

COURT OF COMMON PLEAS  
FOR THE STATE OF DELAWARE  
Wilmington, Delaware 19801

*Carl C. Danberg*  
*Judge*

November 24, 2020

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**Re: William Jolly v. Joseph Gallo and Brad Wagner**  
**Case No.: CPU4-19-003504**

**LETTER OPINION ON DEFENDANTS MOTION TO DISMISS**

**PROCEDURAL HISTORY AND FACTUAL BACKGROUND**

On October 19, 2019, William Jolly (“Plaintiff”) filed a complaint against Brad Wagner and Joe Gallo (“Defendants”). Plaintiff’s complaint alleges that Defendants hired Plaintiff to complete the plumbing work for Hangman Brewing, LLC. Plaintiff’s complaint alleges that the parties signed a contract to perform the work for \$21,400.00. The complaint further alleges that Plaintiff was given a partial deposit of \$5,400.00 but never received full payment on the contract. Plaintiff’s alleges Defendants are in breach of contract and demands \$17,100.00, return of Plaintiff’s equipment and payment of workers compensation insurance. On November 7, 2019, Defendant, Wagner filed a motion to dismiss. On November 13, 2019, Defendant, Gallo filed an answer denying Plaintiff’s claims and asserting Plaintiff’s complaint should be dismissed for failure to state a claim.

On January 31, 2020, this Court heard Defendant, Wagner's motion to dismiss. At the hearing, this Court ordered Plaintiff to provide documentation demonstrating to the Court that, (1) Plaintiff is a party to the contract involved in this breach of contract action and/or (2) that Plaintiff has standing to sue Defendant on behalf of James Twyman Home Remodeling. The Court has provided the Plaintiff with an extensive period of time to supplement the record. Plaintiff did file supplemental documentation and the Court determined that an additional hearing in this matter was not necessary. Plaintiff has failed to provide the court with proof that Plaintiff is the real party in interest in this matter. Defendant Wagner filed a response to Plaintiff's supplemental documents. Defendant, Wagner request that the Court dismiss Plaintiff's action and grant Defendant attorney's fees. This is the final decision of the Court on Defendants motion to dismiss.

#### DISCUSSION

Generally, under Delaware law, someone who is not a party to the contract has no legal rights under the contract and lacks standing to sue for breach of contract.<sup>1</sup> A party must have standing to bring a breach of contract action. Standing "refers to the right of a party to invoke the jurisdiction of a court to enforce a claim or to redress a grievance."<sup>2</sup> Standing is a threshold inquiry that must be established in order for the Court to exercise its judicial powers.<sup>3</sup> In determining whether a party has standing to pursue a claim, the Court shall only consider the question of whether the party is entitled to file the claim, and not the underlying merits of the subject matter of the controversy.<sup>4</sup>

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<sup>1</sup> *JP Morgan Chase bank v. Smith*, 2014 WL 7466729, at \*4 (Del Super. Ct. Sept. 8, 2014).

<sup>2</sup> *Dover Historical Soc'y. v. City of Dover Planning Comm'n.*, 838 A.2d 1103, 1110 (Del. 2003).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

In Delaware, the interpretation of a contract is a question of law suitable for determination on a motion to dismiss.<sup>5</sup> Although dismissal is only proper if the defendants' interpretation is the only reasonable construction as a matter of law.<sup>6</sup> A motion to dismiss for lack of standing presents "a threshold question relating to jurisdiction."<sup>7</sup> <sup>8</sup> As stated by the Delaware Supreme Court, "the interpretation of a contract as a prerequisite to [a party's] standing is . . . a determination involving the merits."<sup>9</sup> Where "the issue of standing is so closely related to the merits, a motion to dismiss on lack of standing" is properly evaluated for its failure to state a claim rather than a lack of jurisdiction."<sup>10</sup>

In considering motions to dismiss filed pursuant to CCP Civil Rule 12(b)(6), the Court must assume that all well-pled facts in the complaint are true.<sup>11</sup> The complaint should not be dismissed unless "the plaintiff would not be entitled to recover under any reasonably conceivable set of circumstances susceptible to proof."<sup>12</sup> "The Court is required to accept only those 'reasonable inferences that logically flow from the face of the complaint, [it] is not required to accept every strained interpretation of the allegations proposed by the plaintiff.'"<sup>13</sup>

Plaintiff has failed to demonstrate that he is a party to the contract. Plaintiff's signature appears on one of the documents provided to the Court. As explained by Defendant, Wagner in a draft memorandum to the Court, Plaintiff supplied a signature on a document related to insurance, not the alleged contract at the heart of this litigation. In addition, Defendant, Wagner alleges that

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<sup>5</sup> *Vinton v. Grayson*, 189 A.3d 395 (Del. Super. Ct. June, 13, 2018) (quoting *Markow v. Synageva Biopharma Corp.*, 2016 WL 1613419, at \*4 (Del. Super. Ct. Mar. 3, 2016).

<sup>6</sup> *Id.*

<sup>7</sup> *L&L Broad. LLC v. Triad Broad. Co., LLC*, 2014 WL 1724769, at \*3 (Del Super. Ct. Apr. 8, 2014).

<sup>8</sup> *Broadway v. Allstate Prop. & Cas. Ins. Co.*, 2015 WL 4749176, at \*2 (Del. Super. Ct. Aug. 11, 2015).

<sup>9</sup> *Vinton v. Grayson*, 189 A.3d 395 (Del. Super. Ct. June, 13, 2018) (quoting *Appriva S'holder Litig. Co., LLC v. EV3, Inc.*, 937 A.2d 1275, 1285 (Del. 2007).

<sup>10</sup> *Id.*

<sup>11</sup> *Battista v. Chrysler Corp.*, 454 A.2d 286, 287 (Del. Super. 1982).

<sup>12</sup> *Id.*

<sup>13</sup> *Abdul-Ahad v. Nationwide Mut. Fire. Ins. Co.*, 2016 WL 4269512, at \*2 (Del. Com. Pl. Aug. 10, 2016).

Plaintiff has taken the liberty to hand select documents and combine them to make a “contract.” The Court agrees that Plaintiff has failed to provide the Court proof he is a party to the contract. The only contract the Court does have bears the signatures of James Twyman and Brag Wagner. This contract is for \$5,400.00 and Defendants have demonstrated that this payment was made in full and made at the time the contract was executed.

Delaware law does permit a third-party to recover where the parties to the underlying contract intended to confer a benefit to that third party. Therefore, someone that is not a party to a contract can recover if they intended to be a third-party beneficiary to the contract. A third-party’s right to recover contractual damages turns on the intent of the contracting parties.<sup>14</sup> “To create third party beneficiary rights, a contract should confer an intended benefit on the third party, and the conferral of such benefit must be a material part of the contract’s purpose.”<sup>15</sup> Where the benefit to the third-party was not contemplated and was merely fortuitous, such third-party will not be conferred rights under the contract.<sup>16</sup> Whether a third-party was an intended beneficiary is “essentially a question of interpretation.”<sup>17</sup> It is not essential for the third-party to be specifically named in the contract; rather, intent to benefit the third-party can be inferred.<sup>18</sup>

Plaintiff has failed to demonstrate that he is a third-party beneficiary under the alleged contract. The entire purpose of the contract was for James Twyman Home Remodeling to provide a service—complete the plumbing job—for Hangman Brewing, LLC. Plaintiff is only mentioned in the fully executed contract the Court has as a “point of contact.” Nothing in the contract indicates Plaintiff should be a third-party beneficiary to the contract. In addition, no information provided

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<sup>14</sup> *Willis v. City of Rehobeth Beach*, 2004 WL 2419143, \*1-2 (Del. Super. Oct. 14, 2004); *see also Delmar News, Inc. v. Jacobs Oil Co.*, 584 A.2d 531, 534 (Del. Super. Ct. 1990).

<sup>15</sup> *Greater News York Mut. Ins. Co. v Travelers Ins. Co.*, 2011 WL 4501207, at \*3 (D. Del Sept. 28, 2011).

<sup>16</sup> *Delmar News, Inc. v. Jacobs Oil Co* at 535.

<sup>17</sup> *Willis v. City of Rehobeth Beach* at 2.

<sup>18</sup> *Greater News York Mut. Ins. Co. v Travelers Ins. Co* at 2-3.

to the Court will allow the Court to infer that Plaintiff was intended to be a third-party beneficiary to the contract. Therefore, Plaintiff is neither a party to the contract or a third-party beneficiary to the contract and does not have legal authority to sue Defendants on a breach of contract action. Moreover, Plaintiff has failed to establish to the court that he has standing to sue on behalf of James Twynman Home Remodeling which is a company and would require legal representation in this Court.

**ATTORNEY'S FEES:**

Delaware follows the American Rule, whereby each party must bear its own costs and attorney's fees absent contractual or statutory authority.<sup>19</sup> With few exceptions, "a court may not order court cost and attorney's fees to be paid by the losing party unless such payment is authorized by some provision of statute or contract."<sup>20</sup>

Delaware courts rarely deviate from the American Rule, but certain narrow exceptions have been recognized, including the bad faith exception.<sup>21</sup> To recover attorney's fees under the bad faith exception, the requesting party bears the burden of proving bad faith conduct by clear and convincing evidence.<sup>22</sup> As explained by this Court, "the bad faith exception to the American Rule applies in cases where the court finds litigation to have been brought in bad faith or finds that the party conducted the litigation process itself in bad faith, thereby unjustifiably increasing the costs of litigation."<sup>23</sup>

In the present case, Defendants have failed to offer any evidence of a statute or contractual obligation requiring Plaintiff to pay attorney's fees in this matter. In addition, although Defendant,

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<sup>19</sup> *Dixon v. Counsel of the Cliff House Condominium*, 2009 WL 5455537 at \*3 (Del. Com. Pl. Dec. 8, 2009).

<sup>20</sup> *Maple Hill Homeowners Ass'n v. Newton*, 2015 WL 1205283 at \*3 (Del Com. Pl. Mar. 9 2015).

<sup>21</sup> *Miller v. Silverside*, 2016 WL 4502012, at \*7 (Del. Super. Ct. Aug. 26, 2016).

<sup>22</sup> *Miller v. Silverside*, 2016 WL 4502012, at \*7 (Del. Super. Ct. Aug. 26, 2016); *see also Maple Hill Homeowners Ass'n v. Newton*, 2015 WL 1205283 at \*3 (Del Com. Pl. Mar. 9 2015).

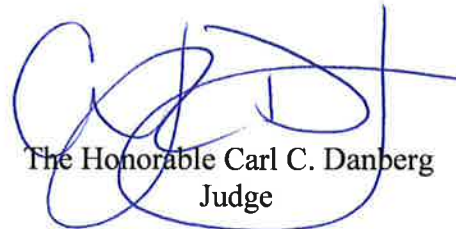
<sup>23</sup> *Maple Hill Homeowners Ass'n v. Newton*, 2015 WL 1205283 at \*3 (Del Com. Pl. Mar. 9 2015).

Wagner alleges Plaintiff has attempted to “perpetuate a fraud on the Court,” this Court finds that Plaintiff has merely failed to prove he is a party interested in the contract involved in this case.<sup>24</sup> Defendant, Wagner has failed to offer clear and convincing evidence that this Court should deviate from the American Rule. Therefore, Defendant, Wagner’s request for attorney’s fees is **DENIED**.

**CONCLUSION**

For the foregoing reasons upon consideration of both parties supplemental documents provided to the Court, **IT IS HEREBY ORDERED** Defendant’s Motion to Dismiss be **GRANTED** and this case be dismissed. It further ordered Defendant, Wagner’s application for attorney’s fees be **DENIED**.

**IT IS SO ORDERED**, this 24<sup>th</sup> day of November, 2020.

  
The Honorable Carl C. Danberg  
Judge

cc: Patricia Thomas, Judicial Case Manager

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<sup>24</sup> See Defendant, Wagner’s March 4, 2020, Memorandum to the Court.