

**IN THE COURT OF COMMON PLEAS FOR PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION – CIVIL**

SCUNGIO BORST & ASSOCIATES,	:	NOVEMBER TERM, 2008
	:	
Plaintiff,	:	NO. 00946
	:	
v.	:	COMMERCE PROGRAM
	:	
410 SHURS LANE DEVELOPERS, LLC,	:	
	:	
Defendant.	:	

PROHIBITION

OPINION

Plaintiff Scungio Borst & Associates (“Scungio”) appeals from the Order entered on September 30, 2010, by the late Judge Sheppard. In that Order, Judge Sheppard granted summary judgment in favor of defendant Robert DeBolt on Scungio’s claims against Mr. DeBolt.

Scungio acted as general contractor on a condominium construction project, which was owned by defendant 410 Shurs Lane Developers, LLC (“410 SLD”). Mr. DeBolt was a principal of 410 SLD. Scungio performed its construction services pursuant to a written contract between it and 410 SLD. Scungio also performed \$2.6 million in additional work under the contract as directed by 410 SLD and Mr. DeBolt. Scungio was not paid for approximately \$1.5 million in additional work, so it filed this lawsuit against 410 SLD, Mr. DeBolt, and others.¹

In its Fourth Amended Complaint, Scungio asserted claims against 410 SLD and Mr. DeBolt for breach of contract, for violation of the Contractor and Subcontractor Payment Act (“CASPA”), and for unjust enrichment. Mr. DeBolt filed a Motion for Summary Judgment as to those claims, which Judge Sheppard granted. The remaining claims against 410 SLD and

¹The claims against the other parties were either dismissed, settled, tried, or discontinued, and they are not at issue in this appeal.



another defendant² were tried before this court, and Scungio obtained a judgment against both of those defendants for approximately \$1.9 million.

Judge Sheppard properly granted summary judgment on Scungio's breach of contract claim against Mr. DeBolt because Mr. DeBolt was not a signatory to the written contract between Scungio and 410 SLD. Scungio alleged that Mr. DeBolt is liable for 410 SLD's debts because he is the alter ego of 410 SLD, but Scungio failed to proffer any evidence that would justify piercing the corporate veil of 410 SLD to reach Mr. DeBolt.

[T]here is a strong presumption in Pennsylvania against piercing the corporate veil. [A]ny court must start from the general rule that the corporate entity should be recognized and upheld, unless specific, unusual circumstances call for an exception. Care should be taken on all occasions to avoid making the entire theory of the corporate entity useless. Also, the general rule is that a corporation shall be regarded as an independent entity even if its stock is owned entirely by one person.

* * *

[T]he factors to be considered in disregarding the corporate form are as follows: undercapitalization, failure to adhere to corporate formalities, substantial intermingling of corporate and personal affairs, and use of the corporate form to perpetuate a fraud.³

In response to Mr. DeBolt's Motion for Summary Judgment on the breach of contract claim, Scungio simply relied on the allegations of its complaint in which it stated that Mr. DeBolt never intended to pay Scungio the amounts owed. Scungio offered no evidence that Mr. DeBolt undercapitalized 410 SLD, failed to adhere to corporate formalities, intermingled 410 SLD's corporate and his own personal affairs, or used 410 SLD's corporate form to perpetuate a fraud against Scungio.

² The other entity is Kenilworth II, LLC, which purchased the condominium property at sheriff's sale. It is also owned by Mr. DeBolt.

³ Advanced Tel. Sys. v. Com-Net Prof'l Mobile Radio, LLC, 846 A.2d 1264, 1277-1278 (Pa. Super. 2004).

Judge Sheppard properly granted summary judgment on Scungio's CASPA claim because 410 SLD was the "owner" of the property and Mr. DeBolt was not. CASPA imposes payment obligations upon the owner of real property,⁴ and a contractor may sue the owner if such payments are not made.⁵ CASPA defines the "owner" as

A person who has an interest in the real property that is improved and who ordered the improvement to be made. The term includes successors in interest of the owner and agents of the owner acting with their authority.⁶

Although the owner's "agents" are included in this definition, the legislature cannot have intended to make every "agent," including even the lowliest employee, liable for a corporate property owner's debts to its contractors. Instead, the legislature must have intended to hold the principal, *i.e.*, the owner, liable for its agents' authorized acts in "ordering the improvement to be made." Such an interpretation comports with general agency law.⁷

Judge Sheppard also correctly granted summary judgment on Scungio's unjust enrichment claim.

The elements necessary to prove unjust enrichment are: (1) benefits conferred on defendant by plaintiff; (2) appreciation of such benefits by defendant; and (3) acceptance and retention of such benefits under such circumstances that it would be inequitable for defendant to retain the benefit without payment of value.⁸

⁴ 73 P.S. § 505 ("The owner shall pay the contractor strictly in accordance with the terms of the construction contract.")

⁵ *Id.* at § 512

⁶ *Id.* at § 502.

⁷ See Restatement (Third) Agency § 6.01 (2006) (When an agent acting on behalf of a disclosed principal enters into a contract with a third party, the principal and not the agent is a party to, and therefore liable under, that contract.)

⁸ Durst v. Milroy Gen. Contr., 52 A.3d 357, 360 (Pa. Super. 2012).

In this case, the benefits conferred by Scungio were the construction services it performed on the real property. Such benefits flowed to the owner of that property, 410 SLD, not to Mr. DeBolt individually.

For all the foregoing reasons, it is respectfully requested that Judge Sheppard's September 30, 2010 Order be affirmed on appeal.

Dated: December 14, 2012



PATRICIA A. McINERNEY, J.