AMENDED OPINION

April 12, 2004

Samuel L. Guy, Esquire
515 S. Heald Street
P.O. Box 25464
Wilmington, DE 19899
Attorney for Plaintiff

Allan Wendelburg, Esquire
722 Yorklyn Road
Stone Mill, Suite 300
Hockession, DE 19707
Attorney for Orsini Top Soil, Inc. and Francis J. Orsini, Jr.

Re: ***Orsini Top Soil and Frank J. Orsini, Jr., v. Kenneth T. Carter and Lisa Carter***
Civil Action No.: 2002-03-430

LETTER OPINION

Date Submitted: April 5, 2004
Date Decided: April 7, 2004

Dear Counsel,

Trial in the above captioned matter took place on Monday, April 5, 2004. Following the receipt of evidence and testimony, the Court reserved decision. This is the Court's final decision and order.

With regard to the breach of contract claim, Defendant conceded liability by admitting the corporation did not complete the work it was hired to perform. Defendant does dispute the amount of damages, if any, that should be awarded by this Court. Therefore, the sole issue before this Court is whether the Plaintiffs have proven by a preponderance of the evidence that they are entitled to damages in the amount of $3,000

pursuant to a breach of the instant landscaping contract. For the reasons set forth below, the Court enters judgment in favor of the Plaintiffs in the amount of $1,140.

THE FACTS

Following trial the Court finds the relevant facts to be as follows. On or about April 17, 2001, Kenneth and Lisa Carter ("Plaintiffs") contracted with Orsini Top Soil ("Defendant") to do various landscaping work on their property located at 1719 Brackenville Road. Plaintiffs were given a receipt that listed what work was to be performed by Defendant at a cost of $3,000. (Plaintiffs Exhibit "1"). Pursuant to their agreement, the following tasks were to be completed by the Defendant: (1) soil entire yard, (2) clean up branches, (3) place pipe under sidewalk, (4) seed entire yard, (5) mulch flower bed, and (6) fix soil on driveway.

Francis "Frank" J. Orsini, Jr. ("Frank"), owner of Orsini Top Soil, testified candidly at trial that he did not complete all of the work he was hired to perform. He did not place pipe under the sidewalk, seed the yard, nor mulch the flowerbed. He testified that he had in fact soiled the yard, fixed the soil near the driveway, and cleaned up some, but not all of the branches. He testified that he was not aware at the time he agreed to do the work just how extensive the job was to remove the pile of branches and brush on Plaintiffs' property. He told the Plaintiffs he had "had enough" and would not finish the job. He testified candidly at trial that he had unknowingly underbid the job.

Kenneth T. Carter ("Carter) testified Frank cleaned up some of the branches on his property. He testified Frank did not seed his yard and when Frank refused to return and complete the job, Carter was forced to hire Henry Miller & Son, Inc. to complete some of the unfinished work. Carter testified he believed he paid $1250 to have that work completed. Carter testified Frank failed to mulch the flowerbed so Carter and his

wife did the work themselves at a cost of $90 for the mulch. Carter further testified that Frank did not place piping under the driveway. Carter and his wife finished that themselves at a cost of $50 for the piping.

Henry G. Miller, Jr. testified that the invoice for the work his company performed at Plaintiffs' property reflects the job would be done for $1250. He further testified that his records reflect only an amount of $1000 was paid by Plaintiffs.

THE LAW

"Where a breach of contract occurs between two parties, the law of damages seeks to place the aggrieved party in the same economic position [he] would have been if the contract had been performed by the breaching party." "The award of damages is meant to compensate the injured party with the losses caused and gains prevented by the defendants breach." Restatement 2d, of contracts § 347. In Delaware, "the traditional measure of damages is that which is utilized in connection with an award of compensatory damages, whose purpose is to compensate a plaintiff for it's proven, actual loss caused by the defendants wrongful conduct. To achieve that purpose, compensatory damages are measured by the plaintiffs' 'out-of-pocket' actual loss. *Strassburger v. Earley*, 752 A.2d 557 (Del. Ch. 2000).

OPINION AND ORDER

In the present case, the Court finds by a preponderance of the evidence at trial that Plaintiffs have proven damages in the amount of $1140 for the 'out-of-pocket' expenses they incurred as a result of Defendant Orsini Top Soil's breach[1]. No testimony or evidence was received by the Court on an amount for clearing the remaining branches on

[1] Even though Defendant testified he believed returning half of the contract price would be fair, Plaintiffs produced no evidence at trial to warrant an award greater than $1,140 for the out-of-pocket actual loss. The amount awarded includes $1000 paid to Henry Miller & Sons, Inc., $90 for 3 cubic yards of mulch, and $50 for the pipe under the sidewalk.

Plaintiffs' property. No hourly laymen's rate was produced at trial for the work left undone by Defendant that was completed by the Plaintiffs themselves. Furthermore, no compensatory judgment for breach of contract against Frank Orsini, Jr., individually, lies within the Court of Common Pleas. Piercing the corporate veil is an equitable remedy and lies within the exclusive jurisdiction of the Chancery Court. *Wirt v. Matthews,* 2002 Del. C.P. LEXIS 16, 4-5 (Del. C.P., 2002); *Sonne v. Sacks,* Del.Supr., 314 A.2d 194 (1973).

Therefore, the Court enters judgment in favor of Plaintiff against Defendant Orsini Top Soil in the amount of $1,140.00.

IT IS SO ORDERED this _______ day of April 2004.

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John K. Welch
Associate Judge