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CLERK DISTRICT COURT

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

JULBERT, INC., a Nevada corporation,

Plaintiff/Counter Defendant,

vs.

SOLID ROCK GATE SUPPLY, INC., an
Idaho corporation, d/b/a WELDING
FABRICATION SERVICES; and JOHN
DOES I-V,

Defendants/Counter Claimants

Case No. CV 12-2727

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW ON
PLAINTIFF'S MOTION FOR
ATTACHMENT**

SOLID ROCK GATE SUPPLY, INC.

Third Party Plaintiff,

vs.

ROBERT FHUERE,

Third Party Defendant.

This matter came before the Court on June 13, 2012, and June 20, 2012, for an evidentiary hearing on plaintiff's Order to Show Cause why a Writ of Attachment Should not Issue, filed on May 11, 2012. Following the last day of evidence, this Court ordered the parties to submit proposed findings of fact and conclusions of law. Counsel for the parties timely submitted such and the Court has review them. The Court now enters its Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. On or about July 2, 2010, defendant Solid Rock Gate Supply, Inc. (SOLID ROCK), entered into a verbal contract with plaintiff, Julbert, Inc. (JULBERT), and third-party defendant Robert Fhuere (FHUERE) to provide welding and metal fabrication services for the construction of three portable dust collection units based on hand-drawn sketches supplied by FHUERE.
2. No particular welding standard or construction specifications for the 3 dust collection units were required by JULBERT or FHUERE, or noted on the sketches provided by FHUERE.
3. FHUERE agreed to pay for the cost of materials and labor to fabricate the 3 units. FHUERE and SOLID ROCK agreed that any changes to or extra work on the 3 units would be billed at the reduced rate of \$50 per hour.
4. Based on the sketches supplied by FHUERE, SOLID ROCK estimated the cost of labor and materials to fabricate the 3 units at \$54,000.
5. FHUERE deposited \$25,000 with SOLID ROCK on July 2, 2010, SOLID ROCK purchased materials and began to fabricate the 3 units. [Def's Ex. A]
6. FHUERE was aware that SOLID ROCK was fabricating the 3 units simultaneously and did not object.
7. During the fabrication, FHUERE frequently visited the SOLID ROCK facility in Post Falls, Idaho to provide additional direction to and answer questions from the employees of SOLID ROCK.
8. During fabrication of the units, JULBERT sent an employee to the SOLID ROCK facility to provide advice and direction regarding the construction of the units to the employees of SOLID ROCK.

9. On August 19, 2010, SOLID ROCK invoiced \$7,860 to JULBERT for labor on the 3 dust collection units. JULBERT paid \$10,000 to SOLID ROCK on September 14, 2010. [Def's Ex. B]
10. During the fabrication of the units, SOLID ROCK discovered that Sheet #11 of the drawings provided by FHUERE was missing. Sheet #11 detailed the design for the top and doors of the dust collection units, and was supplied by FHUERE in September of 2010.
11. On November 3, 2010, SOLID ROCK invoiced \$1,038.90 to JULBERT for extra labor and materials related to the 3 dust collection units. JULBERT paid \$1,038.90 to SOLID ROCK on November 15, 2010. [Def's Ex. C]
12. During the fabrication of the units, various design problems and issues were encountered that required extra labor and materials to correct.
13. On June 13, 2011, SOLID ROCK invoiced \$10,480.00 to JULBERT for extra labor and materials required to build and install the doors and hinges shown on Sheet #11, to turn each unit 180 degrees on the frame and to seal weld the inside of each unit. On June 14, 2011, JULBERT paid the full invoice amount for this extra work and material. [Def's Ex. D]
14. Before the units were painted, FHUERE inspected the units and directed an employee of SOLID ROCK to place "Bondo" at various locations on the units.
15. On September 20, 2011, SOLID ROCK invoiced \$21,466.71 to JULBERT as the remaining balance of the original \$54,000.00 estimated cost, plus the labor cost to paint two of the units. JULBERT paid \$12,000.00 to SOLID ROCK on September 21, 2011. [Def's Ex. E]

16. After the units were painted, JULBERT and FHUERE supplied motors, fans, electrical wiring, control boxes, hydraulic systems and other components to be installed on the units.
17. After the units were painted, an employee of JULBERT and FHUERE spent approximately ten days at the SOLID ROCK facility inspecting the units and addressing any minor issues that needed attention.
18. On or about October 1, 2011, JULBERT and FHUERE removed one of the dust collection units from the SOLID ROCK facility. JULBERT and FHUERE returned the unit to SOLID ROCK approximately six days later.
19. On or about October 10, 2011, FHUERE met with Patrick Harrington, President of SOLID ROCK, at the SOLID ROCK facility in Post Falls. During that meeting, FHUERE stated that the units did not meet "Navy standards" and he declared that would not pay any additional amount for the units.
20. After the meeting on October 10, 2011, FHUERE and JULBERT sent an inspector from the American Welding Society to the SOLID ROCK facility in Post Falls to inspect the dust collection units. The inspector's visit was unannounced, but the inspector was allowed unrestricted access to inspect the units.
21. A few days later, FHUERE and JULBERT sent another agent to the SOLID ROCK facility in Post Falls to inspect the paint on the dust collection units. The paint inspector's visit was unannounced.
22. On or about October 21, 2011, SOLID ROCK notified FHUERE and JULBERT that the 3 dust collection units were finished and ready for JULBERT and FHUERE to take delivery.
23. Approximately 3 weeks after the attempted paint inspection, FHUERE and his business partner arrived unannounced at the SOLID ROCK facility in Post Falls to inspect the units.

Mr. FHUERE and his partner were informed that Mr. Harrington was not available to accompany them and to return later that afternoon.

24. In February of 2012, FHUERE and JULBERT arranged for an inspection of the units at the SOLID ROCK facility in Post Falls and were allowed unrestricted access to the units.
25. In a certified letter dated November 10, 2011, SOLID ROCK made written demand that FHUERE and JULBERT pay the balance owed to SOLID ROCK and take possession of the three dust collection units. [Affidavit of Patrick Harrington, Ex. A]
26. In a letter dated November 17, 2011, JULBERT rejected the dust collection units and demanded a full refund from SOLID ROCK of all amounts paid by FHUERE and JULBERT, plus the cost of motors, fans, hydraulics and other components supplied by FHUERE and JULBERT and installed on the units. [Affidavit of Patrick Harrington, Ex. B]
27. SOLID ROCK makes no claim against the motors, fans, hydraulics, wiring or other components supplied by JULBERT and FHUERE and installed on the dust collection units.
28. SOLID ROCK claims that JULBERT and FHUERE owe in excess of \$80,000.00 to SOLID ROCK for the extra labor, materials and services provided at the request and under the direction of FHUERE and JULBERT.
29. The 3 dust collection units are stored at the Post Falls business premises of SOLID ROCK.
30. SOLID ROCK has declared its intent to sell the 3 dust collection units at a public auction conducted pursuant to Idaho Code §45-806.
31. SOLID ROCK is an Idaho corporation doing business in Kootenai County for approximately 15 years and owned by residents of Idaho.

32. The owners and shareholders of SOLID ROCK also own the real property where the SOLID ROCK facility is located in Post Falls.

CONCLUSIONS OF LAW

1. In July of 2010, FHUERE and SOLID ROCK entered into a verbal contract for SOLID ROCK to provide welding and metal fabrication services for the construction of 3 dust collection units based on drawings and instructions provided by FHUERE.
2. The parties disagree regarding the intent of the \$54,000.00 figure quoted by SOLID ROCK.
3. The parties disagree regarding the standards and specifications, if any, communicated or required for the fabrication of the 3 dust collection units.
4. The parties disagree regarding the accuracy and sufficiency of the drawings provided by FHUERE.
5. The parties disagree regarding the suitability and quality of the 3 dust collection units fabricated by SOLID ROCK.
6. The parties disagree regarding alleged defects and deficiencies in the dust collection units.
7. The parties disagree whether SOLID ROCK has fully or substantially performed its obligations under the oral contract with FHUERE.
8. The principal amount claimed by SOLID ROCK in its counterclaim against JULBERT and third-party complaint against FHUERE exceeds the principal amount claimed by JULBERT against the defendants.
9. The jurisdiction of the Court is not predicated upon attachment of the defendant's property within the State of Idaho.
10. The property sought to be attached by the plaintiff is not a negotiable instrument.

11. The bank accounts of defendant SOLID ROCK are not subject to the threat of imminent withdrawal.
12. The dust collection units are not perishable, and are not in immediate danger of destruction, serious harm, concealment or removal from the State of Idaho, or sale to an innocent purchaser.
13. Defendant SOLID ROCK has not threatened to destroy, harm, conceal or remove the dust collection units from the State of Idaho.
14. Defendant SOLID ROCK has a statutory lien against the 3 dust collection units pursuant to Idaho Code §45-806.
15. Based on the affidavits of the parties and the evidence and testimony admitted at the hearing on the order to show cause, the plaintiff has failed to show a reasonable probability that it will prevail on its claim.
16. Based on the affidavits of the parties and the evidence and testimony admitted at the hearing on the order to show cause, the probability that the plaintiff will prevail on its claim does not exceed the probability that the defendant will prevail on its counterclaims and third-party claims against JULBERT and FHUERE.
17. The Court does not find that sale of the units will result in the destruction of evidence as to their construction. JULBERT and FHUERE have had opportunity to inspect the units. JULBERT and FHUERE have had opportunity in the past to have experts view the units. JULBERT and FHUERE will have a minimum of FOURTEEN DAYS following the entry of this Order to conduct any further inspections, document and photograph the units, and to remove any of the motors, fans, electrical wiring, control boxes, hydraulic systems and other components supplied by JULBERT and FHUERE to be installed on the units by

SOLID ROCK. After the expiration of FOURTEEN DAYS following the entry of this Order, SOLID ROCK is free to sell the units in the condition the units are in at that time.

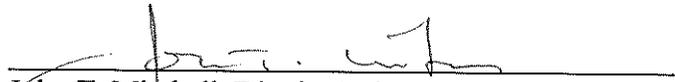
ORDER

IT IS HEREBY ORDERED plaintiff's Order to Show Cause why a Writ of Attachment Should not Issue, pursuant to I.C. § 8-501, is DENIED.

IT IS FURTHER ORDERED plaintiff's alternative request for a preliminary injunction or a restraining order under I.R.C.P. 65(e), is DENIED.

IT IS FURTHER ORDERED that JULBERT and FHUERE will have a minimum of FOURTEEN DAYS following the entry of this Order to conduct any further inspections, document and photograph the units, and to remove any of the motors, fans, electrical wiring, control boxes, hydraulic systems and other components supplied by JULBERT and FHUERE to be installed on the units by SOLID ROCK. After the expiration of FOURTEEN DAYS following the entry of this Order, SOLID ROCK is free to sell the units in the condition the units are in at that time.

Dated this 26th day of June, 2012.


John T. Mitchell, District Judge

Certificate of Delivery

I hereby certify that on the 26th day of June, 2012, at 5:15 p.m., a copy of the foregoing **Defendants' Proposed Findings of Fact and Conclusions of Law** was faxed to Randall Probasco at 664-2193, and to Scott Poorman at 772-6811.


John T. Mitchell, District Judge