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**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

STEINGASS MECHANICAL CONTRACTING, LLC
Plaintiff

Case No: CV-20-941344

Judge: CASSANDRA COLLIER-WILLIAMS

CLE BUILDING COMPANY, LLC
Defendant

JOURNAL ENTRY

83 DISP.COURT TRIAL - FINAL

JUDGMENT ENTRY ATTACHED AND ORDERED RECORDED. FINAL. OSJ.
COURT COST ASSESSED TO THE PLAINTIFF(S).

PURSUANT TO CIV.R. 58(B), THE CLERK OF COURTS IS DIRECTED TO SERVE THIS JUDGMENT IN A MANNER
PRESCRIBED BY CIV.R. 5(B). THE CLERK MUST INDICATE ON THE DOCKET THE NAMES AND ADDRESSES OF ALL
PARTIES, THE METHOD OF SERVICE, AND THE COSTS ASSOCIATED WITH THIS SERVICE.

O.S.J.
Judge Signature

Date

FILED
2023 SEP 12 3:59
CLERK OF COURTS
CUYAHOGA COUNTY

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

STEINGASS MECHANICAL)	CV-20-941344
CONTRACTING, LLC)	
)	
Plaintiff,)	JUDGE CASSANDRA COLLIER-WILLIAMS
)	
)	
v.)	
)	
CLE BUILDING)	
COMPANY, LLC)	
)	
)	<u>JUDGMENT ENTRY</u>
Defendant.)	
)	

JUDGE C. COLLIER-WILLIAMS:

This matter came before the Court on May 9, 2023 for a bench trial. Based upon the testimony and evidence presented during this matter, the Court hereby enters judgment on behalf of Defendant CLE Building Company, LLC.

I. Findings of Fact

This case relates to a construction project of a gymnastics facility known as “Five Star Gymnastics” in Brunswick, Ohio (“the Project”). Defendant CLE Building Company (“Defendant”) was retained as the general contractor on the Project. On or about April 3, 2019, Defendant hired various subcontractors, including Plaintiff Steingass Mechanical Contracting (“Plaintiff”). Plaintiff performed plumbing and HVAC services on the Project. Defendant asserts that it entered into two (2) subcontracts with Steingass: one for the HVAC scope and one for the plumbing scope. However, no evidence was submitted of a contract for the HVAC work. The

only contract submitted to the Court as an exhibit was for the plumbing scope. Plaintiff filed this lawsuit on December 14, 2020, alleging breach of contract and violation of the Ohio Prompt Payment Act against Defendant for failure to pay the full amount of the subcontract. On April 19, 2022, this Court granted Plaintiff's Motion for Partial Summary Judgment: (1) entering judgment in favor of Plaintiff and against Defendant in connection with Plaintiff's breach of contract and violation of Ohio's Prompt Pay Act relating to Plaintiff's Pay Application Nos. 1 through 4, and; awarding Plaintiff damages in the amount of \$45,450.00, plus 18% interest and reasonable attorneys' fees and costs to be determined at a subsequent hearing. As a result, the only claims the parties tried before the Court on May 9, 2023, were Plaintiff's claims for Defendant's breach of contract and violation of Ohio's Prompt Payment relating to Plaintiff's Pay Applications Nos. 5 and 6.

Pay Application No. 5 invoices for three change orders in the amount of \$2,347.05. Pay Application No. 6 seeks the retainage on the Project, in the amount of \$17,482.71.

In addition to this lawsuit, CLE Building sued Project Owner PKJW, alleging that they were not paid in full for their work on the Project. That lawsuit, titled CLE Building Company, LLC vs. PKJW L.L.C., was consolidated with this case on March 17, 2021. The Project Owner filed a Counterclaim, generally alleging breach of contract by CLE Building in addition to various tort claims. Prior to the trial in this matter, CLE and PKJW entered into a confidential settlement agreement that resolved the case between them.

The Court finds that at the trial of this matter, Plaintiff failed to prove by a preponderance of evidence their claims, and therefore judgment is hereby rendered in favor of the Defendants.

II. Conclusions of Law

Plaintiff called two witnesses to testify at trial: William Allen Lesure and Chad Zumkehr. Defendant called one witness to testify: Dan Trinetti. Plaintiff's corporate representative, William Allen Lesure, testified at the trial that the current owner of Steingass Mechanical Contracting, LLC is Charles Slaybaugh. Prior to Slaybaugh, the owner was Bill Steingass. Bill Steingass retained ownership of this potential receivable associated with the business. The Court finds that the real party in interest for purposes of this case is, in fact, Steingass Mechanical Contracting, LLC. The fact that the company was sold to another party does not prevent the company from pursuing its claim against the Defendant.

The Subcontract between Plaintiff and Defendant provided the following:

Payment shall not become due to Subcontractor for any portion of its work unless and until Contractor has received payment for such portion of work from Owner and the amount due shall not exceed the net amount actually received by Contractor applicable to Subcontractor's work. Such receipt of payment by Contractor from Owner is a condition precedent to any obligation of the Contract or its surety if applicable, to pay Subcontractor and Subcontractor accepts the risks associated with such contingency.

(Contract, Section 5.7.). Plaintiff was only due payment for work which the Project Owner had paid Defendant (a "pay-if-paid" provision).

Pursuant to the terms of the Subcontract, whether and to what extent the Project Owner pays Defendant for the work shapes the ripeness of Defendant's secondary payment obligations to Plaintiff. In order to prevail on its claim, the Plaintiff must prove by a preponderance of the evidence that Defendant was paid for Plaintiff's portion of the work. Plaintiff has failed to carry its burden. The testimony at trial indicated that the Project Owner did not pay Defendant in connection with Plaintiff's Payment Application No. 5. Therefore, if the Defendant was not paid

in connection with the Plaintiff's work on Payment Application No. 5, Plaintiff is not entitled to receive payment for that invoice.

Consequently, Plaintiff has failed to establish by a preponderance of the evidence that it is entitled to payment of \$2,112.34 on Payment Application No. 5. Plaintiff has also failed to establish that Defendant's nonpayment constitutes a breach of contract. Therefore, judgment relative to Payment Application No. 5 is hereby rendered in favor of Defendant.

Plaintiff's Payment Application No. 6 seeks \$17,484.71 for Plaintiff's portion of the retainage on the Project. While the evidence at trial shows that Plaintiff requested the payment and that Defendant billed for the release of the retainage, Plaintiff has not established by a preponderance of the evidence that the Project Owner actually released the retainage to Defendant. Dan Trinetti testified that Defendant did not receive the retainage from the Project Owner.

Consequently, Plaintiff has failed to establish by a preponderance of the evidence that it is entitled to payment of \$17,484.71 on Payment Application No. 6. Plaintiff has also failed to establish that Defendant's nonpayment constitutes a breach of contract. Therefore, judgment relative to Payment Application No. 6 is hereby rendered in favor of Defendant.

R.C. §4311.31, Ohio's Prompt Payment Act, requires a contractor to pay, within ten days of its receipt, a subcontractor's request for payment or invoice for materials (provided the subcontractor submits such request or invoice to a contractor in sufficient time to allow the contractor to include it within its own pay request to a project owner). If a contractor does not timely pay a subcontractor's properly submitted request for payment or invoice for materials, the Prompt Payment Act permits the subcontractor to recover statutory damages as set forth in R.C. 4311.61.

Because Plaintiff has failed to prove by a preponderance of the evidence that Defendant's nonpayment of Plaintiff's Payment Application Nos. 5 and 6 was improper, Plaintiff's claim for violation of the Prompt Payment Act lacks merit. Consequently, relative to the Prompt Payment Act, judgment is hereby rendered in favor of Defendant.

It is noteworthy that Plaintiff asserts that because, at some time prior to trial, Defendant and the Project Owner resolved their litigation, that Defendant's arguments of not being paid by the Project Owner are now moot. And further, that now Plaintiff must be paid in full on their invoices. This court disagrees. Plaintiff presented no evidence regarding the settlement at trial. Specifically, there was no evidence of who received payment in the settlement, the Defendant on their claim or the Project Owner on its counterclaim. Furthermore, the trial produced no evidence regarding the amount that was paid, and if the amount paid, was in full, or in part. And lastly, if the Defendant did receive payment, the trial produced no evidence of what portion of that payment covers work done by the Plaintiff. Consequently, the Court finds that Plaintiff failed to establish by a preponderance of the evidence that Steingass Mechanical Contracting, LLC is entitled to any recover pursuant to their Pay Application Nos. 5 and 6.

III. Conclusion

Plaintiff's case fails because it did not satisfy its burden of proof in establishing that: (1) Defendant breached the Contract by failing to pay Plaintiff's Pay Application Nos. 5 and 6, or: (2) that Defendant violated Ohio's Prompt Payment Act. Accordingly, judgment is hereby rendered in favor of Defendant and against Plaintiff in connection with Plaintiff's claims relating to Payment Application Nos. 5 and 6. FINAL.

IT IS SO ORDERED.

9/12/2023
DATE


JUDGE CASSANDRA COLLIER-WILLIAMS