SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

1 THE CIRCLE, SUITE 2
SUSSEX COUNTY COURTHOUSE
GEORGETOWN, DE 19947

Edward Seglias, Esquire
Cohen Seglias Passas Greenhall & Furman, P.C.
United Plaza
30 South 17th Street, 19th Floor
Philadelphia, PA 19103

David H. Williams, Esquire
James H. McMackin, Esquire
Allyson M. Britton, Esquire
Morris James LLP
P.O. Box 2306
Wilmington, DE 19899

Re: ***DDP Roofing Services, Inc. v. Indian River School District***
C.A. No. S09C-01-035 RFS

Upon Defendant's Motion for Reargument. Granted.

Submitted: December 30, 2010
Decided: January 5, 2011

Dear Counsel:

Indian River School District ("Indian River") filed a motion for reargument concerning the Court's opinion dated November 16, 2010. Footnote 15 provided for the award of prejudgment interest from August 14, 2008 to March 12, 2009 on the sum of $79,204.05, and thereafter, on the amount of $29,656.65. The lesser figure was the retainage which remained under a roofing contract between DDP Roofing Services, Inc.

("DDP") and Indian River . DDP claimed $79,204.05 was due in the complaint filed on January 30, 2009, but the figure was actually subject to deductions.

A jury trial resulted in a $29,656.65 verdict. The questions of whether DDP should receive prejudgment interest and attorneys fees were given to the Court by stipulation to decide based upon post-trial memoranda. The pretrial stipulation focused on the $29,656.65 retainage and the jury necessarily did too. Consequently, the trial record did not develop the amount and timing of required deductions. The subject was reserved to the Court and by necessity for additional findings of essential facts.

The date of the breach of contract was August 14, 2008, and prejudgment interest would accrue on that date. In post-trial letters of September 22, 2010 and October 15, 2010, DDP stated that $49,548 was paid or settled on March 12, 2009, thus reducing the $79,204.05 demand to $29,656.65 retainage. This statement was accepted at face value as reflected in the footnote.

With the benefit of hindsight, sufficient consideration was not given to DDP's admissions that the demanded sum of $79,204.05 did not include the $49,548 deductions. Further, my assumption was that the credits occurred on March 12, 2009; this belief was based only on DDP's statements in its letters; upon further review, there was no factual basis to support the argument. Consequently, the motion for reargument must be granted to permit appropriate consideration of when the credits were made.

The $49,548 figure has two aspects - (a) a $10,700 deduction provided for in Change Order No. 5 apparently signed by DDP on June 6, 2008, and (b) a $38,848 joint check to DDP and the Department of Labor. The subject of the change order and joint check was outlined in the architect's closeout letter of August 12, 2008. A summary of application for payments references the joint check in application no. 11 but in a lower amount of $31,529.60, allocating $15,990.40 to DDP and $15,539.20 to the Department.

Frankly, the parties should be able to agree as to when these credits occurred to reduce the $79,204.05 figure to $29,656.65. Absent agreement, there is no record to permit an informed decision and, therefore, an evidentiary hearing would have to be scheduled.

If you are not able to agree by February 1, 2011, please notify my case manager, Kendra Mills, and a hearing date will be set.

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

RFS/cv

cc: Prothonotary