

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

BATTA ENVIRONMENTAL)
ASSOCIATES, INC., A Delaware)
corporation,)
)
Plaintiff,)
)
v.)
)
B&B MANAGEMENT, INC.,)
a Delaware corporation,)
)
Defendant.)

C.A. No. 1999-05-328

Submitted: September 20, 2002
Decided: January 9, 2003

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ORDER
ON DEFENDANT'S MOTION
FOR SUMMARY JUDGEMENT

This matter is before the Court on B&B Management, Inc.'s (hereinafter "B&B") motion for summary judgment. The motion moves the Court pursuant to Civil Rule 56(g) for an order on the basis there are no issues of material fact in dispute because: 1) there is no contract between Batta and B&B to

pay for the environmental services; 2) there is no privity of contract between Batta and B&B for the alleged environmental services; 3) the affidavit of Norman N. Aerenson, Esquire, a principal in B&B makes clear it was someone other than B&B which hired Batta; and 4) there is no quantum meruit basis for Batta to recover on its claim against B&B, since B&B did not benefit from any services.

These proceedings were commenced by Batta Environmental Associates, Inc.'s (hereinafter "Batta") to recover compensation for services allegedly rendered pursuant to a contract between Batta and B&B. In its complaint, Batta alleges it was retained by B&B to perform engineering services on one of B&B Construction's projects. The agreed upon price of \$17,000 was to be deposited with Batta's attorneys and to be released upon completion of the work. In its answer, B&B denies it was liable for any contractual amount and argues that any amounts which may be due and owing is against the owner of the property. In its amended answer filed March 25, 2002, B&B also asserts no privity of contract, failure of plaintiff to join an indispensable party, i.e., the Estate of Michael DiSabatino, lack of consideration and lack of a written agreement between the parties to this proceeding.

In response to the motion, Batta alleges that it began negotiations with the alleged owner of the site Mike DiSabatino, but when he began experiencing financial difficulties, B&B which held the mortgage on the property assumed defacto control. As a result of this difficulty, there was a meeting on

October 2, 1996 with Mike DiSabatino, Norman Aerenon and Robert Aerenon to discuss the services that Batta was to provide.

Further, Batta argues that (1) B&B assumed *de facto* control of work site when the property owner defaulted on the mortgage, (2) there was a written project proposal and escrow agreement sent to B&B for signature, (3) B&B through its principal Robert Aerenon, orally instructed Plaintiff to commence the work even when the agreed escrow deposit was not yet made, (4) there was a “contract by silence” created pursuant to Restatement of Contract 2nd § 69, and (5) B&B terminated Batta’s contract and replaced Batta with someone else when Batta informed B&B of a cost increase for services to be performed.

B&B filed a reply motion to Batta’s opposing motion reasserting its denial of any contractual relation between B&B and the Battas, and refuting Batta’s averment of the existence of a “contract by silence” on the ground that Batta’s act of not depositing funds into the escrow had prevented the formation of the alleged contract.

A motion for summary judgment requires the Court to examine the record to determine whether any genuine issues of material fact exist. If after viewing the record in the light most favorable to the nonmoving party, the Court finds no genuine issue of material fact, summary judgment is appropriate. However, summary judgment may not be granted when the record indicates a material fact is in dispute or it seems from the record desirable to inquire more thoroughly into the facts, in order to clarify the circumstances. *Figgs v. Bellevue*

Holding, Co., Del. Super. 652 A.2d 1084 (1994). In essence, the Court will grant summary judgment only if the pleadings and the record show that there are no genuine issues as to any material fact and the moving party is entitled to judgment as a matter of law. *Browning-Ferris v. Rockford Enterprises*, Del. Super., 642 A.2d 820 (1993).

In these proceedings, Batta seeks to collect allegedly for services rendered on a property owned by B&B. The dispute centers upon whether the services were contracted by the site's former owner Mike DiSabatino or B&B. In its motion, B&B argues that there is no executed contract for services between Batta and it did not receive the benefit of any services. Therefore, Batta claims for compensation has no legal basis. Further, it argues that one of the conditions of the contract negotiations was a required deposit with Batta's attorneys, since there was no deposit, there was no consideration for the contract to be legally formed. In making those assertions, B&B relies upon the affidavit of Norman N. Aerenson.

In his affidavit, Aerenson avers that Batta never commenced to cleanup the site. Moreover, before any of the principals in B&B met with Batta, they had been hired by Mike DiSabatino. However, in a Batta response to the motion attached as an exhibit, is a letter dated November 4, 1996 to Norman Aerenson which set forth all of the bidders which Batta received for this project. Thereafter, there is a letter of Aerenson's dated January 2, 1997 to the Delaware Department of Natural Resources and Environmental Control, Division of Air and

Water Management advising that one of the bidders Batta obtained was awarded the contract.

While these chronology of events may or may not be significant, it does raise issues of facts which require resolution before judgment is appropriate. In essence, when the entire record is reviewed in the light most favorable to the nonmoving party, Batta, I am unable to conclude as a matter of law there are no issues of material fact in dispute.

Accordingly, B&B's motion for summary judgment is Denied.

SO ORDERED this 9th day of January, 2003

Alex J. Smalls
Chief Judge