

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

DENTAL CARE ASSOCIATES, INC., : NO. 07 – 01,218
Appellant :
 : CIVIL ACTION - LAW
vs. :
 :
KELLER ENGINEERS, INC., :
Appellee :

OPINION IN SUPPORT OF ORDER OF JANUARY 15, 2008,
IN COMPLIANCE WITH RULE 1925(A) OF
THE RULES OF APPELLATE PROCEDURE

Appellant appeals from this Court’s Order of January 15, 2008, which denied its Petition to Strike or Open Judgment of Non Pros. The judgment was entered for failure of Appellant to file a certificate of merit under Pennsylvania Rule of Civil Procedure 1042.3.

In both the petition to strike and the petition to open, Appellant argued no certificate is required because the instant action is not one for professional negligence, but rather, for breach of contract and unjust enrichment. Appellant contended that it contracted with Appellee for the creation of a stormwater management system and that Appellee failed to satisfy its obligations under the contract. In its Complaint, Appellant specifically asserts that “Defendant Keller agreed to provide the design for a stormwater management system that would provide for the collection and transportation of stormwater across the property”, and that “[b]y Defendant’s agreement to design a stormwater management system, it was implied that the stormwater management system would *properly* collect and convey water across the property without causing damage to the property or its improvements”, that “Defendant has breached the Agreement in that the stormwater management system designed by Defendant did not provide for the *proper* collection and transportation of stormwater across the Property without causing damage to the Property or its improvements”, that “[t]he stormwater management system designed by Defendant resulted in damage to the Property”, and that “[a]s a result of Defendant’s breach, Plaintiff has had to retain the services of an engineer to complete the design of the stormwater management system so that the same could *properly* collect and convey water across the Property.” Complaint at paragraphs 40-44 (emphasis added).

A rose by any other name is still a rose. While Plaintiff argues the instant action is for

breach of contract, it is clear to this Court that it is still an action for professional negligence and, like the action for professional negligence which was non prossed for failure to file a certificate of merit at No. 06-00,497, the instant action was too.¹

Dated: February 15, 2008

Respectfully Submitted,

Dudley N. Anderson, Judge

cc: Bret Keisling, Esquire
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Hon. Dudley Anderson

¹ Appellant also argued in its petition that Defendant is not a professionally licensed corporation, but as that same issue was raised and decided (against Appellant) in the case at No. 06-00,497, that matter is res judicata and will not be addressed herein.