

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

THE RYLAND GROUP, INC.,	:	
	:	
	:	
Plaintiff,	:	
	:	C.A. No.: 00C-09-056 SCD
v.	:	
	:	
SANTOS CARPENTRY COMPANY,	:	
INC., A&J BUILDERS APCO, C.CM. TEK,	:	
INC., FORMED WALLS FOUNDATIONS	:	
BY SCHULTE AND ROSSI, INC.,	:	
DAVID T. SCHULTE MASONRY, INC.,	:	
HUHN CARPENTRY, OMNIWAY	:	
SERVICE CO. d/b/a KAPPLER	:	
CONSTRUCTION, SAY SERVICE, INC.,	:	
STATE WIDE PLUMBING, MK	:	
BUILDERS, RABSPAN, INC., and	:	
UNITED HVAC, INC.	:	
	:	
Defendants.	:	

O R D E R

This 31st day of August, 2004, upon consideration of the motions for reargument filed by plaintiff, The Ryland Group, Inc. (“Ryland”) as to this Court’s March 6, 2004, rulings on summary judgment regarding the discovery rule, and the claims of contribution/indemnification, it appears:

1. Plaintiff has failed to follow the Rules of civil procedure. Submitting separate motions for reargument of a ruling by issue is not permitted by the rules.
2. As to the motions regarding the time of discovery rule, express indemnity, implied indemnity, and contractual indemnification and warranty claims, I find no merit

in the arguments. Plaintiff has demonstrated neither a misapprehension of the law or the facts.¹ There is no need for reargument.

3. As for the motion directed at the contribution claim, Ryland notes the following paragraph of the decision:

The homeowners had no contract with Santos (the framing contractor). Santos' duties, and thus its obligations, arose entirely from the contract it had with Ryland. The facts do not indicate any independent basis for recovery such as a violation of law. Where an action is based entirely on a breach of the terms of a contract between the parties, and not a violation of some duty imposed by law, a tort action will not lie, and the plaintiff must sue, if at all, in contract.²

Ryland argues that although the homeowners whose claims have been paid by Ryland did not sue the various subcontractors involved in this action, they could have done so. It is true, of course, that the homeowners could have pursued claims against the subcontractors, but they *did not do so*. Ryland has acknowledged in its pleadings the possibility that it had an obligation to the homeowners. That is enough, on a notice pleading basis, to state a cause of action for contribution.³ The essence of a claim for

¹ *Monsanto Co. v. Aetna Casualty & Surety Co.*, Del. Super. C.A. No. 88-JA-118, Ridgley, P.J. (Jan. 14, 1994) citing *Wilshire Rest. Group, Inc. v. Ramada, Inc.*, Del. Ch., C.A. No. 11506, Jacobs, V.C. (Dec. 27, 1990) (letter Op.) 1990 Del. Ch. LEXIS 212.

² *The Ryland Group, Inc., v. Santos Carpentry Co., Inc., et al.*, Del. Super., C.A. No. 00C-09-056, Del. PESCO, J. (Mar. 26, 2004) (Op.) at 10.

³ Ryland's Amended Complaint states:

Each and every defendant has materially breached its subcontractor agreement with Ryland, and its express and implied warranties, representations and covenants to Ryland, by failing to perform the work in a workmanlike manner and in accordance with specifications, in a manner specifically and reasonably fit for the intended purpose, resulting in structurally related problems and construction defects in the Weldin Ridge homes.

Each and every defendant is primarily or wholly responsible for said structural and construction defects and problems in the Weldin Ridge homes, as each and every defendant performed the work in a defective and deficient manner.

* * *

These losses, damages, and costs incurred by Ryland are in an amount that *far exceeds* Ryland's share of responsibility, if any, for said losses, damages, and costs. (emphasis supplied)

contribution is payment by one joint tortfeasor of more than its pro-rata share of the loss. There remains a factual issue as to whether Ryland has paid more than its pro-rata share of the homeowner's losses.

The motion for reargument is GRANTED solely on the claim for contribution. A new trial date will be set.

IT IS SO ORDERED.

Judge Susan C. Del Pesco

xc: Original to Prothonotary
Counsel of Record