

IN THE SUPREME COURT OF THE STATE OF DELAWARE

NORMAN A. ABRAMS, JR.,	§
and PATRICIA G. ABRAMS,	§
	§
Defendants Below,	§
Appellants/Cross	§
Appellees,	§ No. 92, 1999
	§
v.	§ Court Below: Superior Court
	§ of the State of Delaware in and
STANLEY G. HOBBS and	§ for New Castle County
JOHN E. MELVIN,	§ C.A. No. 97L-01-013
	§
Plaintiffs Below,	§
Appellees/Cross	§
Appellees,	§
	§
and	§
	§
RANDY SPENCE,	§
	§
Defendant Below,	§
Appellee/Cross	§
Appellant.	§

Submitted: September 26, 2000  
Decided: October 2, 2000

Before WALSH, HOLLAND, and STEELE, Justices.

ORDER

This 2<sup>nd</sup> day of October 2000, upon consideration of the briefs of the parties, we conclude that this matter should be affirmed on the basis of the Superior Court's bench ruling following trial in this matter on February 5, 1999. The Superior Court's determination that the appellants had been unjustly enriched was legally correct and

supported by the evidence. In view of appellant, Norman Abrams' admitted misconduct in the handling of construction funds, the Superior Court was fully justified in resolving issues of credibility against appellants. We further conclude that the Superior Court did not err in fixing the unjust enrichment award based on the contract price.

(2) With respect to the cross-appeal of appellee, Randy Spence, concerning the refusal of the trial court to impose sanctions for appellants' failure to participate in the arbitration process, we review that ruling under an abuse of discretion standard. We find no basis for finding an abuse of discretion in this case.

(3) While we affirm the decision of the trial court, we note the Superior Court's admonition, during trial, directed to appellants' counsel concerning his conduct in permitting settlement of the construction mortgage in this case without assuring that liens and/or construction claims, including that of the appellees, had been satisfied or otherwise adjusted in accordance with the loan agreement. It is unclear from the present record precisely what conduct appellants' then counsel engaged in but the conduct was sufficient to cause the trial court to take specific notice of it and caution counsel against repeating it. We share the trial court's concern and, under the circumstances, we believe that further investigation of counsel's conduct is warranted.

Accordingly, we refer the matter to the Office of Disciplinary Counsel for investigation of appellants' trial counsel in connection with the closing of the

construction mortgage settlement.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court  
be, and the same hereby is,

AFFIRMED.

BY THE COURT:

s/Joseph T. Walsh  
Justice