

COMMONWEALTH OF PENNSYLVANIA

KNEPPER ASSOCIATES, INC. : BEFORE THE BOARD OF CLAIMS
: :
VS. : :
: :
COMMONWEALTH OF PENNSYLVANIA, :
DEPARTMENT OF GENERAL SERVICES : DOCKET NO. FC-1137-03

FINDINGS OF FACT

1. Plaintiff, Knepper Associates, Inc. (“Knepper”), is a Pennsylvania Corporation located at 148 Jefferson Street, Belmont Hills, PA 19004. Ronald Knepper ("Mr. Knepper") is president. (Compl.)
2. Defendant, Department of General Services (“DGS”), is an agency of the Commonwealth of Pennsylvania with its principal office located in Harrisburg, PA 17120. (Ans.)
3. In 2000, Mr. Knepper was a distributor for Garcy/SLP Lighting Co. (“Garcy”). Garcy supplied a unique lighting system that produced high quality light that was also very energy efficient. (N.T. 6, 12)
4. Gene Kriebel, an acquaintance of Mr. Knepper, had a state contract to provide furniture for the DGS Bid Room demonstration project. (N.T. 11-12, 40)
5. Mr. Kriebel contacted Mr. Knepper and asked him to put together a lighting demonstration connected to the furniture that Mr. Kriebel was selling to the Commonwealth. The lighting demonstration was in connection with the Green Lights/Green Buildings program. (N.T. 10)
6. The Green Lights/Green Buildings Program was a program DGS sought to implement during 1999 and 2000 by mandating the reduction of energy used and the costs of energy in government buildings. (N.T. 5)
7. Mr. Knepper's lighting system was a "plug and play" system that plugged into the furniture system supplied by Mr. Kriebel and the lights therefore required no wiring in the ceiling. This gave the lighting an advantage because in older buildings the installation of ceiling lighting can create problems due to the presence of asbestos. This “plug and play” feature also meant less labor costs and faster installation. (N.T. 14-16, 54)

8. Mr. Knepper had tried unsuccessfully to do business with the Commonwealth before under the GreenLights/Green Buildings Program, and he was therefore reluctant to try again. (N.T. 10)

9. Joe Nugent was Director of Purchasing for DGS in 2000. He is now retired and did not appear at the hearing as a witness. (N.T. 11)

10. Mr. Kriebel set up a meeting at DGS with Mr. Nugent in late July 2000 and invited Mr. Knepper to attend. At the meeting, Mr. Nugent stated that Mr. Kriebel was supplying furniture for the Bid Room under a state contract and he asked Mr. Knepper if he would be willing to put his lighting into the DGS Bid Room, (where excellent reading light is important) as a demonstration for the Green Lights/Green Buildings Program. (N.T. 11-12)

11. At Mr. Knepper's request, Garco/SLP Lighting supplied the Commonwealth with an engineering study (without charge) that detailed the attributes of its lighting system. (N.T. 12; Attachment A to the Compl.)

12. In September 2000, Merle Ryan was Deputy Secretary of DGS, in charge of construction and rehabilitation of buildings. He no longer works for DGS and did not appear as a witness at the hearing. (N.T. 8, 13)

13. Mr. Knepper and Mr. Kriebel met with Mr. Ryan on September 13, 2000, and Mr. Knepper made a presentation of his lighting system. (N.T. 13-14)

14. Mr. Knepper demonstrated to Mr. Ryan that the light from his system met national standards and was better than the light currently installed in the Keystone Building. Mr. Knepper showed Mr. Ryan how his lighting could save the Commonwealth over 70% in energy costs to light its buildings. (N.T. 14-16, 54)

15. Mr. Ryan was excited about the "plug and play" aspect of the lighting system because it would cut costs, but he stated that the biggest problem would be that there was no money in the present furniture budget for lighting. He told Mr. Knepper that lighting is usually a construction budget item that has already been spent by most offices for lighting installed in the ceiling. (N.T. 16, 55)

16. Mr. Ryan told Mr. Knepper that he could overcome this problem and get money out of the construction budget and transfer it to the furniture budget. Mr. Ryan stated, "That problem can be solved at my desk." (N.T. 17, 46, 55, Ex.A)

17. Mr. Ryan told Mr. Knepper that if Mr. Knepper could provide his lighting system and it provided better light for less money then "my commitment is that I will make every architect and every designer working for the State of Pennsylvania go to the Bid Room" to view the lighting system and "I will say to them, 'This is the quality of lighting that I expect and this is the energy level that I expect.' " (N.T. 17-18, 54)

18. Mr. Ryan did not guarantee Mr. Knepper would get any specific amount of state business, but he did state that Mr. Knepper would have an opportunity to sell his superior lighting system. (N.T. 18)

19. Mr. Ryan did not offer to pay for the lighting in the Bid Room. (N.T. 42)

20. Mr. Knepper wrote a letter to Mr. Ryan on September 18, 2000 reiterating Mr. Ryan's statement that the "largest obstacle" to the sale of lighting was "the transfer of moneys from the construction budget to the furniture budget" and that, "You stated that that problem could be solved in your office." (N.T. 19-20; Ex. A)

21. Mr. Knepper relied on Mr. Ryan's statement that he could transfer funds from the construction budget to the furniture budget because Mr. Ryan was Deputy Secretary for Public Works in charge of construction for DGS. (N.T. 47, 59)

22. Based upon Mr. Ryan's representations, Mr. Knepper bought the lighting system at his own expense and installed it in the Bid Room in February 2001. (N.T. 18, 26)

24. In February 2001, Mr. Nugent asked Mr. Knepper to make a presentation to the DGS employees in the Bid Room about the new system and the quality of the light. (N.T. 23-24)

25. Within a few days of Mr. Knepper's presentation, the DGS employees in the Bid Room told Mr. Knepper they were very pleased with the quality of the new lighting. (N.T. 24)

26. Mr. Knepper started marketing his system in February and March, 2001, by calling various state agencies. He showed them the present lighting in the Keystone Building and then showed them his improved system in the Bid Room. No agency bought the lighting because they already had some type of lighting and they had no money in their furniture budgets for a new system. (N.T. 24, 43, 56-57)

27. On March 30, 2001, Mr. Knepper went to Mr. Ryan's DGS office and Mr. Ryan told him that he had been to the Bid Room and that he loved the lighting. Mr. Ryan said Mr. Knepper had done a terrific job. (N.T. 26, 57)

28. Mr. Knepper got no assistance in his marketing efforts from Mr. Ryan. Mr. Ryan sent no architects or agencies to the Bid Room to view the lighting. (N.T. 26, 57)

29. By June 2001, Mr. Ryan had still not directed anyone to see the Bid Room lighting. (N.T. 26)

30. Mr. Kriebel and Mr. Knepper set up a meeting for June 20, 2001, with Mr. Ryan, to discuss the demonstration project. Mr. Ryan did not attend the meeting. Mr. Rados, a DGS employee, was present, and he spoke on behalf of DGS. (N.T. 26-27)

31. At the June 20, 2001 meeting, Mr. Rados told Mr. Kriebel and Mr. Knepper that it was not possible to move capital equipment funds from the building infrastructure budget to the

furniture budget to pay for the Knepper lighting system, as Mr. Ryan had told them. Mr. Rados told Mr. Knepper that Mr. Ryan had misled Mr. Knepper in this respect. Mr. Rados also said that the quality of light in the Bid Room was excellent and DGS would like to use Mr. Knepper's system elsewhere in the Commonwealth, but could not because the state agencies already had installed and paid for ceiling lighting. He said there was nothing further he could do. (N.T. 27-29, 57-58)

32. In 2002, Garcy/SLP Lighting was sold to Light Corp. Mr. Knepper could no longer return the lights to the supplier, and he went out of the lighting business. (N.T. 29)

33. After June 20, 2001, Mr. Knepper demanded payment for his lighting system several times. DGS has not made any payment for the lights. (N.T. 29-33, 59-60, 65)

34. Before January 2002, when the Rendell administration took office, Mr. Kriebel went to DGS. He believed that DGS was willing to buy the lights from Mr. Knepper, but after Mr. Rendell became governor, a freeze was imposed on all spending, so DGS could not buy the lights. (N.T. 31)

35. The lights installed by Mr. Knepper in the Bid Room are still there and are still being used by DGS. The DGS employees continue to love the lighting, and the Commonwealth continues to save money and energy. (N.T. 34-35, 60)

36. The attorney for DGS stipulated that Plaintiff incurred about \$3,800.00 in costs to provide the lighting in the Bid Room. (N.T. 6)

37. The actual cost of the lighting system installed in the DGS Bid Room was \$3,867.50. (Attachment B to the Compl.)

38. The Board finds the testimony of Ronald Knepper and Eugene Kriebel to be credible and reliable in all respects.

39. DGS presented no witnesses at the hearing and filed no pre or post hearing briefs and no proposed findings of fact or conclusions of law.

40. DGS presented no witnesses to support its defenses to the action.

CONCLUSIONS OF LAW

1. The Board of Claims has jurisdiction over the subject matter of this action pursuant to the Board of Claims Act (as amended). 72 P.S. §4651-4.

2. The Board has personal jurisdiction over the parties.

3. Plaintiff had no enforceable written or oral contract with DGS for reimbursement for the cost of the lighting system.

4. Because Plaintiff had no valid oral or written contract with DGS, the doctrine of quasi contract is available to permit recovery of its damages.

5. Plaintiff conferred a benefit on DGS, DGS appreciated and had knowledge of the benefit, and DGS accepted the benefit under circumstances that made its retention inequitable without paying for the benefit.

6. On June 20, 2001, Mr. Rados told Mr. Knepper that Mr. Ryan had misled him about transferring money from the construction budget to the furniture budget and thereby effectively terminated the prior understanding between the parties about the Bid Room demonstration project.

7. The Board finds that DGS's retention and continuous use of the Plaintiff's lighting system in the Bid Room after June 20, 2001, without paying for it, constitutes unjust enrichment.

8. Plaintiff is entitled to an award of \$3,867.50 for the lighting system under a theory of unjust enrichment.

9. The Board awards Plaintiff statutory interest at the rate of 6% from June 20, 2001, on the \$3,867.50 damage amount.

OPINION

A Panel hearing of this matter was held on November 18, 2003. The Panel Report has been submitted and reviewed.

On May 5, 2003, Plaintiff, Knepper Associates, Inc. (“Knepper”), filed its claim in this action, demanding judgment against the Commonwealth of Pennsylvania, Department of General Services (“DGS”) for damages of \$3,867.50. On July 15, 2003, DGS filed an answer and new matter and on July 23, 2003, Knepper responded to the new matter. The parties engaged in no discovery. After the Panel hearing, Knepper filed proposed findings of fact and conclusions of law on January 23, 2004. DGS submitted no pre or post hearing filings. On June 3, 2004, the Panel filed its report with the Board.

The matter has several unique circumstances. Plaintiff Knepper was not represented by counsel, but by Mr. Ronald Knepper, the president of Plaintiff. Although DGS has refused to pay

Plaintiff's claim, it repeatedly characterized the action as "not adversarial." (N.T. 7, 33, 37) At the hearing, DGS presented no witnesses, and filed no briefs, no findings of fact and no conclusions of law. It contested none of the facts presented by the Plaintiff and stated on the record that it considered Mr. Knepper to be "an honest guy." (N.T. 7) In fact, the record indicates that in the past, DGS considered compensating Plaintiff for the lighting system, but for various administrative and budgetary reasons could not do so because Plaintiff had no written contract with DGS. The issue to be addressed by the Board is whether there is any legal theory under which DGS is liable to pay for the lighting system supplied by Plaintiff. That lighting was installed by Plaintiff in the DGS Bid Room in February 2001, and has been used by DGS employees continuously from that time to the present.

The Plaintiff bases its claim for the cost of the lighting on statements made by DGS personnel, particularly Mr. Nugent and Mr. Ryan. Plaintiff contends it is entitled to recover under either an oral contract or quasi contract theory. DGS denies liability because it alleges it never agreed to pay for Knepper's costs.

The Board has jurisdiction to decide this case under theories of written or oral contract as well as quasi contract and the Fiscal Code. The Board's jurisdiction is set forth in the Board of Claims Act, 72 P.S. §4651-1 to 10. Specifically, §4651-4 grants the Board exclusive jurisdiction to decide contract and Fiscal Code claims filed against the Commonwealth. The Commonwealth Court just recently reaffirmed this jurisdiction in Department of General Services v. On-Point Technology Systems, Inc., 821 A.2d 641, 650 (Pa. Cmwlth. 2003) in a footnote where the court stated:

“ ‘...the equity jurisdiction of the Board extends to all cases instituted in the form of contract actions, namely quasi-contract claims and claims in quantum meruit,’ Miller v. Department of Environmental Resources, 133 Pa. Cmwlth 327, 578 A.2d 550, 553 (1990), petition for allowance of appeal denied, 526 Pa. 643, 584 A.2d 324 (1990)...”

On June 28, 2003, the Board’s jurisdiction was changed by certain amendments to the Procurement Code (62 Pa.C.S.A. §1721, *et seq.*), but these changes did not take effect until June 28, 2003, which was after the filing date of Knepper's claim on May 5, 2003. Thus, these jurisdictional changes are not applicable to this case, and the Board has the power under the old Board of Claims Act to decide Plaintiff's claim under either contract or quasi contract theories.

Oral Contract Claim

As noted above, none of the key facts in this matter are contested by DGS. DGS presented no witnesses to contradict Mr. Knepper’s or Mr. Kriebel's testimony, and the Board finds their testimony to be credible and reliable in all respects. The parties agree that there was no written contract for the lighting system. They differ on the question of whether they had an enforceable oral contract, or whether the Plaintiff can recover under quasi contract.

It is well settled that the elements for an enforceable oral contract are an offer, an acceptance, a meeting of the minds, and an exchange of consideration. Schreiber v. Olan Mills, 426 Pa. Super. 537, 627 A.2d 806 (1993). It is also well settled under Pennsylvania law that each party to a contract has an implied duty to act in good faith and deal fairly with the other party during the performance of their contract. Commonwealth of Pennsylvania v. W.P. Dickerson & Sons, Inc., 42 Pa. Cmwlth. 359, 400 A.2d 930 (1979); Commonwealth of Pennsylvania, Department of Property & Supplies v. Berger, 11 Pa. Cmwlth. 332, 312 A.2d 100 (1973).

The Board has analyzed the statements made by the parties and does not find that the Plaintiff is entitled to recover the cost of the lighting because the requisite elements for an

enforceable contract for payment for the cost of the lighting (the relief that Plaintiff requests) are not present in this case. The parties impliedly agreed that Mr. Knepper would install his plug and play lighting system at his own expense into the furniture supplied by his friend, Mr. Kriebel, in the DGS Bid Room in order to demonstrate the lighting's quality and efficiency. In exchange for that installation, Mr. Ryan said that he would direct all architects and agencies to view the Bid Room lighting, he would require them to install lighting that was at least of that same quality and efficiency, and he would insure that money for agencies to pay for new lighting systems would be made available by transferring it from the construction budget to the furniture budget.

Mr. Knepper installed his lighting in the Bid Room and the evidence proved that it met or exceeded the Commonwealth's quality and efficiency requirements. The evidence also proved that Mr. Ryan and DGS failed to perform a single one of the promises that they made. Mr. Ryan did not direct a single architect or agency to view the lighting, he did not require any agencies to install lighting of equal quality or efficiency, and he did not transfer any money from the construction budget into the furniture budget.

Mr. Knepper alleges that he had an oral contract under which DGS would be obligated to pay for the lighting. While Mr. Ryan clearly made statements that misled the Plaintiff and that induced him to act, the statements Mr. Ryan made do not allow Plaintiff to recover the cost of the Bid Room lighting on an oral contract theory. As the defense counsel pointed out during cross-examination, the parties had no specific oral agreement that the Commonwealth would pay for the demonstration lighting in the Bid Room. Neither party ever stated that the Commonwealth would purchase the lighting. On the contrary, both clearly understood and agreed that Plaintiff would install it at his own expense. The Board therefore concludes that there is no enforceable oral

contract under which DGS offered or agreed to pay for the lighting installed in the Bid Room. While Mr. Knepper may have had some expectation of future state contracts, this promise was also not expressly made by DGS personnel. The words used by Mr. Ryan implied to Mr. Knepper that he would receive orders for his lighting in the future, but Plaintiff does not seek damages or recovery on that basis and the promise is too vague to be enforced.

The statements by the DGS official were not sufficient for the Board to find an explicit oral contract whereby DGS agreed to pay Plaintiff for the Bid Room lighting. A more appropriate legal theory that will allow the Board to do justice in this situation is found in the doctrine of quasi-contract.

Quasi-Contract Claim

In a case where no valid written or oral contact exists, the doctrine of quasi-contract is available to permit the Plaintiff to recover its damages. A quasi contract imposes a duty, not as a result of any agreement, but in situations where there is no contract and one party receives unjust enrichment at the expense of another. Temple University Hospital, Inc. v. Healthcare Management Alternatives, Inc. 832 A.2d 501 (Pa. Super. 2003). The party that is unjustly enriched by the services of another must pay a reasonable amount for those services. Crawford's Auto Center, Inc. v. Commonwealth, Pennsylvania State Police, 655 A.2d 1064 (Pa. Cmwlt. 1995), *rearg. den., app. den.* 542 Pa. 651, 666 A.2d 1059 (1996).

In order to establish a claim for unjust enrichment, a plaintiff must show that he conferred a benefit on the defendant, that the defendant appreciated and had knowledge of the benefit, and that the defendant accepted the benefit under circumstances that make its retention inequitable without payment for the benefit. Temple University Hospital, Inc. v. Healthcare Management Alternatives, Inc., *supra.*; Correll v. Millville Area School District, 662 A.2d 696 (Pa. Cmwlt. 1995). In

determining whether the unjust enrichment doctrine applies, courts focus not on the intention of the parties, but rather on whether the enrichment of the defendant is unjust. Mitchell v. Moore, 729 A.2d 1200 (Pa. Super. 1999). Application of the doctrine of unjust enrichment depends on the particular factual circumstances of the case at issue. Schenck v. K.E. David, Ltd., 446 Pa. Super. 94, 666 A.2d 327 (1995), *app. den.*, 544 Pa. 660, 676 A.2d 1200 (1996).

The facts of the case at bar satisfy each of the required elements. At the hearing, Mr. Knepper showed that he conferred a benefit on DGS by installing high quality, energy saving lighting in the furniture in the DGS Bid Room. It is undisputed that he paid \$3,867.50 for the lighting system and installed it himself. In his meetings with Mr. Ryan and Mr. Nugent of DGS, Mr. Knepper demonstrated that his lighting was of high quality and that it met or exceeded all energy saving requirements for the Green Lights/Green Buildings Program.

Mr. Knepper showed that DGS appreciated his lighting and had knowledge of its benefits. The DGS employees using the light in the Bid Room enthusiastically expressed their approval of the lighting. Mr. Ryan specifically told Mr. Knepper that he had visited the Bid Room to see the lighting and was very pleased. DGS saved money because it incurred no installation costs as it would have if the lighting had been installed in the ceiling. DGS also saved money because the efficiency of the lighting system saved substantial energy costs. At the hearing, Plaintiff showed that DGS has had continuous knowledge of the benefits of the lighting from February 2001, when the lighting was installed, to the present.

The last element to be satisfied is whether DGS's acceptance of the benefit of the lighting in the Bid Room is inequitable without any payment to the Plaintiff. Several circumstances convince the Board that DGS's retention of the benefit is unfair without paying for it. While DGS did not agree to pay for the lighting when it was installed, the change in the parties' relationship

and the passage of 3 1/2 years since the lighting's installation, changed DGS's obligation. The demonstration lighting project agreed to by Mr. Knepper and Mr. Ryan effectively ended on June 20, 2001, when Mr. Rados, speaking on behalf of DGS, told Mr. Knepper that Mr. Ryan had made misleading statements, and that no budgetary transfers could be made to pay for the lighting system. This effectively ended any chance that Plaintiff had for a Commonwealth contract, and it terminated whatever understanding the parties had previously had. In the Board's view, Mr. Knepper could no longer expect to get any Commonwealth lighting contracts and the Commonwealth could no longer expect to retain the Plaintiff's lighting for free use in its Bid Room.

However, after that June 20, 2001 meeting, DGS continued to use the lighting system, not as a demonstration of state-of-the-art lighting, but because it wanted to use the high quality of light, to get the energy cost savings, and to enjoy the ambiance of using lighting that plugged into the desk system in use there. Since DGS was no longer using the lighting as a demonstration project and had revoked all aspects of its prior understanding with Mr. Knepper, DGS could not fairly expect to hold Plaintiff to his original position that he would pay for the lighting and continue to give it to DGS for free.

After June 2001, DGS could have no reasonable expectation that it was entitled to the lighting as a gift. Mr. Knepper repeatedly pointed out the unfairness of the situation and requested that DGS pay him for the lighting that was in use. Since DGS has not disconnected, removed, or replaced the lighting with any other type, and has benefited from the lighting system while incurring no expense, the Board finds that DGS has been unjustly enriched since June 20, 2001.

The only measure of damages proposed by the Plaintiff is that it be reimbursed for the cost of the lighting. Mr. Knepper does not seek any amount for lost business opportunities or profits,

only reimbursement of the actual amount he spent for the lights. There is no dispute that the cost of the lighting was \$3,867.50. The Board finds that this is the value of the services that DGS received. The Board finds DGS is liable to Plaintiff for damages of \$3,867.50. The Board also awards interest at the statutory rate of 6% per annum from June 20, 2001. The parties will each bear their own costs and attorneys fees.

ORDER

AND NOW, this 6th day of October, 2004, it is hereby **ORDERED** and **DECREED** that judgment be entered in favor of the Plaintiff, Knepper Associates, Inc., and against the Commonwealth of Pennsylvania, Department of General Services, in the amount of Three Thousand Eight Hundred Sixty-Seven Dollars and Fifty Cents (\$3,867.50). The Board also awards six percent (6%) interest from June 20, 2001. The parties will each bear their own costs and attorneys fees.

BOARD OF CLAIMS

OPINION SIGNED

Jeffrey F. Smith
Chief Administrative Judge

Ronald L. Soder, P.E.
Engineer Member

John R. McCarty
Citizen Member