not be held in contempt of the October 28, 2005 order. The court conducted a hearing on this application on November 22, 2005, at which the individual defendants appeared, *pro se*. Mr. Sampson did not deny having had notice of the October 28, 2005 order. He did, however, deny that he or Just-In owed Johnson any money and stated that he had "prepared a set of papers . . . of contract audits, correspondences and other things that show that actually, there is a balance owed to us by Richard Johnson." He also produced a set of documents that show the results of the public sale and explained that all of the net proceeds of

the sale (\$14,130.48) were paid to the federal government in partial satisfaction of its tax lien.

At the hearing, the court stated its intention to vacate the October 28, 2005 order, explaining that it never intended to prevent the payment of proceeds of the public sale to the government in satisfaction of a tax lien. In response to an argument by Johnson's counsel that Johnson's rights under the statute were superior to those of the IRS, the court allowed time for the submission of additional legal memoranda on that subject. The court has now considered the additional arguments advanced by the plaintiff and concludes that the October 28, 2005 order imposing a constructive trust should be dissolved. The court also concludes that, as a result of their disobedience of the clear terms of that order, the defendants will be required to reimburse Johnson for its reasonable attorneys' fees incurred in bringing the Rule to Show Cause, not to exceed \$1,000.

The most important reason to dissolve the October 28, 2005 order is that it was never meant to continue in force longer than necessary to permit a preliminary determination, on a more complete record and after adequate notice, whether or not the plaintiff's claim is likely meritorious. Now, more than two months later, the funds made subject to the trust created by that order have been paid to the IRS and the merits of Johnson's claim are no nearer to resolution. More generally, and viewing the wording of the order objectively, it would seem for two reasons that the order was entered erroneously. First, the language of the order does not reflect the temporary nature of the relief being granted. Second, and more fundamentally, the relief granted—the imposition of a constructive trust—is really an element of the final relief to which the plaintiff would be entitled only if it proved its case on the merits. In the context of an emergency TRO application, some other form of temporary restraint would have been more appropriately ordered.

The decision to dissolve the October 28, 2005 order does not determine the merits of the motion for a finding of contempt. Nor does it prejudge, in any respect, the plaintiff's claim for protection under 6 *Del. C.* §§ 3501 *et seq.* If the plaintiff is correct that it is entitled to relief, the court can reimpose a constructive trust as final relief. If Johnson is successful, then it will be able to pursue its argument that the Delaware contractor's statute creates priority over a federal tax lien. This may, for example, allow Johnson to reclaim funds already paid to the IRS, which now lie beyond the jurisdiction of this court.

As to the issue of contempt, the court is satisfied that Just-In Construction, Inc., Robert J. Sampson, Sr., and Rhonda Thomas had actual notice of the October 28, 2005 order, and knew or had reason to know that the order required them to preserve the proceeds of the public sale in trust for the benefit of the persons named in the order. If they were unsure of their obligations under that order, they were obligated to apply to the court for instructions. Notwithstanding their knowledge of the order, they paid those moneys over to the IRS, in partial satisfaction of an earlier filed lien. That payment was contrary to the literal terms of the order. Given all the facts and circumstances, the court concludes that the appropriate remedy for this contempt is to require the defendants to reimburse the plaintiff for its reasonable attorneys' fees incurred in connection with the Rule to Show Cause, up to a maximum of \$1,000. The court realizes that this is an unusually mild form of relief for violation of one of its orders but believes this leniency is justified in the circumstances.

For the foregoing reasons, therefore, the plaintiff's motion for Rule to Show Cause is GRANTED. The defendants are found to have acted in contempt of this court's October 28, 2005 order and are directed and required to reimburse the plaintiff for its reasonable attorneys' fees in bringing the Rule to Show Cause, not to exceed \$1,000. Further, the order of October 28, 2005 is hereby DISSOLVED. IT IS SO ORDERED.

/s/ Stephen P. Lamb
Vice Chancellor