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Order Denying Third-Party Defendant Mock Plumbing and Mechanical Inc.'s Motion for Summary Judgment (GEORGIA STATE FINANCING AND INVESTMENT COMMISSION)

Elizabeth E. Long
Superior Court of Fulton County

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**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

**GEORGIA STATE FINANCING AND
INVESTMENT COMMISSION,**

Plaintiff,

v.

**LPS CONSTRUCTION CO., INC., WALLACE
H. WIGGINS, JR., PERKINS & WILL, INC.,
FIREMAN'S FUND INSURANCE CO., and XL
SPECIALTY INSURANCE CO.**

Defendants,

and

**LPS Construction Co., Inc.
Third Party Plaintiff**

v.

**ZURICH AMERICAN INSURANCE CO. and
NATIONAL FIRE INSURANCE COMPANY
OF HARTFORD**

Third-Party Defendants,

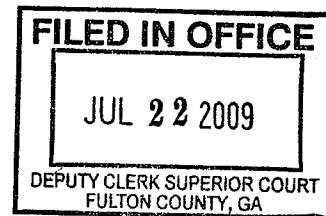
and

**LPS CONSTRUCTION CO., INC.,
FIREMAN'S FUND INSURANCE COMPANY.
and
PERKINS & WILL, INC.,
Third-Party Plaintiffs**

v.

**SOUTHWESTERN COMMUNICATIONS,
INC., SOUTHEAST ROOFING SOLUTIONS,
INC., MOCK PLUMBING AND
MECHANICAL, INC., H. A. SACK CO., INC.
d/b/a THE SACK COMPANY, BONITZ OF
GEORGIA, INC., RIGHTWAY
DRYWALL, INC., OLD CAPITOL GLASS
COMPANY, INC., MAY SPECIALTY
FABRICATORS, INC., LARRY GUNN,
CHARLIE JOHNSON, CENTRAL FENCE
COMPANY, INC., SPRINKLER
CONTRACTORS, INC.,
and H. A. SACK CO., INC. d/b/a THE SACK**

**CIVIL ACTION FILE NO.
2007CV128025**



COMPANY

Third-Party Defendants,

and

**SOUTH WESTERN COMMUNICATIONS,
INC.,**

Fourth-Party Plaintiff,

v.

**SIMPLEXGRINNELL, LP, f/k/a SIMPLEX
TIME RECORDER CO.,**

Fourth-Party Defendant

and

**H. A. SACK CO., INC. d/b/a THE SACK
COMPANY**

Fourth-Party Plaintiff,

v.

**CONTINENTAL LIGHTNING
PROTECTION, INC. AND TERRY L.
DAGENHART**

Fourth-Party Defendants.

**ORDER DENYING THIRD-PARTY DEFENDANT
MOCK PLUMBING AND MECHANICAL, INC.'S MOTION FOR SUMMARY JUDGMENT**

On July 10, 2009, Counsel appeared before this Court to present oral argument on Third-Party Defendant Mock Plumbing and Mechanical, Inc.'s Motion for Summary Judgment. After hearing the arguments made by counsel and reviewing the briefs submitted on the motions and the record in the case, the Court finds as follows:

I. Facts

This case arises out of the construction of a 192-bed state forensics hospital in Milledgeville, Georgia (“the Project”). The Project was designed for the Georgia Department of Human Resources to be used to house detainees awaiting adjudication as to their competence to stand trial. Plaintiff, Georgia State Financing and Investment Commission (“GSFIC”), is the State agency that procures projects for use by other State agencies. Defendant LPS Construction Company, Inc. (“LPS”) was hired by GSFIC to construct the Project, and served as the general contractor. Fireman’s Fund Insurance Company (“Fireman’s Fund”) is the performance bond surety for LPS. Mock Plumbing and Mechanical, Inc. (“Mock”) is the subcontractor of LPS that provided labor and materials for the plumbing and HVAC systems. Defendant Perkins & Will (“P&W”) was hired by GSFIC as the Project architect, and was in charge of contract administration.

GSFIC has filed suit against LPS, P&W, and Fireman’s Fund complaining of extensive construction defects throughout the Project. In turn, LPS and Fireman’s Fund have filed third-party complaints against all of LPS’s subcontractors on the Project.

II. Standard

Summary judgment is appropriate pursuant to O.C.G.A. § 9-11-56 when the moving party shows that no genuine issue of material fact remains to be tried and that the undisputed facts, viewed in the light most favorable to the non-movant, warrant summary judgment as a matter of law. Lau’s Corp., Inc. v. Haskins, 261 Ga. 491, 491 (1991).

III. Mock’s Motion for Summary Judgment


On April 2, 2009, Mock filed for summary judgment against LPS and Fireman’s Fund. In support of its motion, Mock first argues that there is no evidence that Mock’s work on the Project was either defective or non-conforming to the Project’s specifications. Second, Mock argues that neither GSFIC nor the Third-Party Plaintiffs have personal knowledge as to the cause

of the defects attributed to Mock's work. Mock further argues that its work was not defective as of 2003 and that GSFIC gained occupancy to and was in the exclusive control of the Project as of 2004. Based on these circumstances, Mock concludes that Third-Party Plaintiffs will be unable to prove causation.

Many questions of fact persist that preclude the grant of summary judgment. GSFIC and Third-Party Plaintiffs have come forward with numerous instances of defects with the work performed by Mock. Despite Mock's arguments that its work was inspected and approved in 2003, the record shows that as early as October 2003 defects with work attributed to Mock were identified. For example, Michael Lovelady, an independent commissioning agent hired by GSFIC, testified that he witnessed defects in work performed by Mock when he started inspecting the Project in October 2003. Orders of condemnation issued by P&W in 2004 and 2005 confirmed problems attributed to Mock's work as noted earlier by Mr. Lovelady. Such evidence, including direct testimony of an eyewitness, leaves no room for the Court to draw any reasonable inferences nor conclude that Mock is entitled to summary judgment.

As to Mock's argument about causation, the Court finds that Third-Party Plaintiffs need not establish causation through their personal knowledge alone. Proof of causation may come from a variety of sources. As there exists genuine issues of material fact as to causation, judgment as a matter of law may not be granted. Third-Party Defendant Mock's motion for summary judgment is hereby **DENIED**.

SO ORDERED this 21st day of July, 2009.


ELIZABETH E. LONG, SENIOR JUDGE
Superior Court of Fulton County
Atlanta Judicial Circuit

Copies to:

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