

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

EMERALD ERECTORS, INC.,	:	February 2004
Plaintiff,	:	
v.	:	No. 3189
HELCRIST IRON WORKS, INC. and	:	
DANIEL J. KEATING CONSTRUCTION	:	COMMERCE PROGRAM
COMPANY D/B/A KEATING BUILDING	:	
CORPORATION,	:	Control Number 012748
Defendants.	:	

ORDER

AND NOW, this 16th day of March 2005, upon consideration of the Preliminary Objections of Daniel J. Keating Construction Company d/b/a Keating Building Corporation (“Keating”) to plaintiff’s Second Amended Complaint, the response in opposition, the respective memoranda, all matters of record and in accord with the contemporaneous Opinion filed of record, it hereby is **ORDERED** that the Preliminary Objections are **Sustained, in part**, and Count IV is dismissed. Otherwise, the Objections are **Overruled**.

It is further Ordered that defendant Keating is directed to file an answer within twenty-two (22) days from the date of this Order.

BY THE COURT,

ALBERT W. SHEPPARD, JR, J.

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

EMERALD ERECTORS, INC.,	:	February 2004
Plaintiff,	:	
v.	:	No. 3189
HELCRIST IRON WORKS, INC. and	:	
DANIEL J. KEATING CONSTRUCTION	:	COMMERCE PROGRAM
COMPANY D/B/A KEATING BUILDING	:	
CORPORATION,	:	Control Number 012748
Defendants.	:	

.....

OPINION

Albert W. Sheppard, Jr., J. March 16, 2005

This action arises from a construction project relating to renovations at the Suffolk Manor Apartments (“Suffolk Project”). According to the Second Amended Complaint, defendant Daniel J. Keating Construction Company d/b/a Keating Building Corporation (“Keating”) entered into a contract with the Philadelphia Housing Authority to renovate the Suffolk Manor Apartments. On March 2, 2003, Keating entered into a subcontract with Helcrist Iron Works, Inc. (“Helcrist”) to complete all structural steel and miscellaneous metal work as part of Keating’s general contract. Helcrist entered into a separate contract with Emerald Erectors, Inc. (“Emerald”) to perform certain work on the project.

Emerald claims it has fully performed under the terms of the contract with Helcrist and seeks payment for the work performed. Toward this end, on February 18, 2004, Emerald instituted suit against Helcrist for breach of contract (Count I) and unjust enrichment (Count II). After seeking leave of court, Emerald amended its Complaint to

join Keating as an additional defendant alleging claims for unjust enrichment (Count III) and breach of contract (Count IV).

Presently before the court are the Preliminary Objections of Keating. Keating raises two issues: (1) whether the Second Amended Complaint was filed late and without the consent of the parties or leave of court in contravention of the Pennsylvania Rules of Court and the Philadelphia Local Rules¹ and (2) whether Count IV (breach of contract) of the Second Amended Complaint should be dismissed on the ground that Emerald is not a third party beneficiary to the contract between Helcris and Keating. For the reasons discussed, Keating's Preliminary Objections are Sustained, in part and Count IV is dismissed.

DISCUSSION

For purposes of reviewing preliminary objections based upon a demurrer, "all well-pleaded material, factual averments and all inferences fairly deducible therefrom" are presumed to be true. Tucker v. Philadelphia Daily News, 757 A.2d 938, 942 (Pa. Super. 2000). When presented with preliminary objections whose end result would be the dismissal of a cause of action, a court should sustain the objections only where "it is clear and free from doubt from all the facts pleaded that the pleader will be unable to prove facts legally sufficient to establish [its] right to relief." Bourke v. Kazaras, 746 A.2d 642, 643 (Pa. Super. 2000).

¹ The court overrules this objection. Notwithstanding Emerald's apparent disregard of the local rules as well as the Pennsylvania Rules of Civil Procedure, this court finds that Emerald has stated just cause for its failure to follow strictly the rules. Moreover, the court finds no prejudice accruing to the defendants with the acceptance of the Second Amended Complaint. Hydrair Inc. v. Nat'l Env'tl Balancing Bureau, 52 Pa. D. & C. 4th 57, 60 (2001) (Herron, J.) (citing Peters Creek Sanitary Auth. v. Welch, 545 Pa. 309, 314-15, 681 A.2d 167, 170 (1996)); *see also* Pomerantz v. Goldstein, 479 Pa. 175, 178-79, 387 A.2d 1280, 1281-2 (1978)(Procedural rules are not ends in themselves, but means whereby justice, as expressed in legal principles, is administered. They are not to be exalted to the status of substantive objectives.).

“It is essential that the face of the complaint indicate that its claims may not be sustained and that the law will not permit recovery. If there is any doubt, it should be resolved by the overruling of the demurrer...Put simply, the question presented by demurrer is whether, on the facts averred, the law says with certainty that no recovery is possible.” Bailey v. Storlazzi, 729 A.2d 1206, 1211 (Pa. Super. 1999).

Emerald alleges in Count IV that it is a third party beneficiary of the contract between Helcrist and Keating. Thus, it may bring a claim for breach of that contract against Keating. Keating argues that Emerald is not a third party beneficiary.

The standard for establishing status as a third party beneficiary is a difficult one. Under Pennsylvania law , “a party becomes a third party beneficiary only where both parties to the contract express an intention to benefit the third party in the contract itself,...unless, the circumstances are so compelling that recognition of the beneficiary’s right is appropriate to effectuate the intention of the parties, and the performance satisfies an obligation of the promisee to pay money to the beneficiary or the circumstances indicate that the promisee intends to give the beneficiary the benefit of the promised performance.” Scarpitti v. Weborg, 530 Pa. 366, 609 A.2d 147 (1992); Guy v. Liederbach, 501 Pa. 47, 459 A.2d 744 (1983).

Here, Emerald argues that although not specifically named in the Helcrist-Keating agreement, that agreement “specifically contemplates and provides for the payment to plaintiff.” In support of its position, Emerald directs the court to section 3.3 of the agreement as well as an attachment discussing mechanics’ liens. After a careful review of the Helcrist-Keating agreement and the allegations in the pertinent Complaint, this court concludes that Emerald is **not** a third party beneficiary under that contract. The

allegations of third party beneficiary status are not supported by the subcontract agreement. Neither party to the subcontract agreement designated Emerald as a party to receive a benefit for its performance nor did the parties demonstrate an intention to benefit Emerald. Contrary to Emerald's position, the subcontract agreement fails to create a financial obligation between Keating and Emerald. Accordingly, Emerald does not have standing to assert a breach of contract claim against Keating and Count IV shall be dismissed.

CONCLUSION

For these reasons, defendant's Preliminary Objections are sustained, in part, and Count IV is dismissed. Otherwise, the Objections are overruled. Defendant Keating is directed to file an answer to the Second Amended Complaint within twenty-two (22) days from the date of the Order. An Order consistent with this Opinion will be entered.

BY THE COURT,

ALBERT W. SHEPPARD, JR.