

**Don's Landscaping and Tree Service**

v.

**Ronald LoRicco**

**CV05-4013932S**

**Superior Court of Connecticut, New Haven**

**September 21, 2007**

Caption Date: September 20, 2007

Judge (with first initial, no space for Sullivan, Dorsey, and Walsh): Zoarski, Howard F., J.T.R.

Opinion Title: MEMORANDUM OF DECISION

The defendant has filed a Motion for Summary Judgment of a claim by the plaintiff for lawn cutting and landscaping services. The plaintiff's complaint alleges the defendant is indebted for service provided. The defendant, in support of his motion, filed an affidavit which alleges he never received a written contract for the work to be done. The defendant then argues the plaintiff's claim is barred by the Connecticut Home Improvement Statute.

The plaintiff alleges that the parties entered into a verbal agreement for lawn cutting services and also that it performed services involving the installation of a lawn, grading, removal of stones, seeding, moving of trees, planting and building walls. The plaintiff then claims the sum due for lawn services is \$477.00 and the other landscaping services performed were \$1,800.00 for the total sum owed of \$2,277.00. The defendant has denied the claims of the plaintiff and had alleged as a Special Defense the plaintiff's claims are barred because of non-compliance with the Connecticut Home Improvement Statutes, Sec. 20-418 of the Connecticut General Statutes.

On June 27, 2007, the plaintiff filed an Amended Complaint which alleges in Paragraphs 4 and 5 that the defendant is an experienced attorney familiar with the Home Improvement Act and his failure to pay was prompted not by an honest mistake, but by some interested or sinister motive. The plaintiff then argues the actions of the defendant evidences bad faith, and therefore there is a genuine issue of bad faith in the assertion of the defense by the defendant.

A review of the invoices filed by the plaintiff indicates the plaintiff was verbally hired to perform maintenance work in cutting the lawn, and the work then progressed to the landscaping services alleged by the plaintiff. The services rendered by the plaintiff were never reduced to a written contract, and they appear to be

maintenance services, rather than what is described as home improvements.

In support of the defendant's motion, an affidavit is filed by the defendant simply alleging he never received a written contract for the work to be done.

"Summary judgment is a method of resolving litigation when pleadings, affidavits, and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Wilson v. New Haven*, 213 Conn. 277, 279, 567 A.2d 829 (1989). "A material fact has been defined adequately and simply as a fact which will make a difference in the result of the case." (Internal quotation marks omitted.) *Buell Industries, Inc. v. Greater New York Mutual Ins. Co.*, 259 Conn. 527, 556, 791 A.2d 489 (2002).

"In seeking summary judgment, it is the movant who has the burden of showing the nonexistence of any issue of fact." (Internal quotation marks omitted.) *Martel v. Metropolitan District Commission*, 275 Conn. 38, 46, 881 A.2d 194 (2005). "As the party moving for summary judgment, the [movant] is required to support its motion with supporting documentation, including affidavits." *Heyman Associates No. 1 v. Ins. Co. Of Pennsylvania*, 231 Conn. 756, 796, 653 A.2d 122 (1995).

"The courts hold the movant to a strict standard. To satisfy his burden the movant must make a showing that it is quite clear what the truth is, and that excludes any real doubt as to the existence of any genuine issue of material fact . . . As the burden of proof is on the movant, the evidence must be viewed in the light most favorable to the opponent . . . When documents submitted in support of a motion for summary judgment fail to establish that there is no genuine issue of material fact, the nonmoving party has no obligation to submit documents establishing the existence of such an issue . . . Once the moving party has met its burden, however, the opposing party must present evidence that demonstrates the existence of some disputed factual issue." (Internal quotation marks omitted.) *Martel v. Metropolitan District Commission, supra*, 275 Conn. 46-47.

In this case, although the Home Improvement Act refers to landscaping, there is a question of fact regarding whether the services provided by the plaintiff were governed by that Act. Furthermore, the allegations of the amended Complaint also raise questions of fact regarding defendant's reliance upon the Act as a defense.

For the foregoing reasons, the Motion is denied.

Howard F. Zoarski, JTR