

IN THE COURT OF COMMON PLEAS OF
LYCOMING COUNTY, PA

JAMES G. DIEFENDERFER,	:	
Plaintiff	:	NO: 08-01325
	:	
vs.	:	
	:	
	:	
RT MACHINE CO.,	:	CIVIL ACTION
Defendant	:	

OPINION

Plaintiff commenced the above-captioned action seeking compensation for various renovations performed by him to property located at 201 Boak Avenue in Hughesville. The Plaintiff's Complaint contains alleges two (2) causes of action: (1) Breach of Contract; and (2) Unjust Enrichment. On August 5, 2010 the Defendant filed a Motion for Summary Judgment. The Defendant asserts that Plaintiff's claim for breach of contract should be dismissed, as the parties' oral contract is unenforceable pursuant to the Statute of Frauds.

The Defendant relies upon 13 Pa.C.S.A. § 2201 which states as follows:

[A] contract for the sale of goods for the price of \$500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker.

Defendant claims that as a number of goods were provided in connection with the contract, specifically, an air compressor, a jib crane, electric transformers, dry wall and ceiling installation and recessed lighting, the contract was essentially one for goods.

The Plaintiff asserts that the contract was a construction contract, and as such, was not a contract for the sale of goods. Pennsylvania courts have clearly held that when a transaction involves predominantly the rendition of services, the fact that tangible movable goods may be involved in the performance of services does not bring the contract under the Uniform Commercial Code. Whitmer v. The Bell Telephone Co. of Pennsylvania, 522 A.2d 584, 587 (Pa.Super. 1987).

In Atkins v. Pore, 467 A.2d 891 (Pa.Super. 1983), the court held that a contract for the construction of a road was not a contract for the sale of goods, even though it involved the sale of paving material. Similarly, in DeMatteo v. White, 336 A.2d 355 (Pa.Super. 1975), a contract for construction of a home was not found to be a contract for the sale of goods, despite the fact that goods were furnished in connection with the provision of construction services. In reaching its holding, the Superior Court in DeMatteo held:

In a case involving the application of the Uniform Sales Act, on which the U.C.C. Article on Sales was based, to a construction contract, this court stated: 'We are of the opinion that the Sales Act has no application to the contract in suit. That statute is an act relating to sales....It defines a sale of goods as an agreement whereby the seller transfers the property in goods to the buyer for a consideration called a price; and a contract to sell goods as a contract where the seller agrees to transfer the property in goods to the buyer for a consideration called a price. The contract in suit was in no sense a contract of sale. It was a construction contract. The transfer of property in the fan, motor, pipe coil heater, air washer, reheater coils, condensation system, duct system and steam piping was but incidental to the main purpose which was the furnishing of labor and the assembly of material in the erection and construction of a heating system. It would be just as proper to call a contract for the construction of a building a sale of the stone, brick, cement, wood, etc., which entered into the erection of the building. This plaintiff took specified materials and apparatus, manufactured and supplied by various dealers, and by assembling them and connecting them into a system designed by its engineers constructed a new and different unit, a completed heating system. The operation was one of building, or construction, not of sale, within the meaning of the Sales Act aforesaid...' Id. at 358.

Count I of Plaintiff's Complaint seeks damages for "work performed" for "improvements" made to a building. During his deposition, Plaintiff characterized the oral contract as one for "building improvement that the rentee requested to be done to his specifications..." Diefenderfer Dep. 14:10-11, April 20, 2010.

As the contract at issue appears to be one primarily for the provision of construction services, genuine issues of fact exist, and the moving party is not entitled to judgment as a matter of law. Boyer v. Walker, 714 A.2d 458, 459 (Pa.Super. 1998). Accordingly, Defendant's Motion for Summary Judgment to Count I of Plaintiff's Complaint is DENIED.

The Defendant's second argument relates to the Plaintiff's cause of action for unjust enrichment set forth in Count II of Plaintiff's Complaint. The Defendant asserts that RBJD Holdings, LLC's Operating Agreement requires that any disputes be brought before the American Arbitration Association. The Defendant additionally contends that as the property upon which the renovations were performed is owned by RBJD Holdings, LLC, an entity in which the Plaintiff has an interest, summary judgment should be granted.

On November 24, 2008, this Court previously ruled on the issue of the application of the Operating Agreement. As the Court noted in its previous Order, the present dispute involves James G. Diefenderfer and R.T. Machines, Co. Defendant R.T. Machines, Co. was not a party to the arbitration clause in question. Moreover, the Defendant, and not a member of the LLC is alleged to be the non-paying contracting party. Accordingly, whether the Plaintiff has some sort of ownership interest in the building in which improvements were made does not affect the validity

of an action to recover for improvements. Accordingly, Defendant's motion for summary judgment on Count II of Plaintiff's Complaint is DENIED.

ORDER

AND NOW, this 8th day of October, 2010 the Defendant's Motion for Summary Judgment is hereby DENIED.

BY THE COURT,

Richard A. Gray, J.

cc: John R. Bonner, Esquire

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Gary Weber, Esquire