

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANTHONY GUNZL, SR., ¹	§	
	§	No. 439, 2009
Plaintiff Below,	§	
Appellant/Cross-Appellee,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
JILL CHADWICK AKA JILL A.	§	
DEANGELIS and DOUGLAS R.	§	
DEANGELIS, RUTH LIONS,	§	
	§	
Defendants Below,	§	
Appellees,	§	
	§	
and	§	
	§	
WELLS FARGO HOME	§	
MORTGAGE,	§	
	§	
Defendant Below,	§	C.A. No. 08L-08-234
Appellee/Cross-Appellant.	§	

Submitted: May 25, 2010

Decided: July 23, 2010

Before **HOLLAND, BERGER** and **JACOBS**, Justices.

ORDER

This 23rd day of July 2010, upon consideration of the briefs filed by the appellant, Anthony Gunzl, Sr. (“Gunzl”) and the cross-appellant/appellee, Wells

¹ The *pro se* appellant sought to prosecute the appeal in his name and in the name of his sole, unincorporated contracting business, United Contractors. In the absence of the appellant’s filing of an amended notice of appeal as instructed by the Clerk, the Court has deleted United Contractors as a named party on appeal.

Fargo Home Mortgage (“Wells Fargo”), and the motions to affirm filed by the appellees, Jill Chadwick (“Chadwick”) and Ruth Lions (“Lions”), it appears to the Court that:

(1) In early 2008, Chadwick hired Gunzl, a building contractor, to make repairs on a house that was damaged in a fire. Chadwick and De-Angelis co-owned the house. Lions was a real estate agent who listed the house for sale. Wells Fargo was a mortgagee on the house and a co-loss payee on insurance proceeds that were paid on Chadwick’s homeowner’s claim.

(2) In August 2008, Gunzl filed a *pro se* complaint against Chadwick, DeAngelis, Lions and Wells Fargo, “individually and jointly,” for breach of contract, quantum meruit, and a mechanic’s lien. At a June 1, 2009 hearing, the Superior Court dismissed Gunzl’s complaint as to “all defendants” and granted summary judgment to Wells Fargo and Lions. By order dated July 9, 2009, the Superior Court denied Gunzl’s motion for reargument and denied Wells Fargo’s and Lions’ requests for attorney’s fees.

(3) Gunzl filed an appeal from the summary disposition of his complaint and the denial of reargument. Wells Fargo filed a cross-appeal from the denial of attorney’s fees. Following the parties’ submissions, we remanded this case to the

Superior Court for clarification of the decisions on appeal.² With the return of the case from remand, and the filing of a supplemental opening brief by Gunzl, the case is before us for decision.³

(4) The Court reviews *de novo* a dismissal for lack of personal jurisdiction based on improper service⁴ and for failure to state a claim upon which relief may be granted.⁵ On such a dismissal “we must determine whether the plaintiff would be entitled to recover under any reasonably conceivable set of circumstances susceptible of proof under the complaint.”⁶

(5) The Court also reviews *de novo* a ruling on a motion for summary judgment.⁷ On a motion for summary judgment, we must determine whether, viewing the facts in the light most favorable to the nonmoving party, the moving party has demonstrated that there are no material issues of fact in dispute and that the moving party is entitled to judgment as a matter of law.⁸

² The March 3, 2010 remand order asked the Superior Court to give its rationale for the July 9, 2009 denial of attorney’s fees and to clarify whether the June 1, 2009 dismissal as to “all defendants” was intended to include DeAngelis.

³ Nothing further was filed by the cross-appellant/appellees.

⁴ *AeroGlobal Capital Mgmt. v. Cirius Indus.*, 871 A.2d 428, 437 (Del. 2005).

⁵ *Ramirez v. Murdick*, 948 A.2d 395, 399 (Del. 2008).

⁶ *Haskins v. Kay*, 2008 WL 5227187 (Del. Supr.) (citing *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978)).

⁷ *Id.*

⁸ *Fletcher v. City of Wilmington*, 2006 WL 2335237 (Del. Supr.) (citing *Merrill v. Crothall-American, Inc.*, 606 A.2d 96, 99 (Del. 1992)).

(6) Applying these legal precepts to this case, we agree that Gunzl's complaint was properly dismissed in its entirety as to Chadwick and Lions for the reasons stated by the Superior Court at the June 1, 2009 hearing.⁹ Similarly, for the reasons stated by the Superior Court at the same hearing, we agree that Wells Fargo was entitled to the dismissal of Gunzl's breach of contract and mechanic's lien claims as well as the entry of summary judgment on those claims.¹⁰

(7) We do not agree, however, with the Superior Court's summary disposition of Gunzl's quantum meruit claim against Wells Fargo for certain insurance proceeds.¹¹ On the record before us,¹² including Wells Fargo's motion

⁹ The complaint was dismissed as to Chadwick for lack of service. The complaint was dismissed and summary judgment entered on behalf of Lions on the basis that she was, at most, an agent of disclosed principals, and that no material facts as to Lions were in dispute.

¹⁰ The breach of contract claim was dismissed in the absence of an allegation that Gunzl had entered into any contract with Wells Fargo. The mechanic's lien claim was dismissed for Gunzl's failure to comply with the governing statute.

¹¹ Gunzl claims that Wells Fargo is holding insurance proceeds that Chadwick's homeowner's insurer made payable to him as a co-loss payee.

¹² The Superior Court record as electronically transmitted appears to be missing documents that were conventionally filed by Gunzl over the course of the trial court proceedings.

for summary judgment,¹³ and the parties' submissions on appeal,¹⁴ "it seems desirable to inquire more thoroughly into the facts [of Gunzl's claim for insurance proceeds] to clarify the application of law to the circumstances."¹⁵ Accordingly, we will affirm the Superior Court's judgment in part and reverse in part and remand this matter for further proceedings.

NOW, THEREFORE IT IS ORDERED that the judgment of the Superior Court dismissing Gunzl's quantum meruit claim against Wells Fargo for certain insurance proceeds is REVERSED and this matter is REMANDED for further proceedings. In all other aspects, the judgment of the Superior Court, including the

¹³ In its motion for summary judgment, Wells Fargo stated:

Wells Fargo believes, but cannot yet assert under oath, that the check to which [Gunzl] refers was an insurance check in which [Gunzl] did not have any interest. . . . It is unnecessary for the [Superior] Court to resolve this question, however, until [Gunzl] amends the Complaint to state a cause of action associated with this disjointed fact.

When ruling on the claim at the June 1 hearing, the Superior Court stated:

I note also that [Gunzl] alleges that Wells Fargo has cashed a check without Mr. Gunzl's signature in that that is grand larceny. Well, apart from the fact we have no crime labeled, quote, grand larceny, unquote, anywhere in the Delaware Code, it's not at all apparent to the Court what breach of contract claim that somehow relates to.

Hr'g Tr. at 12 (June 1, 2009).

¹⁴ In the interest of justice, and for the limited purpose of considering Gunzl's opposition to summary judgment, we have drawn reasonable inferences from the documents appended to Gunzl's briefs notwithstanding that some of those documents may not be in the record.

¹⁵ *Ebersole v. Lowengrub*, 180 A.2d 467, 468-69 (Del. 1962).

Superior Court's denial of attorney's fees, is AFFIRMED. Wells Fargo's request for attorney's fees on appeal is DENIED.¹⁶

BY THE COURT:

/s/ Carolyn Berger
Justice

¹⁶ In its brief filed on cross-appeal, Wells Fargo requested "attorneys' fees and costs in connection with this appeal."