



containing the valve then fractured, separated, and hit Mr. Pflumm in the head. The water pipe from the Budget Lodge to the City Utilities water connection at the street also came apart in several different places under the parking lot of the Budget Lodge.

Thereafter, Delong repaired the damage to the water pipes in the mechanical room and the water pipe between the mechanical room and the City Utilities water service at the street. This required parts of the Budget Lodge parking lot to be dug up. While repairing the pipes to the street, Delong severed an electrical line running through the parking lot. Delong charged Defendant \$13,522.00 on invoices numbered 71308 and 71309 to make the repairs and seeks payment for this work. Delong also seeks payment of \$4,655.15 on invoices numbered 55468 (Plaintiff's Exhibit 1) 55840 (Plaintiff's Exhibit 6) 71913 (Plaintiffs Exhibit 5) and 8684 (Plaintiff's Exhibit 2) for unrelated repairs to the Budget Lodge which are not disputed. Defendant 3050 N. Kentwood, LLC paid Roper Electric Company \$2,223.10 to repair the damaged electrical line under the parking lot and has obtained an estimate of \$7,509.60 to repair the parking lot damage from Springfield Striping Company. Defendant has since paid Affordable Asphalt Company \$3,780.00 to repair the parking lot. In its counterclaim Defendant 3050 N Kentwood LLC seeks a set off or direct damages for these amounts from Delong.

#### CONCLUSIONS OF LAW

1. Plaintiff Delong Plumbing Two, Inc. is a Missouri Corporation in good standing with its principal place of business in Springfield, Greene County, Missouri.
2. Defendant 3050 North Kentwood, LLC is a Nevada Limited Liability Company registered in the State of Missouri and is the owner of the Budget Lodge of Springfield.
3. This case involves plumbing work performed by Plaintiff Delong Plumbing for Defendant at 3050 North Kentwood Avenue, Springfield, Missouri on property owned by Defendant 3050 North Kentwood, LLC known as the Budget Lodge of Springfield.
4. Plaintiffs Exhibits 1, 2, 5, and 6 were admitted into evidence without objection. These exhibits are invoices from Delong Plumbing to the Defendant and have nothing to do with the dispute at issue in this case. These invoices have never been paid.
5. The material and labor set forth in Plaintiffs Exhibits 1, 2, 5, and 6 were furnished to Defendant at Defendant's request.
6. The charges for material and labor as described on Exhibits 1, 2, 5, and 6 are reasonable.

7. Plaintiff is entitled to the reasonable value of material and labor provided at the request of Defendant as evidenced by Plaintiff's Exhibits 1, 2, 5, and 6. *Kunkle Water and Electric, Inc. vs. Nehai Tonkayea Lake Association, Inc.*, 639 S.W. 2d 177 (Mo.App.1982). As stated above, these invoices are not disputed by the Defendant.
8. With respect to Plaintiff's Exhibits 3 and 4, the Court finds that the Defendant requested Plaintiff to furnish the material and labor set forth and described on Plaintiff's Exhibits 3 and 4 and that the charges reflected in these invoices are fair and reasonable charges for the material and labor provided.
9. Plaintiff is entitled to the reasonable value of the material and labor which is described on Exhibits 3 and 4.
10. Defendant Kentwood presented evidence and argument that Delong should not recover for the materials and labor reflected on Plaintiff's Exhibits 3 and 4 because the materials and labor provided were a result of the alleged negligence of Mr. Tom Pflumm, the plumber working for Delong. In essence, Defendant alleges that Mr. Pflumm was negligent in the manner in which he closed the butterfly valve to shut off water to the leaky coupling repair. Defendant's evidence attempts to show that Mr. Pflumm shut the water off too fast, resulting in a "water hammer" event which, in turn, caused damage throughout the water system running to the Budget Lodge.
11. The Court has considered all of the testimony and exhibits and does not find a basis for concluding that Mr. Tom Pflumm was negligent in the manner in which he closed the butterfly valve. Mr. Pflumm testified at length as to the manner in which he closed the butterfly valve. The Court finds that Mr. Pflumm did not close the butterfly valve negligently or inappropriately. There are numerous explanations for the failure of the butterfly valve and the surrounding pipe.
12. The evidence proved that the plumbing under the Budget Lodge of Springfield was aged and had been repaired multiple times. The evidence also proved that these old repairs were not done appropriately. There was substantial, credible evidence that a significant contributing cause to the failure of the underground pipe was that the underground pipe had 5 previous repairs and the prior repairs were done improperly. The locations of the 5 repairs were the locations where the underground pipe failed when the butterfly valve failed. It is certainly reasonable to conclude that the butterfly valve along with the underground piping system, failed due to their age and from ordinary wear and tear. Furthermore, to the extent that Defendant alleges that the original repair failed for inadequate dry time, there was evidence that Defendant's representative pressured Mr. Pflumm to turn the water back on after a shorter than agreed to dry time. Mr. Pflumm was placed in an untenable position. Rely on his own judgment that 2 hours "might" be enough dry time and turn the water back on at the direction of Defendant, or refuse to turn the water on and face business interruption damages because the Budget Lodge

was full of residents. The Court does not find that Mr. Pflumm's attempt to make the original repair in that manner constituted negligence.

13. Defendant's counterclaim seeks damages, or a credit for damage to outside electrical conduit and asphalt, resulting from the Plaintiff's installation of the new underground water pipe to service the Budget Lodge from the street. Defendant is entitled to such a credit in the amount of \$2,223.10 for the installation of new electrical conduit that was damaged by Delong Plumbing when putting in the new underground line. Delong was negligent in either failing to locate the electrical line or damaging it after it had been located.
14. With regard to the asphalt parking lot, the evidence indicated that Defendant chose not to repair the asphalt for over a year and a half and only repaired it a month before the trial. There was evidence that Defendant's parking lot was already in a state of general disrepair and that the replacement of the underground pipe did not result in damage to the parking lot. In addition, Defendant has benefited by receiving all new piping to the Budget Lodge at a reduced price and in such a manner that the hotel was back in business in a very short period of time.
15. To the extent the Defendant is arguing that Delong was negligent in its original repair of the coupling over the chiller which, ultimately leaked, the Court finds that Delong never charged for that repair and ultimately fixed the coupling repair so that it did not leak.
16. The Court finds that Plaintiff is entitled to the reasonable value of the materials and labor that were requested by Defendant and as set forth in Plaintiff's Exhibits 1 through 6 totaling \$18,177.15
17. The Court finds that Defendant is entitled to a set off in the amount of \$2,223.10 for the cost of repairing the electrical line.
18. The Court finds that Plaintiff is entitled to Judgment against Defendant in the amount of \$15,954.05.
19. The Court further finds that even had the material and labor furnished in Exhibits 1 through 6 not been at the request of the defendant, the Defendant did receive and accept the benefit of such materials and labor such that Defendant would be unjustly enriched in the amount of \$15,954.05 if not required to pay for the materials and labor received.
20. Accordingly and for the reasons set forth above, the Court does hereby enter the following judgment:

JUDGMENT IS HEREBY ENTERED IN FAVOR OF PLAINTIFF AND AGAINST DEFENDANT IN THE SUM OF \$15,954.05. COSTS OF THIS ACTION ARE TAXED TO THE DEFENDANT. THE JUDGMENT SHALL BEAR INTEREST OF 9% PER ANNUM.

Date: \_\_\_\_\_

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JUDGE MARK A. POWELL