IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA

CIVIL DIVISION

CHG CONSTRUCTION CO. INC., Plaintiff	:	
	:	**No. 07-4181**
v.	:	
CAROL A. BLIZZARD, Original Defendant	:	
and	:	
JAMES L. VACCOLA, INC., t/d/b/a JAMES L. VACCOLA PLUMBING & HEATING; B.A. HAWK TRUCKING, INC.; ROBERT BUCK, Individually and t/d/b/a ROBERT BUCK CONTRACTING; and RUSSELL BAKER, Individually AND t/d/b/a SBAKER CONSTRUCTION, Additional Defendants	:	

Jason M. Rapa, Esq.	Counsel for Plaintiff
Scott M. Amori, Esq.	Counsel for Original Defendant
Robert L. Goodman, Esq.	Counsel for Counterclaim Defendant
Robert T. Panowicz, Esq.	Counsel for Counterclaim Defendant
Richard A. Polachek, Esq.	Counsel for Additional Defendant
Thomas P. Clark, Esq.	Counsel for Additional Defendant
James P. Gregor, Esq.	Counsel for Additional Defendant
Kim R. Roberti, Esq.	Counsel for Additional Defendant
Mark T. Sheridan, Esq.	Counsel for Additional Defendant

DECISION & VERDICT

Matika, J. – July 20th, 2012

CHG Construction Co. Inc., (hereinafter "Plaintiff") filed a breach of contract action against Carol A. Blizzard

(hereinafter "Defendant") on January 4, 2008, alleging that Defendant had failed to tender payment for services the company performed in building her home. Defendant filed a counter-claim against Plaintiff for breach of contract and negligence. Defendant alleged that as a result of Plaintiff's negligent workmanship and breach of the contract for the work performed by Plaintiff, she suffered $22,015.32 in damages. Plaintiff filed a joinder complaint, alleging that if there were damages to Defendant's home, those damages were a result of the actions of other parties, in particular, Additional Defendants James L. Vaccola, Inc. t/d/b/a James L. Vaccola Plumbing & Heating (hereinafter "Vaccola"), B.A. Hawk Trucking, Inc (hereinafter "Hawk"), Robert Buck, individually and t/d/b/a Robert Buck Contracting (hereinafter "Buck"), Russell Baker, individually (hereinafter "R.Baker"), and t/d/b/a SBaker Construction (hereinafter "SBaker").

After a Non-Jury trial held before this Court on April 12, 2012, and upon consideration of the evidence and testimony presented, we make the following:

FINDINGS OF FACT

1. In 2006, Defendant purchased a parcel of real estate with an address of 125 Hillview Road, Kunkletown, Pennsylvania. It was Defendant's intent to build a new home on this land.

2. Defendant contracted with Plaintiff to perform various services in constructing her new home.
3. At the time this dispute arose, Matthew Frable was employed by the Plaintiff. Mr. Frable was the only employee of CHG Construction to render any services to Defendant.
4. Given that Defendant lived in Philadelphia while her new home was being constructed, Plaintiff's primary contact in building this home was Defendant's brother and son. Defendant's brother, Russell Baker, an additional defendant, is listed as the contractor on the construction permit application.
5. Defendant initially contracted Plaintiff in 2006, to install a septic system with an elevated turkey mound for her new home. Since the construction of the house had not commenced yet, and Plaintiff was not initially given a plot plan for the land, Plaintiff was forced to use the existing septic design, a design that shows where the tank should be located on the property, in building the septic system. On April 10, 2006, after the installation of the septic tank, the Towamensing Township Sewage Enforcement Officer tested and approved the system. Defendant made full payment to Plaintiff for the services rendered.
6. In the fall of 2006, Defendant contracted with Plaintiff to perform excavation for her home's foundation, to install a

French drain, and to provide and install stone for the basement floor, garage floor, driveway, and sidewalk.

7. When Plaintiff commenced the services requested by Defendant, it was determined that since construction of the home had now started, the placement of the septic system was positioned too close to the planned foundation of the house. The system also did not meet the Township's setback requirements and thus Plaintiff was required to disinter the system. Since Defendant was living in Philadelphia at this time, Plaintiff decided to relocate the septic system instead of repositioning Defendant's home without consulting with her.

8. As Plaintiff removed the septic tank from the ground, Mr. Frable noticed cracks in the tank. To remedy them, Mr. Frable used hydraulic cement to make the repairs. The Towamensing Township Sewage Enforcement Officer testified that using hydraulic cement to repair cracks in the tank was proper and common. On November 29, 2006, after the Plaintiff repaired and reassembled the septic system, the system was retested by the Towamensing Township Sewage Enforcement Officer. One of the tests performed was a pressure test done at the end of the outflow pipe. The purpose of this test was to determine if there were any leaks in the system including the delivery line from the

house to the tank and the outflow pipe to the drain field. After performing such tests, the Sewage Enforcement Officer reapproved the septic system.

9. Defendant alleges that during the removal and relocation of the septic tank Plaintiff damaged the tank. Due to this alleged damage, Defendant argues that water began to leak from the tank which ultimately caused water damage in her basement.

10. Plaintiff also installed a french drainage system which Defendant alleges Plaintiff installed negligently leading to flooding in her basement. Plaintiff testified that a sleeve was left in the front of the foundation wall for what was anticipated to be the location of a well line that was to be installed. The sleeve in the wall was marked and Plaintiff backfilled up against the foundation. With the approval of Defendant's brother, R.Baker, the contractor on the construction permit, Plaintiff filled in over the french drain including near the well line hole in the foundation. Plaintiff left a wooden stake up against the foundation so that the hole could easily be located later when the well line would be installed. The hole in the foundation was never plugged by anyone. During the first heavy rainstorm, the unplugged hole provided a path for water to enter the basement. Defendant testified that Big

Creek Concrete, the contractor responsible for pouring the foundation, was also responsible for the well line hole in the wall.

11. Defendant contends that Plaintiff negligently installed the french drainage system. Still, Plaintiff was paid in full by the Defendant for the services rendered.
12. In the spring of 2007, Defendant entered into an oral agreement with Plaintiff for Plaintiff to provide the finished grade for the property, deliver and spread topsoil, utilize a rock-hound machine to remove rocks from the property, and supply and apply grass seed and straw covering.
13. In performing the work requested, Defendant claims Plaintiff stripped the property of topsoil, failed to fill under the front steps and around the Bilco doors, left rocks in the lawn, improperly seeded the property, and improperly graded the driveway and sidewalk.
14. Before Defendant could move into her new home, the property had to pass inspection and Defendant needed to obtain an occupancy permit.
15. One June 28, 2007, the Towamensing Township Building Code Official inspected the property. The inspection occurred after Plaintiff finished the services Defendant contracted for.

16. As part of Building Code Official's inspection, the foundation of the home was examined, and at that time the inspector noticed the sleeve in the wall for the anticipated well line. The Official testified that leaving a sleeve in the wall for an anticipated later use was common.

17. Upon completion of the inspection process, the Building Code Official issued the occupancy permit as the home was satisfactorily built per the Building Code. The Official declared that had the property been stripped of its topsoil prior to or during grading, the occupancy permit would not have been issued as there would have needed to be an adequate grade around the perimeter of the foundation. The Official also stated that because this was a new home, after the initial settlement of the soil, additional fill would be required. Plaintiff's grading was proper, according to the Building Code Official, and was to the proper height at the bottom of the front steps and Bilco doors. Defendant did not take into account that since this was a new build and that after the initial grading it would still take time for the soil to settle. Once the soil settled, the Defendant would still need to backfill under the steps and doors.

18. On June 8, 2007, Defendant's son requested Plaintiff to

assist him in moving his mother's belongs from Philadelphia to her new home in Kunkletown. Plaintiff rented an eighteen-wheeler truck that had square cutouts about the size of a car window along the sides of the truck. Mr. Frable along with Defendant's son transported most of her belongs to her new home. When Mr. Frable arrived at Defendant's Kunkletown home, he parked the eighteen-wheeler in the driveway and left. Neither he nor Defendant's son removed any of her property from the truck, however, there was no evidence presented to this Court that Mr. Frable was instructed to do so as this move would have taken place before the occupancy permit was issued.

19. Plaintiff invoiced Defendant for the latter services rendered which included delivering the topsoil, grading the property, removing rocks from the property, applying grass seed and straw, and transporting Defendant's property from Philadelphia to Kunkletown. For transporting her property, Plaintiff charged seventy dollars ($70) an hour for the nine hours it took to drive to Philadelphia, load Defendant's property into the truck, and drive back to her new home in Kunkletown.

20. The total amount due for all services Plaintiff provided was four thousand five hundred twenty-six dollars and thirty-three cents ($4,526.33). Defendant did not

immediately pay Plaintiff, so as a result, Plaintiff sent Defendant multiple invoices on July 9, 2007, August 9, 2007, and September 9, 2007 requesting payment for the services provided to her. On these invoices, Plaintiff charged Defendant 1.8% interest for every 30 days the bill remained outstanding. Such late fee penalty was never agreed to by Defendant nor was she ever made aware that late or no payments would result in a late fee charge. Defendant still has not rendered payment for the services Plaintiff provided.

21. In March of 2008, Additional Defendant, Vaccola, who installed the plumbing in Defendant's new home, was called to her home because the alarm for the septic tank was ringing. Once Vaccola turned the alarm off, he opened the lid of the septic tank and noticed the tank was full.

22. Vaccola's initial thought was that the septic tank pump had burned out and thus he installed a new pump. However, this did not cure the problem as the tank remained full.

23. Vaccola then started to dig around the septic tank and delivery line with a mini excavator and a skidster. Vaccola noticed that a pipe was separated from the tank. After noticing this separated pipe, Vaccola removed the septic tank from the ground. Vaccola testified that the tank was damaged and had cracks. Defendant and Vaccola

decided to replace the septic tank due to some leaking around the tank. The township was never requested to come to the property to examine the tank before it was replaced.

24. Vaccola installed the new septic tank and likewise, the township never inspected the installation of this new septic tank.
25. Buck was granted Leave of Court to be discontinued as a party in this case pursuant to Pennsylvania Rules of Civil Procedure 229(b)(1).
26. At the conclusion of the trial, upon motion, SBaker was granted non-suit pursuant to Pennsylvania Rules of Civil Procedure 230.1.

CONCLUSIONS OF LAW

1. Defendant, Carol A. Blizzard, is in breach of the contract she had with Plaintiff, CHG Construction Co., Inc. Plaintiff provided services to Defendant, compensation for which has not been made, namely for the services of spreading the topsoil on the property, grading the property, removing rocks from the property, applying grass seed and straw to the property, and transporting Defendant's personal property from Philadelphia to Kunkletown. Plaintiff performed the

contracted services as evidenced by the issuance of the occupancy permit after it completed the work.

2. As a result of Defendant's breach, Plaintiff is entitled to the principal amount owed on the invoices totaling four thousand five hundred twenty-six dollars and thirty-three cents ($4,526.33). Plaintiff is not entitled to the late fee penalty charged to Defendant as this late fee penalty was never agreed to by Defendant nor was she ever made aware of the charging of such a late fee until she began to receive the invoices.
3. There was insufficient evidence presented to this Court that neither counter-claim Defendant, CHG Construction Co., Inc., nor any Additional Defendants were negligent in performing the work counter-claim Plaintiff, Carol A. Blizzard, contracted for. Therefore, counter-claim Plaintiff is not entitled to any judgment.

BY THE COURT:

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Joseph J. Matika, Judge