

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

BEST CONTRACTING COMPANY)	
)	
Defendant Below)	
Appellant,)	
)	
v.)	C.A. No.: 2001-03-492
)	
DINO & SONS, INC.)	
)	
Plaintiff Below)	
Appellee.)	

Date Submitted: November 1, 2002
Date Decided: November 14, 2002

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FINAL ORDER AND DECISION

Trial in the above captioned matter took place on Friday, November 1, 2002. This is an appeal *de novo* brought pursuant to the provisions of 10 *Del. C.* § 9571 *et seq.* Following the receipt of evidence and testimony, the Court reserved decision. This is the final order and decision by the Court.

This is a debt action for bathroom tiles supplied by plaintiff to defendant. Plaintiff ("Dino & Sons, Inc.") alleges that defendant ("Best

Contracting Company”) owes \$739.79 on the account according to the invoice and statement of the account.¹

Defendant denies liability for payment on the account by claiming that there was no direct contract between the parties, and that plaintiff dealt directly with Lillian Millar in the sale and installation of the tile. Defendant further alleges that since the tile was installed in an unworkmanlike manner, and consequently the homeowner was unsatisfied with the installation, that defendant is therefore not obligated to issue payment to the plaintiff.

By preponderance of evidence, the Court finds that the contract at issue is a contract for the sale of tiles and installation materials that defendant breached by non-payment. For the reasons set forth below, the Court enters judgment in plaintiff’s favor in the amount of \$739.79 plus post judgment interest at the legal rate, 6 *Del. C.* § 2301 and court costs.

The Facts

The Court finds the following relevant facts presented at trial. Plaintiff is in the business of retail sales of ceramic tile. At trial, Yuri Sabbotoni testified that in August, 2000, Lillian Millar purchased tiles from plaintiff for the renovation of her second-floor bathroom that was damaged by a fire. At the time of the sales transaction, Lillian Millar inquired about plaintiff’s availability to perform the tile installation work at her home, and was informed by plaintiff, that the company no longer

¹ See Plaintiff’s Exhibit “2”.

performs tile installation work. Sabbotoni testified that a list of several available installers were provided to Lillian Millar, and that plaintiff gave her the name of “Mauro” as a subcontractor who has previously performed installation work for the plaintiff in the past. Additionally, plaintiff testified that Lillian Millar gave plaintiff the name of a general contractor (“Tom Daly”) as the one responsible for payment of the tiles. Dino Sabbotoni testified at trial and reiterated these facts. Ms. Millar called Sabbotoni back in approximately ten (10) days and informed him the price was fine with Tim Daly and to go ahead and order tile.

At trial, defendant disputed the fact that Lillian Millar was aware of plaintiff’s inability to perform installation work, and testified that the homeowner assumed that plaintiff was going to have Mr. Sabbotoni perform the installation work as he has done in the prior dealings with the homeowner. Additionally, defendant disputed the fact that Lillian Millar had authorized the general contractor to pay for the tiles.

At trial it was established that plaintiff ordered the tiles for Lillian Millar without taking a deposit, and subsequently presented an invoice² to defendant for payment. The invoice was made out in Ms. Millar’s name as well as the defendant’s name. Under the words “shipped to”, which were crossed out, Tom Daley’s name was listed with his phone number. Defendant subsequently refused to make payment for the tiles by reasoning that homeowner was unsatisfied with the installation work.

Defendant also took the position at trial that since installation was a part of the contract, plaintiff failed to perform under the contract. However, defendant admitted at trial that had the installation work been performed satisfactorily by the subcontractor who actually performed the tile installation work at Lillian Millar's residence that plaintiff would have been entitled to payment.

Plaintiff also asserted at trial through the testimony of Dino Sabbotoni that since installation work was not part of the sales contract plaintiff is entitled to payment of products sold regardless of the quality of the installation work. At trial, there was evidence through the testimony of both Dino and Yuri Sabbotoni that the Tom Daly authorized Ms. Millar to pick out the tile and/or installer.

Additionally, it is undisputed through the listing of the defendant, Tom Daly, that the insurance company has paid the defendant through its agent to Tom Daly, a lump sum for the renovation of Ms. Millar's entire property, which included the labor and materials for the second floor bathroom at issue.

The Analysis

Based upon the totality of evidence received into the record at trial, the Court finds the plaintiff has proven beyond a preponderance of evidence that a *bona fide* supply contract for tiles and supplies and that defendant breached the instant contract. *Reynolds v. Reynolds*, Del.

² The invoice, Plaintiff Exhibit "2", is made out to Mrs. Lillian Millar and Best Contracting Associates in

Super., 237 A.2d 708, 711 (1967); *Guthridge v. Pen-Mod, Inc.*, Del. Super., 239 A.2d 709, 713 (1967); *Gibson v. Gillespie*, Del. Super., 152 A.2d 589 (1928).

The invoice admitted into evidence³ clearly reflected a price list solely for materials supplied without any indication for labor costs. Thus, the Court finds the subject contract only represent a contract for sales of product, namely tile and supplies. Defendant, in fact, admitted on cross-examination that the invoice is a price listing for tiles, accessories, glue and grout.⁴ Additionally, it was uncontested at trial that the tiles themselves were not defective, and that if the installation been performed satisfactorily by the subcontractor who installed the tile defendant conceded he would have paid the plaintiff for the tiles and supplies.

It is the Court's finding that the defendant incurred a liability to pay for the tiles as part of the materials used for the total renovation job at Ms. Millar's residence. Additionally, Defendant has already received the insurance lump sum payment for the total renovation job at homeowner's property, which included both labor and materials for the tile installation. The debt must therefore be paid by the defendant. The Court finds by a preponderance of evidence that Defendant breached his obligation for payment. The also finds the evidence was established at

prentices and shows the name "Tom Daly" within the box of a crossed out "ship to".

³ See Plaintiff's exhibit "2".

⁴ Tom Daly testified to this fact.

trial that defendant authorized Ms. Millar to pick out the tile at the job. The Court also finds significant defendant's testimony that he would have paid for the tile and supplies if the original sub-contractor had properly installed the tile at the job site.

The Court enters judgment in favor of the plaintiff in the amount of \$739.79 plus court interest at the legal rate, 6 *Del. C.* § 2301 plus court costs.

IT IS SO ORDERED this 14th day of November, 2002.

John K. Welch
Associate Judge