

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

ABACUS SPORTS)	
INSTALLATION, LTD.,)	
)	
Plaintiff,)	
)	
v.)	
)	
CASALE CONSTRUCTION,)	C.A. No. N10L-08-062 CLS
LLC., a Delaware limited liability)	
company, SILLS/MOYER)	
EDUCATION FOUNDATION,)	
INC., a Delaware corporation and)	
REINVESTMENT II, LLC, a)	
Pennsylvania limited liability)	
company,)	
)	
Defendants.)	

Date Submitted: November 29, 2010

Date Decided: February 10, 2011

On Defendant Reinvestment II, LLC's Motion to Dismiss. **DENIED.**

ORDER

Janet Z. Charlton, Esq., Michael A. Cianci, Esq., 300 Delaware Ave., Suite 800A, Wilmington, DE 19801. Attorneys for Plaintiff.

Charles J. Brown, III, Esq., 300 Delaware Ave., Suite 1370, Wilmington, DE 19801. Attorney for Defendant Reinvestment II, LLC.

Douglas A. Shachtman, Esq., 1200 Pennsylvania Ave., Suite 302, Wilmington, DE 19806. Attorney for Defendant Casale Construction, LLC.

Scott, J.

Introduction

Before this Court is Defendant Reinvestment II, LLC's motion to dismiss pursuant to 25 *Del. C.* § 2711. The Court has reviewed the parties' submissions. For the reasons that follow, the Defendant's Motion to Dismiss is **DENIED**.

Facts

Plaintiff Abacus Sports Installations, Ltd. ("Plaintiff" or "Abacus Sports") is a Pennsylvania corporation. Defendant Sills/Moyer Education Foundation, Inc.¹ ("Sills/Moyer") is a Delaware corporation. Defendant Casale Construction, LLC ("Casale Construction") is a Delaware limited liability company. Defendant Reinvestment II, LLC ("Reinvestment") is a Pennsylvania limited liability company.

Plaintiff entered into a subcontract agreement with Defendant Casale on June 15, 2009. According to the terms of the contract, Plaintiff was to install gymnasium flooring in two gyms, the main gym and the auxiliary gym, at the Maurice J. Moyer Academy ("Moyer Academy") located at 610 East 17th Street, Wilmington, Delaware. In September 2009, Plaintiff completed its furnishing of labor and material to the auxiliary gym and billed Defendant Casale for ninety percent (90%) of the work on that gym and was paid. The main gym area was not ready to have a floor installed until April 23, 2010. From April 23, 2010 through

¹ Defendant Sills/Moyer has not been served the complaint as of the date of this order.

May 11, 2010, Plaintiff supplied the necessary labor and materials to complete the main gym. The substantial completion of work on that gym was accomplished on May 7, 2010. Plaintiff completed the supply of materials and labor on May 11, 2010.

Defendant Sills/Moyer was the owner of the Moyer Academy until July 15, 2010 when it was conveyed to Defendant Reinvestment II. To date, Plaintiff has not been paid for the work completed on the main gym totaling \$82,221.48 with interest accruing at a rate of eighteen percent (18%) per annum, accruing thirty days (30) after each invoice was due, and is seeking attorneys' fees and costs. Plaintiff also alleges Casale Construction had not received final payment as of August 6, 2010, the date this complaint was filed.

Defendant Reinvestment II filed this motion to dismiss this mechanics' lien alleging Plaintiff filed this cause of action after the 120 day time frame prescribed by 25 *Del. C.* § 2711 had lapsed.

Discussion

Standard of Review

In a motion to dismiss a mechanics' lien, all the facts pled in the complaint are accepted as true.² The motion will be granted if plaintiff is able to prove a set of facts that would entitle it to relief.³

Mechanics' Lien

Plaintiff filed this complaint within the 120 day period required by 25 *Del. C.* § 2711(b). The 120 day time period begins to run “from the completion of the labor performed or from the last delivery of materials furnished.”⁴ A complaint is also timely filed if it is filed within 120 days of either: “(1) The date final payment, including all retainage, is due to such person; or (2) The date final payment is made to the contractor.” Since a mechanics' lien is created by statute and in derogation of common law, it is strictly construed.⁵

Plaintiff filed this suit within 120 days of May 11, 2010, the date it finished providing labor and materials to Moyer Academy. This complaint was filed on August 6, 2010, less than ninety days from the date Plaintiff finished providing material and labor to the Moyer Academy main gymnasium project. Defendant

² *Daystar Sills, Inc. v. Anchor Investments, Inc.*, 2007 WL 1098129 (Del. Super.) (citations omitted).

³ *Id.* (citing *Spence v. Funk*, A.2d 967, 968 (Del. 1978); *Ramsey v. Disabatino*, 347 A.2d 659, 661 (Del. Super.)).

⁴ 25 *Del. C.* § 2711(b).

⁵ *King Construction, Inc. v. Plaza Four Realty, LLC*, 976 A.2d 145, 152 (Del. 2009) (citations omitted).

Reinvestment II contends that the date the 120 day period began was April 26, 2010, alleging that is the date Plaintiff completed its work on the project. According to Plaintiff, work was not completed until May 11, 2010. Accepting the facts in the complaint as true, the date Plaintiff completed work on Moyer Academy was May 11, 2010. Even assuming April 26, 2010 was the date the 120 day period began, this complaint was still filed within 120 days.⁶ Since this motion was filed in the time permitted by *25 Del. C. § 2711*, Defendant Reinvestment II's motion to dismiss is denied.

Conclusion

Based on the forgoing, Defendant Reinvestment II's motion to dismiss is **DENIED.**

IT IS SO ORDERED.

/S/CALVIN L. SCOTT
Judge Calvin L. Scott, Jr.

⁶ 120 days after April 26, 2010 is August 24, 2010. This complaint was filed on August 6, 2010, within the allotted time period to file for a mechanics' lien.