# CAPTION: QUEEN CITY CLEANING V. I74 WIRED

**05-08-24**

APPEAL NO: C-230331

TRIAL NO: A-2200140

KEY WORDS: CONTRACTS – DISCOVERY – MOTION TO COMPEL – CIV.R. 56 – ABUSE OF DISCRETION – SUMMARY JUDGMENT – BREACH OF CONTRACT – CONTRACT INTERPRETATION – IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING – IMPLIED-IN-FACT CONTRACT – UNJUST ENRICHMENT – FRAUD

SUMMARY:

The trial court did not abuse its direction in impliedly denying plaintiff’s motion to compel discovery and plaintiff’s motion for a continuance under Civ.R. 56(F) and instead ruling on defendant’s dispositive motion for summary judgment where plaintiff’s substantial rights were not harmed by closing discovery because plaintiff stated in its memorandum in opposition to summary judgment that it had sufficient facts to survive summary judgment.

The trial court correctly granted summary judgment in favor of defendant and against plaintiff on whether defendant breached the contract by providing notice of termination because there is no genuine issue of material fact that the defendant provided to plaintiff the written notice to terminate required by the contract and there are no facts suggesting defendant breached the implied covenant of good faith and fair dealing.

The trial court erred in granting summary judgment in favor of defendant and against plaintiff on whether defendant breached the contract by refusing to pay amounts owed prior to providing notice of termination where there is no genuine issue of material fact that the amounts were due for services rendered prior to defendant sending notice to terminate the contract and defendant had not paid those amounts.

The trial court erred in granting summary judgment in favor of defendant and against plaintiff on whether defendant breached the contract by not paying amounts owed under the contract during the 30-day notice period where there is no genuine issue of material fact that the termination clause keeps the contract in force for 30 days after a party provides written notice to terminate, and sets the amounts owed while the contract is in force, and the plain language of the satisfaction clause permits defendant to inspect services and make complaints, not withhold payment.

The trial court correctly granted summary judgment in favor of defendant and against plaintiff on plaintiff’s claims for breach of an implied-in-fact contract, unjust enrichment, and fraud where the breach-of-implied-in-fact-contract and unjust-enrichment claims are precluded by the presence of an express contract and the fraud claim merely restates the breach-of-contract claim as a fraudulent breach of contract, which is not a recognized tort claim.

JUDGMENT: AFFIRMED IN PART, REVERSED IN PART, AND CAUSE REMANDED

JUDGES: OPINION by WINKLER, J.; ZAYAS, P.J., and CROUSE, J., CONCUR.