

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

AARON WEISS, et al.,

Plaintiffs,

v.

HOME CONSULTING PLUS, INC., et al.

Defendants.

Civil Action No. 03-4048

Calendar 6

Judge Geoffrey M. Alprin

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Plaintiffs are Aaron Weiss, James Roy and Investment Properties & Associates, L.L.C. ("IP&A"). Defendants are two corporations that have done business under the name Housing Made Simple, namely, Home Consulting Plus, Inc. ("HCP") and Housing Made Simple, Inc. ("HMS"), and two individuals who are the owners of those corporations, namely, Brian Carr and Patrick Carr.

Plaintiff Weiss asserts claims against HCP for breach of contract, fraud and violations of the D.C. Consumer Protection Procedures Act. Plaintiff Roy asserts claims against HCP for breach of contract and fraud. Plaintiff IP&A asserts claims against HCP for breach of contract, quantum meruit, and fraud. All plaintiffs allege that Brian Carr and Patrick Carr are liable pursuant to an alter ego theory. All plaintiffs also allege that HMS is liable pursuant to a successor liability theory.

Defendant HCP alleges counterclaims against each of the plaintiffs, claiming that the plaintiffs breached their contracts with HCP, tortiously interfered with the contracts that HCP had with the other plaintiffs, and conspired to commit tortious interference.



This matter was tried before the court without a jury on April 4 and 5, 2005. Pursuant to SCR-Civ. 52(a), the court enters the following findings of fact, conclusions of law, and order.

I.
FINDINGS OF FACT

A. Facts Concerning Housing Made Simple's Entry Into The Home Contracting Business

1. Since 2001, Housing Made Simple has been the name used publicly by three different corporations: defendant HCP, defendant HMS, and a recently-formed entity called HMS International Corporation ("HMSIC"). HMS was formed on April 22, 2003. (Joint Pretrial Statement, Stipulation No. 5) HMSIC was formed on January 11, 2005. (Plf's Exhibit - hereinafter PX-67.) The offices of all three corporations have been at the same address: 10195 Main Street in Fairfax, Virginia.

2. Defendants Brian Carr and Patrick Carr are the sole or majority owners of all three of the Housing Made Simple corporations.

3. Prior to 2001, Housing Made Simple was in the home inspections business. At some point in the summer or fall of 2001, the Carr brothers decided to move into the home improvement contracting business. (B. Carr Dep. at 16; Frolia Tr. 73.) However, the Carr brothers did not intend for Housing Made Simple to actually do the home improvement work. Instead, Housing Made Simple would secure contracts with homeowners, and then hire subcontractors to do the actual work.

4. During the summer and fall of 2001, the Carr brothers and other Housing Made Simple employees, including Brent Flester and Simon Cook, met with various individuals with experience in the building trades about becoming subcontractors of

Housing Made Simple. (Seymore Testimony; Parker Trial Transcript – hereinafter Tr.-41-42.)¹

5. One of those individuals was Wess Seymore, the owner of plaintiff IP&A. Seymore had an extensive background in the building trade. He formed IP&A in the early 1980s, with the goal of purchasing and rehabilitating distressed properties. IP&A also eventually moved into the business of doing rehabilitation projects on properties owned by others.

6. Seymore testified that, in approximately 1999, IP&A started working on so-called “203(k) projects,” conducted under a government-sponsored lending program. When a contractor works on a 203(k) project, an inspection by an outside home inspector is required each time the contractor requests a draw. This is how Seymour first came into contact with Housing Made Simple. Housing Made Simple home inspectors – namely, Simon Cook and Eric Frolia – acted as the inspectors on two 203(k) projects in which IP&A was involved.

7. Seymore testified that Cook invited him to a meeting in August or September, 2001, to discuss the possibility of IP&A becoming a subcontractor for Housing Made Simple’s new home improvement contracting business. Seymore met with Brian Carr, Patrick Carr, Brent Flester and other Housing Made Simple employees.

8. At this meeting, Patrick Carr outlined to Seymore how the arrangement would work. Housing Made Simple would line up the projects. Each project would have a “Project Manager” – an employee of Housing Made Simple – who would coordinate everything necessary to complete the project. The Project Manager would act as the

¹ Throughout these Findings, the court uses the name Housing Made Simple (HMS) for convenience. That name applies equally to Home Consulting Plus, Inc. (HCP) and HMS International Corporation (HMSIC).

primary contact for the subcontractor, and would have authority to approve any change orders. The subcontractor would receive draws each week. Housing Made Simple would assure that the contract prices offered to homeowners would be sufficient to provide profit to both Housing Made Simple and the subcontractor.

9. Seymore agreed to act as a subcontractor for Housing Made Simple, and IP&A entered into its first subcontract with Housing Made Simple on October 5, 2001. (PX 26.)

10. In late-summer or early-fall of 2001 the Carr brothers offered John Parker a salaried position as a Project Manager. They explained to Parker that, as a Project Manager, it would be his job to oversee construction projects. (Parker Tr. 41-42.) Parker accepted that job, and became a Housing Made Simple employee in late 2001.

11. According to Brian Carr, between the summer of 2001 and the spring of 2003, HCP entered into residential home improvement contracts worth \$1.5 million in gross revenue. (B. Carr Dep. at 17-18.)

B. Facts Concerning Housing Made Simple's Pattern Of Bounced Checks

12. Brian Carr testified at deposition that by March or April of 2002, it was clear to him that his company had cash flow problems. (B. Carr Dep. at 55.) At trial, he testified that it was obvious to him by November, 2001, that the company had cash flow problems. (B. Carr Tr. 130-31, 146-47.)

13. Housing Made Simple delivered six separate checks to IP&A that later bounced. The first of these was dated November 20, 2001. (PX 38.) The second was dated December 21, 2001. (PX 39.)

14. Frolia testified that he became worried about Housing Made Simple's business practices "[i]mmediately after we started the home improvement part of the business." He testified that projects were not getting started on time, and that he was instructed by Brent Flester to tell customers that this was because of delays in permitting, materials or suppliers. (Frolia Tr. 75.)

15. Frolia further testified that Housing Made Simple began bouncing checks "[a]s soon as they started the home improvement part of the business." He was personally aware of at least 20 bounced checks, including some checks that Housing Made Simple had made out to him. (Frolia Tr. 76-77.)

16. Parker testified that approximately three months after he accepted the job with Housing Made Simple, he became worried about Housing Made Simple's business practices. Paychecks started coming late, and it became harder for him to get payments for subcontractors he had hired. Checks of various kinds started being returned for insufficient funds. (Parker Tr. 43-44.) When asked to estimate the number of bounced checks of which he was personally aware, Parker stated that "there [were] easily over 50, as many as 100" (Parker Tr. 51), including paychecks that he personally received from Housing Made Simple. (Parker Tr. 53.)

17. Patrick Carr testified that he had no idea how many checks Housing Made Simple bounced in 2002, or even whether it was more than 50. (P. Carr Dep. at 82.)

18. Frolia testified that, with respect to projects in which he was involved, Housing Made Simple failed to meet the schedule promised to the customers "every time." (Frolia Tr. 79.)

19. Frolia testified that on the day he resigned from his job at Housing Made Simple, Kirk Deutrich wrote him three checks for back wages, and all three checks bounced. (Frolia Tr. 95-96.)

20. Frolia also testified that, during the time he was employed by Housing Made Simple, the company withheld money from his paychecks for child support, but failed to pay that money over to Virginia Child Support Services, as required by court order. (Frolia Tr. 96, 98.)

21. Brian Carr testified that between November of 2001 and August of 2002, Housing Made Simple bounced 25 or 28 checks. (B. Carr Tr. 130.)

C. Facts Relating To James Roy's Property At 5607 Seminole Road

22. One of Housing Made Simple's earliest home improvement customers was plaintiff Roy, a licensed real estate agent since 1998.

23. In early September, 2001, Roy visited a single-family house at 5607 Seminole Street in College Park, Maryland. The house was L-shaped, single-story, and had two bedrooms. The property was a HUD foreclosure, and had been on the market for a few months. The house was in poor condition, was very filthy, and needed substantial renovations.

24. On September 20, 2001, Roy entered into a contract to purchase the property at 5607 Seminole Street, with the intention to renovate the house, and then rent it. Roy believed that he would be able to rent the house for \$500 per bedroom, for a total of \$1,000 per month. He expected to be able to rent the house within two weeks of when he offered it for rental.

25. Even before he entered into the contract to purchase the property, Roy had spoken to Brent Flester of Housing Made Simple about renovating the house. Roy knew Housing Made Simple from their existing home inspection business.

26. Frolia visited the property at 5607 Seminole Street, and discussed with Roy what needed to be done. In turn, Roy discussed with both Frolia and Flester his intention to rent the house, and the need to have the renovation project done quickly so that he could begin to receive rental income.

27. Frolia provided to Roy a document titled Specification of Repairs, which listed all of the various items that would be completed, and that quoted a price of \$17,349. (PX 16.) At that time Roy was also given a document titled Contractor's Draw Schedule (PX 17), which showed when each phase of the project would be completed, and that tied completion of various phases to draws that Roy would be required to pay. According to that document, Housing Made Simple would complete the work in five weeks, consistent with what Roy had been told. The Contractor's Draw Schedule showed the work starting during the first week of December, 2001. This was because Roy anticipated closing on the purchase of the property in late November.

28. The closing took place on November 29, 2001. One week later, on December 5, 2001, Roy signed the Construction Contract with Housing Made Simple. (PX 15.)

Paragraph 46 of the Construction Contract stated: "At the time the contract is signed Contractor shall submit a Schedule of Payments to be made and Schedule of Work to be performed. These documents shall become part of the contract itself and shall set forth date on which portions of the work on the contract are to be completed and

payments for those portions of the work are to be received.” Roy testified to his understanding that the “Schedule of Payments to be made and Schedule of Work to be performed” referenced in Paragraph 46 of the Construction Contract meant the Contractor’s Draw Schedule (PX 17), and that the agreed-upon schedule for when work would be completed was as indicated in the Contractor’s Draw Schedule: the work would begin immediately and would be completed within five weeks.

29. After entering into the original Construction Contract (PX 15), Roy decided to build a single story, two bedroom addition to the house. Roy testified that he made this decision because with two additional bedrooms he could obtain an additional \$1,000 per month in rent.

30. Roy had discussions with Eric Frolia and Brent Flester concerning construction of the addition. Frolia and Flester told Roy that Housing Made Simple would construct the addition in one month.

31. On January 17, 2002, Roy entered into a contract with Housing Made Simple in which Housing Made Simple agreed to construct the two-bedroom addition for \$27,000. (PX 19.) Roy paid a \$14,000 deposit to Housing Made Simple at the time he signed that contract.

32. By January 17, 2002, more than five weeks had already passed since Roy signed the original Construction Contract on December 5, 2001. Roy testified that, other than initial demolition work, Housing Made Simple had done very little work on the original contract. Roy testified that he had been given various excuses for this delay by Frolia and Flester, but that at that time he was still giving Housing Made Simple the benefit of the doubt.

33. The work on the addition at 5607 Seminole Street could not begin immediately because Roy had to first obtain a variance. Roy obtained that variance on or about March 20, 2002, and immediately informed Housing Made Simple.

34. Roy testified that by the end of April, 2002, Housing Made Simple had done no work at all on the addition, and still had done very little work on the original contract for the repairs and alterations to the original house. This testimony was corroborated by John Parker, who testified that he first visited the property at 5607 Seminole Street in May or June of 2002, and that at that time it was still "a work in progress." The only work that had been done on the addition was that "footings" – a trench into which concrete could be poured to create a foundation -- had been dug. (Parker Tr. 47-48.) This testimony was also corroborated by Frolia, who testified that the subcontractor hired to dig the foundation abruptly stopped work after he received a check that bounced. (Frolia Tr. 83.)

35. On April 24, 2002 – more than a month after Roy informed Housing Made Simple that he had obtained the variance – Housing Made Simple provided Roy with a document, titled Project Schedule, that indicated that Housing Made Simple would complete the construction of the addition by June 7, 2002. (PX 20.)

36. Housing Made Simple did not complete construction of the addition, or the original work, by June 7.

37. By late August, 2002 – more than eight months after it entered into the original Construction Contract, and five months after it learned that Roy had obtained the variance – Housing Made Simple still had not completed the work it had agreed to do, either under the original contract or the contract for the addition. Housing Made

Simple's failure to complete the project by this time was confirmed by Parker and Froliia. (Parker Tr. 48-49; Froliia Tr. 85.)

38. On August 20, 2002, Roy sent a formal termination letter to Housing Made Simple. (PX 21.)

39. Roy had paid Housing Made Simple \$25,679 for the work it had agreed to do at 5607 Seminole Street.

40. After Roy terminated the contract with Housing Made Simple, the work on the original house and the addition was eventually completed by other contractors. Roy paid a total of \$26,393.93 to other contractors to complete the work.

41. After the work was finally completed, Roy did offer the house for rental. He almost immediately found tenants, and those tenants signed a lease on November 12, 2002 with a start date of November 13, 2002. Under the lease, Roy received \$2,000 per month in rent from the tenants.

42. Roy paid \$78.00 for a permit for the addition. Under his contract with Housing Made Simple, this was a cost that Housing Made Simple was obligated to cover. (Px 15 at 2)

43. Roy paid a \$100 fine because of Housing Made Simple's failure to keep rubbish in a dumpster.

44. Roy paid \$229.51 for paint, which was a supply that Housing Made Simple had agreed to provide.

D. Facts Relating To Aaron Weiss's Property At 3159 Adams Mill Road, N.W.

45. In November of 2001, plaintiff Aaron Weiss was living at a house he owned at 237 Rhode Island Avenue, N.E.

46. On November 10, 2001, plaintiff Aaron Weiss became engaged to Suzanne Summers (now Suzanne Weiss). Soon thereafter, they set a wedding date of August 10, 2002, and began looking for a house that they would live in.

47. In March of 2002, they entered into a contract to purchase a row house in the Mount Pleasant neighborhood at 3159 Adams Mill Road, N.W. The house required substantial renovations, and they planned to hire a contractor to do those renovations.

48. Aaron and Suzanne intended to move into 3159 Adams Mill Road as soon as the renovations were completed, and Aaron intended to then rent his Rhode Island Avenue house.

49. Aaron hired Housing Made Simple to conduct the inspection of the house, and that inspection took place the week after Aaron and Suzanne entered into the contract to purchase the house. Eric Frolia was the inspector.

50. Aaron and Suzanne learned at that time from Frolia that Housing Made Simple also was in the home improvement contracting business.

51. On April 13, 2002, Frolia met with Aaron and Suzanne at the Rhode Island house where Aaron was still living. Frolia presented three documents: a Construction Contract (PX 1), a Specification of Repairs (PX 2), and a Project Schedule (PX 69). Pursuant to these documents, Housing Made Simple offered to perform the work described in the Specification of Repairs for \$70,058.00, and to have that work completed by June 28, 2002. At that meeting, Aaron Weiss signed the Construction Contract, and supplied Frolia with a check (signed by Suzanne) made out to Housing Made Simple for \$21,000 (PX 3) as the initial deposit.

52. The closing on Aaron and Suzanne's purchase of the house at 3159 Adams Mill Road, N.W., took place on April 22, 2002.

53. Aaron Weiss testified that he would stop by the property several times per week to check on progress, and that he noticed almost immediately that not much work was being done. By early June the work still had not progressed, and Aaron Weiss had a conversation with John Parker about the delays. In that conversation, Parker told Weiss that the work would be completed by July 1, 2002. In mid-June, Aaron Weiss had another conversation with Parker. At that point in time, none of the stages of work shown in the Project Schedule had been completed. In this conversation, Parker told Weiss that the delays were the result of the fact that Housing Made Simple had taken on many projects. Parker told Weiss that, if Weiss paid more money to Housing Made Simple, the speed of the work would increase.

54. As a result of that conversation, Suzanne delivered another check, dated June 24, 2002, to Housing Made Simple in the amount of \$20,000 (PX 4).

55. After delivery of the second check to Housing Made Simple, the speed of the work did not increase. Aaron and Suzanne were repeatedly told that the work would be completed by new deadlines. At one point Parker told Aaron that the work would be completed by July 8.

56. By July 8, the work had not been completed. On or about that date, Aaron Weiss spoke to Brent Flester about the progress of the work. Flester assured Weiss that the \$41,000 in deposits was, in fact, being used by Housing Made Simple to complete the work at 3159 Adams Mill Road.

57. Parker subsequently told Aaron that the work would be completed by August 1.

58. Suzanne testified to a conversation with Flester in which Flester told her that Housing Made Simple had made or was about to make payments to Wess Seymore, and that in approximately mid-July, she had a conversation with Patrick Carr, in which he told her that she should start paying Wess Seymore directly. As a result of that conversation, Suzanne wrote a check to Seymore for \$7,500 on July 13, 2002 (PX 5), and another check to Seymore for \$10,000 on August 1, 2002 (PX 6).

59. In mid-July, Suzanne also spoke with Brian Carr in which he assured her that the work would be done by August 15, which was a date in the middle of Aaron and Suzanne's planned honeymoon.

60. By this time, Aaron had leased his Rhode Island Avenue house. Under the lease, his tenants were entitled to move into the house on September 1, 2002. The rent was \$1,300 per month.

61. In addition, Aaron and Suzanne contracted with a moving company to move their belongings into 3159 Adams Mill Road on the day after they returned from their honeymoon.

62. On August 10, 2002, Aaron and Suzanne were married, and left for a one-week honeymoon.

63. Suzanne called Housing Made Simple during the honeymoon, spoke with one of the Carr brothers, was assured that Seymore was being paid, and that all of the work would be done before she returned, but when Aaron and Suzanne returned from their honeymoon, they stopped by 3159 Adams Mill Road to drop off wedding presents.

and found that the work had still not been completed. The house was still a construction zone. The fixtures in the house did not work. Trash was piled up in the back of the house.

64. They spent that night at the Rhode Island Avenue house. The following morning, the moving company arrived, and they moved some of their belongings to 3159 Adams Mill Road, but were forced to put much of their belongings in storage because the house at 3159 Adams Mill Road was still not habitable. Weiss ultimately paid \$507.50 in storage fees, and an additional \$1,618.00 in moving expenses to later have the stored items moved from the storage facility to the house.

65. At this point, plaintiff Weiss terminated the contract with Housing Made Simple. (PX 8; PX 9.)

66. Eric Frolia's testimony confirmed that Housing Made Simple had not completed work on the Weiss project by that point in time. (Frolia Tr. 87.) He testified that the project was "maybe 20 percent" completed. (Frolia Tr. 106.)

67. After Aaron and Suzanne had lived in the house at 3159 Adams Mill Road for several days, a pipe burst, and water flooded into the dining room. Seymore investigated, and informed them that they should not use any of the toilets in the house until the plumbing problem could be corrected. Aaron and Suzanne moved out of the house and into a hotel, where they remained for three nights while the plumbing was corrected. Weiss paid \$558.00 for these three nights at a hotel.

68. After terminating his contract with Housing Made Simple, Weiss entered into a separate contract with IP&A (PX 10) for completion of the majority of the work

called for by the Housing Made Simple Construction Contract and Specification of Repairs. Pursuant to that contract, Weiss paid IP&A an additional \$12,000.

69. Weiss made various other payments to other contractors and suppliers to complete the work called for by Housing Made Simple Construction Contract and Specification of Repairs. He paid \$4,585 to Gallagher Painting for completion of work on the porch roof. (PX 11; PX 12.) He paid \$3,100 for a new gas boiler. He paid \$1,544.19 for various fixtures. He paid \$522 for a new shower pan. In July and August, 2002, Weiss paid \$197.11 for utilities at 3159 Adams Mill Road.

E. Facts Relating To HCP's Unlicensed Status In The District Of Columbia

70. HCP was not licensed as a home improvement contractor in the District of Columbia in 2002. Plaintiffs presented a certified statement from the Department of Consumer and Regulatory Affairs, Business and Professional License Administration (PX 54), stating that HCP's license expired at the end of 2001, and was not renewed.

71. At trial, defendant Patrick Carr testified that, at the end of 2001, HCP had received a 6-month "extension letter" from the District government. (Tr. 117.) The "extension letter" was not produced at trial and Carr's testimony about the "extension letter" was directly contradicted by the certified statement, PX 54, and has not been credited by the court.

F. Facts Relating To Projects At Which IP&A Acted As A Subcontractor For Housing Made Simple

3154 Tennyson Street, N.W. (Lessar)

72. IP&A acted as a subcontractor for Housing Made Simple at 3154 Tennyson Street, N.W., Washington, D.C., a house owned by an individual named Lessar.

73. On September 12, 2001, Frolia sent to Seymore by facsimile a Specification of Repairs for 3154 Tennyson Street, N.W. (PX 27.) In that document, Housing Made Simple offered to pay IP&A \$32,437 to do the work.

74. IP&A agreed to do the work, and on October 5, 2001, Seymore signed a contract that was prepared and provided to him by Housing Made Simple. (PX 26.) Although this contract did not specify the work to be done, the contract price (\$32,437) was the same price in the Specification of Repairs (PX 27), and Seymore testified that by signing the contract he understood that he was agreeing to do the work set forth in the Specification of Repairs.

75. Frolia was the Housing Made Simple Project Manager for the project at 3154 Tennyson Street, N.W.

76. IP&A completed all of the work called for by the Specification of Repairs (PX 27).

77. In addition to the work called for by the Specification of Repairs, Housing Made Simple asked IP&A to take on other projects at 3154 Tennyson Street, N.W., and Seymore created and maintained a record of these additional projects. (PX 57.) For each, Seymore quoted a price to Frolia, and Frolia subsequently told him that Housing Made Simple would pay that price. IP&A then completed the project.

78. In total, IP&A agreed to perform the additional projects at 3154 Tennyson Street, N.W. for \$10,347.18, and Housing Made Simple agreed to pay that amount to IP&A for completion of those projects. IP&A completed all of the projects. The total amount that Housing Made Simple agreed to pay IP&A for work performed at 3154 Tennyson Street, N.W., was \$42,784.18. For that work, Housing Made Simple paid

IP&A \$27,370.00. (PX 58.) In addition, Housing Made Simple made certain payments directly to suppliers for supplies that were within the scope of the work that IP&A had agreed to perform. These payments totaled \$3,940.54. (PX 58.)

79. Accordingly, for work performed at 3154 Tennyson Street, N.W., the court finds that Housing Made Simple owes IP&A \$11,473.64.

4000 Cathedral Avenue, N.W., #206-A (Blackington)

80. IP&A also acted as subcontractor for Housing Made Simple at 4000 Cathedral Avenue, N.W, Washington, D.C., #206-A, a condominium unit owned by an individual named Blackington.

81. Housing Made Simple prepared and provided Seymore with a Specification of Repairs setting forth the work to be done, and offering to pay IP&A \$18,396.00. (PX 31.)

82. The court finds that IP&A agreed to perform the work for that price, even though no contract was offered by in evidence by either party.

83. IP&A completed all of the work called for in the Specification of Repairs. (PX 31.)

In addition, Housing Made Simple asked IP&A to perform additional projects beyond the scope of the Specification of Repairs. (Frolia Tr. 92.) IP&A agreed to perform that additional work for a total of \$5,265.00. Frolia was instructed by Brent Flester to not document those agreements. (Frolia Tr. 93) But Seymore created and maintained a record of the additional projects. (PX 59.) IP&A completed all of the additional projects.

84. Accordingly, the total amount that Housing Made Simple agreed to pay IP&A for the work that IP&A did at 4000 Cathedral Avenue, N.W., #206-A was \$23,661.

85. For its work at that property, Housing Made Simple paid IP&A \$13,245. (PX 61.) Housing Made Simple also purported to pay IP&A for work done at that property with three other checks, checks numbered 1370, 1479, and 1488. All three checks bounced.

86. Housing Made Simple paid directly for certain supplies and appliances that were within the scope of the Specification of Repairs. The payments totaled \$2,862.95. (PX 61.) Accordingly, for work performed at 4000 Cathedral Avenue, N.W., #206-A Housing Made Simple owes IP&A \$7,553.05.

602 Aldrid Street, Silver Spring (Smith)

87. IP&A also makes claims with respect to the property at 602 Aldrid Street, Silver Spring, owned by an individual named Smith. Seymore testified that Housing Made Simple (through Frolia) asked Seymore if IP&A could paint the house at 602 Aldrid Street on an emergency basis, because the homeowner was about to put the house on the market. Seymore offered to do the paint job for \$1,023.00, and Frolia, on behalf of Housing Made Simple, agreed to that price.

88. IP&A completed the work. Seymore testified that at the completion of the job, the homeowner gave him an envelope with a check in it, made out to Housing Made Simple. Seymore gave the envelope with the check in it to Frolia. But IP&A never received any payment from Housing Made Simple for the paint job.

2406 Dexter Avenue, Silver Spring (Lawn)

89. IP&A also makes claims with respect to a property at 2406 Dexter Avenue, Silver Spring, owned by an individual named Lawn.

90. Frolia provided Seymore with a Specification of Repairs for this property, setting for the work to be done, and showing a price of \$5,915.00. (PX 34.) Frolia and

Seymore went to the property together to review the project, and Seymore agreed that IP&A would do the work for that price.

91. IP&A completed all of the work called for by the Specification of Repairs, and was paid \$5,000 for that work, as well as \$146.30 for materials within the scope of the Specification of Repairs.

92. Therefore, Housing Made Simple owes IP&A \$768.70 for work performed at 2406 Dexter Avenue, Silver Spring, MD.

Warner Street (Lobos)

93. IP&A also makes claims with respect to a property on Warner Street, Washington, D.C., owned by an individual named Lobos. Housing Made Simple, through Frolia, asked IP&A to repair termite damage at this property that one of its home inspectors had missed. (Frolia Tr. 93-94.) Seymore told Frolia that he could not estimate how much this would cost because he could not tell how extensive the damage was until he began the work. Housing Made Simple, through Frolia, agreed that it would pay IP&A whatever it cost to do the work.

94. IP&A completed the work, and asked for payment from Housing Made Simple in the amount of \$2,160.00, and was paid by Housing Made Simple with check number 1847. The check bounced (PX 38) and was never replaced.

95. Thus, Housing Made Simple owes IP&A \$2,160.00 for work done at the Warner Street property.

5607 Seminole Street, College Park (Roy)

96. IP&A makes a claim relating to plaintiff Roy's property at 5607 Seminole Street.

97. IP&A was one of Housing Made Simple's contractors on this project. Another one of the subcontractors was Lenny Johnson, whom Housing Made Simple hired to build the foundation for the 2-bedroom addition. After Johnson had already begun the work, Housing Made Simple delivered an initial check to Johnson. The check bounced, was not replaced by Housing Made Simple, and Johnson ultimately refused to do any additional work on the project.

98. IP&A paid Johnson \$675 for the work that Johnson had done on the project, and then demanded payment of this amount from Housing Made Simple. Housing Made Simple never reimbursed IP&A for this amount.

3159 Adams Mill Road, N.W. (Weiss)

99. IP&A was hired by Housing Made Simple as the subcontractor for the project at plaintiff Weiss's house at 3159 Adams Mill Road, N.W., Washington, D.C.

100. Parker provided Seymore with a Specification of Repairs, showing the work to be done, and indicating that Housing Made Simple would pay \$49,586.00 for completion of that work. (PX 25.) Seymore, on behalf of IP&A, agreed to perform the work in the Specification of Repairs for that price. Seymore testified that a formal contract was presented to him, and that he signed it, but never received a copy back from Housing Made Simple, and it was not produced at trial.

101. In addition to the work outlined in the Specification of Repairs, Housing Made Simple asked IP&A to perform additional items. IP&A agreed to perform those additional items for \$4,870.00, and Housing Made Simple agreed to pay that price. Seymore created and maintained a record of the additional items. (PX 62.) IP&A completed all of the additional items.

102. Thus, the total amount that Housing Made Simple agreed to pay IP&A for work at 3159 Adams Mill Road was \$54,366.00.

103. On May 7, 2002 – after IP&A had already started work on the project – Housing Made Simple delivered to IP&A a check for \$10,000.00 for work on the Weiss project. The check bounced, was never replaced, and no additional money was paid to IP&A for the Weiss project.

104. Housing Made Simple has claimed in this lawsuit that, in fact, it paid IP&A \$19,900 for work done on the Weiss project. (PX 14; B. Carr Tr. 155-56.) But the court finds to the contrary, because, among other reasons, Parker testified that the reason the Weiss project fell behind schedule was that the subcontractor on the project (IP&A) was “not receiving payments for the work that he had done.” (Parker Tr. 50.)

105. At some point, Seymore was told by Patrick Carr or Brent Flester that Housing Made Simple had authorized Weiss to make payments directly to IP&A, and Weiss paid IP&A \$4,870.00 in additional items, and also gave Seymore two other checks, one for \$7,500.00 (PX 5) and one for \$10,000.00 (PX 6).

106. After Weiss terminated the contract with Housing Made Simple, Weiss hired IP&A directly to complete the work called for by Specification of Repairs. (PX 10.) IP&A subsequently completed all of the work called for by the Specification of Repairs, and was paid an additional \$12,000.00 by Weiss for that work.

107. Accordingly, the amount Housing Made Simple owes to IP&A for work done at 3159 Adams Mill Road is \$20,086.00.

Fees And Penalties Incurred As A Result Of Bounced Checks

108. On six separate occasions, Housing Made Simple gave IP&A checks that were drawn on accounts that did not have sufficient funds to cover those checks, that is,

the checks bounced. As a result, IP&A incurred \$1,389.66 in fees and penalties charged by IP&A's bank. (PX 38-43.)

G. Facts Relating To Alter Ego And Successor Liability

109. Brian Carr and Patrick Carr are the sole shareholders of HCP. (B. Carr Dep. at 8; P. Carr Dep. at 8.) HCP has never had a board of directors, and has had no corporate officers other than the Carr brothers. (B. Carr Dep. at 21.) HCP has never had a formal shareholders meeting. (B. Carr Dep. at 24; P. Carr Dep. at 27.)

110. Brian Carr testified that no minutes of either board meetings or shareholder meetings of HCP were created. (B. Carr Dep. at 24-25.) Similarly, Patrick Carr testified that he did not know if anybody created minutes of board meetings of HCP (P. Carr Dep. at 24), and that he did not know whether he was an officer or director of HCP, or who the officers or directors of HCP were in 2002. (P. Carr Dep. at 19-21.)

111. Brian Carr testified that HCP never owned any assets. (B. Carr Dep. at 26.) Although the company used various vehicles, the vehicles were always purchased in the names of HCP's owners or employees. (B. Carr Dep. at 27-28.) Patrick Carr testified that he had no idea what the assets of either HCP or HMS were. (P. Carr Dep. at 120-21.)

112. On April 1, 2003, defendants Brian Carr and Patrick Carr received a letter from plaintiffs' attorney, indicating plaintiffs' intent to sue, and enclosing a draft of the complaint. (Px 53.) Three weeks later, on April 22, 2003, HMS was formed. (Joint Pretrial Statement, Stipulation No. 5.) HMS had no board of directors. (B. Carr Dep. at 10.) The corporate officers of HMS were the Carr brothers, and Kirk Deutrich.

113. Prior to April, 2003, defendants Brian Carr and Patrick Carr drew salaries from HCP. After April, 2003 – when HMS was formed – they both began to draw salaries from HMS. (K. Deutrich Dep. at 24-25.)

114. Brian Carr testified that HMS “has taken responsibility for the liabilities” of HCP. (B. Carr Dep. at 22-23.) Kirk Deutrich, the CFO and vice president of marketing of Housing Made Simple, similarly testified that HMS intended to pay the liabilities of HCP. (K. Deutrich Dep. at 19.)

115. Between the October, 2004 pretrial conference in this case and the April 4, 2005 trial date, defendants Brian Carr and Patrick Carr created a new corporation, HMSIC. HMSIC was formed on January 11, 2005. (Px 67.) The three initial directors of HMSIC were defendants Brian Carr and Patrick Carr, and Kirk Deutrich. (B. Carr Tr. 11.)

116. On March 9, 2005 – less than a month before trial – defendant Brian Carr signed an application to withdraw HMS’s authorization to do business in Virginia, which was subsequently filed on March 11, 2005 with the Commonwealth of Virginia, State Corporation Commission. (PX 66.)

117. HCP, HMS and HMSIC all do business, or have done business, as Housing Made Simple. (B. Carr Tr. 12-13.) The employees of HMS became employees of HMSIC. (B. Carr Tr. 13.) The assets and business of HMS have now been transferred to HMSIC. (B. Carr Tr. 13.)

II.

CONCLUSIONS OF LAW

A. Breach Of Contract Claims

1. Plaintiff James Roy

118. Plaintiff Roy's breach of contract claim is based on two interrelated contracts. First, on December 5, 2001, Housing Made Simple (which at the time was defendant HCP) and Roy entered into the Construction Contract (PX 15) to perform work set forth in the Specification of Repairs (PX 16) on an agreed-upon schedule (PX 17.) Paragraph B on page 2 of the Construction Contract explicitly incorporates by reference the Specification of Repairs. Paragraph 36 on page 10 and Paragraph 46 on page 12 of the Construction Contract both explicitly incorporate the schedule. Accordingly, the three documents (PX 15, 16 and 17) collectively set forth the terms of the contract.

119. Housing Made Simple breached that contract. Plaintiff proved that Housing Made Simple did not perform the agreed-upon work on the agreed-upon schedule. The work was to be completed by the first week of January, 2002 (PX 17.) At the time Roy terminated the contract on August 20, 2002 – eight months later – the work still had not been completed.

120. The second contract was the "change order" form signed by Roy and on behalf of Housing Made Simple on January 17, 2002. (PX 19.) Pursuant to that second contract, Housing Made Simple agreed to construct a two-bedroom addition to the house for \$27,000.00, within one month.

121. Roy obtained the necessary variance on or about March 20, 2002, and immediately informed Housing Made Simple. Accordingly, Housing Made Simple should have completed the addition by approximately April 20, 2002, but by April 20,

2002, all that had been done was that the "footings" had been dug. The subcontractor that Housing Made Simple had hired to build the foundation had walked off the job after Housing Made Simple paid him with a check that bounced.

122. At the time Roy terminated the contract on August 20, 2002, the addition still had not been completed.

123. The total contract price for the original contract plus the addition was \$44,353.00. Roy paid \$25,679 to Housing Made Simple, and \$26,393.93 to other contractors and suppliers, in order to complete the work that Housing Made Simple had agreed to perform. Accordingly, Roy proved contract damages of \$7,719.93.

124. Roy also proved lost rental income. If Housing Made Simple had complied with its contract, all work at 5607 Seminole Street would have been completed by approximately April 20, 2002. Based upon Roy's testimony, which the court credits, he would have been able to rent that house within approximately two weeks, which would have been early May, 2002. As a result of Housing Made Simple's failure to perform, Roy actually was able to rent the house in mid-November, 2002, for \$2,000 per month. Accordingly, Roy lost approximately 6-1/2 months of rent, at \$2,000 per month. Accordingly, Roy proved lost rental income of \$13,000.00.

125. Roy incurred other consequential damages in the amounts of \$78.00, \$100.00, and \$229.51, as discussed above in the findings of fact.

126. Accordingly, the Court concludes that Roy proved \$21,127.44 in damages on his breach of contract claim.

2. Plaintiff Aaron Weiss

127. On April 13, 2002, Housing Made Simple (which at the time was defendant HCP) and Weiss entered into the Construction Contract (PX 1) to perform

work set forth in the Specification of Repairs (PX 2) on an agreed-upon schedule (PX 69). The contract price was \$70,058.00. Paragraph B of the Construction Contract explicitly incorporates by reference the Specification of Repairs. Paragraphs 36 and 46 of the Construction Contract both explicitly incorporate the schedule. Accordingly, the three documents collectively set forth the terms of the contract.

128. Housing Made Simple breached that contract. Plaintiff proved that Housing Made Simple did not perform the agreed-upon work on the agreed-upon schedule. The work was to be completed by June 28, 2002 (PX 69). At the time Weiss terminated the contract on August 29, 2002 the work still had not been completed.

129. Although Weiss paid \$41,000 in deposits, Housing Made Simple never spent those funds on the Weiss project. Rather Housing Made Simple hired IP&A to do the work, but only gave IP&A a single check, which bounced. Housing Made Simple never made any further payments.

130. In addition to the \$41,000.00 in deposits paid to Housing Made Simple, Weiss paid \$17,500 directly to IP&A prior to the time he terminated his contract with Housing Made Simple, and an additional \$12,000 after termination of the contract. Weiss also paid \$4,584.00 to Gallagher Painting for completion of the porch roof, and \$3,100 for a gas boiler that was within the scope of the Housing Made Simple contract. Accordingly, Weiss proved contract damages of \$8,126.00.

131. Weiss also proved lost rental income. Weiss intended to rent his Rhode Island house as soon as he and Suzanne moved into the house at 3159 Adams Mill Road. Had Housing Made Simple complied with its contractual obligations, Weiss would have been able to rent that property by the end of June, 2002. Instead, he was not able to rent

it until September 1, 2002, at a rent of \$1,300 per month. Accordingly, Weiss proved lost rental income of \$2,600.00.

132. In addition, Weiss proved other incidental consequential damages of \$5,157.80.

133. Accordingly, the Court concludes that Weiss proved \$15,883.80 in damages on his breach of contract claim.

3. Plaintiff IP&A

134. Plaintiff IP&A alleges both breach of contract and quantum meruit claims, with respect to numerous projects, as discussed in detail in the findings of fact.

135. With respect to each of those projects, the Court concludes that plaintiff IP&A proved the existence of a contract with HCP, all oral contracts except 3154 Tennyson Street, which was written (PX 26).

136. The contract regarding 3154 Tennyson Street has a change order provision, stating that changes should be in writing. However, written change order provisions of construction contracts are subject to implied waiver where there is oral approval and proof of acquiescence. *Safer v. Perper*, 569 F.2d 87, 99 (D.C. Cir. 1977). Here, the undisputed testimony is that HCP (through Eric Frolia) orally approved all of the change orders, and permitted IP&A to do the work. In addition, HCP collected money from the homeowner for that work. Thus, there has been an implied waiver of the change order provision of the contract.

137. With the exception of the Weiss project at 3159 Adams Mill Road, defendants did not put on any evidence contradicting Seymore's testimony and documentation concerning the amounts owed to IP&A. Accordingly, the Court finds that IP&A proved contract damages of \$11,473.64 as to 3154 Tennyson Street, \$7,553.05 as

to 4000 Cathedral Ave., N.W., #206-A, \$1,023.00 as to 602 Aldrid Street, \$768.70 as to 2406 Dexter Avenue, \$2,160.00 as to Warner Street, and \$675.00 as to 5607 Seminole Street.

138. In addition, defendants did not put on any evidence contradicting or disputing Seymore's testimony and documentation indicating that IP&A was charged \$1,389.66 in fees and penalties as a result of the six separate checks that it received from HCP that bounced when deposited by IP&A. These are consequential damages that IP&A is entitled to recover.

139. As for the Weiss project at 3159 Adams Mill Road, defendants claim that HCP paid IP&A \$19,900 with respect to the Weiss project. This is directly disputed by Seymore, who testified that the only payment he ever received was a check for \$10,000.00 that bounced (PX 42). The court credits Seymore's testimony in this regard and resolves this dispute against defendants. Accordingly, the court rejects defendants' contention that HCP paid IP&A \$19,900.00, and concludes that IP&A proved contract damages of \$20,068.00 with respect to 3159 Adams Mill Road, and further concludes that IP&A proved total damages on its breach of contract and quantum meruit claims of \$45,129.05.

140. The court declines to award pre-judgment interest pursuant to, D.C. Code § 15-109, concluding that such an award is not necessary to fully compose the IP&A, in light of the scope of other damages awarded herein.

B. Plaintiff Weiss's Claims Under The D.C. Consumer Protection Procedures Act

141. The court declines to conclude that Housing Made Simple violated the D.C. Consumer Protection Procedures Act (DCCPPA) D.C. Code §§ 28-3901 et. seq.,

except to the extent that plaintiffs established that in 2002 Housing Made Simple operated a home improvement business without a license, in violation of 16 DCMR § 800.1 and § 899.1. This violation of the Municipal Regulations in turn constitutes a violation of the DCCPPA, pursuant to D.C. Code § 28-3904(dd). The violation consists of the failure of Housing Made Simple to renew its license after it expired at the end of 2001. As indicated earlier, the court does not credit Patrick Carr's testimony regarding the existence of a six-month extension letter, ¶ 71 supra, as it was not produced at trial. Under established principles, a homeowner can recover any payments made to an unlicensed home improvement contractor. Cevern, Inc. v. Ferbish, 666 A.2d 17 (D.C. 1995). Here, Weiss paid Housing Made Simple \$41,000 as a deposit on work to be done at his home, and he is entitled to recover that amount.

142. But the court concludes that Weiss's remaining alleged DCCPPA violations as well as the allegations of fraud of all three plaintiffs have not been established to the court's satisfaction. The fraud allegations clearly have not been proved by clear and convincing evidence. The court cannot conclude that when the various contracts were entered Housing Made Simple had a specific intention not to perform the work or complete it on or near schedule.

The continual slippages, bounced checks, and broken promises as to work progress and lack of completion reflect absolutely horrid business practices and miscalculations that would have frustrated and exasperated any home owner, and, indeed, did so here. But there is no evidence that Housing Made Simple intended to, in effect, steal money from persons with whom it contracted. There is as much reason to believe that Housing Made Simple simply underestimated its expected cash flow during the

months it contracted with these plaintiffs and was forced, at least in its own eyes, to solicit and contract additional work in order to prevent its inevitable overall collapse. Indeed, there was some testimony as to the possibility of a Small Business Administration loan which apparently never came to fruition, but which defendants counted on. While no documentation of such a loan was produced, its possibility supports the conclusion that, rather than fraud, Housing Made Simple became seriously overextended in 2002 and did what it could, albeit improperly and ineffectively, to stave off disaster.

These actions should not be excused, and plaintiffs should be made whole for their damages caused by defendants' improper activities. But in the court's view they are as likely to constitute incredibly poor business judgment as they are to constitute fraud or violations of the DCCPPA. Defendants' actions may have had some "Ponzi scheme" characteristics, as plaintiffs suggest, but their intent to defraud has not been sufficiently established.²

143. For these reasons, there is no occasion for trebling damages under the DCCPPA or imposing punitive damages. Even though a violation of the DCCPPA has been found because of Housing Made Simple's unlicensed status in 2002, trebling of the \$41,000 to be returned to plaintiff Weiss is not required either by District Cablevision, Ltd. V. Bassin, 828 A.2d 714 (D.C. 2003), or the statute itself. See D.C. Code § 28-3905(k)(1).

² Similarly, although perhaps suspicious, defendant's actions in regard to some of its records have not been adequately established to constitute "fabrication."

C. Alter Ego Liability Claims Against Defendants Brian Carr and Patrick Carr

144. To establish alter ego liability of defendants Brian Carr and Patrick Carr, plaintiffs must prove two elements: (1) unity of ownership and interest; and (2) use of the corporate form to perpetrate fraud or wrong. *Bingham v. Goldberg, Marchesano, Kohlman, Inc.*, 637 A.2d 81, 93 (D.C. 1994); *Vuitch v. Furr*, 482 A.2d 811, 815-16 (D.C. 1984).

145. Plaintiffs proved a unity of ownership and interest between defendant HCP and the Carr brothers. The Carr brothers were the sole owners and officers of HCP, and completely controlled its business. Corporate formalities were completely disregarded by HCP.

146. Moreover, the evidence strongly suggests that the Carr brothers abused the corporate form, repeatedly moving Housing Made Simple's business from one corporation to another at key moments in this dispute. HMS was formed a mere three weeks after the Carr brothers learned of plaintiffs' intention to file this lawsuit. HMSIC was formed between the dates of the pretrial conference and trial of this case. Each time, the earlier corporation was left as an empty shell, without any assets or ongoing business. As a result of this manipulation of the corporate form, the corporations that plaintiffs' contracted with and/or named as defendants in this lawsuit now exist in name only, and have no assets with which they could pay a judgment.

147. Defendants offered no evidence that would have provided a legitimate explanation for their repeated changes of corporate form.

148. Plaintiffs also proved that the Carr brothers used the corporate form to perpetuate a wrong. Plaintiffs proved a wide-spread and long-standing pattern of

wrongful conduct by the Carr brothers, in which they breached their obligations to numerous employees, subcontractors and customers.

149. Accordingly, this is a proper case for application of the alter ego doctrine, and for imposition of personal liability on defendants Brian Carr and Patrick Carr for the amounts awarded in this case.

D. Successor Liability Claims Against HMS

150. To prevail on their claim of “successor” liability against HMS, plaintiffs must prove at least one of the following three things: (1) that HMS expressly or impliedly agreed to assume the debts of HCP; or (2) that HMS is a mere continuation of HCP; or (3) that the transaction between HMS and HCP was intended as a means to escape liability for the debts of HCP. *Bingham v. Goldberg, Marchesano, Kohlman, Inc.*, 637 A.2d 81, 89-90 (D.C. 1994).

151. Plaintiffs proved all three. First, Brian Carr and Kirk Deutrich, in their deposition testimony that was submitted as evidence at trial, both testified that HMS had taken responsibility for the debts of HCP. Standing alone, that testimony is sufficient to impose successor liability on HMS. Second, HMS clearly is a “mere continuation” of HCP. All of HCP assets, business, and employees moved over to HMS. HMS continued to operate the exact same business, from the exact same location, using the exact same trade name and trademark. Finally, the formation of HMS was intended to thwart Housing Made Simple’s debtors, including the plaintiffs. This is demonstrated quite clearly by the time of the formation of HMS (three weeks after plaintiffs made their intention to sue known), by defendant’s failure to offer any evidence of any legitimate explanation for the formation of HMS, and by defendant’s subsequent formation of HMSIC close to the eve of trial.

152. Accordingly, the court concludes that HMS is liable for the amounts awarded in this case.

E. Defendants' Counterclaims

153. At trial, defendants failed to put on any evidence in support of their counterclaims, and did not attempt to prove or quantify any damages. Accordingly, the court concludes that defendants failed to prove any of their counterclaims.

**III.
SUMMARY OF FINDINGS AND CONCLUSIONS AND ORDER**

1. The court finds in favor of plaintiff Weiss, and against defendant HCP, on Weiss's claims of breach of contract and a violation of the DCCPPA.

2. The court awards plaintiff Weiss damages of \$15,883.80.

3. The court awards plaintiff Weiss \$41,000, the amount of the deposits made to HCP during the time that HCP was not licensed as a home improvement contractor in the District of Columbia.

4. The court finds in favor of plaintiff Roy, and against defendant HCP, on Roy's claim for breach of contract.

5. The court awards Roy damages of \$21,127.44.

6. The court finds in favor of plaintiff IP&A, and against defendant HCP, on IP&A's claims for breach of contract and quantum meruit.

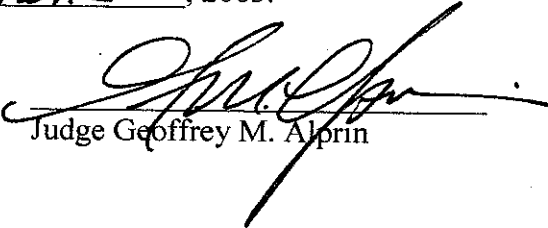
7. The court awards plaintiff IP&A damages of \$45,129.05.

8. The court finds in favor of all plaintiffs, and against defendants Brian Carr and Patrick Carr, on plaintiffs' alter ego claims. Accordingly, Brian Carr and Patrick Carr shall be jointly and severally liable for all amounts awarded.

9. The court finds in favor of all plaintiffs, and against defendant HMS, on plaintiffs' successor liability claims. Accordingly, defendant HMS shall also be jointly and severally liable for all amounts awarded.

10. The court finds against defendants, and in favor of plaintiffs, on defendants' counterclaims.

SO ORDERED this 23 day of June, 2005.


Judge Geoffrey M. Alprin

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