TJP Copy

NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

Fairfax County Courthouse
4110 Chain Bridge Road
Fairfax, Virginia 22030-4009

703-246-2221 • Fax: 703-385-4432 • TDD: 703-352-4139

COUNTY OF FAIRFAX CITY OF FAIRFAX

DENNIS J. SMITH, CHIEF JUDGE
MICHAEL P. McWEENY
MARCUS D. WILLIAMS
STANLEY P. KLEIN
ROBERT W. WOOLDRIDGE, JR.
JANE MARUM ROUSH
DAVID T. STITT
LESLIE M. ALDEN
JONATHAN C. THACHER
R. TERRENCE NEY
GAYLORD L. FINCH, JR.
RANDY I. BELLOWS
CHARLES J. MAXFIELD
BRUCE D. WHITE
ROBERT J. SMITH
JUDGES

BURCH MILLSAP
BARNARD F. JENNINGS
THOMAS J. MIDDLETON
THOMAS A. FORTKORT
RICHARD J. JAMBORSKY
JACK B. STEVENS
J. HOWE BROWN
F. BRUCE BACH
M. LANGHORNE KEITH
ARTHUR B. VIEREGG
KATHLEEN H. MACKAY
RETIRED JUDGES

April 24, 2008

Ralph D. Rinaldi, Esq.
Cowles, Rinaldi, Judkins & Korjus, LTD.
10521 Judicial Drive, Suite 204
Fairfax, Virginia 22030

James P. Connor, Esq.
The Law Office of Thomas J. Powell
10565 Lee Highway, Suite #102
Fairfax, Virginia 22030

RE: *Daniel Jones Remodeling, L.L.C. v. Johnny Cheng-Teh Chiu, et al.*,
CL-2007-14511

Dear Counsel:

This matter came before the Court on Defendants' Plea in Bar. After oral arguments and consideration of evidence presented on April 17, 2008 the Court grants the Plea in Bar and orders the case dismissed.

FACTS

Plaintiff Daniel Jones Remodeling, L.L.C. contracted on March 18, 2007 to remodel portions of a home owned by Defendants Johnny Cheng-Teh Chiu and Lien Rung Kao. The contract called for compensation of $128,600.00 to the Plaintiff, more if there were alterations or

deviations involving extra labor or materials.[1] The construction is complete and Plaintiff has been paid $128,913.51. Due to requested alterations, Plaintiff claims $62,355.42 is still due and owing. By his lawsuit, the Defendant seeks damages for breach of contract or quantum meruit. A mechanics lien is also filed.

Plaintiff holds a Class B contractor's license. The issue presented in the Plea in Bar is whether he can maintain this action on a contract of $128,600.00. This appears to be a question of first impression in Virginia.

ANALYSIS

"The defensive plea in bar shortens the litigation by reducing it to a distinct issue of fact which, if proven, creates a bar to the plaintiff's right of recovery." *Tomlin v. McKenzie*, 251 Va. 478, 480; 468 S.E.2d 882 (1996). A plea in bar may be used "to present a single issue [such as statute of limitations, res judicata, collateral estoppel, accord and satisfaction, or statute of frauds] which may result in ending the proceedings." Leigh B. Middleditch, Jr. & Kent Sinclair, *Virginia Civil Procedure* § 9.8 (2d ed., Michie 1992). The burden of proof on the dispositive fact rests on the moving party. *Tomlin*, 251 Va. at 480.

When an issue of statutory interpretation is presented, the Court must follow strict construction rules so as to give effect to legislative intent. Legislative intent is to be "deduced from the words used, unless a literal interpretation would result in a manifest absurdity." *Crawford v. Haddock*, 270 Va. 524, 528, 621 S.E.2d 127, 127 (2005). Under the plain meaning doctrine, where a statute is written in "words that are clear and unambiguous, courts may not interpret them in a way that amounts to a holding that the legislature did not mean what it actually has expressed." *Id.* The Court will "interpret the several parts of a statute as a consistent and harmonious whole so as to effectuate the legislative goal." *VEPCO v. Prince William Co.*, 226 Va. 382, 388, 309 S.E.2d 308, 311 (1983).

Section 54.1-1100 of the Code of Virginia defines Class B contractors as those who

> ...perform or manage construction, removal, repair, or improvements when (i) the total value referred to in a single contract or project is $7,500 or more, but less than $120,000, or (ii) the total value of all such construction, removal, repair or improvements undertaken by such person within any 12-month period is $150,000 or more, but less than $750,000.

Section 54.1-1115(A)(1) provides that it shall be a class I misdemeanor where one is guilty of

[1] Plaintiff's Amended Complaint arguably states that the contract was three severable contracts. This position was not sustained by the evidence presented.

> Contracting for, or bidding upon the construction, removal, repair or improvements to or upon real property owned, controlled or leased by another person without a license or certificate, or without the proper class of license as defined in § 54.1-1100 for the value of work to be performed.

Virginia has long held that "a contract made in violation of a police statute enacted for public protection is void and there can be no recovery thereon." *Bowen Elec. Co. v. Foley*, 194 Va. 92, 100, 72 S.E.2d 388, 393 (1952). The statutory scheme of Section 54.1-1100 *et seq.* is designed to protect the public and is a valid exercise of police powers. *Sutton Co. v. Wise Contracting Co.*, 197 Va. 705, 709-710, 90 S.E.2d 805, 808 (1956).

Plaintiff advances the argument that no case presented involves a contractor exceeding his monetary restrictions and accordingly no authority exists to grant the plea in bar. Alternatively, he argues that subsection C of Section 54.1-1115 can "save" this contract if he was unaware of the monetary contract limitation on Class B contractors. This argument is not persuasive.

Section 54.1-1115 only added contracting "without the proper class of license" as a prohibited act in 2004. Therefore the Court is not surprised that no case on point was found. Furthermore, adding this language to Section 54.1-1115 evidenced a legislative intent to protect the public from contractors who exceed their authorization just as it protects the public from contractors without licenses. The deficiencies on the part of the contractor are treated identically under the statute.

The provision § 54.1-1115(C), which protects good faith violations of the chapter, does not apply to the case at bar. Section 54.1-1115(C) reads:

> No person shall be entitled to assert the lack of licensure or certification as required by this chapter as a defense to any action at law or suit in equity if the party who seeks to recover from such person gives substantial performance within the terms of the contract in good faith and without actual knowledge that a license or certificate was required by this chapter to perform the work for which he seeks to recover payment.

Clearly this section is designed to protect innocent contractors and places a burden on them to know when their license expires. It creates no exception for a contractor innocently or otherwise exceeding the monetary limits of his and the Court cannot read such a saving provision into the statute.[2]

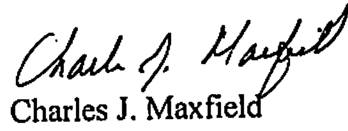
---

[2] The Court *sua sponte* raised the argument that perhaps subparagraph (ii) of the Class B contractor definition which is disjunctive of (i) creates the authority for a single contract over $120,000.00. This argument is rejected as a single contract over $120,000.00 is by definition restricted to a Class A contractor.

CONCLUSION

For these reasons, the Defendants' plea in bar is sustained and this case is dismissed.

Sincerely yours,



Charles J. Maxfield