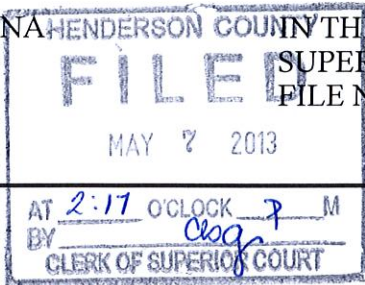


STATE OF NORTH CAROLINA HENDERSON COUNTY THE GENERAL COURT OF JUSTICE
COUNTY OF HENDERSON SUPERIOR COURT DIVISION
FILE NUMBER 13 CVS 454



COUNTY OF HENDERSON,
Plaintiff,

v.

SEVEN FALLS LLC, *et al.*,
Defendants,

ORDER
Granting Partial Summary Judgment and
Emergency Relief

THIS CAUSE came on to be heard before the Honorable Zoro J. Guice, Jr., presiding over the May 6, 2013, term of the Henderson County Superior Court, and was heard on the Motion filed Plaintiff County for partial summary judgment, pursuant to N.C. Gen. Stat. §1A-1, Rule 56, and was heard. It appears to the Court that there is no genuine issue to any material fact, and that the Plaintiff is entitled to a judgment as requested.

The facts regarding which there are no dispute (as stated in the verified Complaint and the Affidavits filed herein by the Plaintiff, which are the sole evidence before the Court) are as follows:

1. The Defendant, Seven Falls LLC (hereafter "the Developer"), was the developer of Seven Falls Subdivision Sections 1, 1A and 2 (collectively these Sections are referred to elsewhere in this document as "the Subdivision"), which were to be a part of Seven Falls Golf and River Club, a golf course development to be located within Henderson County, North Carolina.
2. In order to be permitted, pursuant to N.C. Gen. Stat. §153A-331, and pursuant to the Henderson County Land Development Ordinance, Chapter 200A of the Henderson County Code, to sell lots in the Subdivision prior to completion of certain improvements required in the Subdivision ("the Improvements"), the Developer executed a Performance Guaranty, which was later extended, in favor of the County.
3. To further guarantee the Developer's completion of the Performance Guarantee, a surety bond was required by the County and subsequently obtained, in the amount of Six Million Dollars (\$6,000,000.00). This amount represented one hundred twenty-five percent (125%) of the project engineer-estimated cost of the Improvements.
4. The Developer defaulted under the terms of the Performance Guarantee.
5. After litigation with the surety (see Henderson County Clerk of Court file number 10-CVS-08, which is also found at in the Office of the Clerk of the North Carolina Court of Appeals at file 11COA1601, and in the Office of the Clerk of the North Carolina Supreme Court at file 375P12), the County received payment of this surety bond, in an amount totaling \$6,000,124.59 (\$3,257,097.80 from Clerk of Court, representing a deposit on behalf of the surety in 10-CVS-08, plus \$2,743,026.79 directly from the surety) as of October 10, 2012 (this total amount hereinafter "the Surety Bond Proceeds").

6. Henderson County has a duty, to the extent of the Surety Bond Proceeds, to complete the Improvements.

7. Since the time of the default of the Developer, the site comprising the Subdivision, and the work which was previously performed toward the obligations of the Developer to complete the Improvements, has degraded substantially, to the extent that the certified engineer most familiar with the project now estimates that the cost of completion of the Improvements will exceed the Surety Bond Proceeds.

8. As the funds required to complete the Improvements may now exceed the Surety Bond Proceeds, the County, in attempting to remedy the Developer's breach, could be subject to claims by the Defendants, or some of them, resulting from the failure to complete all of the work of the Improvements.

9. In addition, the Developer's failures has caused to be revoked certain permits, issued by (and subsequently revoked by) the United States Army Corps of Engineers, required for the installation of the improvements. Such Corps of Engineers permits required either the performance of work in mitigation of the results of certain crossing or affecting of the waters of the United States by bridge, culvert or other means, or payment of sums in lieu of such work. The cost of this work in mitigation, or the payment of sums in lieu of the same, was not included in the costs of the Improvements, as at the time of the negotiated of the Performance Guarantee the developer possessed such permits (since revoked by the Corps of Engineers).

10. The expenditure of funds from the Surety Bond Proceeds for the work in mitigation, as referred to above, or the payment of sums in lieu of the same, may result in a claim against the County by the Defendants, or some of them. However, without such expenditure, performing the work required for portions of the Improvements may be unlawful.

11. Certain of the Improvements are such that it would be in the interest of all parties that a portion of the work toward completion of the Improvements be immediately performed ("the Emergency Work"), both to secure the Subdivision site from further degradation, as alleged in the Complaint, and to avoid a continuation of the environmental harm that results from such degradation.

12. The Emergency Work, for which the County seeks an emergency Order of partial summary judgment, is work which is a part, in any case, of the Improvements.

13. To further delay the Emergency Work will only increase its later cost, using up a greater portion of the Surety Bond Proceeds than if the work is earlier approved and carried out.

14. The County prior to hearing presented an affidavit containing a complete listing and schedule of the Emergency Work, and an estimate provided by the engineer who designed the Subdivision of the cost of the same. The Emergency Work consists (in general terms) of site stabilization by grading, clearing erosion traps, reinstalling and repairing existing erosion control measures, and seeding with grass the grades and slopes to avoid further degradation. The County has caused to be filed certain affidavits, including that of William Lapsley, Certified Engineer.

15. Lapsley's cost estimate for the Emergency Work is \$260,360, including a small contingency amount as detailed therein.

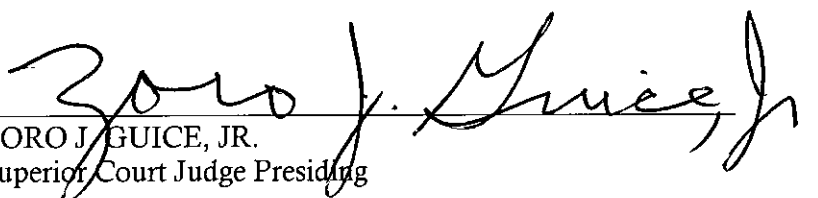
In addition to the foregoing facts which are not in dispute, the Court notes that no party argued in opposition of granting the County the ability to proceed with the Emergency Work, although the managing member of Seven Falls LLC argued to the Court that an even greater scope of work was required. To the extent this is a concern, the Court will order this matter brought back before this Court

for further hearing on its status, and for the Court to consider, if needed, the use of additional of the Surety Bond Proceeds toward the cost of the Emergency Work.

IT IS THEREFORE ORDERED that the County be and hereby is allowed to proceed with the "Emergency Work" as detailed in the affidavit of Engineer Lapsley, and pay for the costs of the same from the Surety Bond Proceeds, up to \$260,360.00.

It is further ordered that this matter will come back before the Court for a status hearing July 15, 2013, at 10:00 a.m., and for determination of the additional amount, if any, of the Surety Bond Proceeds that should be authorized to pay for any costs of the Emergency Work over and above the amounts stated in Lapsley's affidavit, and to set an amount of Court costs to that date expended by the County to be repaid from the Surety Bond Proceeds.

Announced in open Court May 6, 2013, and signed 5-7-13


ZORO J. GUICE, JR.
Superior Court Judge Presiding