

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

CONESTOGA CERAMIC TILE DISTRIBUTORS, INC., : NO. 11 - 01,916

Plaintiff

vs.

TRAVELERS CASUALTY AND SURETY COMPANY :
OF AMERICA, IMC CONSTRUCTION, INC., PROFAST :
COMMERCIAL FLOORING, INC. and :
PENNSYLVANIA COLLEGE OF TECHNOLOGY,

Defendants

:
: CIVIL ACTION - LAW

:
: Motion for

: Judgment on the Pleadings

OPINION AND ORDER

Before the Court is Defendants’¹ Motion for Judgment on the Pleadings, filed on August 24, 2012. Argument was heard October 10, 2012.

This suit arises out of a construction contract entered into by Pennsylvania College of Technology’s (hereinafter “the College”) with IMC Construction, Inc. (hereinafter “IMC”) for the construction of additional facilities through its “Stage X Building Program”. ProFast Commercial Flooring, Inc. (hereinafter “Profast”) was a sub-contractor of IMC. Conestoga Ceramic Tile Distributors, Inc. (hereinafter “Plaintiff”), provided tile and setting materials to Profast for installation at the College’s facilities. Travelers Casualty & Surety Company (hereinafter “Travelers”) provided a payment bond for the construction. The College paid IMC and IMC paid Profast, but Profast did not pay Plaintiff. Plaintiff obtained a default judgment against Profast (which is apparently insolvent) and now seeks recovery from Travelers for breach of contract and violation of the Public Works Contractor’s Bond Law of 1967, from IMC for breach of contract and violation of the Commonwealth Procurement Code, and

from the College for unjust enrichment. In their Answer and New Matter, Defendants raise the doctrine of release, the inapplicability of the Bond Law, the applicability of the Procurement Code and the inapplicability of the doctrine of unjust enrichment. These contentions also form the basis for Defendants' Motion for Judgment on the Pleadings, and it should be noted that as Plaintiff did not respond to the New Matter until after the motion was filed, the assertions of the New Matter will be deemed admitted for purposes of the instant motion. *See Urbano v. STAT Courier, Inc.*, 878 A.2d 58 (Pa. Super. 2005). After reviewing the pleadings, the court agrees that Defendants are entitled to judgment on all counts as a matter of law.

Count I, a claim for breach of contract against Travelers, is barred by the terms of the Payment Bond as IMC has made payment to Profast for all sums due and owing. *See* New Matter, Paragraph 77 ("IMC has made payment to Profast for all sums purportedly due and owing to Conestoga"), and Payment Bond, Paragraph 3 (Traveler's obligation is "null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due".) This same bond was held to bar a claim by another supplier under the same construction contract with the College in *Impro Corp. v. Travelers Casualty & Surety Co. of America*, No. 11 – 01,409, 2011 WL 8003571 (Lycoming C.P. April 19, 2012)(Gray, J.). Thus, Travelers is entitled to judgment on this claim.

Count II, a claim for breach of contract against IMC, is barred by the terms of the Joint Check Agreements, which both state "IMC has no contractual relationship with Conestoga Tile Distributors, Inc. nor does IMC have any legal obligation of any type whatsoever to Conestoga Tile Distributors, Inc." *See*

¹ Although the motion has been filed on behalf of only three of the four defendants, a default judgment having

Amended Complaint, Exhibit D. Therefore, Plaintiff cannot recover for breach of these agreements and IMC is entitled to judgment on this claim.

Count III, a claim against Travelers under the Public Works Contractor's Bond Law of 1967, is barred as the Bond Law has been repealed and replaced with the Commonwealth Procurement Code insofar as it relates to government agencies. *See Trumbull Corp. v. Boss Construction, Inc.*, 768 A.2d 368 (Pa. Commw. 2001). The Procurement Code defines government agencies to include state-aided institutions, 62 Pa.C.S. Section 3902, and Plaintiff itself contends the College is a state-aided institution. See Amended Complaint, Paragraph 45. Therefore, the Procurement Code rather than the Bond Law applies and Travelers is entitled to judgment on this claim.

Count IV, a claim against IMC under the Procurement Code is barred by the terms of the Procurement Code, which provides that “[o]nce a contractor has made payment to the subcontractor according to the provisions of this subchapter, future claims for payment against the contractor or the contractor’s surety by parties owed payments from the subcontractor which has been paid shall be barred.” 62 Pa.C.S. Section 3939(b). Since, as noted above, IMC has made payment to Profast for all sums due and owing, IMC is entitled to judgment on this claim.

Finally, Count V, a claim for unjust enrichment against IMC and the College, also cannot be sustained. To state a claim for unjust enrichment, a plaintiff must establish “benefits conferred on defendant by plaintiff, appreciation of such benefits by defendant, and acceptance and retention of such benefits under such circumstances that it would be inequitable for defendant to retain the

been entered against Defendant Profast, for convenience the court will simply refer to “Defendants”.

benefit without payment of value.” AmeriPro Search, Inc. v. Fleming Steel Co., 787 A.2d 988, 991 (Pa. Super. 2001). Again, as noted above, IMC has made payment to Profast for all sums due and owing and thus Plaintiff cannot establish that any benefit was retained “without payment for value.” IMC and the College are thus entitled to judgment on this count as well.

Accordingly, the court enters the following:

ORDER

AND NOW, this 16th day of October 2012, for the foregoing reasons, Defendants’ Motion for Judgment on the Pleadings is hereby GRANTED. Judgment is hereby entered against Plaintiff and in favor of Travelers Casualty & Surety Company of America, Inc. on Counts I and III, against Plaintiff and in favor of IMC Construction, Inc. on Counts II, IV and V, and against Plaintiff and in favor of Pennsylvania College of Technology on Count V.

BY THE COURT,

Dudley N. Anderson, Judge

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