

Superior Court  
of the  
State of Delaware

Jan R. Jurden  
Judge

New Castle County Courthouse  
500 North King Street, Suite 10400  
Wilmington, Delaware 19801-3733  
Telephone (302) 255-0665

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Douglas A. Shachtman, Esq.  
Douglas A. Shachtman & Associates  
1200 Pennsylvania Avenue  
Suite 302  
Wilmington, DE 19806

William W. Erhart, Esq.  
800 N. King Street, Suite 302  
Wilmington, DE 19801

**RE: Ciappa Construction, Inc. and Michael Ciappa  
v. Innovative Property Resources, LLC, et al.  
C.A. No. 05L-07-035-JRJ  
AMENDED DECISION AFTER BENCH TRIAL**

Dear Counsel:

The bench trial in this matter concluded on August 18, 2006. The Court requested post trial briefing which was completed on August 31, 2006. The Court has now reviewed the evidence, the applicable law, and the post-trial submissions. For the reasons set forth below, the Court finds in favor of the plaintiffs, Ciappa Construction and Michael Ciappa, on Counts I and II of the Amended Complaint and on defendants' Counterclaim, and in favor of defendants on Count III (Fraud).

In this action, plaintiffs (collectively referred to as “Ciappa”) seek a mechanics lien against property known as 935 E. Hazeldell Drive in Wilmington, Delaware (“Hazeldell”), and a personal judgment against Hazeldell’s then owner, Innovated Property Resources, LLC (“IPR”) due to IPR’s refusal to compensate Ciappa in accordance with their contract. In response, defendants counterclaim that as a result of construction defects (allegedly caused by Ciappa), Ciappa is not entitled to a mechanics lien and IPR does not owe Ciappa all the damages Ciappa claims. The Court finds that the following facts were established by a preponderance of the evidence at trial.

On November 17, 2004, Ciappa contracted IPR to raze Hazeldell and construct a new house on that site. Ciappa fully performed the contract. It submitted building plans, obtained a New Castle County Land Use building permit, posted the required bond, hired subcontractors, built a home and obtained the necessary approvals at each stage of the construction. Hazeldell passed all inspections and, consequently, a Certificate of Occupancy was issued on June 16, 2005.<sup>1</sup> Ciappa regularly faxed his material invoices and time records to IPR. Ciappa kept meticulous and detailed records in this regard. Ciappa sent these invoices and time records to Jonathan and Christina Quinn’s<sup>2</sup> house, which served

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<sup>1</sup> See e.g. Exhs. 15, 18, 21, 23.

<sup>2</sup> Jonathan and Christina Quinn were principles of IPR. Jonathan Quinn served as managing partner of IPR.

as the office of IPR. Payment was to occur at the time of settlement for the sale of Hazeldell.

On April 20, 2005, IPR contracted to sell Hazeldell to Yolanda Smith (“Smith”) for \$195,000, the full asking price. Settlement was scheduled to occur on June 20, 2005. Unfortunately, shortly before settlement, Smith backed out. It is undisputed that the only reason Smith refused to go to settlement was because IPR did not agree with the amount of Ciappa’s claimed construction costs. Had IPR proceeded with the sale to Smith, there would have been sufficient funds to reimburse Ciappa for all of its construction costs (\$103,917.71) and its share of the profit. To compute the profit, the contract allows IPR its stated investment (\$50,000) and “additional receipted investment.” The \$195,000 sales price less \$103,917.71 and \$50,000 equals \$41,082.29 profit, to be divided equally between IPR and Ciappa (\$20,541.14 each). After the sale fell through, the Quinns caused IPR to transfer the Hazeldell deed to themselves.

At trial, IPR claimed it incurred “additional investment” for which it is entitled to reimbursement. Ciappa requested information and documentation regarding IPR’s “additional investment” in May 2005, but there is no credible evidence that such information was ever supplied to Ciappa. Jonathan Quinn claims he faxed this information to Ciappa and its attorney, but neither received it and Mr. Quinn offered no other proof (*i.e.* a fax confirmation sheet) of transmittal.

Moreover, Mr. Quinn's trial testimony on this point contradicts his deposition testimony.<sup>3</sup>

Through its counterclaim, IPR also seeks compensation of \$65,352.84 as "additional investment" for the costs incurred by Lewis Quinn and Steven Davis in initially purchasing Hazeldell. However, these costs are not IPR's and hence do not constitute an "additional investment" of IPR under the contract.<sup>4</sup> The contract does not provide that costs incurred by Lewis Quinn and/or Steven Davis are reimbursable or comprise IPR's investment in Hazeldell. And, even if it did, IPR is estopped from claiming that the original, initial investment was more than the \$50,000 specifically referenced in the contract because those costs were incurred and known to IPR ten months before IPR represented that its investment was \$50,000. In addition, the defendants failed to establish by a preponderance of the evidence that IPR paid Lewis Quinn for the Hazeldell property. Lewis Quinn's mortgage loan was not repaid when Hazeldell was titled in IPR's name. And, the initial investment of Lewis Quinn and Steven Davis was only \$9,135.05.<sup>5</sup> The evidence IPR offered to substantiate its counterclaim was inconsistent and often incredible. For example, Jonathan Quinn admitted that Hazeldell was listed for \$45,000. But the HUD1 lists the purchase price as \$60,000, and the realtor's

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<sup>3</sup> See Jonathan Quinn Dep. Tr. at 72. At deposition, Mr. Quinn testified that his only written communications to Ciappa were the termination letter (PX 32) and the letter requesting subcontractor information (PX 45).

<sup>4</sup> See *Smith v. Dixon*, 1988 WL 109024 \*2 (Del. Ch. 1988).

<sup>5</sup> DX6.

commission<sup>6</sup> was based on a sale price of \$40,000. No one from IPR explained this discrepancy at trial. As for the monthly mortgage payments claimed by IPR as its investment, these payments were not IPR's legal obligation, there were Lewis Quinn's. IPR did not produce any documentation (such as cancelled checks) to prove IPR made these payments. And, any payments made prior to November 17, 2004 cannot constitute "additional investment." Finally, the Court found most of Jonathan Quinn's testimony contradicted by the far more credible testimony of Michael Ciappa and Nancy Ciappa and the exhibits themselves. In stark contrast to the Ciappas, Mr. Quinn appeared inexplicably ignorant and vague on several key issues. The Court was struck by the sheer number of inconsistencies in his testimony, and between his version of events and the Ciappas' recitation of events. Unlike the Ciappas' testimony, Mr. Quinn's testimony was simply not supported by any documentation, contemporaneous or otherwise. In fact, the documentation provided by Ciappa soundly belied most of Mr. Quinn's claims. Moreover, Mr. Quinn's credibility was severely damaged by evidence demonstrating he lied twice in an affidavit submitted to New Castle County in connection with the transfer of Hazeldell and lied on an application for an equity line.

The evidence clearly demonstrates that Ciappa properly performed the contracted work, routinely and consistently apprised IPR of its construction costs,

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<sup>6</sup> The realtor was Christina Quinn of IPR, Jonathan Quinn's wife.

and completed “good quality” construction. The evidence further clearly demonstrates that the sale of Hazeldell to Smith failed to occur through no fault of Ciappa. Because the Quinns decided Ciappa’s construction costs were too high, and only because the prospective buyer was told of their dissatisfaction, the potential buyer walked. The Quinns not only refused to advise Ciappa of the settlement date, (presumably to prevent Michael Ciappa from appearing at the settlement table and demanding payment for the construction costs), but they refused to discuss with Ciappa prior to settlement their purported (and very belated) dissatisfaction with the construction costs. The evidence establishes that IPR had no justifiable reason to thwart the sale of Hazeldell in June 2005. Had IPR acted reasonably, the settlement would have occurred, Ciappa would have been paid, and Ciappa and IPR would have split the profit. This should have happened.

The Court finds the evidence offered in support of IPR’s counterclaim to be wholly unpersuasive and fatally contradicted by the exhibits and the very credible testimony of Michael and Nancy Ciappa. For all these reasons, the Court finds for plaintiffs on Counts I and II and the counterclaim.

As for Count III, plaintiffs’ claim of fraud, the Court finds for defendants. The Court does not find by a preponderance of the evidence that IPR and/or the Quinns intended to defraud Ciappa when they caused IPR to transfer the Hazeldell

deed from IPR to the Quinns after the sale fell through. The Court does not find that punitive damages are warranted.

In light of the above, the Court awards the following damages to the plaintiffs:

Count I – Writ of *scire facias sur* Mechanics Lien Judgment *in rem* imposing a mechanics lien on 935 East Hazeldell Drive in the amount of \$103,917.71, plus interest at the legal rate from June 30, 2005, plus 50% of net profit based on a sale price of \$195,000.

Count II – *In person am* judgment in favor of plaintiffs against defendants jointly and severally in the amount of \$103,917.71, plus interest at the legal rate from June 30, 2004, plus 50% of the net profit based on a sale price of \$195,000.

The Court declines to award plaintiffs their claimed compensatory damages of \$731,300. The Court finds the profit projections<sup>7</sup> offered by plaintiffs to be too speculative. The plaintiffs' claim rests on too many assumptions about what properties Ciappa *could have* purchased, *could have* obtained construction loans for, *could have* built houses on, and *could have* gained a profit on. It is well settled that an award of damages must be based on probabilities not possibilities. It is safe to say, based on Ciappa's testimony, that he could have used the money owed to him by IPR to invest in other properties. It is probably safe to say he would have

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<sup>7</sup> Exh. 51.

made some money on those investments. But the Court cannot say it is more probable than not that the scenario set forth by Ciappa in Exh. 51 would have occurred but for IPR's breach of contract.

Having said that, the Court does find by a preponderance of the evidence that as a proximate result of defendant's breach, Ciappa incurred attorney's fees and costs in prosecuting his mechanics lien and defending against the counterclaim. Consequently, the Court requests counsel for Ciappa submit for the Court's consideration an affidavit detailing Ciappa's attorney's fees and costs. The Court awards Michael Ciappa consequential damages for the hours of work he missed due to his attendance at trial. The Court requests Ciappa submit for the Court's consideration an affidavit detailing his time and his hourly rate.

**IT IS SO ORDERED.**

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Jan R. Jurden, Judge