

STATE OF VERMONT
RUTLAND COUNTY

WILLIAM ALEXIS)

v.)

SUGARLOAF HILL CONSTRUCTION, INC.)
and ROBERT F. DAVIE, II)

Rutland Superior Court
Docket No. 517-9-06 Rdcv

CONFORMED COPY
RUTLAND SUPERIOR COURT

AUG 29 2008

DECISION

Defendant Robert Davie's Motion for Summary Judgment, filed April 8, 2008
Plaintiff's Cross-Motion for Summary Judgment, filed May 8, 2008

Plaintiff William Alexis alleges that defendants Sugarloaf Hill Construction, Inc. and Robert Davie breached a construction contract by failing to complete certain work and by performing other work in a defective manner. The complaint also states claims for unjust enrichment, breach of implied warranty, and negligence.

The parties have filed cross-motions for summary judgment on the issue of whether Mr. Davie, who is the president of Sugarloaf Hill Construction, Inc., was a party to the construction contract in his individual capacity. The statements of material facts filed by the parties, supported by affidavits and other record evidence, clearly show disputed issues of material facts on this issue.

Specifically, Mr. Alexis has submitted an affidavit stating that Mr. Davie never disclosed that he was acting on behalf of Sugarloaf Hill Construction at the time the verbal contract was formed. Mr. Alexis also states that he never became aware of an agency relationship during the performance of the contract, and believed that a contract had been made between himself and Mr. Davie personally.

Mr. Davie has submitted an affidavit contending that Sugarloaf Hill Construction was the contracting party, and setting forth a number of facts allegedly showing that Mr. Alexis had notice of the agency relationship, including invoices delivered on Sugarloaf letterhead. Mr. Alexis specifically denies receiving invoices on Sugarloaf letterhead.

These facts show a genuine dispute regarding whether Mr. Davie disclosed his agency relationship with Sugarloaf Hill Construction, whether Mr. Alexis knew or should have known of the agency relationship, and whether Mr. Alexis entered into a contract with Mr. Davie, Sugarloaf Hill Construction, or both. See *Douglas v. O'Connell*, 139 Vt. 427, 429 (1981) (stating general rule that "an agent must disclose the fact of his agency and the identity of his principal if he is to escape personal liability"); see also Restatement (Third) of Agency §§ 6.01, 6.03 (explaining that when an agent makes a contract on behalf of a disclosed principal, the agent is not ordinarily a party to the contract unless the agent and third party agree otherwise, but that when the principal is

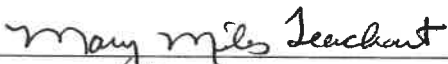
undisclosed, the agent is generally a party to the contract). For these reasons, the parties' cross-motions for summary judgment are denied.

ORDER

(1) Defendant Robert Davie's Motion for Summary Judgment (MPR #3), filed April 8, 2008, is *denied*; and

(2) Plaintiff's Cross-Motion for Summary Judgment (MPR #5), filed May 8, 2008, is *denied*.

Dated at Rutland, Vermont this 28th day of August, 2008.



Hon. Mary Miles Teachout
Superior Court Judge