

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

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<b>PENCOYD IRON WORKS, INC.</b>	:	
	:	
<b>v.</b>	:	<b>March Term, 2010</b>
	:	
<b>AXIS CONSTRUCTION SERVICES, LLC., AXIS CONSTRUCTION MANAGEMENT, &amp; GRASSO HOLDINGS</b>	:	<b>NO. 00814</b>
	:	<b>CIVIL ACTION</b>
_____	:	

**AMENDED ORDER**

**AND NOW**, this 11<sup>th</sup> day of September, 2012, it is hereby

**ORDERED**

that a finding is entered in favor of the plaintiff, Pencoyd Iron Works, Inc., and against defendant, Grasso Holdings, in the amount of \$130,950.00.

**BY THE COURT:**

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**GLAZER, J.**



4. 11<sup>th</sup> & Washington Associates also owned the building, titled the Lofts at Bella Vista (the “Project”), which was located on the Property. [N.T., pp. 219].

5. On the Grasso Holdings website, Grasso Holdings purports to own the Project. [P-9]

6. 11<sup>th</sup> & Washington Associates hired Grasso Holdings to act as the Owner’s representative on the Project. [D-1, D-2; N.T., pp. 42].

7. 11<sup>th</sup> & Washington Associates contracted (“first contract”) with Axis Construction Services (“Axis”) to be the general contractor on the Project to convert an industrial building into condominium apartments beginning on April 15, 2005 for a guaranteed maximum price of \$23,409,476. [N.T., pp. 33-34, 54, 57].

8. Subsequently, 11<sup>th</sup> & Washington Associates entered into a second construction contract (“second contract”) with Axis that provided for an additional guaranteed maximum price of \$4.6 million. [N.T., pp. 56-57].

9. Bruce Crawley (“Crawley”) was the superintendent in the field for Axis and was initially in charge of running the Project. [N.T., pp. 153-54].

10. Pencoyd Iron Works, Inc. (“Pencoyd”) entered into two subcontracts with Axis which established that Pencoyd would install miscellaneous metals, including rails, stairs, and lintels at the Project. [P-1; N.T., pp. 81-85].

11. Pencoyd is metal and fabricator erector. [N.T., pp. 80-81].

12. James Heldring (“Heldring”) is the President and Owner of Pencoyd. [N.T., pp. 80-81].

13. Michael Morrison (“Morrison”) is a Project Manager at Pencoyd. [N.T., pp. 197-98].

14. The original subcontract (“first subcontract”) provided that Pencoyd would install the metalwork on the original brick building for the sum of \$188,835. [P-1, §10; N.T., pp. 81-82].

15. The second subcontract (“second subcontract”) between Pencoyd and Axis provided that Pencoyd would install the stairs and rails for the new “villa portion” of the Project for \$353,395. [P-4; N.T., pp. 85-88].

16. Axis subsequently increased the second subcontract sum to \$391,535. [P-5; N.T., pp.88].

17. Both the first subcontract and second subcontract provided that in the event that payment is not made to Axis, Pencoyd would look exclusively to the Owner for payment of any and all funds due under the subcontracts. [P-1, §11.3, P-44, §11.3].

18. From start to finish of the Project, neither Grasso Holdings nor Axis informed the subcontractors of the guaranteed maximum price in their contract. [N.T., pp. 189-93].

19. Due to lack of payment by Axis to the subcontractors, work ceased and all subcontractors, including Pencoyd, discontinued working on the Project. [N.T., pp. 92-93].

20. Axis kept an assistant “super” on site but other than that had ceased work on the project as well. [N.T., pp. 157].

21. The project shut down prior to completion as a result of lack of funding or lack of disbursements of funding. [N.T., pp. 154-155].

22. In order to recommence the Project, David Grasso personally guaranteed the debt on the Project as the President of Grasso Holding and the partner of 11<sup>th</sup> & Washington Associates. [N.T., pp. 39-40].

23. Around February 2008, David Grasso also arranged a construction loan with WSFS for additional financing. [N.T., pp. 47-48].
24. Axis, as general contractor, caused many delays and produced many errors, including the upper portion of the Project being built out of order. [N.T., pp. 39, 162].
25. After the subcontractors ceased work, Axis indicated that they were going to walk away from the Project. [N.T., pp. 39-40].
26. In response David Grasso decided to hire GH Property Services, an affiliate business, to “handle some of the responsibilities” because people were already living in the building and buyers were waiting to move in. [N.T., pp. 39-40].
27. GH Property Services took over the day to day management of the Project. [N.T., pp. 35].
28. The agreement between the 11<sup>th</sup> & Washington Associates, the owner of the Project, and GH Property Services was an oral agreement. [N.T., pp. 37].
29. On February 11, 2008, Grasso Holdings held a meeting at Axis’ office where Pencoyd and other subcontractors were present. [N.T., pp. 93].
30. At the meeting, Gerald Gallagher, the Vice President of construction services for GH Property Services, informed Pencoyd and the other subcontractors that they had received funding for the job, that GH Property Services would be taking over the job, and that invoices would be paid within 15 days of receipt. [N.T., pp. 93, 175-76].
31. Gerald Gallagher also informed them that all the direction would be coming from Grasso Holdings and that Axis would be operating only on the administrative level. [N.T., pp. 93].

32. All emails from Gerald Gallagher were signed from “GRASSO HOLDINGS” and not GH Property Services. [P-8].

33. Around February 20, 2008, a second meeting was held by Gallagher in the basement of the Property in which, among other subcontractors, James Heldring, Michael Morrison, and Bruce Crawley were in attendance. [N.T., pp. 99-100, 155-56, 199].

34. At this second meeting, Gerald Gallagher reaffirmed that all direction would be from Grasso Holdings and that payment would be made 15 days after receipt of invoices. [N.T., pp. 100-01, 175-76].

35. Gerald Gallagher informed Pencoyd that Axis would be involved only on an administrative level and that Pencoyd should submit all payment applications to Axis. [D-9A through D-9G].

36. Within two weeks, as promised by Gallagher, Axis made payments to the subcontractors from the construction loan and Pencoyd received payments in the amount of the then current balance. [N.T., pp. 48, 97].

37. Upon receiving the past due balance, Pencoyd returned to the Project and resumed working. [N.T., pp. 98].

38. After the second meeting, Axis had no presence at the site. [N.T., pp. 96, 160, 172],

39. Ultimately, Axis did not have any administrative, office, or project presence. [N.T., pp. 174].

40. James Heldring and Gerald Gallagher had multiple discussions about the expectation of payment. [N.T., pp. 177].

41. After the second meeting, Pencoyd's communications about the project were exclusively with employees of GH Property Services, Gallagher and Karnell. [N.T., pp. 102-03].

42. The communication about the Project included job instructions, changes to scheduling and negotiating changes about the construction. [N.T., pp. 102-03].

43. Again, after Pencoyd returned to work, the payments ceased and officials at Pencoyd considered whether to leave the job, but determined it would be less costly to complete the Project before commencing suit. [N.T., pp. 105].

44. James Heldring confirmed with Gerrald Gallagher through email that payments would be made to Pencoyd on July 1, 2008 with a second payment on July 14, 2008. [P-8; N.T., pp. 28-29].

45. Gerrald Gallagher later emailed James Heldring that the July 1, 2008 payment would be delayed till July 2, 2008 and asked for a schedule of their progress because Pencoyd's work needed to be completed the following week in order to obtain a certificate of occupancy. [P-8; N.T., pp. 34].

46. Pencoyd received a payment on or about July 18, 2008 and this payment was the last that they received. [N.T., pp. 118-19].

47. Pencoyd completed their work on the Project on September 22, 2008. [P-7, ¶ 5].

48. Axis, Grasso Holdings, and GH Property Services did not issue a Notice of Deficiency or any other document indicating that Pencoyd did not perform their work correctly. [N.T., pp. 178].

49. Axis, Grasso Holdings, and GH Property Services did not claim that Pencoyd was responsible for the water intrusion at the site until trial. [N.T., pp. 92].

50. 11<sup>th</sup> & Washington Associates sold all of the units at the Property. [N.T., pp. 33].

51. Upon completion of the project, Axis did not submit a final bill to 11<sup>th</sup> & Washington Associates for their work on the Project. [N.T., pp. 183-84].

52. Pencoyd is still owed \$130,953.50 from unpaid invoices resulting from the Project. [P-7; N.T., pp. 90].

### **CONCLUSIONS OF LAW**

53. The plaintiff, Pencoyd, has asserted a claim for unjust enrichment against Grasso Holdings. In order to recover for unjust enrichment, there must be both (1) an enrichment, and (2) an injustice resulting if recovery for the enrichment is denied. Meehan v. Cheltenham Township, 189 A.2d 593 (1963); see also Restatement, Restitution § 1, comment a (1936).

54. A corporation is treated as a separate and independent entity which creates a strong presumption against piercing the corporate veil. First Union National Bank v. Quality Carriers, Inc., 48 Pa. D.&C.4<sup>th</sup> 1, 50 (Phila. Co. 2000).

55. In limited circumstances, the corporate veil can be pierced when the corporate form is being used to, “defeat public convenience, justify wrong, protect fraud or defend crime, and only after considering such factors as undercapitalization, failure to adhere to corporate formalities, substantial intermingling of corporate and personal affairs, and use of corporate form to perpetrate a fraud.” Id.

56. The alter ego theory for piercing the corporate veil can be used when an individual or corporation controls the entity to be pierced and the controlling individual is liable. Miners, Inc. v. Alpine Equipment Corp., 722 A.2d 691, 695 (Pa. Super. 1998).

57. On the Grasso Holdings website they state, “Grasso Holdings, through its affiliates, provides brokerage and property management services for many of the properties that it develops.” [P-9]

58. Moreover, the Grasso Holdings website states that David Grasso is the President, CEO, and primary principal of Grasso Holdings and that Grasso Holdings is the owner of the Lofts at Bella Vista. [P-9].

59. David Grasso personally guaranteed the construction loan to recommence the project. [N.T., pp. 48].

60. Further, although Gerald Gallagher stated in his testimony that he worked for GH Property Services, his email address (@grassoholdings.com) and signature (Vice President Construction Services, GRASSO HOLDINGS) indicates he was ultimately employed by Grasso Holdings. [P-8; N.T.; pp. 177-179].

61. Thus, there was substantial intermingling of corporate affairs which makes it apparent that Grasso Holdings was in charge of the Project and 11<sup>th</sup> and Washington was a layering company in order for Grasso Holdings to avoid liability.

62. A right obtained under a contract can be assigned from one contracting party to another when the contracting party, “extinguishes (their right to performance by the obligor and transfers the right to the assignee.” Legal Capital, LLC v. Medical Professional Liability Catastrophe Loss Fund, 750 A.2d 299, 301 (Pa. 2000).

63. An oral direction can imply an assignment if the agreement is “in effect.” In re Way’s Estate, 109 A.2d 161, 171 (Pa. 1954)

64. In support for the plaintiff’s claim of unjust enrichment, plaintiff stated that, “Grasso Holdings assured the subcontractors, including Pencoyd, of timely payment at the February 11, 2008 meeting, and again at the meeting on or about February 20, 2008, with the knowledge that completion of the project would benefit Grasso Holdings and their ability to sell the Project’s unit.” [N.T., pp. 93-93, 176].

65. Grasso Holdings did not pay Pencoyd for their completed work and thus Grasso Holdings was unjustly enriched. [P-8; N.T., pp. 33].

66. Ordinarily, to satisfy the Statute of Frauds, an action for the payment of another's debt cannot be brought unless the agreement is in writing. Webb Mfg. Co. v. Sinoff, 647 A.2d 723, 725 (Pa. Super. 1996).

67. However, this provision of the Statute of Frauds does not apply when the main object of the promisor is, "to serve his own pecuniary purpose or business purpose." Biller v. Ziegler, 406 Pa. Super. 1, 593 A.2d 436, 440 (1991).

68. This exception is known as the "leading object" rule or the "main purpose" rule and is applicable when a promisor, such as Grasso Holdings, for their own pecuniary purpose or business purpose, enters into an oral agreement when that agreement is for the payment of another's debts. Webb Mfg. Co., 647 A.2d at 725.

69. Grasso Holdings, represented by Gerrald Gallagher, assured Pencoyd that it would be paid up to current and in the future be paid 15 days after receipt of an invoice.

70. Pencoyd returned to work after leaving the job for lack of payment and completed their work on the project.

71. Grasso Holdings assumed the contract with Pencoyd so that Grasso Holdings could finish and sell the unsold units, comply with current residents, and pay off the debts that David Grasso had personally guaranteed.

72. A finding is entered in favor of the plaintiff, Pencoyd Ironworks, Inc., and against defendant, Grasso Holdings, in the amount of \$130,950.00.

**BY THE COURT:**

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**GLAZER, J.**