

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

STRUCTURAL CONCRETE, INC.,)
a foreign corporation of the State of) C.A. No. 08L-03-060 JTV
Maryland,)
)
Plaintiffs,)
)
v.)
)
FORT MAIER HOMES, LLC, a)
Maryland Limited Liability Corpor-)
ation, FORT MAIER HOMES OF)
DELAWARE, LLC., a Delaware)
Limited Liability Corporation,)
PARADISE RIDGE, LLC., a)
Delaware Limited Liability Company,)
)
And)
)
CYNTHIA A. McDONOUGH, owner)
or reputed owner of Lot 8 Paradise)
Ridge Subdivision,)
)
Defendants.)

Submitted: August 22, 2008
Decided: November 25, 2008

Dean A. Campbell, Esq., Georgetown, Delaware. Attorney for Plaintiff.

David N. Rutt, Esq., Moore & Rutt, Georgetown, Delaware. Attorney for Defendants Fort Maier and Paradise Ridge.

Structural Concrete v. Fort Maier, et al.
C.A. No. 08L-03-060 (JTV)
November 25, 2008

*Upon Consideration of Defendants Fort Maier Homes
and Paradise Ridge's Motion To Dismiss*
DENIED

VAUGHN, President Judge

ORDER

Upon consideration of a motion to dismiss the complaint filed by defendants Fort Maier Homes, LLC; Fort Maier Homes of Delaware, LLC; and Paradise Ridge, LLC; the plaintiff's opposition, and the record of the case, it appears that:

1. The plaintiff, Structural Concrete, Inc., a Maryland corporation, has filed a complaint for mechanics' liens against a number of properties, including properties owned by defendant Paradise Ridge, LLC, et al. The complaint also alleges counts for personal judgments against defendant Fort Maier Homes, LLC and Fort Maier Homes of Delaware, LLC, Paradise Ridge, LLC, et al. The plaintiff alleges that it did concrete work on the properties involved.

2. Defendants Paradise Ridge, LLC, Fort Maier Homes, LLC and Fort Maier Homes of Delaware, LLC have filed a joint motion to dismiss the complaint pursuant to Superior Court Civil Rule 12(b). The grounds alleged for dismissal are lack of subject matter jurisdiction, lack of personal jurisdiction over said defendants, improper venue, and failure to state a claim upon which relief can be granted.

3. The defendants contend that the relevant contract governing this case is one between the plaintiff and defendant Paradise Ridge, LLC. They allege that no

Structural Concrete v. Fort Maier, et al.

C.A. No. 08L-03-060 (JTV)

November 25, 2008

contract existed between the plaintiff and defendants Fort Maier Homes, LLC or Fort Maier Homes of Delaware, LLC.

4. The alleged contract between the plaintiff and defendant Paradise Ridge, LLC, which is attached to the motion, contains clauses which provide, in relevant part, that disputes between the parties shall be resolved by binding arbitration, that arbitration proceedings shall occur in the State of Maryland and that the agreement shall be governed, construed and enforced in accordance with the laws of the State of Maryland. All of the defendants' contentions arise, in whole or in part, from the contention that the plaintiff's rights are governed by the aforesaid contract between the plaintiff and defendant Paradise Ridge, LLC, and the absence of an agreement between the plaintiff and defendants Fort Maier Homes, LLC or Fort Maier Homes of Delaware, LLC.

5. The plaintiff responds with contentions that the aforementioned, alleged contract between the plaintiff and Paradise Ridge, LLC was not the contract under which its work was performed. It alleges that the aforementioned contract was invalid, or abandoned, and that its work was performed under contracts with defendants Fort Maier Homes LLC and Fort Maier Homes of Delaware, LLC. It contends that defendant Paradise Ridge, LLC is a party not because a contractual relationship existed between the plaintiff and defendant Paradise Ridge, LLC, but because defendant Paradise Ridge, LLC is the owner or reputed owner of the properties upon which a mechanics' lien is sought.

6. In evaluating the defendants' motion, the Court must assume that the

Structural Concrete v. Fort Maier, et al.

C.A. No. 08L-03-060 (JTV)

November 25, 2008

material facts alleged in the complaint are true.¹

7. The minimal record now existing is not sufficient to enable the Court to form any reliable judgment as to which of the competing contentions between the plaintiff and the defendants is correct. Therefore, the court must, for purposes of a motion to dismiss, assume as true the plaintiff's contention that its contract was with defendants Fort Maier Homes, LLC and Fort Maier Homes of Delaware, LLC. Based upon this assumption, the defendant's conflicting contentions must fail.

8. Therefore, the motion to dismiss is ***denied***.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.

President Judge

oc: Order Distribution
File

¹ *Grace v. Morgan*, 2004 WL 26858, at *1 (Del. Super.) (citing *Diebold Computer Leasing, Inc. v. Commercial Credit Corp.*, 276 A.2d 586, 588 (Del. 1970).