

**IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE**  
**IN AND FOR NEW CASTLE COUNTY**

|                              |   |                       |
|------------------------------|---|-----------------------|
| MIDSOUTH BUILDING SUPPLY OF  | ) |                       |
| MARYLAND, INC.,              | ) |                       |
|                              | ) |                       |
| Plaintiff,                   | ) |                       |
|                              | ) |                       |
| v.                           | ) | C.A. No.: 2002-06-401 |
|                              | ) |                       |
| BUCKINGHAM/GALMAN ASSOCIATES | ) |                       |
| L.P., and GALMAN GROUP, LTD. | ) |                       |
|                              | ) |                       |
| Defendants                   | ) |                       |

Submitted: June 3, 2004  
Decided: June 10, 2004

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## DECISION AFTER TRIAL

Plaintiff, Midsouth Building Supply of Maryland, Inc. (“Midsouth”), filed this lawsuit against Defendants, Buckingham/Galman Associates L.P., and Galman Group, Ltd. (“Galman”), for failure to pay the balance due under a contract for window installation. Galman filed a counterclaim against Midsouth seeking \$32,381.00 for poor workmanship and failure to complete the work in a timely manner. Galman’s claim regarding the quality of the windows was dropped prior to the start of trial. As to Midsouth’s claim, summary judgment was entered in favor of Midsouth and against Galman in the amount of \$43,498.32 by the Honorable John K. Welch on January 23, 2004. A trial was held June 3, 2004 as to Galman’s counterclaim only. After receipt of evidence and conclusion of testimony, the Court reserved decision.

The Court heard the testimony of Gerald Slipakoff, Regina Plunto, Donald Masters, John Santilli, Daniel Flynn, and Gus Courpos. Based on their testimony and documentary evidence received into evidence, the Court finds the following relevant facts. On or about September 22, 2000, the parties entered into a contract whereby Plaintiff was to remove and replace windows in the Defendants’ townhouse complex. An exclusion to the contract stated Midsouth would not be responsible for any drywall damage since there were existing problems with the drywall. The work was completed and Midsouth sent four invoices totaling \$263,498.32, dated October, 2000, through December, 2000. Galman made payments totaling \$220,000.00 on the

following dates: November 27, 2000, December 26, 2000, and April 23, 2001. The unpaid balance was the basis for Midsouth's lawsuit.

Galman's employees testified that the quality of Midsouth's workmanship was poor and complaints were constantly made to Midsouth's foreman. All of Galman's complaints were verbal and never reduced to writing. Towards the end of the job in December, 2000, the parties conducted a walk-through of the property and created a punch list. Shortly thereafter, Midsouth sent workmen to the property to complete the punch list.<sup>1</sup> The workmen reported to Gus Courpos, head of the installation unit at Midsouth, that the punch list had been completed. From that point on Galman never asked Midsouth to fix any other problems and continued to pay the invoices up to April, 2001.

Once the work was completed, Midsouth had difficulty in collecting the balance due under the contract. Daniel Flynn, vice president of Midsouth, called Galman in an effort to collect payment. He was never told by anyone at Galman that the work done was poor or that payment was being withheld for that reason. Flynn telephoned Gerald Slipakoff, vice president of Galman, several times. Slipakoff never returned his phone calls. Slipakoff failed to mention problems with workmanship when Flynn finally reached him in May, 2001, and simply stated that there was no more money left in the job. Furthermore, Slipakoff did not ask Midsouth to come out to the property and make repairs.

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<sup>1</sup> No punch lists were introduced into evidence, nor were pictures of the alleged poor workmanship.

Galman hired to two other companies, Paint Masters and Santilli Remodeling, to do work on the property. Paint Masters was on the job at the same time as Midsouth, while Santilli Remodeling was hired after Midsouth left the property. It was unclear whether they were hired to specifically address the alleged problems left behind by Midsouth. Paint Masters was supposedly doing clean-up work during the few months prior to the phone conversation between Slipakoff and Flynn, yet Slipakoff did not mention any problems at that time. It was only after Midsouth filed suit seeking the balance due under the contract that they first learned of Galman's displeasure with their work.

Based upon the evidence presented at trial, the Court finds that Galman has failed to meet its burden of proving its claims against Midsouth by a preponderance of the evidence. *Reynolds v. Reynolds*, Del. Supr., 237 A.2d 708, 711 (1967). Therefore, as to Galman's counterclaim, judgment is entered in favor of Midsouth and against Galman.

**IT IS SO ORDERED.**

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Jay Paul James  
Associate Judge