

THE COMMONWEALTH OF MASSACHUSETTS

Plymouth, ss.

**Superior Court
Trial Dept.**

**James J. Decoulos, Decoulos & Company,
LLC, and Wright Industries, Inc.,**

Plaintiffs

vs.

Civil Action No. 05-1428A

**Eagle Gas, Inc., Najib Badaoui, individually,
the Marina Nominee Trust,
a real estate trust, and Najib Badaoui, as
Trustee of the Marina Nominee Trust,**

Defendants.

COMPLAINT

This action arises out of defendants Eagle Gas, Inc. and Najib Badaoui's (collectively "Eagle") failure to pay plaintiffs James J. Decoulos, Decoulos & Company, and Wright Industries, Inc. for environmental engineering and petroleum remediation services.

THE PARTIES

1. James J. Decoulos is a licensed environmental engineer and President of Decoulos & Company, LLC ("Decoulos").
2. Decoulos is an environmental engineering company with a principal place of business in Cambridge, Massachusetts.
3. Wright Industries, Inc. is a petroleum remediation services firm with a principal place of business in Essex, Massachusetts.

4. Defendant Eagle Gas, Inc. (“Eagle”) is a gasoline and automotive service station located at 131 Main Street, Carver, Plymouth County, Massachusetts.
5. Defendant Najib Badaoui (“Badaoui”) is the owner and President of Eagle and has a personal residence in Carver, Plymouth County, Massachusetts.
6. The Marina Nominee Trust is a real estate trust established in June 2003 by defendant Badaoui. The sole asset of the trust is Eagle’s gas station located at 131 Main Street, Carver, Massachusetts.
7. Defendant Badaoui is the sole trustee of the Marina Nominee Trust (“the Trust”). The Trust grants Badaoui complete power and authority to “sell, exchange, convey, refinance, lease, repair, abandon, pledge for security, and exercise all rights, powers and privileges which an absolute owner of the same property would have....”
8. The Marina Trust is a named defendant solely for the purpose of securing an attachment of the property located at 131 Main Street, Carver, Massachusetts in order to satisfy any judgment issue in this case.

ALLEGATIONS AND FACTS COMMON TO ALL COUNTS

9. The property at 131 Main Street Carver, Massachusetts has been a gasoline and automotive service station for many years.
10. In September 1997, a prior owner of the station reported a release of oil and hazardous materials at the station triggering intervention by the Department of Environmental Protection (“DEP”) to oversee and administer response actions and site cleanup by a Licensed Site Professional (“LSP”) under the Massachusetts Contingency Plan (“MCP”), M.G.L. ch. 21E. Kaegael Environmental, Inc., of Fall River, Massachusetts (“Kaegael”) was hired by the owner as LSP.

11. DEP assigned Release Tracking Number (“RTN”) 4-13333 for the release, which is not at issue in this dispute.
12. In October 1997, Eagle purchased the gas station.
13. In December 2002, Kaegael discovered approximately ten inches of pure petroleum, otherwise known as non-aqueous phase liquid (“NAPL”), on top of the groundwater table in Monitoring Well BP-5RR.
14. Kaegael informed Badaoui (who was not responsible for the original release) that the identification of NAPL was a new release and recommended that Badaoui notify DEP.
15. On January 16, 2003, Decoulos, who had been introduced to Badaoui by Badaoui’s brother, represented Badaoui in a telephone conference call with Kaegael concerning the new release.
16. On January 21, 2003, Decoulos notified DEP of the new petroleum release on behalf of Badaoui. DEP assigned RTN 4-17582 to the release, identified Eagle as the Potentially Responsible Party (“PRP”) and issued a Notice of Responsibility (“NOR”) letter to Eagle.
17. On February 11, 2003, Decoulos and Eagle entered into a contract (“the Contract”) whereby Decoulos assumed LSP responsibilities for RTN 4-17582 and agreed to provide environmental services to Eagle for the purpose of ensuring Eagle’s compliance with the MCP. See Exhibit 1. Kaegael remained LSP on the Site for RTN 4-13333.
18. Decoulos and Eagle’s Contract contained a Scope of Work section outlining Decoulos’ tasks and a proposed schedule, budget and fee schedule.

19. The Contract estimated that the cost of the clean-up, given the information known about site conditions as of February 11, 2003, would not exceed \$20,000.
20. The Contract stated that the contract estimate “will not be exceeded without your [Badaoui’s] written authorization.”
21. The Contract contained a Statement of Terms and Conditions stating, *inter alia*, that in the event of Eagle’s non-payment of Decoulos’ invoices, Eagle “shall reimburse [Decoulos] for all costs and expenses of collection, including reasonable attorney’s fees.” Exhibit 1.
22. Badaoui accepted and signed the Contract in his capacity as President of Eagle on February 11, 2003.
23. Decoulos requested Wright Industries, Inc. of Essex, Massachusetts (“Wright”) to provide remedial contracting support for Decoulos at the Site.
24. Eagle agreed to Wright’s services and paid Wright a \$2,500 retainer deposit.
25. On April 24, 2003, Wright arrived on Site with a drum vacuum system to remove NAPL from the Site and evaluate the recovery of NAPL back into the well.
26. Before Wright evacuated the NAPL on April 24, 2003, Decoulos measured the apparent thickness of the NAPL at Well BP-5RR as 6.27 feet with a Solinst™ Oil/Water Interface Meter. The top of the NAPL was at 3.67 feet below the ground surface; the NAPL/groundwater interface was at 9.94 feet below grade; and, total well depth was 11.30 feet below the existing ground surface.
27. Based on the sensitive agricultural use of wetland resources in the Carver area for cranberry production, on May 16, 2003 Decoulos inspected South Meadow Brook, which ran underneath Main Street approximately 600 feet south of the Site.

28. Decoulos' inspection revealed the presence of a sheen on the surface of the Brook.

The sheen was observed from Main Street on both the easterly (upgradient) and westerly (downgradient) flows of the Brook.

29. DEP was contacted and representative Mark Jablonski responded to the scene at approximately 2:30 PM on May 16, 2003. With the support of the Carver Department of Public Works, drainage structure covers in Main Street were removed and the headspace within each drainage structure was screened for volatile organic compounds ("VOCs").

30. Although the drainage structures and underground piping in front of the Site did not show any signs of causing the sheen on the water surface of the Brook, DEP issued an immediate Notice of Responsibility ("NOR") to Eagle due to the likelihood that the source of the outfall contamination originated from the Site. DEP assigned RTN 4-17825 to the new release.

31. Based upon the release identified at the Brook, Decoulos informed Badaoui that the original \$20,000.00 contract estimate would be exceeded. Badaoui acknowledged the additional costs associated with the new release and asked that Decoulos and Wright continue their work at the Site.

Decoulos' Invoices to Eagle

32. Throughout 2003 and 2004, Decoulos submitted invoices to Eagle and Eagle paid the invoices without protest.

33. On March 27, 2003, Decoulos Invoice No. 444 was submitted to Eagle for services and expenses incurred between January 16, 2003 and March 27, 2003. The total amount of Invoice No. 444 was \$10,213.72.

34. On June 13, 2003, Eagle paid Decoulos \$5,000.000 that was applied to Invoice No. 444.
35. On June 25, 2003, Eagle paid Decoulos \$5,213.72 that was applied to Invoice No. 444.
36. On July 21, 2003, Decoulos Invoice No. 450 was submitted to Eagle for services and expenses incurred between March 28, 2003 and July 21, 2003. The total amount of Invoice No. 450 was \$12,008.17.
37. On July 29, 2003, Eagle paid Decoulos \$6,000.00 that was applied to Invoice No. 450.
38. On August 23, 2003, Eagle paid Decoulos \$6,008.17 that was applied to Invoice No. 450.
39. On April 2, 2004, Decoulos Invoice No. 479 was submitted to Eagle for services and expenses incurred between July 21, 2003 and April 2, 2004. The total amount of Invoice No. 450 was \$3,282.50.
40. On April 22, 2004, Eagle paid Decoulos \$3,282.50 that was applied to Invoice No. 479.
41. On June 5, 2004, Decoulos Invoice No. 505 was submitted to Eagle for services and expenses incurred between April 2, 2004 and June 5, 2004. The total amount of Invoice No. 505 was \$9,396.42. Exhibit 2.
42. On July 9, 2004, Decoulos Invoice No. 515 was submitted to Eagle for services and expenses incurred between June 5, 2004 and July 9, 2004. The total amount of Invoice No. 515 was \$18,391.65. Exhibit 3.
43. On July 19, 2004, Eagle paid Decoulos \$4,396.42 that was applied to Invoice No. 505.
44. On August 10, 2004, Eagle paid Decoulos \$8,391.65 that was applied to Invoice No. 515.

45. On August 19, 2004, Eagle paid Decoulos \$5,000.00 that was applied to Invoice No. 505.
46. On October 8, 2004, Eagle paid Decoulos \$5,000.00 that was applied to Invoice No. 515.
47. On October 22, 2004, Decoulos Invoice No. 530 was submitted to Eagle for services and expenses incurred between July 9, 2004 and October 22, 2004. The total amount of Invoice No. 530 was \$11,318.32. Exhibit 4.
48. On October 29, 2004, Eagle paid Decoulos \$5,000.00 that was applied to Invoice No. 515.
49. Based upon demands by DEP to accelerate remedial response actions to remove NAPL and ensure the protection of public health, Badaoui informed Decoulos in November of 2004 of the financial difficulties he was facing in paying Decoulos' and Wright's invoices.
50. On December 6, 2004, Eagle paid Decoulos \$6,318.32 that was applied to Invoice No. 530.
51. On February 14, 2005, Decoulos Invoice No. 552 was submitted to Eagle for services and expenses incurred between October 22, 2004 and December 31, 2005. The total amount of Invoice No. 552 was \$19,865.13. Exhibit 5.
52. On March 3, 2005, Eagle paid Decoulos \$5,000.00 that was applied to Invoice No. 530.
53. On March 24, 2005, Decoulos contacted environmental attorney Adam D. Rogoff to identify whether Eagle could pursue a claim against Harleysville for failing to cover pollution damage.

54. Rogoff contacted Badaoui to identify if he would engage his services to pursue an insurance claim against Harleysville.
55. Badaoui decided to not pursue the insurance claim with Rogoff.
56. Sometime in April of 2005, Badaoui informed Decoulos of discussions he was having with Cumberland Farms, Inc. ("Cumberland") to sell the Site.
57. On April 20, 2005, Eagle paid Decoulos \$5,000.00 that was applied to Invoice No. 552.
58. On April 25, 2005, Decoulos gave Eagle a credit totaling \$347.08 for certain traffic controls.
59. On April 29, 2005, Decoulos spoke with attorney Benjamin J. Ericson, the acting Brownfields Unit Chief of the Massachusetts Attorney General's office, regarding the possibility of seeking brownfield funding for Eagle.
60. Ericson provided contact information for brownfield funding options. One of the contacts suggested was Thomas Barry of the Massachusetts Business Development Corporation ("MassBusiness").
61. Badaoui, Barry and scheduled a meeting for May 12, 2005 to outline brownfield financing programs that may be available for Eagle.
62. Barry could not attend the May 12, 2005 meeting but later met Badaoui at the Site and provided information on MassBusiness programs that could benefit Eagle.
63. Eagle was at this time in active negotiations to sell the gas station to Cumberland Farms.
64. On June 9, 2005, Eagle paid Decoulos \$5,000.00 that was applied to Invoice No. 552.
65. On June 30, 2005, Decoulos submitted Invoice No. 577 to Eagle indicating a balance due of \$4,518.05. Exhibit 6.

66. Eagle continued to accept Decoulos' service without protest.
67. On June 17, 2005, Badaoui and Decoulos met his attorneys Jonathan M. Graham and Theodore L. Bosen at their office in Sagamore Beach, MA to review the project status and discuss negotiations that Eagle was undertaking to sell the Site to Cumberland.
68. Decoulos and Wright withheld Invoices to Eagle in anticipation of the impending sale to Cumberland.
69. On June 23, 2005, Decoulos discussed the project status with Emile Tayeh of Cumberland. Tayeh informed Decoulos that Cumberland was planning on purchasing the Site, demolishing the building, replacing the underground storage tanks and constructing a completely new gas station and convenience store facility. Tayeh also informed me of Cumberland's desire to allow Decoulos and Wright to continue our remedial actions until our work was completed. Decoulos later that day emailed Tayeh recent reports that we had filed with DEP.
70. On July 14, 2005, Decoulos received correspondence from attorney Shephard Johnson identifying himself as Eagle's "environmental counsel" and asking for copies of Decoulos' submissions to the Massachusetts Underground Storage Tank Trust Fund pursuant to M.G.L. ch. 21J. Exhibit 7.
71. Eagle continued to accept Decoulos' services without protest.
72. Beginning in late July and early August 2005, Eagle began failing to return Decoulos' phone calls.
73. On August 11, 2005, Decoulos received a letter from attorney Shephard Johnson, this time identifying himself as "representing" Eagle. Johnson informed Decoulos that he was no longer LSP for the Site and requested that Decoulos no longer communicate

directly with Eagle or Badaoui. Johnson also asked Decoulos to provide him with copies of all submittals made to DEP for the site. Exhibit 8.

74. On August 15, 2005, Decoulos wrote Johnson a letter informing him that Decoulos would not provide copies of its files to Johnson until Decoulos and Wright had been paid by Eagle for services performed. As of August 2005, Decoulos and Wright had not been paid for any services performed for Eagle in 2005. Exhibit 9.
75. On August 19, 2005, Decoulos Invoice No. 580 was submitted to Eagle for reimbursable services and expenses incurred between December 31, 2004 and August 19, 2005. The total amount of Invoice No. 580 was \$20,089.17 and a past due amount of \$4,518.05 from Invoice No. 552 was listed. The cover letter and invoice is attached hereto as Exhibit 10.
76. On or about August 25, 2005, Decoulos received a copy of a letter sent by attorney Johnson to DEP indicating that Decoulos had been fired as LSP for the site. Exhibit 11.
77. On or about August 25, 2005, Wright Industries, Inc. received a letter from attorney Johnson telling Wright to stop calling Eagle regarding Eagle's non-payment of Wright's outstanding invoices. Exhibit 12.
78. On or about August 26, 2005, Decoulos received a letter from attorney Johnson stating for the first time that Eagle was questioning Decoulos' past services and also questioning the accuracy of its submittals for reimbursement under M.G.L. c. 21J. Exhibit 13.
79. On November 7, 2005, Decoulos Invoice No. 584 was submitted to Eagle for non-reimbursable services and expenses incurred between December 31, 2004 and October 11, 2005. The total amount Eagle owes Decoulos is \$29,013.47. Exhibit 14.

Wright Industries, Inc.'s Invoices to Eagle

80. Wright performed petroleum remediation services at the Site.
81. On or about April 30, 2003, Eagle paid Wright a retainer deposit of \$2,500.
82. Wright submitted its invoices directly to Eagle.
83. Eagle made payments directly to Wright.
84. On June 3, 2003, Wright submitted Invoice No. 543 to Eagle totaling \$4,416.29.
- Exhibit 15.
85. On June 13, 2003, Eagle made a payment to Wright of \$1,916.29. Exhibit .
86. On July 24, 2003, Wright submitted Invoice No. 565 to Eagle totaling \$2,364.00.
- Exhibit 15.
87. On September 1, 2003, Eagle made a payment to Wright of \$2,364.00. Exhibit 15.
88. Eagle continued to accept Wright's services without protest.
89. On December 14 and December 20, 2004, Eagle made advance payments to Wright of \$5,000, \$10,000 and \$5,000. Exhibit 15.
90. Eagle continued to accept Wright's services without protest.
91. On April 1, 2005, Wright submitted Invoice No. 797 to Eagle totaling \$60,450.28, leaving a balance due of \$40,450.28. Exhibit 15.
92. On August 8, 2005, Wright submitted Invoice No. 1031 to Eagle totaling \$9,646.63, leaving a balance due of \$50,096.91. Exhibit 15.
93. On or about August 25, 2005, Wright received a letter from attorney Shephard Johnson telling it to stop trying to contact Eagle for payment of its outstanding invoices and instead told Wright to look to Decoulos for payment. Exhibit 15.
94. Eagle owes Decoulos and Wright \$29,013.47 and \$50,096.91, respectively, for a total of \$79,110.38, plus attorney's fees and costs associated with this collection action.

95. On November 14, 2005 Decoulos made an unsuccessful demand on Eagle for the \$79,110.38 owed.
96. In response to Decoulos' demand, on November 23, 2005 Eagle sent a M.G.L. c. 93A demand letter to Decoulos alleging, without foundation or basis in fact, that Decoulos had engaged in unfair and deceptive business practices during the course of its contractual relationship with Eagle.

COUNT I – Breach of Contract/ Breach of Implied Contractual Obligation

97. Plaintiff incorporates by reference paragraphs 1-96 as if fully set forth herein.
98. Decoulos and Eagle have an enforceable contract, supported by valid consideration.
99. Decoulos provided services to Eagle pursuant to the contract.
100. Eagle accepted Decoulos' services and benefited from them.
101. Eagle has breached the contract by failing to pay Decoulos \$29,013.47 for services provided and accepted.
102. By accepting Decoulos' and Wright's services after the \$20,000 contract estimate was exceeded, Eagle's conduct created an implied contractual obligation to pay for those services.
103. Wright Industries, Inc. provided services to Eagle.
104. Eagle accepted and benefited from Wright's services, creating an implied contractual obligation.
105. Eagle owes Wright \$50,096.91 for those services. Exhibit 15.

COUNT II – Unjust Enrichment/Quantum Meruit

106. Plaintiff incorporates by reference paragraphs 1-104 as if fully set forth herein.

107. Decoulos and Wright provided services to Eagle, which Eagle accepted and benefited from with the understanding that Decoulos and Wright were to receive payment.
108. Eagle accepted and benefited from Decoulos' services in the amount of \$29,013.47 for which no payment has been made as reflected by invoices submitted to Eagle and set forth in Exhibit 14 attached hereto.
109. Eagle accepted and benefited from Wright's services in the amount of \$50,096.91 for which no payment has been made as reflected on Exhibit 15.

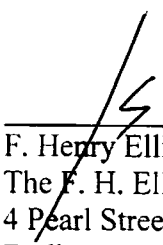
WHEREFORE, the plaintiff Decoulos requests the following relief against Eagle Gas, Inc. and Badaoui, both individually and as trustee of the Marina Nominee Trust:

1. Upon Count I, Breach of Contract/Implied Contractual Obligation, the entry of judgment for the Decoulos in the amount of \$29,013.47, including attorney's fees and costs; and the entry of judgment for Wright in the amount of \$50,096.91, including attorney's fees and costs; or in the alternative
2. Upon Count II, Unjust Enrichment/Quantum Meruit, the entry of judgment for the Decoulos in the amount of \$29,013.47, including attorney's fees and costs; and the entry of judgment for Wright in the amount of \$50,096.91, including attorney's fees and costs
3. Any and all such other relief as the Court may deem appropriate.

PLAINTIFF REQUESTS A TRIAL BY JURY UPON ALL CLAIMS AND ISSUES SO TRIABLE.

Respectfully submitted,
James J. Decoulos, Decoulos & Company,
and Wright Industries, Inc.

By their attorney



F. Henry Ellis, III BBO#556859
The F. H. Ellis Law Office
4 Pearl Street
Dedham, Massachusetts 02026
781-329-1157
781-459-0082 *fax*

Dated: December 15, 2005