

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

SALAH & PECCI LEASING CO., INC.,)
)
Plaintiff,)
)
v.) C.A. No. 07C-05-137 MMJ
)
GBC CHRISTIANA LANDING, LLC, et)
al.,)
)
Defendants.)
)

Submitted: June 18, 2008
Decided: September 17, 2008

ORDER

Upon Motion for Reargument of Defendants
The Berlin Steel Construction Company and Western Surety Company
DENIED.

Joanne P. Pinckney, Esquire, Pinckney & Harris, LLC, Wilmington, Delaware,
Attorneys for Plaintiff

James F. Harker, Esquire, Cohen Seglias Pallas Greenhall & Furman P.C.,
Wilmington, Delaware, Attorneys for Defendants

JOHNSTON, J.

1. By opinion dated February 10, 2005, the Court granted plaintiff Salah & Pecci Leasing Co., Inc.’s Motion for Summary Judgment and denied the Cross-Motion for Summary Judgment of defendants The Berlin Steel Construction Company and Western Surety Company. Defendants have moved for reargument.

2. The purpose reargument is to permit reconsideration of findings of fact, conclusions of law, or judgment of law.¹ Reargument usually will be denied unless the moving party demonstrates that the Court overlooked a precedent or legal principle that would have a controlling effect, or that it has misapprehended the law or the facts in a manner affecting the outcome of the decision. “A motion for reargument should not be used merely to rehash the arguments already decided by the court.”²

3. Defendants argue that the Court: “(1) made factual findings without having the complete factual record before it to support granting Plaintiff Salah & Pecci Leasing Co., Inc.’s (‘S&P’) Motion for Summary Judgment; and (2) misapprehended the applicable facts and law to conclude that S&P is a proper claimant on a surety payment bond.” Specifically, defendants contend that

¹*Hessler, Inc. v. Farrell*, 260 A.2d 701, 702 (1969).

²*Wilmington Trust Co. v. Nix*, 2002 WL 356371 (Del. Super.); *Whitsett v. Capital School District*, Del. Super., C.A. No. 97C-04-032, Vaughn, J. (Jan. 28, 1999); *Monsanto Co. v. Aetna Casualty & Surety Co.*, Del. Super., C.A. No. 88-JA-118, Ridgeley, P.J. (Jan. 14, 1994).

because discovery is ongoing, it is reasonably possible that discovery could lead to evidence demonstrating a material issue of fact. Additionally, defendants claim that the Court misapprehended the law and facts because plaintiff is not a sub-subcontractor, but is a sub-sub-subcontractor, and, therefore, *Knecht, Inc. v. United Pacific Ins. Co.*,¹ is distinguishable.

4. As stated in the Court's opinion, the parties agreed at the conclusion of oral argument that resolution of one legal issue would determine the cross-motions for summary judgment.² The speculative prospect of unidentified evidence, that might be produced is future discovery, is not a basis for granting reargument.

5. The Court found *Knecht* instructive on the issue of a subcontractor's right to recover on a bond against a principal or surety. In determining an issue of first impression in Delaware, the Court held that plaintiff is a claimant under the surety bond.

¹860 F.2d 74 (3d Cir. 1988).

²See Super. Ct. Civ. R. 56(h):

Where the parties have filed cross motions for summary judgment and have not presented argument to the Court that there is an issue of fact material to the disposition of either motion, the Court shall deem the motions to be the equivalent of a stipulation for decision on the merits based on the record submitted with the motions.

Where a surety for a contractor in a construction contract guarantees payment of the contractor's obligation to pay for labor and materials, those parties providing labor and materials are third-party beneficiaries of the surety contract. In the absence of a specific disclaimer of liability in the surety agreement, the surety's assumption of the contractor's responsibility to pay for material and labor extends to sub-subcontractors.³

6. It is clear in the context of the opinion that the Court was aware that plaintiff was a sub-sub-subcontractor and that the opinion extended to all subcontractors, in whatever degree. The explicit language in the bond refers to equipment "used or reasonably required for use in the performance of the contract" and includes rental equipment. Thus, lessees can be claimants under the bond.

7. Defendants have failed to demonstrate that the Court overlooked a precedent or legal principle that would have a controlling effect, or that it misapprehended the law or the facts in a manner affecting the outcome of the decision.

THEREFORE, the Motion for Reargument of Defendants The Berlin Steel Construction Company and Western Surety Company is hereby **DENIED**.

IT IS SO ORDERED.

³See *Royal Indemnity Co. v. Alexander Industries, Inc.*, 211 A.2d 919, 921 (Del. 1965).

/s/ *Mary M. Johnston*
The Honorable Mary M. Johnston