IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

DELAWARE BUILDING SUPPLY, INC.,	:	**C.A. No: 08L-08-074 (RBY)**
Plaintiff,	:	
v.	:	
BARCLAY FARMS COMMUNITY, LLC,	:	
Defendant.	:	

Submitted: January 9, 2009
Decided: March 16, 2009

Upon Consideration of Defendant Barclay Farms Community, LLC's Motion to Dismiss and for Judgment on the Pleadings
DENIED

Patrick Scanlon, Esq., Milford, Delaware for Plaintiff.

Michael J. Goodrick, Esq., Wilmington, Delaware for Defendant Barclay Farms Community, LLC.

OPINION AND ORDER

Young, J.

Delaware Building Supply, Inc., v. Barclay Farms Community, LLC
C.A. No: 08L-08-074
March 16, 2009

I. Introduction

Defendant Barclay Farms Community, LLC ("Defendant") moves this Court to dismiss the action of Plaintiff Delaware Building Supply, Inc., ("Plaintiff") for failure to join a necessary party. Defendant asserts that Plaintiff did not name the owner of the property at the time of contract, Baseball, Limited Partnership ("BLP") as a party to Plaintiff's mechanics lien proceeding. Defendant argues that this failure to name a necessary party warrants dismissal of Plaintiff's entire action. Based on an analysis of the proceedings and applicable laws, this motion is **DENIED**.

II.Facts

When the Court considers a motion to dismiss, it must accept all of Plaintiff's well-pleaded allegations from the Complaint as true.[1] Therefore, the facts below are taken directly from the Complaint and the documents incorporated into the Complaint.

Plaintiff supplied building supplies to a work site in Camden, Delaware. Plaintiff commenced supplying these materials on April 9, 2008. On April 9, 2008, the record owner of the subject property was Baseball, Limited Partnership (BLP). BLP transferred the property to Defendant Barclay Farms via deed dated April 28, 2008. This deed was recorded on May 9, 2008. Plaintiff delivered the materials to the work site until May 8, 2008. The materials were taken to a storage-shed located at 2 Paynter's Way, Camden, Delaware. These materials were furnished on the credit of this storage-shed. Plaintiff's claim is in the amount of $5,686.25 plus interest. The subject property is mortgaged in the amount of $8,900,000.

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[1] *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978).

The invoices for the materials list T&A Contracting (the general contractor, also a Defendant) as the purchaser. On the invoices, the Customer identification lists "storage shed" in type, but also has "Barclay Farms" handwritten in the same area. All of the invoices are consistent in this manner. Some of these invoices, including the first one dated April 9, 2008, list the destination as "RT10W from Camden T/L into Barclay Farms go to the stop sign and T/R the job is on the left beside the clubhouse."

These invoices begin on April 9, 2008, continuing until May 8, 2008. There are 17 separate invoices. These invoices were attached to the Complaint in a Bill of Particulars. Plaintiff filed mechanic's liens both *in rem* against the property and *in personam* against T&A Contracting.

III. Standard of Review

As mentioned above, when considering a motion to dismiss for failure to join a necessary party under Superior Court Civil Rule 12(b)(7), this Court must accept all of Plaintiff's well-pleaded allegations in the Complaint as true.[2] If, after considering the motion, this Court finds sufficient allegations to support Plaintiff's claim, the motion to dismiss should be denied.[3] This Court "must draw all reasonable inferences in favor of the non-movant" when reviewing the facts.[4]

Superior Court Civil Rule 12(b)(7) allows Defendant to move for dismissal for

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[2] *Id.*

[3] *Id.*

[4] *Roberts v. Delmarva Power and Light Co.*, 2007 WL 2319761, at *3 (Del. Super.) (quoting *AT&T Corp. v. Clarendon American Ins.*, 2006 WL 2685081, at *3 (Del. Super.) (internal citations omitted)).

failure to join a party under Rule 19. Superior Court Civil Rule 19 requires joinder of certain parties so as to achieve just adjudication. If complete relief cannot be accorded without a person's being named a party; or if a person claims an interest in the subject property, and without his inclusion the result would be unfair, the Court shall order that such person be named as a party.[5] If it is not feasible to name that person as a party, the Court must determine if equity and good conscience allow the claim to continue without the person.[6]

IV. Discussion

Defendant argues that Plaintiff's failure to join BLP as a party requires this Court to dismiss the action. Defendant relies on its interpretation of Delaware common and statutory law. Defendant argues that under 25 *Del. C.* § 2712, Plaintiff is required to name the owner or reputed owner of the structure in its claim for a mechanic's lien. Defendant urges that section 2712's requirement that the owner be named in the complaint refers to the owner at the time of contracting. Defendant further argues that this failure to name that owner amounts to a failure to join an indispensable party, warranting dismissal of the action.

Defendant places its reliance on *First Florida Building Corp. v. Robino-Ladd Co*.[7] In *First Florida*, the Superior Court addressed the naming of parties in a mechanic's lien situation.[8] The plaintiff in that case named the owner of the subject

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[5] Super. Ct. Civ. R. 19(a).

[6] Super. Ct. Civ. R. 19(b).

[7] *First Fla. Bldg. Corp. v. Robino-Ladd Co.*, 424 A.2d 32 (Del. Super. 1980).

[8] *Id*.

property at the time of contract as a defendant, but failed to include the owner at the time the action was filed.[9] The defendant argued that this failure to include the current owner denied that owner of a constitutional right to notice, and of the opportunity to be heard.[10] The court was concerned with notice to title examiners of a lien when the mechanic's lien relates back to the date when the materials began to be furnished.[11] The court stated that because relation back would apply, title examiners needed to know who the owner at the time of the relation back was.[12] Failure to name this party would warrant dismissal of the lien as it was necessary that they be joined.[13] The court noted, however, that because the initial owner was a party, notice to the subsequent owner could be achieved.[14] The court further noted that joinder of the current owner would satisfy the constitutional requirements of notice and opportunity to be heard.[15] This delayed joinder was not sufficient to warrant dismissal.[16]

While the court in *First Florida* stated in dicta that 25 *Del. C.* § 2712 required naming the owner of the subject property at the time of contracting,[17] other Delaware

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[9] *Id*. at 33.

[10] *Id*. at 34.

[11] *Id*. at 35.

[12] *Id*.

[13] *Id*. at 35-36.

[14] *Id*. at 36.

[15] *Id*.

[16] *Id*.

[17] *Id*.

case law has concluded otherwise. In *Hoffman v. Siegel*, the Delaware Superior Court stated that a party not intended to be burdened by the mechanic's lien was not an indispensable party.[18] The defendant in *Hoffman* sought dismissal under Superior Court Civil Rule 12(b)(7) as the owner of the fee simple estate was not named as a party.[19] The plaintiffs in that action targeted the owners of the remaining leasehold estate with their action for a mechanic's lien.[20] If the mechanic's lien were granted, it would have operated against the leasehold interest, not the fee simple interest.[21] Therefore, the court denied dismissal sought on grounds that the fee simple owner was an indispensable party, but not named in the action.[22] Since the plaintiffs did not intend to burden the entire estate, the owner of the fee simple was held to be not an indispensable party.[23]

Particularly instructive is *Carswell v. Patzowski*.[24] In *Carswell*, the Delaware Superior Court analyzed the Delaware statute against similar statutes of other states,[25] stating "[c]areful examination of our statute clearly indicates that whenever the word 'owner' or 'reputed owner' is used, it means the owner or reputed owner *with whom*

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[18] *Hoffman v. Siegel*, 1991 WL 113431, at *3 (Del. Super.).

[19] *Id*. at *1.

[20] *Id*.

[21] *Id*. at *3.

[22] *Id*.

[23] *Id*.

[24] *Carswell v. Patzowski*, 55 A. 342 (Del. Super. 1903).

[25] *Id*.

the contract is made, and he is, therefore, the *only* necessary defendant, as such owner or reputed owner."[26] This analysis is pertinent to the instant case.

In the present case, Plaintiff names two parties as Defendants. First, Plaintiff named the general contractor. Plaintiff initially contracted with the general contractor for the supplies it delivered. Plaintiff also named Barclay Farms as a defendant. Barclay Farms was identified on all the invoices as the customer.

The asserted difficulty addressed in this motion is that Plaintiff did not name BLP as a party. Is BLP is indispensable party to the action? It appears that even though the deed conveyance from BLP to Barclay Farms was not recorded until May 9, 2008, Barclay Farms' site was the recognized location throughout the relationship. Based on the invoices, Plaintiff rationally considered Barclay Farms to be the owner from the inception of the relationship.

Section 2712 requires the owner or *reputed owner* to be listed as a party to the mechanic's lien action.[27] The reputed owner is the apparent or believed owner. Based on a review of the referenced invoices, certainly in a light most favorable to Plaintiff, it would appear that Plaintiff was aware of the pending transaction between BLP and Barclay Farms. That Plaintiff named only Barclay Farms as a party, arguably because Plaintiff was never aware of BLP's involvement, is not sufficient to bring about dismissal of its action. A reasonable inference may be drawn in Plaintiff's favor that Plaintiff believed Barclay Farms was the owner, or at least the reputed owner, of the property. A strict reading of section 2712, which is necessary as section 2712 is a

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[26] *Id*. at 343 (emphasis added).

[27] 25 *Del. C.* § 2712(b)(2).

derogation of common law,[28] allows the further inference to be drawn that Plaintiff satisfied the requirement of naming the reputed owner in the complaint.

Additionally, mechanic's liens are to be an available remedy when a party has not been paid. These liens may be levied against both the property (*in rem*) and parties (*in personam*) involved. Plaintiff supplied materials at the request of the contractor, to property which, very soon, would become Barclay Farms. The contractor would then use the supplies in its construction of a property, which shortly thereafter officially became Barclay Farms.

If the proceedings result in applying the mechanic's lien *in rem* against the property, Barclay Farms or its successor will be liable for payment of the lien. The lien will appear on the title of the property, against its owner, until satisfied. BLP no longer has any interest in the property. Further, it is unclear whether BLP ever had anything to do with the construction giving rise to the lien, as all the invoices reference Barclay Farms and T&A Contracting. Declaring BLP a necessary party in this action subjects it to nothing. The *in personam* action is against T&A Contracting; the *in rem* action is against the subject property. BLP faces no detriment from the lien. Even though the court in *First Florida* required the initial owner to be named for title examination purposes,[29] the action *in rem* attaches to the property, and the date of contract goes with it. When the deed was transferred from BLP to Barclay Farms, any claims on the title went with it. Just adjudication of this action would not assert any

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[28] *Browning-Ferris, Inc. v. Rockford Enterprises, Inc.*, 642 A.2d 820, 824 (Del. Super. 1993).

[29] *First Fla.*, 424 A.2d at 35.

liability on BLP, as it is not presented that BLP had any involvement in the building materials transaction. Plaintiff's action is properly framed and asserted.

V.Conclusion

Defendant's motion to dismiss, therefore, is **DENIED**.

SO ORDERED this 16th day of March, 2009.

/s/ Robert B. Young
J.

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cc: Opinion Distribution