

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

UNITED CONTRACTORS)	
)	
ANTHONY GUNZL, SR.,)	
)	
Plaintiff,)	
)	C.A. No. 08L-08-234 RRC
v.)	
)	
JILL CHADWICK AKA JILL A.)	In the Supreme Court:
DEANGELIS, DOUGLAS R.)	
DEANGELIS, RUTH LIONS and)	No. 439, 2009
WELLS FARGO HOME)	
MORTGAGE)	
)	
Defendants,)	
)	

Submitted: March 3, 2010
Decided: April 21, 2010

Upon the Supreme Court's Remand for Clarification.

**REPORT TO THE DELAWARE SUPREME COURT OF FINDINGS
OF FACT AND CONCLUSIONS OF LAW.**

United Contractors Anthony Gunzl, Sr., Newark, Delaware, *Pro Se*

Jeffrey K. Martin, Esquire, Martin & Associates, P.A., Wilmington,
Delaware, Attorney for Jill Chadwick

Rochelle L. Gumapac, Esquire, Reger Rizzo & Darnall LLP, Wilmington,
Delaware, Attorney for Ruth Lions

Adam Hiller, Esquire, Pinckney, Harris, & Weidinger, LLC, Wilmington,
Delaware, Attorney for Wells Fargo Home Mortgage

COOCH, J.

This 21st day of April, 2010, upon consideration of the Supreme Court's Order of Remand requesting clarification of this Court's June 1, 2009 ruling dismissing the above captioned action and awarding no attorney's fees to any defendant, this Court reports that:

1. Plaintiff, Anthony Gunzl, Sr., brought this *pro se* breach of contract and mechanic's lien action on behalf of himself and purportedly on behalf of his company, United Contractors, on August 26, 2008. After the case was dismissed in a bench ruling on June 1, 2009, Mr. Gunzl took an appeal to the Supreme Court. The case was then remanded

for clarification of the Superior Court's intent when dismissing the complaint as to "all defendants" on June 1, 2009 and for the court's rationale underlying the denial of attorney's fees on July 9, 2009.

2. The Order of Remand requests clarification as to whether Plaintiff's complaint against Douglas DeAngelis was also dismissed in addition to the other three defendants. Mr. Gunzl first attempted service on all parties via the sheriff.¹ The sheriff properly served Ruth Lions,² but service was *non est* as to Douglas DeAngelis and Jill Chadwick.³ Mr. Gunzl's Complaint

¹ Dkt. 1.

² Dkt. 6.

³ Dkt. 3, 5.

addressed to Mr. DeAngelis was returned because the sheriff could not “find the address.”⁴

3. On March 30, 2009, the Prothonotary sent Mr. Gunzl a letter, which notified him:

IN REVIEWING THE ABOVE-CAPTIONED ACTION, IT APPEARS THAT THIS MATTER CAN NOT PROCEED BECAUSE EITHER SERVICE OF PROCESS OR AN ANSWER IS LACKING, A DEFAULT JUDGMENT NEEDS TO BE ENTERED OR AN ARBITRATION HEARING HAS NOT BEEN COMPLETED.

PLEASE CHECK YOUR FILE AND REPORT BACK TO THE COURT THE STATUS OF THIS CASE BY APRIL 13, 2009. FAILURE TO COMPLY MAY RESULT IN THE COURT DISMISSING THIS ACTION.⁵

After receiving this letter, Mr. Gunzl hired a special process server, who was able to serve Wells Fargo Home Mortgage and Jill Chadwick.⁶ Mr. DeAngelis was never served, and no documents were subsequently ever filed by Mr. Gunzl indicating proper service on Douglas DeAngelis.

4. On June 1, 2009, this Court heard argument on Defendants, Ruth Lions, Jill Chadwick, and Wells Fargo Home Mortgage’s motions to dismiss. The status of any claim of Plaintiff still pending against Douglas DeAngelis was not raised by anyone at that hearing. Ruth Lions and Wells Fargo moved to dismiss for failure to state a claim for which relief could be

⁴ Dkt. 5.

⁵ Dkt. 20.

⁶ Dkt. 25, 27.

granted, and Jill Chadwick moved to dismiss for failure of service of process. Douglas DeAngelis had apparently originally been named as a co-defendant because, according to the complaint, he was a purported co-owner of the premises with Jill Chadwick a/k/a Jill DeAngelis where Mr. Gunzl undertook to perform property “renovations.” Douglas DeAngelis was not alleged in the complaint to have had any other involvement in this dispute over property “renovations” at the subject property, and his name rarely appeared in the numerous filings by Plaintiff and others during the course of this litigation.

Wells Fargo and Jill Chadwick also sought attorney’s fees in their pleadings in connection with their defense of this action. This Court granted the motions to dismiss with prejudice and stated that “the case is now dismissed.” Neither Wells Fargo nor Jill Chadwick addressed their request for attorney’s fees at the June 1, 2009 hearing.

After the June 1, 2009 hearing, Plaintiff filed a motion for reargument. All defendants, except Douglas DeAngelis, filed responses. Although Plaintiff listed Douglas DeAngelis in the certificate of service to his motion for reargument, Douglas DeAngelis was not mentioned in the text of this motion.

5. The Supreme Court has now asked this Court to clarify its intent as to whether unserved defendant Douglas R. DeAngelis was intended to be included when this Court dismissed the complaint as to “all defendants.” The complaints against Ruth Lions, Jill Chadwick, and Wells Fargo Home Mortgage were explicitly dismissed as against each of these co-defendants on June 1, 2009.

There is no evidence from the record that Mr. DeAngelis had ever been properly served. Superior Court Civil Rule 4(j) provides:

Summons: Time limit for service. -- If a service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint and the party on whose behalf such service was required cannot show good cause why such service was not made within that period, the action shall be dismissed as to that defendant without prejudice upon the court's own initiative with notice to such party or upon motion.

Mr. Gunzl had been sent a letter on March 30, 2009 informing him that his case against Mr. DeAngelis (and other defendants) could be dismissed for failure of service.⁷ Mr. Gunzl never properly served Mr. DeAngelis despite that March 30 notification. Thus, on June 1, 2009, this Court intended, but did not explicitly so state, to dismiss the complaint also against Mr. DeAngelis.

The Court therefore dismissed “the case” against all Defendants, including Douglas R. DeAngelis. As noted, his alleged role in this \$10,000

⁷ Dkt. 20.

dispute appears peripheral, at best. In summary: the Court granted three motions to dismiss as to defendants Jill Chadwick, Ruth Lions, and Wells Fargo Home Mortgage for the reasons stated, and this Court further reports to the Supreme Court that Mr. DeAngelis was dismissed “upon the court's own initiative [after] notice to [Mr. Gunzl]” pursuant to Superior Court Civil Rule 4(j).

6. The Supreme Court has also asked this Court to clarify its rationale underlying its denial of attorney’s fees to “any defendant.” In its letter to Mr. Gunzl and to counsel of July 9, 2009, denying Mr. Gunzl’s motion for reargument of the June 1, 2009 dismissal of the case, this Court stated only that “[t]he Court in its discretion declines to award counsel fees to any Defendant under the circumstances.”⁸ Although both Wells Fargo and Jill Chadwick had requested attorney’s fees in their original “Motion[s] to Dismiss and Summary Judgment,” and in their motions for reargument, Wells Fargo and Jill Chadwick did not argue their requests for attorney’s fees at the June 1, 2009 hearing.⁹ The Order of Remand indicates that only Wells Fargo has cross-appealed this Court’s failure to award attorney’s fees.

⁸ Dkt. 44. Defendant, Jill Chadwick, had also originally requested attorney’s fees. Jill Chadwick Resp. to Mot. for Rearg. at ¶ 6. Defendant Ruth Lions did not request attorney’s fees.

⁹ Wells Fargo Resp. to Mot. for Rearg. at ¶ 3. This Court notes, but does not now reach any conclusion of law (since such a legal conclusion appears outside the scope of the Order of Remand), that Wells Fargo’s post-June 1, 2009 request for attorney’s fees may not have been timely. Superior Court Civil Rule 59(e) provides that “[a] motion for reargument shall be served

The amount of attorney's fees requested by Wells Fargo was about \$2,500 as of June 19, 2009;¹⁰ the amount requested by Jill Chadwick was about \$2,700.¹¹

This Court should have originally stated its basis for declining to award attorney's fees. The underlying rationale for the Court's declining to grant attorney's fees is that Mr. Gunzl is a frequent and very active *pro se* litigator in this Court. The Court recognizes that there are exceptions to the "American Rule" (pursuant to which each party is expected to bear its own legal fees and expenses), but this Court believes that no exception to that Rule applied in this case. One reason for declining to award attorney's fees to any defendant is that this Court felt that the likelihood of Wells Fargo or any defendant ever actually recovering any legal fees from Mr. Gunzl was, in this Court's view, extremely unlikely and that, in Wells Fargo's or any other defendant's pursuit of such attorney's fees from Mr. Gunzl, continued litigation in this case about attorney's fees would be a waste of judicial resources.¹² If past behavior is any guide, Mr. Gunzl will resist to the

and filed within 5 days after the filing of the Court's opinion or decision." The Court's oral decision was June 1, 2009; Wells Fargo "renew[ed]" its original request for attorney's fees on June 19, 2009 in its response to Plaintiff's Motion for Reargument; Wells Fargo did not originally seek reargument on this issue.

¹⁰ Wells Fargo Resp. to Mot. for Rearg. at ¶ 3.

¹¹ Jill Chadwick Resp. to Mot. for Rearg. at ¶ 6.

¹² This Court also notes that Wells Fargo in its cross-appeal has asked the Supreme Court to "remand [the attorney's fee issue] to the Superior Court for a factual determination." C.A. No 439, 2009; Dkt. 18.

utmost payment by him of any attorney's fees award through his intensive future *pro se* continued litigation. Legal fees presumably would continue to mount as this remaining collateral part of the case dragged on.¹³ Another factor in this Court's declining to award attorney's fees is that Mr. Gunzl does not appear to understand and/or follow the Superior Court Rules of Civil Procedure or its pretrial practice. A third factor was that the amount of legal fees requested by Jill Chadwick and Wells Fargo was relatively low. A fourth factor was that, as of the June 1, 2009 hearing, neither Jill Chadwick nor Wells Fargo had itemized their respective requests in support of an award of attorney's fees. Finally, this Court notes that, although this Court declined to award attorney's fees in this case, it may well become appropriate to award attorney's fees in some future case involving Mr. Gunzl, should circumstances so warrant.

7. This case is **RETURNED** to the Supreme Court of Delaware.

Richard R. Cooch

oc: Prothonotary
cc: Clerk of the Supreme Court of Delaware

¹³ This Court notes that, subsequent to the Order of Remand, Plaintiffs filed a 77 page (including exhibits) "Motion for Clarification & Motion to Reopen the Case." This Court has denied that motion by separate order today.