

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

**IN AND FOR NEW CASTLE COUNTY**

**SHIRLEY WILSON** )  
 )  
 v. ) CIVIL ACTION NUMBER  
 )  
 ) 03A-09-001-JOH  
**KLABE CONSTRUCTION CO.** )  
**and KEVIN S. KLABE** )  
 )  
 Defendants )

*Submitted: May 19, 2004*

*Decided: July 29, 2004*

***MEMORANDUM OPINION***

*Upon Appeal from the Court of Common Pleas*

***AFFIRMED***

Shirley Wilson, 819 Woodsdale Road, Wilmington, Delaware, 19809, *Pro-se*

Paul A. Bradley, Esquire, of McCarter & English, LLP, Wilmington, Delaware, attorney  
for the defendants

HERLIHY, Judge

Appellant Shirley Wilson appeals the decision of the Court of Common Pleas which granted Appellees Klabe Construction Company and Kevin Klabe's (jointly the defendants) motion for directed verdict. Wilson sued the defendants for breach of contract claiming that they did not complete home repair work in a workmanlike manner and in accordance with industry standards. Wilson had originally sued the defendants in Justice of the Peace court. After a trial, that court dismissed Wilson's claim. She then appealed to the Court of Common Pleas where a trial *de novo* was conducted.

The Court of Common Pleas granted the directed verdict concluding that Wilson did not present evidence of either liability or damages during her case-in-chief. This Court finds that the trial court did not commit any errors of law during the trial and that its decision is supported by substantial evidence. Accordingly, the decision is **AFFIRMED**.

### ***Facts***

On September 5, 2000, Wilson and Klabe Construction Company, a corporation, entered into a "time and materials" contract for work to be done at Wilson's rental property located at 311 Beverly Place. The scope of the work involved removing and replacing wood windowsills rotted due to termite damage, removing old caulk and recaulking all the windows in the house, replacing a rotted screen door, and replacing certain beams and floor joists located in the home's basement.

Wilson tendered a \$2,500 deposit to Klabe Construction on September 11, 2000. It completed the work in approximately six weeks and completed time and material

summaries each day documenting the hours and materials used each day. Wilson supervised much of the work that was done by Klabe Construction employees. Specifically, Wilson directed which wood would be used to replace the rotted wood in the home. John Morgan, the Klabe Construction employee who actually performed the carpentry work, testified at trial that Wilson had him use wood milled to match the rest of the wood in the home despite his advice that using pressure-treated would deter termites.<sup>1</sup> Morgan testified that he replaced a screen door with a pressure-treated wood door, but Wilson asked him to remove it and install a door she had in her basement which, according to Morgan, was rotted wood. Morgan also testified that he informed Wilson that there was termite damage to windowsills in the basement and that he recommended that the sills be replaced with pressure-treated wood.<sup>2</sup> However, she refused the recommendation. On cross-examination, Morgan testified that all the work at the job site was done according to Wilson's instructions and in a workmanlike manner complying with industry standards.<sup>3</sup>

Thomas Laskey, Jr., a carpenter who was hired by Wilson to repair certain things due to Klabe Construction's allegedly deficient work, testified that he informed Wilson nothing needed to be fixed and that the previous carpentry work was done in a

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<sup>1</sup> Tr. Court of Common Pleas Trial at 31-32.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 34.

workmanlike manner.<sup>4</sup> On cross-examination, Laskey testified that there were no deficiencies in the carpentry work completed by Klabe Construction.<sup>5</sup>

Wilson called William Krauss, who had hired Klabe Construction to convert a garage attached to his home. He testified that he was completely satisfied with the work completed by Klabe Construction and that it ranked as excellent construction company.<sup>6</sup>

Wilson admits that she did not hire Klabe Construction to investigate or exterminate termites at her property.<sup>7</sup> She hired it on a time and materials basis to repair certain specified areas in the home. Klabe Construction is not licensed nor in the business of termite extermination. Wilson stated that the home had been treated for termites by another company prior to the carpentry work done by Klabe Construction.<sup>8</sup>

On July 17, 2003, a trial was held in the Court of Common Pleas. At the close of Wilson's case-in-chief, the defendants moved for a directed verdict. The trial court held that there was no evidence in the record to find Kevin Klabe individually liable for Klabe Construction Company's alleged breach of contract. The trial court further held that there

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<sup>4</sup> *Id.* at 63.

<sup>5</sup> *Id.* at 70.

<sup>6</sup> *Id.* at 75.

<sup>7</sup> Tr. Court of Common Pleas Trial at 54.

<sup>8</sup> *Id.*

is “ absolutely no substantial evidence to support a verdict in favor of [Wilson]”<sup>9</sup> because Wilson had not presented any evidence of Klabe Construction’ s liability or damages required for a breach of contract claim.

### ***Standard of Review***

When this Court reviews an appeal from the Court of Common Pleas, the decision is reviewed as the Supreme Court would consider an appeal.<sup>10</sup> The applicable standard of review for an appeal from the Court of Common Pleas to this Court is two-fold. First, errors of law are reviewed *de novo*.<sup>11</sup> Second, “ this Court is bound by findings of fact made by the Court of Common Pleas which are supported by the record and which are the product of a logical and deductive process.”<sup>12</sup>

If substantial evidence exists for a finding of fact, this Court must accept that ruling, as it must not make its own factual conclusions, weigh evidence, or make credibility determinations.<sup>13</sup> “ Substantial evidence” means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.<sup>14</sup> Substantial evidence is more than

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<sup>9</sup> *Wilson v. Klabe Construction Co.*, 2003 Del. WL 22931390 (Del. CCP).

<sup>10</sup> *Fiori v. State*, 2004 WL 1284205, at \*1 (Del. Super.).

<sup>11</sup> *Downs v. State*, 570 A.2d 1142, 1144 (Del. 1990).

<sup>12</sup> *Trader v. Wilson*, 2002 WL 499888, at \*2 (Del. Super.); *Downs*, 570 A.2d at 1144.

<sup>13</sup> *Johnson v. Chrysler*, 213 A.2d 64 (Del. 1965).

<sup>14</sup> *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981).

a scintilla but less than a preponderance.<sup>15</sup>

### *Discussion*

Shirley Wilson entered into a contract with Klabe Construction Company on a time and materials basis for work at her rental property at 311 Beverly Place. She claims that termite damage was found by Klabe Construction while they were completing the carpentry work at her rental property, but Klabe Construction did not inform her about the termite damage. Wilson claims she did not discover the termite damage until after the work was completed. She stated during the trial that the home had been treated for termites by another company prior to the carpentry work done by Klabe Construction.<sup>16</sup> Wilson further testified that she filed this lawsuit against Klabe Construction seeking to hold it liable even though she admits that she should have filed a lawsuit against the pest control company that treated her property for termites prior to the carpentry work by Klabe Construction. She argues that she lost her cause of action against the pest control company because of Klabe Construction's failure to control the termite problem that it discovered while working at her property. Wilson does admit, however, that she did not hire Klabe Construction to exterminate termites on her property.

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<sup>15</sup> *Id.*

<sup>16</sup> Tr. Court of Common Pleas Trial at 54.

Ordinarily, an individual corporate officer is not liable for the business acts of a corporation.<sup>17</sup> Under established Delaware law, courts will pierce the corporate veil where certain facts indicate that the corporate entity has been or is being used by those in control of it to perpetuate fraud.<sup>18</sup> The Delaware Court of Chancery, however, has sole jurisdiction over actions to pierce the corporate veil.<sup>19</sup> This Court and the trial court, therefore, lack jurisdiction to pierce the corporate veil in this case.<sup>20</sup>

The second, and primary, issue to address is whether Klabe Construction breached the September 5, 2000 time and materials contract. Delaware law recognizes the long-standing tradition that parties to a contract should receive the benefit of their bargains.<sup>21</sup> Damages for breach of contract will be in an amount sufficient to return the party damages to the position they would have been in had the breach not occurred.<sup>22</sup> The law is concisely stated in *J.J. White, Inc. v. Metropolitan Merchandise Mart, Inc.*<sup>23</sup>:

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<sup>17</sup> *Sonne v. Sacks*, 1979 Del. Ch. LEXIS 455 (Del. Ch.).

<sup>18</sup> *Petroleum, Inc. v. Continental Oil Co.*, 231 A.2d 450 (Del. Ch. 1967).

<sup>19</sup> *Sonne v. Sacks*, 314 A.2d 194, 197 (Del. 1973).

<sup>20</sup> *John Julian Construction Co. v. Monarch Builders, Inc.*, 324 A.2d 208, 210 n. 1 (Del. 1974).

<sup>21</sup> *SLMSOFT.COM v. Cross County Bank*, 2003 Del. Super. LEXIS 112 (Del. Super.).

<sup>22</sup> *Delaware Limousine Services, Inc. v. Royal Limousine Service, Inc.*, 1991 Del. Super. LEXIS 130 (Del. Super.).

<sup>23</sup> 107 A.2d 892 (Del. Super. Ct. 1954).

One who is injured by the breach of contract is entitled to compensation for the injury received. The compensation should be such as will place him in the same position that he would have been in if the contract had been performed. The measure of damages is the loss actually sustained as a result of the breach of contract.<sup>24</sup>

The Court concludes that Klabe Construction did not breach its contract with Wilson. The evidence in the record overwhelmingly shows that Klabe Construction completed the work in accordance with Wilson's instructions and in a workmanlike manner complying to industry standards. Wilson's own fact witnesses at trial testified as to this. For example, John Morgan testified that he followed Wilson's instructions of replacing wood throughout the home with rotted wood that she had supplied even though he recommended using pressure-treated wood to prevent termite infestation. Morgan and Thomas Laskey, Jr. both testified that the carpentry work performed by Klabe Construction was done in a workmanlike manner and in accordance with industry standards. William Krauss testified that he was completely satisfied with the work Klabe Construction did for him. Wilson presented no evidence of any deficiencies in Klabe Construction's work on her home.

In addition to not presenting evidence of liability, Wilson did not present evidence that she suffered damages as a result of the carpentry work done by Klabe Construction. The basis of Wilson's breach of contract action is flawed. She argues that Klabe Construction found termite damage, but it did not relay this information to her. Because

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<sup>24</sup> *Id.* at 894.



Klabe Construction did not inform her of the termites, she claims that she lost the ability to bring a suit against the pest control company that treated her property prior to the work done by Klabe Construction. Wilson conceded at trial that the proper lawsuit should have been filed against the pest control company. She is correct that the proper suit is against the pest control company. She is incorrect, however, regarding Klabe Construction not informing her about the termite damage. John Morgan testified that he told her about the termites.<sup>25</sup> Furthermore, Wilson admits that she did not hire Klabe Construction to investigate or exterminate termites at her property.

This Court determines that the trial court committed no errors of law and that its findings of fact are supported by the record and are the product of a logical and orderly deductive process.<sup>26</sup>

### ***Conclusion***

For the reasons stated herein, the judgement of the Court of Common Pleas is **AFFIRMED.**

**IT IS SO ORDERED.**

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J.

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<sup>25</sup> Tr. Court of Common Pleas Trial at 31-32.

<sup>26</sup> *Downs*, 570 A.2d at 1144.