IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

ORSINI TOPSOIL AND FRANCIS J. ORSINI, JR.	)	
Defendant Below, Appellant,	)	
v.	)	**Civil Action No.: 2002-03-430**
KENNETH T. CARTER AND LISA CARTER,	)	
Plaintiffs Below, Appellee.	)	

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ORDER ON PLAINTIFFS'
MOTION FOR RECONSIDERATION AND/OR REARGUMENT

Kenneth T. Carter and Lisa Carter, Plaintiffs Below, Appellees have Moved for Reconsideration of the Court's Amended Final Order and Opinion dated April 12, 2004. Mr. Wendelburg, on behalf of his client's Orsini Top Soil and Francis J. Orsini, have filed a Response to Mr. Guy's Motion. This is the Court's Final Order and Decision on the Plaintiffs' Motion for Reconsideration.

I. THE MOTION

The factual basis for the Motion for Reconsideration (the "Motion") as asserted by Kenneth T. and Lisa Carter ("the Carters") is that Plaintiffs are entitled for compensation for out-of-pocket expenditures "that are unrelated to the clean up of the property in the amount of $1,140.00." (¶ 2, Motion). The Carters claim the Court did not include compensation for their physical labor, "which at minimum starts at minimum wage." (¶ 3, Motion). Finally, in the Carters' Motion for Reconsideration, they alleged "it is appropriate for the Court to examine the entire set of evidence received and assign a dollar value to compensate Plaintiff's for their breach of contract based on the extensive testimony and evidence related to the remaining clean-up." (¶ 4, Motion).

II. DEFENDANTS' RESPONSE

Orsini Topsoil has answered the Motion and assert that Plaintiffs did not offer "any evidence as to the value of any further clean-up."[1] Defendants also assert in paragraph 3 of their answer that "no evidence was offered by the Plaintiffs' of how these figures (value of the clean-up) could be translated into proof of additional damages. Defendants also assert that Plaintiff provided "no evidence of additional labor which would be required to complete the project, or the hourly value of that labor."

[1] Francis J. Orsini was dismissed as a party defendant in the Court's Final Opinion and Order. *See, Sonne v. Sachs*, Del. Supr., 314 A.2d 194 (1973); Court of Common Pleas lacks jurisdiction to pierce the corporate veil.

III. THE LAW

"The law is well settled that a Motion for Reargument is the proper device for seeking reconsideration by the trial court of its Findings of Fact, Conclusions of Law or a Judgment after a bench trial." *See e.g. Hessler, Inc. v. Farrell,* Del. Supr., 260 A.2d 701 (1969). "A Rule 59(e) Motion is within the sound discretion of the Court." *Brown v. Wiler*, Del. Supr., 719 A.2d 489 (1998), *See also, Keith R. Orzechowski v. Paul Sherman*,1998 Del. C.P. Lexis 16, C.A. No. 97-03-106, Welch, J. (Sept. 8, 1998).

OPINION AND ORDER

For the following reasons, the Court denies the Plaintiffs' Motion which it shall treat as a Motion for Reargument and/or Reconsideration under Court of Common Pleas Civil Rule 59(e). Clearly, Plaintiffs have the burden of proving beyond the ponderance of evidence these alleged additional damages which they now assert in their Motion. It is therefore the clear burden of plaintiffs, not the Court to present evidence at trial showing the additional the value or labor of plaintiff's labor by a preponderance of the evidence. Plaintiffs had the underlying burden of showing exact detailed costs and/or value of their labor and submit through evidence and testimony at trial the basis for any alleged additional costs. The Court is without legal authority, either factual or legal, to now assess such actual damages as a result of the breach of the contract at the request of the Plaintiffs without any such evidence being originally produced at trial. In short,

only in closing did Plaintiffs' counsel raise the issue of Plaintiffs' *pro se* labor without submitting any evidence at trial as to the monetary value of such labor.

As the Court noted in its amended April 12, 2004 Opinion, . . . "[t]he traditional measure of damages is compensatory damages or proven actual loss caused by defendant's wrongful conduct." Plaintiffs are asking this Court *sua sponte* in their own Motion to assess such monetary value without having first proven by a preponderance of evidence at trial the actual value of their services. The Court is without legal authority to do so.

The Court therefore **DENIES** Plaintiffs' Motion for Reargument. Each party shall bear their own costs.

IT IS SO ORDERED this 18th day of May, 2004.

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JOHN K. WELCH
ASSOCIATE JUDGE

cc: Barbara C. Dooley, Civil Case Manager