

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

JUDGE PETER J. WALSH

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March 7, 2013

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Chapter 7 Trustee

**Re: George L. Miller, Chapter 7 Trustee for DBSI ST Tower
LeaseCo LLC v. DC Construction Associates, Inc.
a/k/a DC Construction Associates
Adv. Proc. No. 10-54644**

Dear Counsel:

This is with respect to Defendant's motion for summary judgment (Doc. # 54). For the following reasons, I am denying the motion.

The motion is premised on the Declaration of Chris Peck (Doc. # 54). That document is replete with hearsay. Just a way of

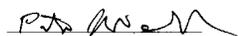
example, I note that paragraphs 9 and 13 constitute blatant hearsay.

The Peck Declaration identifies four "Application And Certificate For Payment" (Exhibit D, E, F, and J). However, none of those four documents are certified.

On another issue, in the Amended Answer to Complaint (Doc. # 45) Defendant asserts that "[d]uring the Preference Period, as defined in the Complaint, Defendant had the right to file a mechanic's lien under Florida Lien Law, Fla. Stat. §§ 713.001 et seq., in and to property to which it provided services and, in fact, filed a mechanic's lien." (p. 7.) In the Declaration of Mr. Tomlin (Doc. # 55) he includes as Exhibit C a copy of a Claim of Lien. I assume that that document is the one referred to in the above-quoted statement in the Amended Answer to Complaint. I note that that Claim of Lien appears to be notarized and recorded on November 14, 2008. As we know, the Debtor's petition was filed on November 10, 2008. The filing of that Claim of Lien violates the automatic stay (§ 362(a)(4)) and is therefore void.

The summary judgment motion (Doc. # 54) is hereby **denied**.

Very truly yours,



Peter J. Walsh

PJW:ipm