

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

KENT, SC.

SUPERIOR COURT

[Filed: July 24, 2015]

A. SALVATI MASONRY, INC.

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v.

**C.A. Nos. KM-2013-1278
KC-2014-0773**

**MICHAEL ANDREOZZI AND
AMY ANDREOZZI**

DECISION

RUBINE, J. These consolidated cases concern improvements made to property located at 6 Old Farm Rd., East Greenwich, Rhode Island (the Property). The Property is owned by Defendants Michael and Amy Andreozzi (the Owners or the Andreozzis). The improvements were performed in two phases. The first phase involved construction of a new residence; the second phase involved landscaping and associated construction on-site, including the construction of a patio and pool in the area located behind the residence. The Plaintiff A. Salvati Masonry, Inc. (Salvati) performed masonry work in both phases. However, this litigation primarily involves work performed by Salvati, as subcontractor to the general contractor Pariseault Builders, Inc. (Pariseault) in Phase 2 of the project, more particularly, an outdoor stone patio. The parties have stipulated to many of the facts concerning Salvati’s masonry work at the Property, which stipulation is incorporated in these findings of fact by reference.

The work associated with Phase 2, including landscaping and associated hardscape, was to be performed by Pariseault in accordance with plans and specifications prepared by John Carter (Carter), a landscape architect. From the outset, it was clear that Pariseault intended to complete the masonry work by hiring a subcontractor. In order to engage a masonry subcontractor, Pariseault provided copies of the Carter plans and specifications to several

masonry contractors, and solicited bids from them to complete the masonry work, as called for by the plans. The plans initially forwarded to the potential masonry subcontractors included a specific reference to construction of a stone patio. However, there were some changes made to plans after they were originally distributed for bid. For instance, the type of stone to be used for the patio surface was changed from the original limestone called for in the original plans to a product called Teco-block, a manufactured stone. After receiving the original plans, Salvati prepared its bid as the masonry subcontractor. Pariseault, in making a decision as to which bid to accept, invited Michael Andreozzi (Mr. Andreozzi) to participate in the decision. However, when the decision was made to hire Salvati as the masonry subcontractor, that decision was exclusively made by Pariseault as the general contractor. Salvati's contractual relationship was exclusively with Pariseault, and there is no evidence that Salvati ever entered into a binding contract directly with the Owners.

However, Mr. Andreozzi did send Salvati an e-mail in which he acknowledged responsibility for any work to be performed by Salvati at Mr. Andreozzi's request, outside the scope of the original subcontract. The November 6, 2013 e-mail stated as follows:

“I knew that any extra work that was done on the house would be contracted directly with Keith [Salvati] and myself outside of what he had to finish for the original \$135,000 bid and the \$88,845 bid.”

However, there was no testimony or exhibit which set forth with specificity any new items, outside the bid/subcontract for which Mr. Andreozzi was responsible, nor any price or scope of work for such items. A contract is incomplete and unenforceable if there has been no agreement on scope or price. Joseph M. Perillo, Corbin on Contracts, Vol. 1 § 4.1 at 525 (“A court cannot enforce a contract unless it can determine what it is. It is not enough that the parties think that they have made a contract. They must have expressed their intentions in a manner that is capable

of being understood. It is not even enough that they have actually agreed if their expressions, when interpreted in the light of accompanying factors and circumstances, are not such that the court can determine what the terms of that agreement are. Vagueness of expression, indefiniteness and uncertainty as to any of the essential terms of an agreement have often been held to prevent the creation of an enforceable contract.”). See also Haviland v. Simmons, 45 A.3d 1246, 1258 (R.I. 2012) (In order for a valid contract to be formed, each party must have the intent to be bound by the terms of an agreement.).

The Owners apparently¹ entered into a contract with Pariseault for Pariseault to complete all work at the residence as general contractor. During the course of Salvati’s performance of the masonry work as subcontractor, Salvati would receive periodic payments from Pariseault, which payments were in amounts identified in the original bid. As of the spring of 2013, Salvati had not yet completed all masonry work identified in his bid and subcontract with Pariseault. As of the winter of 2013, the parties stipulated as follows: “[I]t was agreed between the Owners and Pariseault that Pariseault would “withdraw”² as general contractor; and for future masonry work, Salvati would work directly for the Owners.”

¹ The use of the word “apparently” is a result of the contract between the Owners and Pariseault which was never marked as a full exhibit at trial. From the testimony of Mr. Andreozzi and Thomas Rezendes (a Pariseault executive), the Court finds circumstantially that such a contract exists.

² The Court questions the legal viability of a general contractor’s unilateral withdrawal, prior to the completion of its contract with the owners. Until the general contractor completes all of its obligations under the contract with the owners, including those portions to be performed by subcontractors, the general contractor remains legally obligated to perform the contract, including any supervision of subcontractors called for in its contract with the owners.

I

Contract Claims

The future masonry work to be performed by Salvati after Pariseault “withdrew” as general contractor was to include completion of the work called for in the original subcontract, as well as additional work outside the scope of the original contract, that the Andreozzis had separately arranged for Salvati to perform. At trial, Salvati introduced no evidence from which the Court could determine the scope or price charged for any additional work it performed at the direct request of the Andreozzis, or what portion of its claim in this litigation resulted from such additional work. In a letter to Salvati from Mr. Andreozzi, dated November 6, 2013, Mr. Andreozzi acknowledged that he was responsible directly to Salvati for any extra work that was done on the house beyond that called for in the original contract with Pariseault. Mr. Andreozzi also indicated that he had confirmed with Tom Rezendes, as well as with Salvati, that as of that date, Salvati had been “paid up from Pariseault” on all contract work that had been done and had been billed. If, in fact, Salvati had billed Pariseault, and was paid by Pariseault for completion of the contract work, any billing from Salvati to Mr. Andreozzi for contract work completed would have resulted in Salvati being paid twice for the contract work completed. If, in fact, Mr. Andreozzi had agreed with Salvati that Salvati was to perform masonry work at the Property for items beyond those contained in the original Salvati bid, and therefore outside the scope of Mr. Andreozzi’s contract with Pariseault, then as to those items Mr. Andreozzi would have a direct contractual commitment to pay Salvati in accordance with terms directly agreed to between Salvati and Mr. Andreozzi.

There was some testimony that Mr. Andreozzi had requested Salvati to quote a price for such additional work; Salvati, however, did not provide such a quote. Instead, Salvati had

agreed to perform such additional work on the basis of labor and materials. Nevertheless, Salvati failed to establish by a preponderance of the evidence what masonry work was completed outside the original project scope, and the amount that remained unpaid as to that work. Since the work to be performed after Pariseault's withdrawal was to include both completion of contract items, as well as performing additional work as directed by Mr. Andreozzi, there was insufficient credible evidence from which the Court could distinguish which items involved completion of the original subcontract, and which items were completed by Salvati at the direct request of Mr. Andreozzi. Since Plaintiff bears the burden of proof to establish the amount of the claim against Mr. Andreozzi, Salvati cannot obtain judgment against Mr. Andreozzi. At most, Mr. Andreozzi could be liable only for work outside the original subcontract in accordance with Mr. Andreozzi's letter of November 6, 2013. Salvati acknowledged that it had been paid in full by Pariseault, and executed a lien release on February 1, 2013. Only Pariseault is responsible for payment to Salvati for items included in the subcontract.

For the reasons set forth above, Salvati has failed to prove its contract/book account³ claims against the Andreozzis. Judgment shall enter for Defendants in KC-2014-0773.

³ A claim for book account may also be considered a claim for breach of contract. Book account is defined as "a detailed statement of debits and credits giving a history of an enterprise's business transactions." Black's Law Dictionary 18 (7th edition 1999). In Corey v. Miller, 12 R.I. 337 (R.I. 1879), the Supreme Court characterized book account as "an action of assumpsit due by book account to recover balance due by book account." Assumpsit is a common law form of action for breach of "an express or implied promise, not under seal, by which one person undertakes to do some act or pay something to another," and is coextensive with a claim for breach of contract. Black's Law Dictionary 120 (7th Ed. 1999).

II

Mechanics Lien Claim

As to the mechanics lien claim, the parties have stipulated that Salvati is entitled to a mechanics lien on the Property for “unpaid work.” However, the parties have not stipulated to the amount due and owing from the Andreozzis for work performed by Salvati, beyond the scope of the original contract. As to work performed by Salvati at the Property that was called for in the original subcontract, Salvati acknowledged it was paid in full by Pariseault. Moreover, the lien release, dated February 1, 2013, is fatal to the mechanics lien claim against the Property. Accordingly, judgment shall enter for Defendants in KM-2013-1278. The mechanics lien claim contained therein is denied and dismissed.

III

Conclusion

As Salvati failed to sufficiently establish what work was done for Mr. Andreozzi outside of the subcontract, he has not met his burden of proof that would entitle him to judgment for breach of contract. Moreover, as Salvati failed to demonstrate that payments for any work performed remain due and owing, he has not met his burden to establish a judgment in his favor for a mechanics lien. There being no other claims against Defendants,⁴ judgment shall enter for Defendants on all claims asserted by Salvati.

⁴ Compare S. Cnty. Post & Beam, Inc. v. McMahon et al., Nos. 2014-24-Appeal, 2014-25-Appeal, 2015 WL 3534116 (R.I. June 5, 2015) (holding that subcontractor was entitled to recovery under theory of *quantum meruit*). Unlike the subcontractor in S. Cnty. Post & Beam, Salvati made no claim for unjust enrichment or *quantum meruit*. Moreover, even if Salvati had included a claim for unjust enrichment or *quantum meruit*, he failed to sufficiently demonstrate the benefit that he conferred without receiving value. See Dellagrotta v. Dellagrotta, 873 A.2d 101, 113 (R.I. 2005) (“To recover for unjust enrichment, a claimant must prove: (1) that he or she conferred a benefit upon the party from whom relief is sought; (2) that the recipient appreciated the benefit; and (3) that the recipient accepted the benefit under such circumstances that it would be inequitable for the recipient to retain the benefit without paying the value thereof.”) (interior quotation marks and citation omitted); S. Cnty. Post & Beam, 2015 WL 3534116, at *5 (“[T]o recover on a claim for quantum meruit, a plaintiff must prove the same three elements as in a claim for unjust enrichment.”). See also Emond Plumbing & Heating, Inc. v. BankNewport, 105 A.3d 85, 90 (R.I. 2014) (quoting R & B Elec. Co., Inc. v. Amco Constr. Co., 471 A.2d 1351, 1356 (R.I. 1984)) (“Simply conferring a benefit upon a landowner by a subcontractor is not sufficient to establish a claim for unjust enrichment.”).



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: A. Salvati Masonry, Inc. v. Michael Andreozzi, et al.

CASE NO: KM 2013-1278; KC 2014-0773

COURT: Kent County Superior Court

DATE DECISION FILED: July 24, 2015

JUSTICE/MAGISTRATE: Rubine, J.

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