

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

GENNA CONTRACTING, INC.,)
) C.A. No. 09L-08-082 (JTV)
Plaintiff,)
)
v.)
)
FRANK ROBINO COMPANIES, LLC,)
a Delaware Limited Liability Company,)
ROBINO-BELLE AYRE, LLC, a Delaware)
Limited Liability Company, ROBINO-)
GRAND POINT, LLC, a Delaware Limited)
Liability Company; RS VALLEY RUN)
APARTMENTS, LLC, a Delaware Limited)
Liability Company, POND'S EDGE ASSO-))
CIATES, LLC, a Delaware Limited Liability)
Company, DOVERIVEW, LLC, a Delaware)
Limited Liability Company, personally and)
as owner or reputed owner of the lands)
described herein,)
)
Defendants.)

Submitted: June 11, 2010
Decided: September 16, 2010

Mark H. Hudson, Esq., and Dean A. Campbell, Esq., Law office of Dean A. Campbell, Georgetown, Delaware. Attorneys for Plaintiff.

Douglas M. Hershman, Esq., and Vanessa R. Tiradentes, Esq., Bayard, Wilmington, Delaware. Attorneys for Defendants Frank Robino Companies, Robino-Belle Ayre, Robino-Grand Point, RS Valley Run Apartments, and Overview.

Jeffrey M. Weiner, Esq., Wilmington, Delaware. Attorney for Defendant Pond's Edge Associates.

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*Upon Consideration of Plaintiff's
Motion to Sever*
GRANTED

VAUGHN, President Judge

ORDER

Upon consideration of the plaintiff's motion to sever, the defendants' opposition thereto, and the record of the case, it appears that:

1. The plaintiff, Genna Contracting Inc., filed this action asserting claims against six defendants: Frank Robino Companies, LLC ("Robino"), Robino-Belle Ayre, LLC ("Belle Ayre"), Robino-Grand Point, LLC ("Grand Point"), RS Valley Run Apartments, LLC ("Valley Run"), Pond's Edge Associates, LLC ("Pond's Edge"), and Doveview LLC ("Doveview").

2. Count I makes a Statement of Claim for Mechanics' Lien against a property known as Parcel Three of Fountainview, Dover, Delaware, of which Doveview is the reputed owner. Count II alleges a breach of contract action against Robino and Belle Ayre for work allegedly done at a site in Seaford. Count III alleges a breach of contract action against Robino and Grand Point for work allegedly done at a site in Salisbury, Maryland. Count IV alleges a breach of contract action against Robino and Doveview. It appears to be for the same or substantially the same work done at Parcel Three of Fountainview which is the subject of the Statement of Claim for Mechanics' Lien. Count V alleges a breach of contract action against Robino and

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Valley Run for work done at a site in Milford. Count VI alleges a breach of contract action against Robino and Pond's Edge for work done at a site in Delmar, Maryland. Count VII alleges a quantum meruit/unjust enrichment claim against all six defendants for the work which is the subject of Counts I through VI.

3. On or about May 5, 2010, Doveview filed a Chapter 11 bankruptcy petition with the United States Bankruptcy Court for the District of Delaware. Therefore, the automatic stay of 11 U.S.C. § 362 applies to actions against Doveview.¹

4. The plaintiff has moved to sever Doveview from this action, so it may proceed against the remaining defendants. Said severance would create two separate cases: (1) a mechanics' lien action, a breach of contract claim, and a quantum meruit/unjust enrichment claim against Doveview; and (2) an action against the remaining defendants for the claims against them. The case against Doveview would

¹ Section 362 provides in part:

Automatic Stay.

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 or this title . . . operates as a stay, applicable to all entities, of-

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

11 U.S.C. § 362(a)(1) (Subsection (b) provides specific exceptions to the automatic stay rule, none of which apply here).

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be stayed pending the resolution of the bankruptcy petition or the lifting of the automatic stay.

5. In support of its motion, the plaintiff cites *In re The Conference of African Union First Colored Methodist Protestant Church*.² In that Chapter 7 bankruptcy case, the Bankruptcy Court for the District of Delaware concluded:

When a bankruptcy petition is filed, it is common practice for a non-bankruptcy court where an action is pending against the debtor and others to sever the action and proceed with the causes against the non-debtors. There is sound basis for this practice. Code [11 U.S.C.] § 362(a) only stays actions against the debtor and its property. Code § 362(a) does not stay actions against persons (or their property) who are related to the debtor or who are participants in the harm or liability underlying claims against the debtor.³

6. Defendants Robino, Belle Ayre, Grand Point, Valley Run, and Pond's Edge oppose the motion to sever, contending that the automatic stay suspends the authority of this Court to hear any judicial proceeding against the debtor. In support of this argument, the defendants cite *Constitution Bank v. Tubbs*.⁴ In that case, the Third Circuit concluded:

Once a stay is in effect, without relief from the bankruptcy court, 'the parties themselves [can]not validly undertake

² 184 B.R. 207 (Bankr. D. Del. 1995).

³ *Id.* at 214.

⁴ 68 F.3d 685 (3d Cir. 1995).

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any judicial action material to the . . . claim against' the debtor. This includes the filing of motions, which are void *ab initio*, unless the bankruptcy court later grants retroactive relief.⁵

7. These defendants are apparently attempting to prevent the plaintiff from proceeding with claims against them. However, section 362(a) only stays actions against Doveview and its property; it does not stay actions against the remaining defendants. The plaintiff's motion is a step taken to honor the automatic stay, not violate it. The authorities relied upon by the defendants state general principles and are distinguishable from what the plaintiff seeks to do here.

8. The defendants' additional contentions that Doveview is a necessary party in the plaintiff's actions against them and that proceeding would result in duplication, double expense and other perceived inefficiencies are unpersuasive.

9. I am not persuaded that a formal severance into two actions is truly necessary. It seems to me that the plaintiff could simply proceed with its claims against the remaining defendants while honoring the stay against Doveview within the same civil action. However, perhaps the plaintiff's approach will add some procedural clarity that may be helpful in some way.

10. Therefore, Counts I, IV and VII against Doveview are severed and will be given a distinguishing civil action number. Counts II, III, IV, V and VI against Robino, and VII against all defendants except Doveview will proceed under the civil action number on the above caption.

⁵ *Id.* at 692 (internal citations omitted).

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11. For the foregoing reasons, the plaintiff's motion to sever is hereby ***granted.***

IT IS SO ORDERED.

 /s/ James T. Vaughn, Jr.

cc: Prothonotary
Order Distribution
File