

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

C&C DRYWALL CONTRACTOR,	:	
INC., a Delaware Corporation,	:	C.A. No: 05L-07-015 (RBY)
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
MILFORD LODGING, LLC, a	:	
Delaware Corporation, and	:	
HHK CONSTRUCTION, INC.,	:	
a Minnesota Corporation,	:	
STEPHEN G. SANNUTI, a sole	:	
proprietor,	:	
	:	
Defendants.	:	

Submitted: October 6, 2009
Decided: January 13, 2010

Upon Consideration of Defendant Milford Lodging, LLC's
Motion for Summary Judgment
DENIED
and
Defendant HHK Construction Inc.'s
Motion for Summary Judgment
DENIED IN PART, GRANTED IN PART

OPINION AND ORDER

Young, J.

Donald L. Logan, Esq., Logan & Associates, LLC, New Castle, Delaware for Plaintiff.

Ellen J. Feinberg, Esq., and Matthew S. Lindauer, Esq., Smith, O'Donnell, Feinberg & Berl, LLP, Lewes, Delaware, for Defendant Milford Lodging, LLC.

Bradley S. Eaby, Esq., The Eaby Firm, LLC, Dover, Delaware for Defendant HHK Construction, Inc.

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SUMMARY

Defendant Milford Lodging, LLC (“Milford Lodging”) and Defendant HHK Construction, Inc. (“HHK”) each move this Court to grant summary judgment in its favor. The Plaintiff, C & C Drywall Contractor, Inc. (“C & C”), instituted a mechanics’ lien action against Defendants Milford Lodging, HHK, and Stephen G. Sannuti (“Sannuti”). Milford Lodging asserts that HHK admitted liability for payment to C & C, therefore obviating its responsibility to pay C & C. HHK denies liability, and argues that neither C & C nor Milford can maintain any cause of action against it. Because Milford Lodging’s status as owner of the subject property affords only limited legal protection, Milford Lodging’s Motion for Summary Judgment is **DENIED**. Because factual issues remain with regard to HHK’s liability, HHK’s Motion for Summary Judgment is **DENIED** in part, and **GRANTED** in part.

FACTS

_____The factual background of this case is largely undisputed. Therefore, the facts below are taken directly from the non-disputed aspects of the Complaint and the parties’ pretrial stipulations.

_____On May 24, 2004, Defendant Milford Lodging entered into a contract with HHK (the “Milford-HHK Contract”) for the construction of an AmericInn Hotel in Milford, Delaware (the “Project”). Under the terms of the Milford-HHK contract, HHK was to act as the general contractor of the Project. The total contract price was \$2,908,810.00.

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On August 12, 2004, HHK subcontracted with Sannuti, who, in turn, later subcontracted with C & C to provide labor, materials, and equipment for drywall installation on the Project. Although HHK's subcontract with Sannuti was written, Sannuti's subcontract with C & C was oral. It appears to be undisputed that C & C completed the drywall installation in accordance with the Project specifications, and performed the work in a satisfactory, workmanlike manner. C & C invoiced Sannuti, but never received payment. C & C is owed \$36,707.00.

C & C obtained a default judgment against Sannuti on May 18, 2006. Due to Sannuti's absconsion, C & C has not recovered any money from this judgment. C & C now seeks to establish an *in rem* mechanics' lien against all the parties as well as the subject property, the Project. Additionally, C & C pursues *in personam* damages from both Milford Lodging and HHK under a theory of *quantum meruit*. Milford Lodging seeks indemnification from HHK, if it is found liable to C & C.

All parties agree that HHK received full payment from Milford Lodging. Milford Lodging moves for summary judgment based on this fact and an alleged assumption of liability by HHK to C & C. Milford Lodging also relies on an alleged personal guaranty from Lawrence Waldron, the president of HHK ("Waldron"), to support its Motion. HHK contends that the personal guaranty from Waldron only guaranteed payment for materials. Furthermore, HHK insists it paid all required sums to Sannuti. C & C challenges this assertion.

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STANDARD OF REVIEW

When considering a motion for summary judgment, the Court must determine if there are genuine issues of material fact.¹ If there are none, and the moving party is entitled to judgment as a matter of law, summary judgment is appropriate.² If, when considering the facts in a light most favorable to Plaintiff, the Court determines that no reasonable trier of fact would find in favor of Defendant, summary judgment is also appropriate.³ “In weighing a motion for summary judgment under Rule 56, the Court must examine the present record, including pleadings, depositions, admissions, affidavits, and answers to interrogatories.”⁴

DISCUSSION

An examination of the record indicates that Defendants’ Motions for Summary Judgment raise three questions for decision: (1) in a commercial mechanics’ lien action, does full payment from a property owner to a general contractor relieve the property owner from liability to an unpaid minor subcontractor; (2) may a *quantum meruit* claim be asserted against a general contractor by a minor subcontractor where

¹ Super. Ct. Civ. R. 56©).

² *Id.*

³ *Matas v. Green*, 171 A.2d 916, 918 (Del. Super. June 7, 1961).

⁴ *Oliver B. Cannon & Sons, Inc. v. Dorr-Oliver Inc.*, 213 A.2d 322, 325 (Del. Super. Ct. Sept. 18, 1973) (citing *Continental Cas. Co. v. Ocean Accident & Guarantee Corp.*, 209 A.2d 743 (Del. Super. Ct. Apr. 22, 1965)).

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the general contractor purports to have paid the major subcontractor; and (3) is an owner, who has paid all required sums to a general contractor, entitled to indemnification from that general contractor if found liable to a minor subcontractor? These questions will be answered by examining them in their respective legal contexts.

A. The Mechanics' Lien Action

The purpose of the mechanics' lien statute is salutary.⁵ Specifically, it

protects, by means of a lien on the land and buildings, the interests of persons furnishing materials for the erection or repair of buildings under a contract with the owner or his agent or to a contractor who had contracted with the owner or his agent for the erection or repair of the buildings.⁶

It affords suppliers of labor and material for construction and property improvements an exceptionally powerful remedy for unpaid invoices.⁷ "A resulting judgment lien relates back in time to when work first began."⁸ "Property may be sold at sheriff's sale to pay for work and materials supplied by a subcontractor with whom the owner

⁵ *J.O.B. Constr. Co. v. Jennings & Churella Serv., Inc.*, 2001 WL 9855106, at *2 (Del. Super. Ct. Aug. 9, 2001).

⁶ *J.G. Custis Co v. Spicer*, 95 A. 239, 240 (Del. Super. Ct. June 14, 1915).

⁷ *Id.*

⁸ *Id.* (citing 25 Del. C. § 2718).

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may not have dealt.”⁹ “Not only may titleholders forfeit ownership[,] but other interested parties can be prejudiced as well.”¹⁰ Moreover, in the commercial context, unlike in the residential context, no statutory defense exists for property owners who, in good faith, make either full or final payment to a contractor.¹¹

Against this judicial and statutory background, the Court considers Milford Lodging’s Motion. Milford Lodging argues that there is no genuine issue of material fact as to who is responsible to pay plaintiff. Milford Lodging bases this position on HHK’s apparent admissions. Milford Lodging, in its Answer and Crossclaim, alleged that “any monies owed to Plaintiff are the responsibility and obligation of Defendant, [HHK].” HHK affirmatively responded to this allegation in its Answer. Additionally, Milford Lodging relies on the personal guaranty from Waldron as further evidence of HHK’s obligation to pay C & C.

HHK denies liability to C & C or Milford Lodging. HHK claims it, by scrivener’s error, mistakenly admitted the obligation to C & C in its Answer to C & C’s Crossclaim. HHK also challenges Milford Lodging’s reliance on Waldron’s

⁹ *J.O.B. Constr. Co.*, 2001 WL 9855106 at *2 (citing 25 *Del. C.* § 2719).

¹⁰ *Id.* (certain first mortgage holders were given protection in this regard under 25 *Del. C.* §§ 2712(b)(11); 2718(a)).

¹¹ 25 *Del. C.* § 2707 offers statutory protection to residential home owners who make good faith payment to a contractor. It provides, in relevant part,

“[n]o lien shall be obtained under this chapter upon the lands, structure, or both, of any owner which is used solely as a residence of said owner when the owner has made either full or final payment to the contractor, in good faith, with whom he contracted for the construction, erection, building, improvement, alteration[,] or repair thereof.”

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personal guaranty. HHK asserts that Waldron's guaranty merely constitutes a guaranty for materials.

The Court is compelled to deny Milford Lodging's Motion. Milford Lodging has a point that, prior to HHK's withdrawal of its admission, arguably there was no dispute with regard to liability. HHK appeared to have assumed responsibility for payment to C & C. HHK's amendment to its Answer, however, significantly changed Milford Lodging's legal bastion. By retracting the "inculpatory" statements from its Answer, HHK removed the "admitted" legal protection for Milford Lodging.

25 *Del. C.* § 2702 specifically provides that subcontractors have recourse, in the form of a lien, against the owner of a property. Furthermore, as language from an early mechanics' lien case makes clear,

[t]he materials being furnished for the building, and the owner being the one benefitted [sic] thereby, it [is] only natural that, in the event of the owner's failure to see that persons furnishing materials used in the building, to [wit] a contractor who had contracted with the owner for the erection or repair of the building were paid for the materials, the owner should be made liable for such debts, and the materialmen given the right to lien the building for the amount of the materials furnished.¹²

As the property owner, Milford Lodging remains financially responsible to unpaid subcontractors. Therefore, the first legal query is answered in the negative. Absent procurement of the proper releases, full payment by an owner to a contractor

¹² *J.G. Custis Co.*, 95 A. at 240.

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does not relieve the owner from liability to an unpaid minor subcontractor in the commercial mechanics' lien context. Therefore, Milford Lodging's Motion for Summary Judgment is **DENIED**.

B. The *Quantum Meruit* Theory

“In construction litigation, *quantum meruit* is a well-known, and even preferred remedy.”¹³ “*Quantum meruit* literally means ‘as much as he deserves.’”¹⁴ “It is a quasi-contractual remedy by which a plaintiff, in the absence of an express agreement, can recover the reasonable value of the materials or services it rendered to the defendant.”¹⁵ “If there is an enforceable contract between the parties, *quantum meruit* recovery is inapplicable.”¹⁶ To advance a successful theory of *quantum meruit*, a plaintiff must establish that “the services were performed with an expectation that the recipient of the benefit would pay for them, and that the services were performed, absent a promise to pay, under circumstances which should have put

¹³ *Middle States Drywall, Inc. v. DMS Properties-First, Inc., et al.*, 1996 WL 453418, at *10 (Del. Super. Ct. May 18, 1996) (citing Steven G.M. Stein, Construction Law ¶ 11.03[2][e] (1993)).

¹⁴ *Id.* (citing *Marta v. Nepa*, 385 A.2d 727, 730 (Del. 1978)).

¹⁵ *Id.* (citing *Marta*, 385 A.2d at 729).

¹⁶ *Id.* (citing *Stoltz Realty Co. v. Paul*, Del. Super., C.A. No. 94C-02-208, Del Pesco, J. (Sept. 20, 1995) (Mem. Op. at 20)).

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the recipient of the benefit upon notice that the plaintiff expected to be paid.”¹⁷

C & C seeks recovery under a theory of *quantum meruit* from both Milford Lodging and HHK. Defendants Milford Lodging and HHK do not dispute that C&C provided the materials and services it claims to have provided. Both defendants do, however, challenge C & C’s assertions that they should both be found liable under this theory. It is important to note that neither Milford Lodging nor HHK entered into an express contract with C & C.

HHK’s primary contention is that, through its alleged full payment to Sannuti, it satisfied all financial obligations to C & C. Relying on the holding in *Griffin Dewatering Corporation v. B.W. Knox Construction Corporation*, HHK asserts that “equity should not be distorted so as to require HHK to pay twice for the same services.”¹⁸ In *Griffin*, the court was asked to determine, upon a motion for summary judgment, whether plaintiff, a minor subcontractor, was entitled to recover from the general contractor under a *quantum meruit* theory after the major subcontractor failed to pay plaintiff.¹⁹ The *Griffin* court granted summary judgment in favor of the general contractor. Basing its decision on the minor subcontractor’s failure to plead facts establishing the major subcontractor’s inability to pay, as well as the minor subcontractor’s failure to contest the general contractor’s full payment to the major

¹⁷ *Griffin Dewatering Corp. v. B.W. Knox Constr. Corp.*, 2001 WL 541476, at *7 (Del. Super. Ct. May 14, 2001) (citing *Bellanca Corp. v. Bellanca*, 169 A.2d 620, 623 (Del. 1961)).

¹⁸ Def.’s Reply Br. at 5.

¹⁹ *Griffin*, 2001 WL 541476, at *7.

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subcontractor, the court opined that

quantum meruit is a remedy rooted in equity. It is *uncontested* that [the general contractor] paid [the major subcontractor] for the work which [the major subcontractor] performed on the Project. This Court will not distort the principle of equity by forcing [the general contractor] to pay for the same service twice under one of its theories. If [plaintiff/minor subcontractor] is entitled to recovery against [the general contractor], it will not be through equity.²⁰

HHK argues that, given *Griffin*, the Court should find in its favor. However, the two factual backgrounds differ. Additionally, possible factual issues exist with regard to C & C's *prima facie* case. Hence, HHK's Motion for Summary Judgment on the *quantum meruit* claim does not prevail.

First, C & C has, in fact, pleaded Sannuti's, the major subcontractor, inability to pay. Sannuti absconded from this jurisdiction, and has not been located. C & C cannot obtain payment from an individual it cannot find. Second, C & C does contest HHK's full payment to Sannuti. Although HHK has provided evidence of wire transfers between itself and Sannuti, the documents do not specifically reference C&C, the Project at issue, or any other information relating the wire transfers to this litigation. As highlighted by C & C, HHK has not shown "on unquestioned facts" that it has paid Sannuti, and is entitled to judgment.²¹ In light of these substantial factual distinctions, the holding in *Griffin* is inapplicable, and does not govern the

²⁰ *Id.* [emphasis in original].

²¹ *Matas*, 171 A.2d at 918.

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outcome of C & C's *quantum meruit* claim. As such, HHK's reliance on this holding is misplaced, and summary judgment is inappropriate. The Court must still determine, however, whether summary judgment is appropriate on alternate grounds.

In order for a claim by C & C asserting *quantum meruit* against HHK to be valid, C & C must establish that: (1) there is no written contract between HHK and C & C, (2) Sannuti is unable to pay C & C for the work performed, (3) C & C performed the work with the expectation to be paid, and (4) HHK was on notice that C & C expected to be paid by them. In order for HHK's Motion for Summary Judgment to be granted, HHK must show that no genuine issue of material fact exists as to the failure of C & C to establish at least one of these factors. No dispute appears to exist between the parties with regard to the first three requirements. The parties, however, do not address the issue of notice in their submissions. "Therefore, the Court cannot hold conclusively that there is no genuine issue of material fact with regard to this issue."²² Accordingly, while inferentially that notice does appear to have existed, perhaps HHK can establish its absence, and pursue summary judgment on that basis at a later time. At this point, however, HHK's Motion for Summary Judgment, regarding the *quantum meruit* claim is premature, and is **DENIED**.

In any event, the answer to the second legal query of the case is in the affirmative. A minor subcontractor may maintain a *quantum meruit* claim against a general contractor where factual issues remain regarding the general contractor's full

²²*Daystar Sills, Inc. v. Anchor Investments, Inc.*, 2007 WL 1098129, at *6 (Del. Super. Ct. Apr. 12, 2007).

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payment to the major subcontractor.

The question remains, however, whether C & C, a minor unpaid subcontractor, can pursue a *quantum meruit* claim against Milford Lodging, the owner of the Project. “In Delaware, the court will not consider a *quantum meruit* claim against an owner unless the subcontractor is unable to recover under the contract between the subcontractor and the general contractor.”²³ These cases illustrate that, in order for an unpaid materialman to recover under a *quantum meruit* theory against an owner, he must first exhaust all other subordinate payment sources.

For example, in *Gilbane*, two subcontractors could not recover against a project owner, the third-party beneficiary of subcontracts with the general contractor, for the value of uncompensated work performed by the subcontractors under a *quantum meruit* claim. The *Gilbane* court opined that, while the subcontractors alleged they had not been fully compensated for their services and materials, and that Nemours “retained the benefits thereof, there [was] no allegation that they [would] be unable to recover full compensation for these services and materials from [the general contractor].”²⁴ The court would not allow recovery against the owner until all possible subordinate avenues had been exhausted.

Consequently, any determination of Milford Lodging’s liability under a theory of *quantum meruit*, would be premature at this stage in the litigation. Questions still

²³ *Daystar* 2007 WL 1098129, at *5 (Del. Super. Ct. Apr. 12, 2007). See also *Gilbane Bldg. Co. v. Nemours Foundation*, 606 F.Supp. 995, 1007 (D.Del. 1985); *Chrysler Corp. v. Airtemp Corp.*, 426 A.2d 845, 850 (Del. Super. Ct. Nov. 20, 1980).

²⁴ *Gilbane*, 606 F. Supp. at 1008.

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remain with regard to HHK's liability to C & C under a theory of *quantum meruit*. Again, if HHK is able to establish that it fully paid Sannuti, making summary judgment appropriate in HHK's favor under the holding in *Griffin*, C & C can certainly revisit its *quantum meruit* claim against Milford Lodging.

C. Indemnification

Lagrone v. American Mortell Corporation pronounced that “[i]t is extremely difficult to state any general rule or principle as to when indemnity will be allowed and when it will not.”²⁵ Nonetheless, *Lagrone* is particularly instructive on the right to indemnity.²⁶ In *Lagrone*, the court presented an in-depth analysis of indemnification. It began by stating:

[i]ndemnity in its most basic sense means reimbursement and may lie when one party discharges a liability which another rightfully should have assumed, and it is based on the principle that everyone is responsible for his or her own wrongdoing, and if another person has been compelled to pay a judgment which ought to have been paid by the wrongdoer, then the loss should be shifted to the party whose negligence or tortious acts caused the loss.²⁷

The court then outlined the three grounds upon which the right to indemnification can

²⁵ 2008 WL 4152677, at *7 (Del. Super. Ct. Sept. 4, 2008).

²⁶ 2008 WL 4152677, at *6-8.

²⁷ *Id.* (quoting 41 Am. Jur. 2d *Indemnity* § 1 (2008)) (quotes omitted).

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rest: (1) an express contract; (2) a contract implied-in-fact; or (3) equitable concepts arising from the tort theory of indemnity, i.e., indemnification implied-in-law.²⁸

____ Unlike its categorical counterparts, indemnification implied-in-law has proven to be more abstruse. Judge Bifferato, in an effort to supply the concept with tangible parameters, first articulated the prerequisites of implied indemnification in *Ianire v. University of Delaware*.²⁹ “The [c]ourt identified the following scenarios in which implied indemnification might be available:

- (1) Where the one seeking indemnity has only a derivative or vicarious liability for damage caused by the one sought to be charged;
- (2) Where the one seeking indemnity has incurred liability merely because of failure, even though negligent, to discover or prevent the misconduct of the one sought to be charged;³⁰
- (3) Where the one seeking indemnity has incurred liability because of a breach of duty owed to him by the one sought to be charged; and
- (4) Where there is an express contract between the parties containing an explicit undertaking to reimburse for liability of the character involved.”³¹

As correctly highlighted by HHK, and as evidenced by the above discussion, fact

²⁸ *Id.* (quoting 41 Am. Jur. 2d Indemnity § 2 (2008)) (quotes omitted).

²⁹ 255 A.2d 687 (Del. Super. Ct. 1969).

³⁰ Although never expressly overruled by a Delaware court, this situation was found not to be an appropriate grounds for implied indemnification in *Harden v. Allstate Ins. Co.*, 883 F. Supp. 963, 975 (D. Del. 1995).

³¹ *Ianire*, 255 A.2d at 692.

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patterns that give rise to modern indemnification are typically characterized by some type of wrongdoing or breach of duty by the culpable party.

_____Applying these guidelines to the case *sub judice*, the Court concludes that Milford Lodging is not entitled to indemnification. An inspection of the Milford-HHK contract reveals that it does not contain an indemnification clause. Consequently, Milford Lodging is not entitled to contractual indemnification, and can only proceed under an implied indemnification theory.

In order to state a valid claim for implied indemnification, Milford Lodging must proffer facts that correspond to one of the above enumerated situations. Milford Lodging has failed to do so. First, Milford Lodging's potential liability does not arise from any breach of duty, misconduct, or damage caused by HHK. Milford Lodging's liability derives from its property owner status. As the owner of the Project, Milford Lodging ultimately remains responsible for unpaid claims against the property. Milford Lodging's opportunity to insulate itself from this particular situation was at the time of contracting. By omitting an indemnification clause from the Milford-HHK contract, Milford Lodging lost its "automatic" right to recover from HHK.

As a result, the Court must answer the third and final query in the negative. Absent an express contract or a specific set of circumstances that evidences an intent to divide liability between the parties, a property owner, even if it has paid all required sums to a general contractor, is not entitled to indemnification from that general contractor if found liable to a minor subcontractor. Because Milford Lodging has not alleged any factual or lawful basis for a right to indemnification, HHK's

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Motion for Summary Judgment on the indemnification claim is **GRANTED**.

_____ In the event that ultimate discovery demonstrates that HHK has failed to pay Sannuti properly in regard to the C & C claims, then the matter might be revisited. That would, perhaps, create a factual issue on a breach of duty from HHK to Milford.

CONCLUSION

Based on the foregoing, Milford Lodging's Motion for Summary Judgment is **DENIED**. HHK's Motion for Summary Judgment is **DENIED** in part, as to its Motion regarding *quantum meruit* with C & C. Summary Judgment is **GRANTED** in part as to its indemnification responsibility to Milford Lodging.

SO ORDERED.

/s/ Robert B. Young

J.

RBY/sal

oc: Prothonotary

cc: Opinion Distribution