

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

FIRST INSTALLATION GROUP, LLC, :
a Delaware limited liability company, : C.A. No: K09C-11-002 (RBY)
: :
Plaintiff, :
: :
v. :
: :
HUNT BUILDING COMPANY, :
LIMITED PARTNERSHIP, a Texas :
limited partnership, BUILDINGS :
INTERIORS, MERRILL COFFIN, and :
DOVER AIR FORCE BASE :
PROPERTIES, LLC, :
: :
Defendants. :

Submitted: May 4, 2012

Decided: May 15, 2012

Upon Consideration of Defendants' Hunt Building Company
and Dover Air Force Base Properties Motion for Summary Judgment
Defendant Hunt's Motion is **DENIED in part, GRANTED in part**
Defendant Dover Air Force Base Properties' Motion is **GRANTED**

OPINION AND ORDER

James S. Green, Sr., Esq., Seitz, Van Ogtrop & Green, P.A., Wilmington, Delaware
for Plaintiff.

Robert D. Ardizzi, Esq., Davis, Bucco & Ardizzi, Wilmington, Delaware for
Defendants Hunt Building Company, Limited Partnership and Dover Air Force Base
Properties, LLC.

John C. Andrade, Esq., Parkowski, Guerke & Swayze, P.A., Dover, Delaware for
Defendant Buildings Interiors.

Young, J.

SUMMARY

_____ Hunt Building Company, LP (Hunt) and Dover Air Force Base Properties, LLC (DAFBP) seek summary judgment of First Installation Group, LLC's (Plaintiff) *quantum meruit* claim and co-defendant Builders Interiors' (BI) cross claim for indemnification and contribution. The parties agree that Plaintiff's claim against DAFBP is barred. Plaintiff has not waived its claim seeking the value for services it provided to Hunt after July 20, 2008. A genuine issue of material fact remains as to whether or not money is owed for those services. Finally, BI waived its right to assert a claim against Hunt. As it pertains to DAFBP, the motion for summary judgment is **GRANTED**. As it pertains to Hunt, the motion for summary judgment is **DENIED** in part and **GRANTED** in part.

FACTS

On November 3, 2009, Plaintiff filed suit against Hunt, BI and DAFBP.¹ The complaint seeks relief for claims rooted in breach of contract and *quantum meruit*. Subsequently, BI filed a cross claim against Hunt. Together, Hunt and DAFBP filed the instant motion for summary judgment regarding the complaint as it pertains to them and regarding BI's cross claim.

According to the complaint, DAFBP owns a construction project by which it had sought to develop residential housing for the Dover Air Force Base. In furtherance thereof, the parties to this suit entered into a series of contracts for the performance of labor and the furnishing of materials.

First, DAFBP entered into a contract with Hunt by which Hunt was to perform

¹ Merrill Coffin, owner of BI, is named as a defendant. He is not otherwise involved with this motion.

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labor and furnish materials for the project. Soon thereafter, Hunt entered into a contract with BI by which BI was to provide and install flooring for the project. After that, BI entered into a subcontract with Plaintiff by which Plaintiff was to provide all labor to install all ceramic tile, VCT, sheet vinyl, carpet and pad, hardwood flooring and reducers.

Plaintiff began performance of its duties under its subcontract with BI. In addition to those duties, Plaintiff provided labor and materials to Hunt at Hunt's request to repair damage caused to the project by BI and by other contractors. Moreover, Plaintiff provided generators to supply electricity to the project during the performance of labor.

In addition to the foregoing agreements, the parties executed a series of release forms waiving certain legal claims against one another. There are three releases pertinent to this motion. First, on May 30, 2008, Plaintiff signed a release form waiving any claim against Hunt for work Plaintiff completed up to March 20, 2008. On October 6, 2008, Plaintiff, through its subsidiary, BPR, signed a release form waiving any claim against Hunt for work Plaintiff performed up to June 20, 2008. Finally, on January 7, 2009, BI signed a release form waiving any legal claim that it may have against Hunt.

Count I of the complaint alleges that BI has breached the contract that it maintains with Plaintiff by failing to tender payment of \$340,305.21 owed pursuant thereto. Count II, under a theory of *quantum meruit*, demands an *in personam* judgment in the same amount, alleging that Hunt and DAFBP accepted the benefit of labor and materials that Plaintiff provided to the project but have failed to pay for same. In addition, BI has asserted a cross claim against Hunt for indemnification and

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contribution.

STANDARD OF REVIEW

____ Summary judgment is appropriate where the record exhibits no genuine issue of material fact so that the movant is entitled to judgment as a matter of law.² “Summary judgment may not be granted if the record indicates that a material fact is in dispute, or if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of the law to the circumstances.”³ The movant bears the initial burden of establishing that no genuine issue of material fact exists.⁴ Upon making that showing, the burden shifts to the non-movant to show evidence to the contrary.⁵ When considering a motion for summary judgment, the Court considers the facts in the light most favorable to the non-movant.⁶

DISCUSSION

____ The parties agree that Plaintiff’s claim against DAFBP is barred because Plaintiff must pursue its breach of contract claim against BI before it can pursue its *quantum meruit* claim against DAFBP.⁷ Accordingly, in regard to Plaintiff’s claim against DAFBP, there is no genuine issue of material fact.

² *Tedesco v. Harris*, 2006 WL 1817086 (Del. Super. June 15, 2006).

³ *Id.*

⁴ *Ebersole v. Lowengrub*, 54 Del. 463 (Del. 1962).

⁵ *Id.*

⁶ *Tedesco*, 2006 WL 1817086 at *1.

⁷ *See Daystar Sills, Inc. v. Anchor Investments, Inc.*, 2007 WL 1098129 (Del. Super. Apr. 12, 2007); *see also Gilbane Building Co. v. The Nemours Foundation*, 606 F. Supp. 995 (D. Del. 1985).

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From there, the parties dispute the existence of any genuine issue of material fact in regard to Plaintiff's claim against Hunt. Hunt argues that Plaintiff's claim is barred because Plaintiff has signed a release. In the alternative, Hunt contends that Plaintiff's claim is legally insufficient. Finally, Hunt argues that it is entitled to summary judgment of BI's cross claim. The Court will address each issue in turn.

Plaintiff's Releases

Hunt argues that Plaintiff cannot sustain a claim against it because Plaintiff waived the right to do so by executing the above referenced release forms. Together, the two release forms, signed by Plaintiff on May 30, 2008 and October 6, 2008, waived Plaintiff's right to assert a claim against Hunt in regard to the work Plaintiff performed up to July 20, 2008 only. There is no waiver for claims arising from work Plaintiff performed after July 20, 2008.

After discovery, Plaintiff represents that it seeks recovery from Hunt of \$12,940.00 only. That amount represents the value of the work that Plaintiff performed for Hunt at Hunt's direction subsequent to July 20, 2008. Plaintiff has not released the right to assert a claim in regard to that work. In regard to that claim, notwithstanding the releases, there remains a genuine issue of material fact.

Plaintiff's Quantum Meruit Claim

Hunt, classifying Plaintiff's claim as one for *quantum meruit* only, presents two arguments attacking the legal sufficiency thereof. First, Hunt contends that Plaintiff never expected payment from Hunt, instead expecting payment from BI. Accordingly, Hunt argues that Plaintiff cannot sustain a claim under a *quantum meruit* theory.

Quantum meruit is "a quasi-contract claim that allows a party to recover the

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reasonable value of his or her services if: (1) the party performed the services with the expectation that the recipient would pay for them; and (2) the recipient should have known that the party expected to be paid.”⁸ “Generally, *quantum meruit* is considered only if the relationship of the parties is not governed by an express contract.”⁹

Plaintiff alleges that it performed work, after July 20, 2008, at Hunt’s request and outside the scope of the agreement that Plaintiff maintained with BI. Hunt’s instruction, together with Plaintiff’s performance, may have established a contract between those two parties specifically. Accordingly, Plaintiff may be entitled to relief from Hunt under a contract theory. In the alternative, if a contract was not established, Plaintiff performed work at Hunt’s direction, creating a question of fact as to whether the parties knew or should have known that Plaintiff expected to be paid by Hunt.

Second, Hunt argues that Plaintiff cannot sustain a claim for *quantum meruit*, because Hunt paid BI for the services conferred by Plaintiff. Hunt points to the release form BI signed on January 7, 2009 as evidence of Hunt’s satisfaction of its obligations.

The January 7, 2009 release serves as a waiver of BI’s right to assert a claim against Hunt. It does not serve as a waiver of Plaintiff’s right to assert a claim against Hunt. Moreover, even if Hunt has paid BI, as is reflected by the January 7, 2009 release, that does not preclude Plaintiff from asserting a claim for money owed for services it provided Hunt at Hunt’s direction outside the scope of Hunt’s agreement

⁸ *Petrosky v. Peterson*, 859 A.2d 77, 79 (Del. 2004).

⁹ *Daystar Sills, Inc.*, 2007 WL 1098129 at *4.

