IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

SPYROS DOUKAS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 06L-03-033 JTV
	)	
LA BABOLA BAKERY and RESTAURANT, LLC, DIMITRIOS BAHLITZANAKIS, MARIA BAHLITZANAKIS, WILLIAM A. ROBINSON, CHU PAO ROBINSON, MENG ROBINSON,	)	
	)	
Defendants.	)	

Submitted: March 5, 2007
Decided: July 30, 2007

Dean A. Campbell, Esq., Georgetown, Delaware. Attorney for Plaintiff.

Gregory A. Morris, Esq., Liguori, Morris & Yiengst, Dover, Delaware. Attorney for Defendants La Babola Bakery and Dimitrios and Maria Bahlizanakis.

Stephan J. Holfeld, Esq., Camden, Delaware. Attorney for Defendants William A. and Chu Pao Robinson.

DECISION AFTER BENCH TRIAL

VAUGHN, President Judge

Doukas v. La Babola Bakery, et al.
C.A. No. 06L-03-033
July 30, 2007

OPINION

This is the Court's decision following a bench trial. The plaintiff's complaint arises out of certain work performed and materials provided at property at 654 North duPont Highway, Dover, Delaware. The owners of the property are defendants William A. Robinson, Chu Pao Robinson and Meng Robinson. The remaining defendants, La Babola Bakery and Restaurant, LLC ("La Babola"), Dimitrios Bahlizanakis and Maria Bahlizanakis were tenants who occupied the premises under a written lease with the Robinson's. I will address the plaintiff's claim as to each defendant.

I. Plaintiff's Claims.

La Babola Bakery and Restaurant, LLC.

The plaintiff presented detailed evidence through testimony and exhibits to support his claim that he performed labor and provided materials at the order of La Babola in the amount of $72,982.69. I find that the plaintiff has established that La Babola is contractually obligated to him for that amount. I also find that none of that amount has been paid. Judgment will be entered in favor of the plaintiff and against La Babola in the amount of $72,982.69. Interest at the legal rate on $60,000 will be allowed from June 27, 2005, that being a date upon which La Babola executed a promissory note in favor of the plaintiff for $60,000. Interest at the legal rate will be allowed on the balance from December 5, 2005, that being the last date upon which an item was performed which is included in the $72,982.69.

Dimitrios Bahlitzanakis.

As mentioned, I find that La Babola was the contracting party with the plaintiff

and is liable for the full amount of the plaintiff's claim. The preponderance of the evidence establishes that the plaintiff's contract for labor and materials was solely with La Babola, and not with the Bahlitzanakis' individually. However, the evidence also establishes that Mr. Bahlitzanakis executed a promissory note (along with La Babola) payable to the plaintiff in the amount of $60,000, dated June 27, 2005. I find that Mr. Bahlitzanakis is liable on the basis of the note he signed to the plaintiff in the amount of $60,000. The note provides that interest is not payable as long as the monthly payments on the note were timely paid. I find that none of the payments were paid. Interest will, therefore, be allowed at the legal rate on said amount of $60,000 from June 27, 2005. Judgment will be entered against Mr. Bahlitzanakis for the sum of $60,000 plus interest at the legal rate from June 27, 2005.

Maria Bahlitzanakis.

No evidence was presented which established any individual liability on the part of Ms. Bahlitzanakis. There is no evidence that she contracted with the plaintiff or made any promise to pay. Therefore, the plaintiff's claim against her is dismissed.

William A. Robinson, Chu Pao Robinson and Meng Robinson ("the Robinsons'").

The plaintiff has asserted a mechanics' lien against the structure at the business premises at which the labor was performed and the materials provided. As mentioned, the owners of the premises are defendants William A. Robinson, Chu Pao Robinson, and Meng Robinson. The amount claimed as a mechanics' lien is $70,067.74.

Where, as here, labor is performed and materials are provided under a contract

with a tenant, the owner or his duly authorized agent must give prior written consent.[1] The plaintiff passes this test because the written lease between the parties expressly authorized the tenant to make alternations, additions and improvements.

Where a contractor has made his contract directly with the owner or reputed owner of the structure and both performs labor and provides materials, the contractor has 180 days after completion of the structure within which to file the mechanics' lien action.[2] All other claimants must file within 120 days of completion of labor performed or from the last delivery of materials. [3]

The plaintiff did not make his contract directly with the owner or reputed owner. He made his contract with the tenant. He was, therefore, required to file his mechanics lien action within 120 days. It is sometimes stated that the 120 day period is intended for sub-contractors and the 180 day period for general contractors. This enables a general contractor to wait until after sub-contractors have filed all timely claims before the general contractor is required to file. The terms sub-contractor and general contractor, however, do not appear in the statute. The statute is clear and unambiguous. In order to fall within the category of contractors given 180 days to file, one must make the contract directly with the owner or reputed owner. The plaintiff did not do that. Here, where the contract was with a tenant, the 120 day filing period applies.

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[1] 25 *Del C.* § 2722.

[2] 25 *Del. C.* § 2711(a).

[3] 25 *Del C. §* 2711(b).

The plaintiff filed his mechanics' lien on March 17, 2006. In order for the mechanic's lien complaint to be timely, the date of completion of labor performed or the last delivery of materials furnished must have occurred on or after November 17, 2005.

There are two activities which occurred on or after November 17, 2005. On November 17, 2005, the plaintiff submitted to the tenant an invoice of that date for $800 for cleaning interior and exterior sewer lines and cleaning water out of the building. On December 5, 2005, Alpha Engineering, Inc. performed an on-site structural evaluation with recommendations relating to problems with the roof. The cost to the plaintiff of this service was $250. All other labor performed or materials provided occurred prior to November 17, 2005.

The plaintiff and La Babola did not enter into a single, written contract signed by both parties.[4] Their contract was oral but was documented by invoices. The documentation of the labor performed by the plaintiff consists of six invoices which he presented to La Babola for his labor, including the above-mentioned, final invoice of November 17, 2005. The dates and amounts of those invoices are as follows: February 9, $40,000; June 9, $1,700; August 22, $1,500; October 17, $2,500; October 29, $2,550; and November 17, $800. The materials provided are also documented in a series of invoices from the companies who provided the materials to the plaintiff. They range in date between March 18, 2005 and June 17, 2005, with the exception

[4] The parties did have a written service agreement, but the labor and materials upon which the plaintiff's claim is based were not provided under the service agreement.

of the one from Alpha Engineering, Inc. dated December 5, 2005.

After carefully considering the evidence, I conclude that the work described in the plaintiff's invoices dated February 9 and June 9, and the materials described in the material invoices dated between March 18 and June 27, at most, constitute the labor performed and materials provided pursuant to the original contract between the plaintiff and La Babola. I further conclude that work performed after June 27 was separate from the contract. Although it appears that problems with the sewer and the roof were perceived shortly after the tenants took possession of the premises, work performed after June 17 consisted of individual responses by the plaintiff to calls from La Babola to fix immediate problems as they arose, separate and apart from the original agreement of the parties.

"The provision of labor or materials of a trivial nature, which were not provided for in the contract and which were provided after the contract had been substantially performed, does not extend the statute of limitations under 25 *Del. C.* § 2711."[5] From the evidence deduced at trial, I find that this principle applies to the work described in the November 17 invoice and the inspection work done December 5, that the contract was substantially performed prior to November 17, 2005,[6] and that

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[5] *Delaware Lumber & Millwork v. Abrams*, 1997 Del. Super. LEXIS 300 at *9 *citing Breeding v. Melson*, 34 Del. 9 (Del. 1927).

[6] The documentary and testimonial evidence indicates that by June 17, 2005, the plaintiff had incurred $20,542.53 of the $20,792.53 material expenses related to the property and by June 22, 2005, completed $43,200 of the $49,050 worth of labor furnished for the property. The bulk of the plaintiff's work is contained in the $40,000, February 9, 2005, invoice. (The labor included by the plaintiff in his February 9, 2005 invoice is as follows: tear down and replace old ceiling in entire building; tear down broken wall and dispose of debris; reroute electrical lines;

the work performed by the plaintiff on November 17, 2005 and December 5, 2005 was trivial in nature in relation to the substantive work completed by the plaintiff prior to those dates.

For the foregoing reasons, I find that the plaintiff's mechanics' lien was untimely filed.

Next, the plaintiff contends that the Robinson's were unjustly enriched by the repairs and alterations made to his property.[7] Although it is undisputed that the plaintiff performed work on the property, the parties dispute the quality, necessity and benefit of that work. Despite the $1,000 increase in rent assessed by the Robinsons in the lease with the property's new Tenant after the landlord-tenant relationship with La Babola was terminated, I find that the plaintiff has not proved by a preponderance of evidence that the Robinson's were unjustly enriched, that the Robinson's secured a benefit from the plaintiff's work, and that it would be unconscionable to allow them to retain that benefit. Accordingly, I conclude that the Robinson's are not liable to the plaintiff under a theory of unjust enrichment.

I also conclude that no contractual relationship existed between the plaintiff and any of the Robinson's. There is no evidence that the plaintiff had any contact

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tear down, repair, and resurface dining room walls; repair kitchen walls; install firing strips and sheetrock; replace sinks, counters, doors, and replumb bathrooms.)

[7] *Stock v. Nash*, 732 A.2d 217, 232-233 (Del. 1999); *Snyder v. Jehovah's Witnesses, Inc.*, 2005 Del. Super. LEXIS 364 at *13 ("Unjust enrichment in defined as: the unjust retention of a benefit to the loss of another, or the retention of money or property of another against the fundamental principles of justice or equity and good conscience. To obtain restitution . . . plaintiffs [are] required to show that the defendants were unjustly enriched, that the defendants secured a benefit, and that it would be unconscionable to allow them to retain that benefit.").

with William A. Robinson or Chu Pao Robinson. Although it appears that there was some small degree of contact between the plaintiff and Meng Robinson, it was insufficient to establish any contractual relationship between them at all.

II. Defendants La Babola Bakery and Restaurant, LLC and Dimitrios Bahlitzanakis' cross-claim

Defendants La Babola and Dimitrios Bahlitzanakis assert a cross-claim against the Robinson's for that amount of the plaintiff's claim for which they are, respectively, found liable. The cross-claim is based, at least in part, upon paragraph 6(d) of the lease and requires an interpretation of that provision.

Mr. Bahliltzanakis and Mrs. Bahlitzanakis have also filed a separate action against the Robinson's in this Court, C.A. No. 06C-12-029 JTV. In that case they have requested a jury trial. In that action they also rely, in part, upon paragraph 6(d). That action is pending, with a trial date of February 11, 2008. It appears that the cross-claim in this case and the claims set forth in C.A. No. 06C-12-029 JTV involve common questions of law or fact, at least insofar as paragraph 6(d) is relevant to both. For this reason, I decline to address the cross-claim without giving counsel for the parties in 06C-12-029 JTV an additional opportunity to consider whether they wish to have the cross-claim addressed by the Court independently of 06C-12-029 JTV or whether they wish to have it consolidated with that action. Counsel may contact the Court to schedule a pre-trial conference on this issue at counsel's discretion.

III. CONCLUSION

In conclusion, judgment will be entered in favor of Spyros Doukas against La Babola Bakery and Restaurant LLC in the amount of $72,982.69 together with

interest at the legal rate on $60,000 from June 27, 2005 and with interest at the legal rate on entire amount from December 5, 2005 plus costs and against Dimitrios Bahlitzanakis in the amount of $60,000 together with interest at the legal rate from June 27, 2005 plus costs. Plaintiff's counsel shall prepare and submit to the Court an order for entry of said judgments in a form approved by counsel for La Babola and Mr. Bahlitzanakis. The plaintiff's claim against Ms. Bahlitzanakis is dismissed. The cross-claim is deferred.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.
President Judge

oc: Prothonotary
cc: Order Distribution
File