BCLC, LLC : NUMBER: 570,597-B

VERSUS : FIRST JUDICIAL DISTRICT COURT

JOSEPH PONSEIGO and GARY

LOFTIN, CADDO PARISH CLERK

OF COURT AND EX OFFICIO

RECORDER OF MORTGAGES : CADDO PARISH, LOUISIANA

**REASONS FOR JUDGMENT**

Trial in the peremptory exceptions of no right of action was held December 16, 2013. The Court heard testimony from Joseph Ponseigo, Keith Johnson and Charis Kirk, also receiving into evidence various exhibits. Finding the no right of action exception to have merit as to the lien, the Court sustains the exception.

In his reconventional demand against BCLC, LLC (filed August 13, 2013), Joseph Ponseigo has alleged that he provided labor in the construction of improvements on the Unadilla property, that there is an indebtedness, that he has filed in the public records an affidavit asserting a lien and privilege against the property, and that he wishes to have his lien recognized. In his first amending reconventional demand (filed October 21, 2013), Mr. Ponseigo has modified his allegations and alternatively alleged improvements “over a period of time resulting in the unjust enrichment to BCLC, LLC.” (See First Supplemental and Amending Reconventional Demand, Paragraph 10)

Based on the evidence presented on December 16, 2013, the Court concludes that Mr. Ponseigo has no right of action against the owner of the Unadilla property under the Private Works Act: specifically, the facts adduced are insufficient to render the Unadilla property subject to the privilege for material, labor or similar services imposed by R.S. 9:4801.

Under the Private Works Act, a contractor is anyone who has privity of contract with an owner.[[1]](#footnote-1) A subcontractor is one who performs work for a contractor.[[2]](#footnote-2) By contrast, a general contractor not only has privity of contract with the owner: a general contractor is one who “perform[s] all or substantially all of [the] work.”[[3]](#footnote-3) Of critical importance, a “subcontract” is a contract under or subordinate to another contract.[[4]](#footnote-4) Here, Mr. Ponseigo has not produced any evidence of a contract between BCLC, LLC and himself, or between BCLC, LLC and Mr. Johnson. Therefore, in the absence of proof of a contract, the Court is in no position to characterize either party as a “contractor,” “general contractor,” or “subcontractor” as these terms are defined by the Private Works Act, and such a characterization of the parties is a necessary predicate to evaluating the merits of a claim under the Act.

The purpose of the Private Works Act is to protect laborers who are hired by a contractor or a general contractor but are not in privity of contract with the owner. It is *not* the purpose of the Private Works Act to protect laborers who perform work for an alleged “contractor” who is also not in privity of contract with the owner.

It should be noted that Mr. Ponseigo is not precluded from pursuing his claim of unjust enrichment; in fact, he may avail himself of any contractual remedy afforded by the laws of this state. Mr. Ponseigo should not be unmindful that the rights of a subcontractor are not restricted to remedies afforded by lien statutes, and Mr. Ponseigo has a right of action to advance his case to trial on the merits--but he does not have the benefit of maintaining a lien on the Unadilla property under the Private Works Act.

Accordingly, the peremptory exception of no right of action filed by BCLC, LLC is sustained, in part, as to Mr. Ponseigo’s right of action to maintain the Affidavit Asserting a Lien and Privilege Against Immovable Property and his right to maintain the lis pendens filing.

The lien and lis pendens shall be cancelled forthwith. In all other respects, the no right of action is overruled and Mr. Ponseigo is allowed to present evidence at the trial on the merits.

The other exceptions are deferred and may be reurged by counsel.

Signed this 20th day of December, 2013, in Shreveport, Caddo Parish, Louisiana.

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SCOTT J. CRICHTON

DISTRICT JUDGE

DISTRIBUTION:

David Szwak, Counsel for BCLC, LLC

Byron Richie, Counsel for Joseph M. Ponseigo

Keith Johnson, Self-Represented Party (no answer filed)

1. La. R.S. 9:4807 [↑](#footnote-ref-1)
2. La. R.S. 9:4807(C) [↑](#footnote-ref-2)
3. La. R.S. 9:4807(B)(1) [↑](#footnote-ref-3)
4. *Executive House Bldg., Inc. v. Demarest*, 248 So.2d 405 (La. App. 4 Cir. 1971) [↑](#footnote-ref-4)