

Plaintiff agreed to pay Defendant on a time and costs basis for work performed by Defendant.

In his amended complaint, Plaintiff claims that Defendant indicated to him that the system would be up and running by July 1999. Plaintiff asserts he had an urgent need for the sewage treatment facility because he was incurring costs between \$600-\$700 per week to pump the sewage holding tanks, Defendant was aware of this situation.

Plaintiff also alleges that Defendant billed him for \$6,957.00 for work performed, which Plaintiff paid. Plaintiff claims that from the inception of the agreement until September 2000 Defendant failed to complete the project. Further, Plaintiff claims Defendant did not provide Plaintiff the necessary documentation from various governmental agencies needed to complete the project. The damages claimed by Plaintiff for Defendant's breach of the oral contract are the fees of \$6,959.00 paid to Defendant by Plaintiff, and pumping fees incurred by Plaintiff for non completion of the project in the amount of \$36,400.00.

In his answer to Plaintiff's complaint, Defendant alleges that there was an oral agreement between the parties to begin preparation of a Pennsylvania Department Environmental Protection Sewer Planning Module. Defendant agrees he was to be paid on a time and cost basis for work performed on this project. Defendant denies he contracted to construct the sewage treatment facility for Plaintiff's restaurant by a specific date and time. Defendant denies ever discussing with Plaintiff the costs of Plaintiff's pumping fees or that Defendant would be responsible to pay such fees at any particular subsequent time. Defendant claims he was unable to complete the sewer facility planning module because Plaintiff did not obtain and provide necessary

documentation and authorization from various governmental agencies required to complete project.

The Court has closely examined the deposition of the two parties. While claiming Defendant told him in January 1999 that he could have a sewer treatment system up and running in six (6) months, Plaintiff concedes that there was no set figure to pay Defendant for this project, and that he paid Defendant for time and costs as billed. Waltz deposition p. 12, line 22, p. 13, lines 1-2. Plaintiff admitted Defendant was not going to physically put in the system, but he was to design and engineer the system. Waltz deposition, p. 13, lines 1-11. Plaintiff admitted that he never discussed with the Defendant that he would be responsible for paying pumping fees incurred by Plaintiff at any time. Waltz deposition p. 14, lines 23-25, p. 15, line 1- 2, p. 31, lines 22-25.

Plaintiff agreed he paid Defendant \$6,957.00 for work performed by Defendant. Waltz deposition p. 15, lines 3-11.

Plaintiff was aware that certain permits and documentation needed to be obtained from governmental agencies for the project to go forward. He was aware a right-of-way agreement with the township was needed and that Defendant himself could not obtain it. Waltz deposition p. 18, lines 8-20. In the summer of 2000, Plaintiff contacted his attorney, Dan Mathers to see if he could get something done on this with the Township solicitor, Mr. Sholder. Waltz p. 20, lines 20-25.

Plaintiff acknowledged in his deposition that Defendant had told him to complete the module and submit it to DEP for approval he would need to produce verification for the Township sewer official that he had been denied a permit for an on lot system. Waltz p. 23, lines 1-17. Plaintiff also acknowledged that before the sewer could

be operational DEP would require him obtain a right-of-way from Penn DOT (to pass effluent underneath Route 314) and from the Township where the restaurant was located. He would also need a permit for drilling under the road. Waltz deposition p. 23, lines 1-25; p. 24, line 1-6.

It is clear in reading Plaintiff's deposition that there was not a specific meeting of the minds with Defendant beyond an agreement to reimburse him for hourly services and costs relating to feasibility, permitting, and design of a sewage treatment system for Plaintiff's restaurant. Despite the assertion in the complaint, it is also clear that this was not a contract to provide a finished sewer treatment system in a six (6) month period.¹ Likewise, the deposition makes it clear that the oral contract did not discuss or envision Defendant paying pumping costs if the system was not up and running within six (6) months.

When one studies Plaintiff's deposition testimony at pages. 25-26, the lack of clarity and specificity concerning the agreement between the parties beyond time and costs becomes obvious. When asked by Defendant's attorney of his understanding of the agreement (p. 24, line 12) and whether this system could be up and running within six (6) months, Plaintiff expressed uncertainty over Defendant's part of the work and what others would have to do. Waltz deposition pp. 24-26.²

¹ Plaintiff acknowledged the Defendant was not the individual that was going to physically install the sewer system. Waltz deposition, p 12. There is no indication he had chosen the entity who would install the system.

² Plaintiff's attorney in his brief at page 1 under the heading "Facts/Procedural History" argues that Defendant was advised by Plaintiff that time was of the essence as Plaintiff was incurring sewage pumping costs. As already point out, Plaintiff testified at deposition that they never talked about Defendant being responsible to pay the pumping costs if the system was not up and running within six (6) months. In fact, Plaintiff noted he did not get upset when the project was not finished in July, the six (6) month period. Waltz deposition, p. 25, lines 20-21.

The Court's findings are not meant to criticize Plaintiff or impugn his efforts in any way. However, this case is a good example of the problems that can develop between two well meaning businessmen who do not take the time to secure their agreement in writing to confirm the mutuality of their understanding regarding just what is agreed upon and the specific terms of such agreement. It appears to the Court that there never was any specific or firm agreement beyond Defendant advising and aiding Plaintiff in the design and engineering of a sewage treatment system, with Defendant being paid for time and costs of his work on the project.

Thus, the Court believes the depositions reveal that Plaintiff cannot prevail on the specific claims and damages requested.

Therefore, the Court deems summary judgment appropriate. The Court notes it does not want put both parties through the ordeal of a two-day trial where the outcome seems clear.

Accordingly, the following Order is entered:

ORDER

AND NOW, this _____ day of January, 2007, Defendant's Motion for Summary Judgment is **GRANTED** for the reasons stated in the foregoing opinion. .

By the Court,

Kenneth D. Brown
President Judge.

cc: Norman Lubin, Esquire
Thomas C. Marshall, Esquire/N. Randall Sees, Esquire
Work file
Gary Weber, Esquire (Lycoming Reporter)