SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

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February 5, 2013

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RE: Duffield Associates, Inc. v. Meridian Architects and Engineers, LLC, Windmill Estates, LLC, Darin Lockwood and John L. Stanton
C.A. No: 10C-03-004 ESB

Dear Counsel:

This is my decision on Plaintiff Duffield Associate, Inc's Motion for Summary Judgment on its breach of contract claim against Defendants Meridian Architects and Engineers, LLC, and Windmill Estates, LLC. Meridian hired Duffield on a time and material basis to provide environmental and geotechnical consulting services for a wastewater treatment plant for a real estate project being developed by Windmill. Duffield was doing the work it was hired to do, but was not getting paid in full. The payment situation got so bad that Duffield threatened to stop work unless it got paid. This led Duffield, Meridian and Woodmill to negotiate a settlement. The settlement was memorialized in a letter from Meridian to Duffield dated April 2, 2008. The following is an except of that letter:

> I am in receipt of your letters of various dates over the past month or so and will memorialize my understanding of the current state of the project as of today. I

am acknowledging by this letter that the amount to be paid to Duffield Associates will be a total of $206,751.20, a number not to increase. This is for the contract with Meridian and monies owed to Duffield by a third party. Meridian Architects and Engineers and/or Windmill Estates, L.L.C. will pay the current balance owed to Duffield (minus the $55,000.00 submitted) at the time the current contract purchaser goes to settlement. The purchaser is required to go to settlement when Final Subdivision Plat is approved by the Sussex County Planning and Zoning and recorded and Duffield acknowledges that the DNREC permit it is contracted to obtain is one of the permits needed. If settlement is delayed by any reason not caused by Duffield, the company shall be paid in full or reasonable interest until settlement occurs.

I am enclosing a check for $55,000 with this letter and by cashing this check you are accepting the terms of this letter.

This letter is to serve as a Bi-lateral Corporate Guarantee.

The letter was signed by the appropriate representatives for Meridian and Woodmill. Duffield cashed the $55,000 check, finished its work, and sent Meridian an invoice for $82,153.17, being the difference between $206,751.20 and what it had been paid. The "current contract purchaser" refused to go to settlement, resulting in Windmill, after litigation, keeping the purchaser's $500,000 deposit. Windmill latter went to settlement with another purchaser on or about February 16, 2012. However, Meridian and Windmill never paid Duffield the $82,153.17.

Meridian concedes that it owes Duffield $82,153.17, plus interest, but disputes that it owes more. Given this concession, I will, as Duffield has requested, enter summary judgment in its favor and against Meridian on the issue of liability only, leaving the amount of damages to be determined at trial.[1]

[1] Duffield and Meridian started with a time and material contract and converted it to a fixed price contract. Meridian breached that fixed price contract by not paying the $82,153.17. Duffield argues that its measure of damages for this breach is not $82,153.17, but the total that it would have been due under the time and material contract, less what it was paid. Duffield will, at trial, have to provide adequate authority for this measure of damages.

Windmill disputes Duffield's Motion for Summary Judgment, arguing that it does not owe Duffield anything because it did not go to settlement with the "current contract purchaser." I have rejected Windmill's argument as an unreasonable interpretation of the settlement language and the undisputed facts of the case. I believe that a fair reading of the settlement language supports a conclusion that Windmill did obligate itself to pay $82,153.17 to Duffield. This makes sense because Windmill needed Duffield's services so that it could get DNREC approval for the wastewater treatment plant design so that it could, in turn, sell the project to the "current contract purchaser." It is only the timing of the payment that is not tied to a certain date. However, it can be determined upon the happening of certain events. Those events are, as far as the parties are concerned, the approval and recording by the Sussex County Planning and Zoning Office of the Final Subdivision Plat for the project and the DNREC permit. The happening of those events would trigger the "current contract purchaser's" obligation to go to settlement according to the settlement agreement. Those events did occur, but the "current contract purchaser" did not go to settlement. This does not excuse Windmill's obligation to pay because it agreed that "[i]f settlement is delayed by any reason not caused by Duffield, the company shall be paid in full or reasonable interest until settlement occurs." While the "current contract purchaser" never went to settlement, Windmill did ultimately go to settlement with another purchaser. Thus, Windmill got what it bargained for from Duffield and all of the conditions for it to pay Duffield were satisfied. Therefore, I will enter summary judgment in favor of Duffield and against Windmill on the issue of liability only, leaving the amount of damages to be determined at trial.[2]

[2] Windmill was, unlike Meridian, never a party to the time and material contract. Thus, the measure of damages against it may well be different than the measure of damages against Meridian.

IT IS SO ORDERED**.**

Very truly yours,

/s/ E. Scott Bradley

E. Scott Bradley

ESB/sal