IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

DONALD SNOW, d/b/a DONALD, SNOW CONSTRUCTION, a Sole Proprietorship,	)	
Plaintiff and Claimant,	)	C.A. No. 04L-01-011 PLA
v.	)	
MAP CONSTRUCTION a/k/a M.A.P. Associates, Inc. a/k/a M.A.P. CONSTRUCTION ASSOCIATES, L.P., C. ARENA & COMPANY, INC., d/b/a ARENA CONSTRUCTION, BLUE HEN HOTEL, L.L.C., a Delaware limited liability company, and UNIVERSITY OF DELAWARE, a Delaware Corporation,	)	
Defendants.	)	

ON DEFENDANTS' MOTION FOR JUDGMENT
ON THEIR COUNTERCLAIM
DENIED

Submitted: February 8, 2008
Decided: April 9, 2008

This 9th day of April, 2008, it appears to the Court that:

1. This litigation arises out of claim for a mechanic's lien asserted by Plaintiff Donald Snow ("Snow") for work he performed on a construction project that was erected on property owned by the University of Delaware and Blue Hen Hotel, L.L.C. (collectively the "University Defendants").

Following a bench trial on November 13, 2007,. The Court found that Snow had performed his construction work improperly, causing the University Defendants to expend additional sums to remedy and repair his defective work. The Court therefore refused to grant him a mechanic's lien.[1] In its order, however, the Court did not rule on the University Defendants' counterclaim which demanded a set-off from Snow for the additional expenses incurred to complete the hotel project.

2. Now before the Court is the University Defendants' counterclaim in the amount of $154,948.00 against Snow. The University Defendants cite no legal theory, nor any legally binding document, requiring Snow to repay them for the additional costs they incurred as a result of his defective work. Nonetheless, in support of their request for a set-off, the University Defendants point to documentary and testimonial evidence admitted at trial that demonstrated that the University Defendants undertook repairs and remedial measures costing $162,428.00,[2] consisting of: (1) $41,137.00 to remove and reframe Snow's defective work;[3] (2) $77,698.00

[1] *Snow v. MAP Constr.*, 2008 WL 116205 (Del. Super. Ct. Jan. 11, 2008).

[2] The Court found in its January 11, 2008 decision that the University Defendants had to expend $154,948.00. *Snow,* 2008 WL 116205 at *2. Despite the $7,480.00 difference, which reflects the remedial work on the roof trusses, the University Defendants do not challenge this Court's finding and only seek to recover $154,948.00. Docket 62.

[3] Tr. Trans. at 119:1-120:16.

to repair the exterior wall framing on the second and third floors;[4] (3) $23,556.00 to remove the exterior wall framing on the first floor and replace it with new framing;[5] and (4) $20,037.00 to remove masonry veneer at the metal stud walls.[6] Although the Court allowed Snow ten days to respond to the University Defendants' counterclaim after they renewed their request for entry of judgment, Snow did not respond.[7]

3. In essence, the University Defendants are asking for reimbursement from Snow for the additional sums it had to expend to complete the hotel project. The mechanic's lien statute permits a defendant to assert a claim to recover a debt owed by the contractor in addition to the claim for a mechanic's lien.[8] To maintain a claim for personal liability, however, there must be a contract between the defendant and the plaintiff.[9] In this case, the University Defendants have offered no contract, either express or implied, between themselves and Snow. Although Snow had a contract with MAP Construction, the general contractor, nothing in that

[4] *Id.* at 122:7-123:19.

[5] *Id.* at 125:4-126:17.

[6] *Id.* at 128:3-129:19.

[7] Docket 61.

[8] 25 *Del. C.* § 2721(a).

[9] *Silverside Home Mart, Inc. v. Hall*, 345 A.2d 427, 429 (Del. Super. Ct. 1975).

contract requires Snow to indemnify the University Defendants or any other party for poor work.[10] In fact, the contract limits the right of the contractor to terminate Snow from the hotel project, explicitly stating, "[i]nferior quality of work or failures to meet time deadlines, is cause for termination of contract."[11] Moreover, the University Defendants have not offered any legal theory or statute establishing their right to recover from Snow. While the Court is not unsympathetic to the fact that the University Defendants had to incur additional expenses related to Snow's defective work, the University Defendants are not entitled to $154,948.00 from Snow for the sole reason that they chose to terminate him from the project, hire different contractors, and complete the hotel project by removing and repairing his work. Absent any showing of a right to recover from Snow, the Court will not force Snow to pay damages when Snow has been denied the right to recover any damages from the University Defendants for the work he performed on the hotel project.

4. The only other basis offered by the University Defendants is a request of this Court to enter default judgment based on Snow's failure to respond to the University Defendants' counterclaim raised in their Answer

[10] *See* Pl.'s Ex. 1 at trial.

[11] *Id.*

and the Pre-Trial Stipulation.[12] A default judgment is not treated as "an absolute confession" of liability by the party who failed to answer.[13] Rather, to obtain a default judgment, the Court must first be satisfied that the claim strictly conforms to all of the pleading requirements.[14] While the counterclaim places Snow on notice that the University Defendants sought a set-off and additional damages "including but no limited to the cost of all remedial corrective work,"[15] the University Defendants have offered no theory for recovery. As explained above, no contract was offered into evidence, nor was the Court provided any statutory or decisional law that would justify the University Defendants' right to indemnification. As a result, Snow's failure to respond to the counterclaims cannot be a basis for default judgment.

5. The Court concludes that the University Defendants have offered no basis for this Court to enter judgment against Snow on its

[12] Docket 60; *Snow v. MAP Constr.*, 2008 WL 116205, at *3 (Del. Super. Ct. Jan. 11, 2008).

[13] *Hauspie v. Stonington Partners, Inc.*, ___ A.2d ___, 2008 WL 623245, at *2 (Del. Mar. 7, 2008).

[14] *Id.* (applying the heightened pleading standard of fraud to a request for entry of a default judgment).

[15] Docket 4.

counterclaim. Accordingly, the University Defendant's request for entry of judgment on its counterclaim is hereby **DENIED**.

IT IS SO ORDERED.

Peggy L. Ableman, Judge

Original to Prothonotary