

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

JAMES J. GORY MECHANICAL	:	
CONTRACTING, INC. and	:	
JAMES J. GORY MECHANICAL	:	August Term 2004
SERVICES, INC.	:	
	:	
Plaintiffs,	:	No. 3361
	:	
v.	:	
	:	Commerce Program
	:	
JOHN J. TURCHI, JR., TURCHI, INC.,	:	
WALNUT CONSTRUCTION CORP.,	:	Control No. 113386
400 WALNUT ASSOCIATES, LP,	:	
400 WALNUT CORPORATION,	:	
1700 ASSOCIATES, LP, 1700	:	
CORPORATION, 1930-24 ASSOCIATES,	:	
LP, and 1930-34 CORPORATION	:	
	:	
	:	
Defendants.	:	

**ORDER**

**AND NOW**, this 31<sup>ST</sup> day of March, 2005, upon consideration of the Preliminary Objections of Defendants John Turchi, Jr., Turchi, Inc., Walnut Construction Corp., 400 Walnut Associates, LP, 400 Walnut Corporation, 1700 Associates, LP, 1700 Corporation, 1930-34 Associates, LP, and 1930-34 Corporation to the Amended Complaint of Plaintiffs James G. Gory Mechanical Contracting, Inc. and James J. Gory Mechanical Services, Inc., the response thereto, and in accordance with the attached memorandum opinion, it is hereby **ORDERED** and **DECREED** that Defendants' Preliminary Objections are **OVERRULED**.

Defendants are further **ORDERED** to file an answer to Plaintiffs' Complaint within twenty (20) days of this Order.

**BY THE COURT,**

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**C. DARNELL JONES, II, J.**

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400 WALNUT ASSOCIATES, LP,	:	
400 WALNUT CORPORATION,	:	
1700 ASSOCIATES, LP, 1700	:	
CORPORATION, 1930-24 ASSOCIATES,	:	
LP, and 1930-34 CORPORATION	:	
	:	
	:	
Defendants.	:	

**MEMORANDUM OPINION**

**JONES, J.**

Presently before the court are the Preliminary Objections of Defendants John Turchi, Jr. (“Mr. Turchi”), Turchi, Inc. (“Turchi”), Walnut Construction Corp. (“Construction”), 400 Walnut Associates, LP (“400 Associates”), 400 Walnut Corporation (“400 Corp.”), 1700 Associates, LP (“1700 Associates”), 1700 Corporation (“1700 Corp.”), 1930-34 Associates, LP (“1930 Associates”), and 1930-34 Corporation (“1930 Corp.”) to the Amended Complaint of Plaintiffs James G. Gory Mechanical Contracting, Inc. (“Contracting”) and James J. Gory Mechanical Services, Inc. (“Services”).

Although the allegations in the Amended Complaint are less than clear, the Court can derive the following information. Contracting and Services seek payment for the work they provided on three of Defendants’ properties in the city of Philadelphia, located

at 400-414 Walnut Street (“400 Walnut”), 1930-34 Chestnut Street (“1930 Chestnut”), and 1700 Walnut Street (“1700 Walnut”).

Mr. Turchi is the principal officer, employee, and owner of the other Defendants and controls each of them. 400 Walnut is owned by 400 Associates, whose general partner is 400 Corp. 1930 Chestnut is owned by 1930 Associates, whose general partner is 1930 Corp. 1700 Walnut is owned by 1700 Associates, whose general partner is 1700 Corp. Turchi occasionally does business as Walnut Construction.

On June 25, 2001, Contracting entered into an agreement with Construction for plumbing and other services at 400 Walnut. In addition, Contracting performed extra work on 400 Walnut at the request of Construction and 400 Associates. Contracting submitted numerous invoices for its work. Walnut Construction, Inc. made payments of \$207,726.36 and 400 Associates made payments of \$463,769.54. Contracting is owed an additional \$183,947.20 for its work.

On July 16, 2002, Services and Turchi entered into an agreement for work at 400 Walnut. Throughout 2003, Services performed work, both pursuant to the agreement and otherwise, at 400 Walnut at the request of Turchi and 400 Associates. Services is owed \$28,204.25 for its efforts.

On May 16, 2002, Contracting and 1930 Associates entered into an agreement for plumbing and other services at 1930 Chestnut. Contracting also performed extra work at the request of 1930 Associates. Contracting submitted invoices totaling \$1,276,765.66 to Walnut Construction and received partial payment, but \$203,638.40 remains outstanding.

In January 2004, Services performed work at 1930 Chestnut at the request of 1930 Associates and 1700 Associates, but 1700 Associates has not paid the \$1,350.07 bill.

From April through December 2003, Services performed work at 1700 Walnut at the request of Mr. Turchi and 1700 Associates. Services submitted invoices totaling \$9,017.75, but has not been paid.

The Amended Complaint contains ten Counts, six by Contracting and four by Services, against the nine Defendants in overlapping fashion. Defendants have raised nine Preliminary Objections, also in overlapping fashion, to all Counts of the Amended Complaint.<sup>1</sup> Several of the Preliminary Objections are in the nature of a demurrer. In such an instance, the court considers all material facts set forth in the Amended Complaint as well as all inferences reasonably deducible therefrom as true. Essentially, when presented with a demurrer, the court queries whether the law says with certainty that no recovery is possible. Where a doubt exists as to whether a demurrer is sustained, this doubt should be resolved in favor of overruling it. Moser v. Heistand, 545 Pa. 554, 559, 681 A.2d 1322, 1325 (1996).

Defendants object to Counts III, V, VIII and X of the Amended Complaint on the grounds that a contract between the relevant parties exists, barring any claim for unjust enrichment. There can be no finding of unjust enrichment where there is a contract between the parties. Mitchell v. Moore, 729 A.2d 1200, 1203 (Pa. Super. 1999). No contract exists between the parties in Count III, VIII, and X.<sup>2</sup> Count V is brought by Contracting against both 1930 Associates and Construction for work done on 1930 Chestnut. As the agreement between Contracting and Construction is for 400 Walnut, it has no application to this Count. As for 1930 Associates, there is a contract between

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<sup>1</sup> The objection based upon Pa.R.C.P. 1028(a)(5) does not refer to the Amended Complaint. In any event, the allegations in the Amended Complaint depict a common thread among the Defendants sufficient to overcome this objection.

<sup>2</sup> The contract between Services and Turchi refers to 400 Walnut, not 1700 Walnut, which is the property at issue in Count X.

Contracting and this Defendant, in its capacity as “contractor.” Another agreement exists between 1930 Associates, in its “contractor” guise, and itself as “owner.” In Count V, Contracting seeks recovery from 1930 Associates as “owner,” a party with whom it has no agreement. Therefore, Defendants objections are overruled.

Defendants assert the existence of a prior agreement to mediate as grounds for objecting to Counts V, VI, and IX. The sole contract in the Amended Complaint containing a mediation provision, however, does not implicate the Defendants named in these three Counts, making this objection unsustainable.

Defendants challenge Counts III, IV, V, VI, VIII, and X as containing insufficient information to pierce the corporate veil. “There is a strong presumption in Pennsylvania against piercing the corporate veil,” which applies to corporations with one owner.

Lumax Indus., Inc. v. Aultman, 543 Pa. 38, 41, 669 A.2d 893, 895 (1995). Plaintiffs allege that Mr. Turchi dominates and controls the other Defendants, uses them as his *alter ego*, misrepresented their status in dealings with the Plaintiffs, and kept certain of them undercapitalized. Despite the difficulty of piercing the corporate veil, these allegations are sufficient to withstand Defendants objections.

Defendants base their objection to the damages clause of Counts I, II, VII, and IX on the lack of a contract between the parties. The Contractor and Subcontractor Payment Act (“CSPA”), 73 Pa.C.S. §§501-16, allows for the assessment of interest, penalties, and attorney fees. Counts I and VII clearly identify contracts covered by the CSPA. The Amended Complaint, in Count II, states that 400 Associates assumed the payment obligations of Construction, making the CSPA applicable to 400 Associates. As the CSPA covers both written and oral contracts, 73 Pa.C.S. §502, Count IX sufficiently

alleges a claim under this law. Defendants objections to the *ad danmum* clauses are overruled.

Defendants object to Counts I, II, III, IV, V, VI, IX, and X for failure to attach the relevant writing to the Amended Complaint as required by Pa.R.C.P. 1019. Plaintiffs attached writings to the Amended Complaint, indicated when performance was orally requested by Defendants, and brought claims that do not require a writing. Therefore, Plaintiffs have complied with the Rules of Civil Procedure.

In sum, based upon the foregoing, the Preliminary Objections of Defendants are overruled.

**BY THE COURT,**

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**C. DARNELL JONES, II, J.**