

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1972-13T1

WATERS & BUGBEE, INC.,

Plaintiff-Respondent,

v.

B.W. ELECTRICAL SERVICES, L.L.C.,

Defendant-Appellant,

v.

AMERICAN CAPITAL ENERGY, INC.,

Third-Party Defendant/
Respondent.

Submitted January 28, 2015 – Decided July 22, 2015

Before Judges Ashrafi, Kennedy and O'Connor.

On appeal from Superior Court of New Jersey,
Law Division, Mercer County, Docket No. L-
2048-12.

Cohen Seglias Pallas Greenhall & Furman,
P.C., attorneys for appellant (Edward
DeLisle and Jennifer R. Budd, on the brief).

Connell Foley, L.L.P., attorneys for
respondent Waters & Bugbee, Inc. (John D.
Cromie, of counsel; Matthew D. Fielding, on
the brief).

Bruce G. Cassidy & Associates, P.A.,
attorneys for respondent American Capital
Energy, Inc. (Bruce G. Cassidy, on the
brief).

PER CURIAM

Defendant B.W. Electrical Services, LLC (Electrical)
appeals three November 15, 2013 orders that granted plaintiff,
Waters & Bugbee, Inc., (Waters) and third-party defendant,
American Capital Energy, Inc., (American) summary judgment
against Electrical, and denied Electrical's motions for summary
judgment against Waters and American. We affirm.

I

In 2010, Public Service Electric and Gas (PSE&G) retained
American to construct a solar panel farm in Yardville. In
October 2010, American entered into separate subcontracts with
Waters and Electrical to provide various services in connection
with the project. In November 2010, Electrical entered into a
sub-subcontract with Waters to do some of the work Electrical
was required to perform under its subcontract with American.

During the course of the project, American periodically
required Electrical and Waters to provide services that were
outside the scope of American's subcontract with each. In one
instance, American's project manager, Dan Porrazzo, directed
Waters to provide "extra work" for American that fell outside
the scope of the subcontract between it and Waters, but fell

within the scope of the sub-subcontract between Waters and Electrical. Porrazzo, however, represented American would pay for the work Waters performed.

After the project was completed, American failed to pay Electrical and Waters for some of the services each provided to American. In June 2011, Waters filed a complaint against American seeking payment of its bill under their subcontract. Two months later, the parties settled and Waters signed a release and affidavit of final payment releasing American from all "claims chargeable to said premises and contract funds by reason of the work performed, services rendered, and materials furnished by the undersigned and any subcontractor, material man, supplier or employee working for or under the undersigned."

In June 2011, Electrical also filed a complaint against American, as well as PSE&G, seeking payment of its outstanding bill for work performed under its subcontract with American. That matter settled on December 30, 2011. Electrical contends that before the parties settled, American assured Electrical that it had compensated Waters for the "extra" work Porrazzo directed Waters to perform under the sub-subcontract between Waters and Electrical. Specifically, Electrical claims that on December 27, 2011, American's attorney sent an email to Electrical's attorney stating:

With respect to [Waters], [PSE&G] in coordination with [American], [Waters] settled and was paid for all of its work performed at Yardville; please see attached final release and waiver . . . [Waters] was paid both for its services to [American] but also for its services to [Electrical] including work change orders 27, 28, and 29.

On January 10, 2012, Waters sent Electrical a letter demanding payment of a bill dated February 11, 2011 for \$68,723.08. Electrical disputed the bill, contending it was for the work Waters performed at Porrazzo's direction. On August 2, 2012, Waters filed the within action against Electrical seeking payment of this bill. Electrical filed a third party complaint against American alleging breach of contract and fraud in the inducement, and also sought contribution.

On November 15, 2013, the trial court entered orders granting Waters's and American's motions for summary judgment against Electrical, and denying Electrical's motions for summary judgment against Waters and American. Electrical appeals these orders.

II

Summary judgment must be granted if "the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law."

R. 4:46-2(c). To determine whether there is a genuine issue of material fact, a "judge must decide whether 'the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party.'" Town of Kearny v. Brandt, 214 N.J. 76, 91 (2013) (quoting Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995)). Because "appellate courts 'employ the same standard [of review] that governs the trial court,'" we review summary judgment rulings de novo, and the "trial court rulings 'are not entitled to any special deference.'" Henry v. N.J. Dept. of Human Servs., 204 N.J. 320, 330 (2010) (alteration in original) (citations omitted).

Electrical contends the trial court erred in granting Waters and American summary judgment, claiming the evidence conclusively showed that the bill for \$68,723.08 was for the work Porrazzo requested Waters to perform. At the least, Electrical argues, there were material issues of fact over which entity was responsible for the bill, precluding summary judgment. Electrical also maintains it would not have settled its complaint against American had it known American was not going to compensate Waters for the work rendered at Porrazzo's direction, and further alleges American falsely induced

Electrical to enter into the settlement knowing it was not going to honor this bill. Electrical also contends its motion for summary judgment against Waters should have been granted because the release Waters executed in favor of American also released Electrical.

We do not discern any material questions of fact that should have precluded the entry of the orders under review. See R. 4:46-2(c). The record reveals the following. Waters forwarded Electrical a bill in February 2011 for \$77,298.85¹ for work Waters performed in accordance with change orders numbered 2, 3A, 5, 8, 10, 14, 15, and 16. More important, correspondence between Electrical and Waters before February 2011 clearly indicates that Electrical – not American – requested that Waters do the work on these eight change orders. There is no evidence American directed Waters to perform any of the work described in the bill for \$68,723.08.

Moreover, the December 27, 2011 email between American's and Electrical's counsel on which Electrical so heavily relies does not support the contention American promised to pay for the work that is the subject of the February 2011 bill. The email


¹ It is not disputed Electrical paid \$10,683.75 toward the bill, reducing the amount owed to \$66,615.10. By the time Waters filed its complaint against Electrical in August 2012, the interest on the unpaid balance increased the total amount owed to \$68,723.08.

stated American paid Waters for work it performed in connection with change orders 27, 28, and 29. The email does not mention or allude to any of the eight change orders listed in the February 2011 bill.

After carefully considering the record and the briefs, we conclude Electrical's remaining arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION