

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE AT NASHVILLE

FORREST CONSTRUCTION, INC.)
)
Plaintiff,)
)
and)
)
JAMES L. LAUGHLIN, II AND)
DEBBIE LAUGHLIN)
)
Intervening Plaintiffs)
)
v.)
)
THE CINCINNATI INSURANCE)
COMPANY,)
)
Defendant.)

No. 3:09-cv-01036

PROPOSED FINAL JUDGMENT BY JAMES AND DEBBIE LAUGHLIN

COMES NOW James L. Laughlin, II, and Debbie Laughlin, by and through their undersigned counsel, and submit the following proposed final judgment:

The defendant, Cincinnati Insurance Company, through its Answer to the Laughlins’ complaint, pretrial order, and proposed findings of fact and conclusions of law, have admitted that Cincinnati Insurance Company and Plaintiff Forrest Construction, Inc. were parties to a contract of commercial liability insurance under which Defendant agreed to defend and indemnify Plaintiff from certain claims, suits, and liabilities (the “Policy”). Forrest Construction was engaged to construct a residence for Plaintiff James L. Laughlin, II, and wife, Debbie Laughlin, located at 1007 Blakefield Drive, Brentwood (Williamson County), TN 37027 (the “Project”). The Project resulted in litigation between Plaintiff Forrest Construction and Plaintiffs James L. Laughlin, II and Debbie

Laughlin, regarding claims arising during the Policy period (the “Tennessee state court litigation”).

In addition, this Court has found that Forrest Construction timely notified the Defendant of the claims against it, and the Defendant refused to provide a defense or coverage for the claims at issue. (Dkt # 47). The Tennessee state court litigation between Plaintiff Forrest Construction and Plaintiffs James L. Laughlin, II and Debbie Laughlin has now concluded, resulting in a final judgment against Plaintiff Forrest Construction in favor of Plaintiffs James L. Laughlin, II and Debbie Laughlin, in the amount of \$168,624.49, plus post-judgment interest accruing at the rate of 10% per annum (the “Judgment”). The claims for which liability was adjudged against Plaintiff Forrest Construction trigger coverage under the Policy, and, as a result, Plaintiff Forrest Construction is entitled to indemnity from Defendant for the judgment. As third-party beneficiary of the Policy, Plaintiffs James L. Laughlin, II, and Debbie Laughlin are entitled to proceeds from Forrest Construction’s causes of action asserted against the Defendant in this cause.

The Defendant materially breached its obligations under the Policy by refusing to defend Plaintiff Forrest Construction Inc. in the Tennessee state court litigation, and for failing to indemnify Plaintiff Forrest Construction Inc. for the judgment against it. As a result of the Defendant’s breaches of its contract with Plaintiff Forrest Construction, Plaintiffs James L. Laughlin, II, and Debbie Laughlin have been damaged in the amount of \$168,624.49, not including post-judgment interest under state law and the costs of this action.

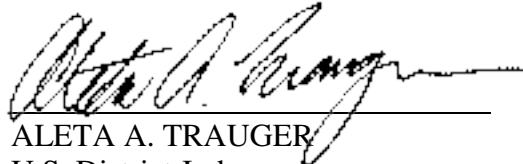
The Laughlins and Cincinnati Insurance have stipulated that according to the trial court order dated September 20, 2010 as to damages, the amount of damages owed to the Laughlins is \$168,624.49, plus post-judgment interest accruing at a rate of 10% a year from the date of June 2, 2008. This amount, including the accrued post-judgment interest of \$55,114.95, totals \$223,739.44 as of September 6, 2011, and this amount has been stipulated by Cincinnati and the Laughlins. (See Laughlins' stipulation No. 1). The Laughlins and Cincinnati Insurance have stipulated that this total of \$223,739.44 covers three components of the damages award:

- a. The cost of the repairs already done in the Laughlins' home after the initial construction by Forrest Construction, Inc. - \$51,637.52;
 - b. The amount awarded to cover the costs of repairing the patio and foundation walls - \$98,200.00;
 - c. And, the discretionary costs previously awarded by the court - \$18,786.97.
- (See Laughlins' stipulation No. 1).

The Laughlins and Cincinnati Insurance have stipulated that 100% of the damages detailed above totaling \$223,739.44 are damages to property arising from the faulty construction of the Laughlins' home by Forrest Construction and its subcontractors. (Id). The Laughlins and Cincinnati Insurance also stipulate that the \$223,739.44 in damages are not barred by the "your work" exclusion in the insurance policy. Rather, the subcontractor exception under the case of The Travelers Indemnity Company of America v. Moore & Associates, Inc., 216 S.W.3d 302, 309-10 (Tenn. 2007) applies, and all of the above work was done by subcontractors of Forrest Construction. (See Laughlins' Stipulation No. 1).

This Court awards a judgment to the Laughlins against Cincinnati Insurance in the amount of \$223,739.44, plus court costs and discretionary costs. Post-Judgment interest shall accrue on this judgment according to applicable law.

It is so ordered on this 6th day of September 2011.


Aleta A. TRAUGER
U.S. District Judge

Respectfully submitted,

/s/ Donald Capparella
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CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of September, 2011, a copy of the foregoing document was sent electronically via the Court's CM/ECF system to the following:

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