LOUISIANA CAPITAL PARTNERS, L.L.C. : NUMBER: 529,720, “A”

VERSUS : FIRST JUDICIAL DISTRICT COURT

THOMSON GENERAL CONTRACTORS, INC. : CADDO PARISH, LOUISIANA

CONSOLIDATED WITH

LOUISIANA CAPITAL PARTNERS, L.L.C. : NUMBER: 529,719, “B”

VERSUS : FIRST JUDICIAL DISTRICT COURT

THOMSON GENERAL CONTRACTORS, INC. : CADDO PARISH, LOUISIANA

**REASONS FOR JUDGMENT**

 Trial was held April 13, 2011. The Court heard testimony from John Thomson (Thomson), Allen Dyson, Mark Goff (Goff), Walter Ledig (Ledig), Randy Berry and Jeff Barron. Numerous items of evidence were admitted, notably the Thomson letter of October 4, 2007 (P2); the invoices (P8 and T3); the e-mails between Thomson and Goff (P7, P11, T6-T-8); the Randy Berry Daily Field Observation Report (T5) and the lien filed by Thomson on October 9, 2008. For reasons assigned, the Court concludes that a valid contract existed between Louisiana Capital Partners, L.L.C. (LCP) and Thomson General Contractors, Inc. (TGC); alternatively, an enforceable obligation existed between them based on the conduct of both between October 2007 and September 2008, such that the work performed by TGC was authorized. Accordingly, and for reasons which follow, the Court grants judgment on TGC’s reconventional demand and third party demand against LCP and Goff, respectively, in the amount of $99,816.06.

**CLAIMS AND PROCEDURAL BACKGROUND**

 In Docket No. 529,719, LCP, by rule, seeks cancellation of the lien filed by TGC against property located at 6540 Line Avenue and attorney’s fees.

 In Docket No. 529,720, LCP seeks damages in the amount of $709,757.00 for “unauthorized demolition”.[[1]](#footnote-1) In response, TGC filed a reconventional demand against LCP and a third party demand against Goff and Ledig seeking enforcement of the lien and judgment for the unpaid portion of the demolition work, $99,816.06.

 The suits were consolidated on January 26, 2010. Third party plaintiff dismissed Ledig on the day of trial.

**ISSUES**

1. Whether the October 4, 2007 letter constitutes a contract that authorized Thomson to perform demolition work between October 2007 and September 2008 for a total price of $119,816.06?
2. Whether the October 4, 2007 letter coupled with the actions and/or inactions of Thomson, Goff and Ledig – that is, the conduct of the principals of LCP and TGC - constitute an obligation incurred by LCP to pay TGC for the work performed between October 2007 and September 2008?
3. Whether the lien filed by Thomson is valid and enforceable under the Louisiana Private Works Act.

**THE EVIDENCE, FINDINGS OF FACT AND CONCLUSIONS OF LAW**

 In his letter of October 4, 2007 Thomson wrote the following:

Dear Mark and Walter,

We propose to furnish all material, labor, equipment, subcontractors, permits, insurance, supervision, and construction management for bringing your project on Line Ave to the shell stage for the sum of all cost (material, labor, burden, equipment, subcontractors, permits, overhead, etc.) plus a fee of 4%. For this we will communicate with owners, tenants and architects to ascertain the requirements of the shell, obtain pricing from multiple subcontractors and suppliers to get the best value for the work required, contract with those subcontractors and suppliers, and complete the work in a timely manner to proceed on to the next phase.

For the work involved with the tenant finish out we propose to furnish the same services as described above for the sum of all cost plus a fee of 5%.

We will provide copies of all invoices for materials and subcontractors, labor reports, and equipment rental rates with each monthly invoice on or about the 25th of the month and will require payment by the 10th of the following month. Prior to closing out the project and with the final invoice we will provide lien releases from all subcontractors and any major material supplier you may request.

Thank you for this opportunity to supply your construction needs and we look forward to a long relationship.

 Sincerely,

 John R. Thomson, Jr.

Under Thomson’s signature is the word “Accepted” and signed by Mark Goff.

 On November 8, 2007 Thomson applied for a demolition permit, which was approved on November 13, 2007, and commenced work in December 2007 on the Line Avenue building. The Court concludes that this work was fully authorized based upon the October 2007 letter agreement and the subsequent actions of Thomson, Goff and Ledig in light of the following particular facts:

1. John Thomson has been in the construction business for 37 years. Notwithstanding points scored during a vigorous cross examination by counsel for LCP, the Court believes that Thomson justifiably relied on Goff’s written response to his proposal of “Accepted”. Serving as a contractor for almost four decades, Thomson would not have engaged his business on this consuming and laborious task if Goff, as a principal of LCP, had not given him authorization. Furthermore, it is highly improbable that Thomson would have continued on this 9 or 10 month project had he received any signal from Goff or Ledig to cease work.
2. Even though Goff and Ledig do not reside in Shreveport (Goff in Coushatta and Ledig in Minden-each city a mere 30 minutes away), they are charged with the personal and business responsibility of knowing the status of their LLC’s building during the 9 or 10 month time frame at issue. Moreover, this building is prominent and conspicuous, well known as the old Boots Pharmaceutical building; it faces Line Avenue, taking up a city block on a major roadway in Shreveport, upon which thousands of motorists travel each day. For 9 or 10 months, the building had chutes positioned from the windows and dumpsters in front of the building for much if not all of the time that Thomson was performing the demolition shell work. It is inconsistent with common sense and irresponsible of Goff and Ledig to claim ignorance of Thomson’s work during this period of almost a year.
3. Moreover, Goff and Ledig made numerous visits to the building, as evidenced by the testimony of Randy Berry and Jeff Barron, and as further evidenced in the contemporaneous Daily Field Observations Report. Obviously, Berry summarized numerous issues in his report, the purpose of which was not to record the comings and goings of Goff and Ledig. However, it does reflect their presence and involvement in this project by the following entries:
4. November 13, 2007: “Walter (Ledig) came by and looked around”.
5. December 5, 2007: “We had the people from USDA walking through and looking at the building today”.
6. December 12, 2007: “Richard LeBlanc (LCP’s architect) came by and looked around”.
7. December 17, 2007: “Richard LeBlanc came by and was looking at the bathroom in the big office…”
8. December 20, 2007: “John came by today and the owner wants the cabinets and fixtures if not used in the new construction to be put in the basement”.
9. June 26, 2008: “Loaded the trailer in the rear for Mark the owner of Line Avenue Building”.
10. July 11, 2008: “Went to the Line Avenue Building and met John and the architect along with a few other key people”.

Their contemporaneous input during Berry’s recorded 8 month period reflects the presence of Goff and Ledig as well as the presence of LCP’s architect and USDA at the site, all of which is inconsistent with Goff’s and Ledig’s position at trial that they “didn’t know” and that the work was unauthorized.

1. The contemporaneous e-mails between Thomson and Goff as well as Thomson and Richard LeBlanc throughout the project indicate that shell demolition was ongoing. Significantly, there are no reply e-mails from Goff and Ledig to Thomson indicating that he would not be paid or that TGC should cease work. One e-mail indicates communication between Thomson and Goff of December 20, 2007 (to LeBlanc: “talked to Mark and he is thinking that a wheelchair lift would be cheaper than the new ramp location.) The August 20, 2008 e-mail stream between LeBlanc, Goff and Thomson evidences the expense incurred: “you need to consider the expenses incurred to date in the neighborhood of $100,000.00 when making your decisions”. There was no reply by Goff. Finally, the December 9, 2008 e-mail from Thomson to Goff and Ledig (two months after the lien was filed) states:

Gentlemen, I am to a point where it has become necessary to borrow money to stay in business. Anything you can do would be appreciated. My bonding company is not at all understanding and is giving me alot (sic) of greif (sic). Invoices and statements in the future will include interest since I have to pay interest on the money you owe me.

Again, significantly, there was no response by Goff or Ledig.

1. Invoices were sent to LCP and Goff and Ledig throughout the project, as reflected by P8, specifically on December 8, 2007 in the amount of $34,361.07; March 24, 2008 in the amount of $47,909.74; and September 9, 2008 in the total amount of $119,816.06. There were no letters or e-mails in response to these invoices by LCP, Goff or Ledig inquiring about the nature or extent of the invoices or objecting to them. This action by TCG and inaction by the principals of LCP evidences that the work was authorized and would be paid, at least upon the contract being consummated with General Services Administration.
2. Goff’s testimony that at various points he instructed Thomson “to stop” is not corroborated by any independent witness or any e-mail or letter confirming the instruction (which is in contrast to the e-mails and related evidence presented by TGC). Furthermore, the explanation by Goff and Ledig that they assumed Thomson was doing “cabinet work” is not sustainable.
3. The undated and unsigned Promissory Note (P12) and the March 28, 2008 check to TGC in the amount of $20,000.00, drawn on the escrow account of LCP’s counsel (T4), while odd and puzzling, is consistent with TGC’s argument that this was Goff’s and/or LCP’s partial payment on the amount due in connection with the March 24 invoice. The Court does not believe that the payment of $20,000.00 by Goff, through his counsel, was a personal loan to Thomson as there was no note signed by Thomson and, perhaps more significantly, Goff has never filed suit for payment of the 2008 loan - as a separate suit or counterclaim - even though these parties have been embroiled in this litigation since LCP filed the two suits almost two years ago, on May 23, 2009. The only way to make sense of the $20,000.00 payment by LCP counsel to TCG is that it was partial payment on an account for authorized work.

Based on the evidence, the Court believes that after LCP realized that it would not receive revenue from GSA that it then took the position that Thomson’s work was unauthorized, and the Court agrees with TGC’s counsel that this was “a ploy to avoid payment of the $99,816.06 balance of the invoices”.[[2]](#footnote-2)

For these reasons, as to the first two issues, the Court concludes that the October 4, 2007 letter constituted a contract between Thomson and Goff; moreover, the action of the parties between October 2007 and September 2008 evidences an enforceable obligation between LCP, Goff and TGC. Obviously, because the work was in accordance with the contract between the parties and because it was fully authorized, the claim by LCP against TGC for the amount of $709,757.00 is denied. Judgment shall be rendered in favor of TGC in the amount of $99,816.06 and against LCP and Goff.

**THE LIEN**

 There are legal issues, worthy of further debate, concerning the lien sworn to by Thomson and filed with the Caddo Parish Clerk of Court on October 9, 2008. In light of this Court’s findings as to the central issue, and the fact that a Judgment is forthcoming, there may not be the need for the Court to address the various legal issues concerning the lien. However, if there is the need for the Court to resolve the lien issue, counsel should submit a concise memorandum within 10 days followed by a proposed formal Judgment in accordance with La. Dist. Ct. R. 9.5.

 Signed this 21st day of April 2011 in Shreveport, Caddo Parish, Louisiana.

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 SCOTT J. CRICHTON

 DISTRICT JUDGE

DISTRIBUTION:

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1. Petition, paragraph 11. [↑](#footnote-ref-1)
2. Pretrial memorandum, page 4. [↑](#footnote-ref-2)