

SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

SUSSEX COUNTY COURTHOUSE
1 The Circle, Suite 2
GEORGETOWN, DE 19947

April 18, 2006

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**RE: George England t/a England Construction v. Thomas E. Jones,
Charlene A. Jones, Mark Quillen and Kimberly M. Quillen
C.A. No. 03L-07-026-ESB**

Dear Counsel:

This is my decision on the two Motions to Amend Judgment filed separately by defendants Thomas and Charlene Jones (the “Joneses”) and Mark and Kimberly Quillen (the “Quillens”). The Joneses hired George England (“England”) to construct certain portions of a house on a lot they owned. Other contractors were hired by the Joneses to construct the rest of the house. The Joneses sold the house to the Quillens. England filed just suit against the Joneses and Quillens when he was not paid in full by the Joneses. The Quillens filed a cross-claim against the Joneses. After a one-day bench trial, I entered judgment in favor of England and against the Joneses on England’s breach of contract claim in the amount of \$11,703.00, together with pre- and post-judgment interest and costs.

I also granted England's request for a mechanic's lien against the property. I also entered judgment in favor of the Quillens and against the Joneses on the Quillens' cross-claim. Lastly, I awarded England his attorney's fees pursuant to 10 *Del.C.* §3912 and 6 *Del.C.* §3506.

The motions challenge the award of attorney's fees. The Joneses and Quillens argue that the award of attorney's fees pursuant to 10 *Del.C.* §3912 is improper because the portion of it that applies to a mechanic's lien action has been determined by the Delaware Supreme Court to be unconstitutional. Their argument is correct. The Delaware Supreme Court reached this conclusion in *Gaster v. Coldiron*, 297 A.2d 384, 385 (Del. 1972). Therefore, I will amend my order to delete the award of attorney's fees pursuant to 10 *Del.C.* §3912.

The Joneses argue that attorney's fees cannot be awarded pursuant to 6 *Del.C.* §3501 because they were never paid as a contractor. The Joneses' rationale for this is that, even if I was correct in holding that they were a "contractor" within the meaning of §3501(1), they were never paid as a contractor because they received payments under their construction loan as property owners and not as a contractor. Section 3501(1) is written broadly enough to cover property owners who act as their own contractor, which is the case here.¹ Thus, monies that the Joneses received pursuant to their construction loan were received by them as a contractor, which implicates the provisions of

¹6 *Del.C.* §3501 (1)(1999) states: (1) "Contractor" includes, but is not limited to, an architect, engineer, real estate broker or agent, subcontractor or other person, who enters into any contract with another person to furnish labor and/or materials in connection with the erection, construction, completion, alteration or repair of any building or for additions to a building, by such contractor, or for the sale to such other person of any lands and premises, whether owned by such contractor or another, upon which such contractor undertakes to erect, construct, complete, alter or repair any building or addition to a building.

§3506(a)² and (d).³ I had previously concluded that the Joneses did not have a good faith basis for not paying England. Therefore, the Joneses must, as I had previously concluded and ordered, pay England his attorney's fees pursuant to §3506(d).⁴

IT IS SO ORDERED.

Very truly yours,

Judge E. Scott Bradley

cc: Prothonotary

²6 *Del.C.* § 3506(a)(1999) states: (a) Each construction contract awarded by a contractor shall include: (1) A payment clause which obligates the contractor to pay the subcontractor and each supplier for satisfactory performance under the subcontract within 30 days out of such amounts as are paid to the contractor; and (2) An interest penalty clause which obligates the contractor to pay the subcontractor and each supplier an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the contract pursuant to paragraph (1) of this subsection.

³6 *Del.C.* § 3506 (d) (1999) states: (d) If it is determined by a court of competent jurisdiction that a payment withheld pursuant to subsection (c) of this section was not withheld in good faith for reasonable cause, the court may award reasonable attorney's fees to the prevailing party. In any civil action brought pursuant to this section, if a court determines after a hearing for such purpose that the cause was initiated, or a defense was asserted, or a motion was filed or any proceeding therein was done frivolously or in bad faith, the court shall require the party who initiated such cause, asserted such defense, filed such motion or caused such proceeding to be had to pay the other party named in such action the amount of the costs attributable thereto and reasonable expenses incurred by such party, including reasonable attorney's fees.

⁴The contract between England and the Joneses was entered into in 2001. Therefore, the applicable portion of §3506 is found in 6 *Del.C.* §3506 (1999). Section 3506 became effective on June 30, 1996, through the enactment of 70 *Del. Laws*, c. 420§2 (1996).