

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

ALEXANDER R. CAPOSSERE,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 07C-08-133 JRS
)	
DAVID J. LEVINE and)	
GINA LEVINE,)	
)	
Defendants)	

Date Submitted: December 20, 2007
Date Decided: February 20, 2008

*Upon Consideration of
Defendant's Motion to Dismiss.*
GRANTED in Part and DENIED in Part.

ORDER

This 20th day of February 2008, Ms. Gina Levine (“Ms. Levine”), having moved to dismiss the complaint seeking a mechanic’s lien filed by Alexander Ronald Capossere (“Mr. Capossere”), it appears to the Court that:

1. On January 25, 2007, Mr. Capossere entered into an agreement with Mr. David Levine (“Mr. Levine”) to remodel Mr. and Ms. Levine’s home located at 204 Sundance Court, Bear, Delaware, 19701. According to the terms of the agreement,

Mr. Capossere would finance the construction and remodeling work on the property based on a six month no-payment-required plan. A three percent monthly interest rate would accrue on the balance each month thereafter. This agreement was signed only by Mr. Levine and Mr. Capossere because Ms. Levine no longer resided in the home.

2. Between September 15, 2006 and June 30, 2007, Mr. Capossere and Mr. Levine entered into eight individual agreements to remodel various sections of the Levine home. The total cost for labor and materials was fifty-one thousand five hundred eighty-four dollars (\$51,584.00). Mr. Levine has paid approximately five thousand dollars (\$5,000) to Mr. Capossere, leaving a balance of forty-six thousand five hundred eighty four dollars (\$46,584.00) still outstanding.

3. On August 15, 2007, Mr. Capossere filed a three-count complaint with this Court against Mr. and Ms. Levine for breach of contract, quantum meruit, and a mechanics lien.¹ Mr. Capossere attached to the complaint a copy of the promissory note he entered into with Mr. Levine on January 25, 2007, copies of the invoices representing the contractual agreements between September 15, 2006 and June 30, 2007, and a copy of the mortgage held by Washington Mutual on the Levine home.

¹ The Court orally granted Ms. Levine's motion to dismiss the breach of contract claim at the conclusion of oral argument upon concluding that Ms. Levine was not a party to the contract and the complaint did not adequately plead that she was a third party beneficiary to the contract.

4. On October 15, 2007, Ms. Levine filed a motion to dismiss the breach of contract claim and the mechanic's lien. Ms. Levine avers that the action for the mechanic's lien should be dismissed because Mr. Capossere failed strictly to conform to the pleading requirements set forth in *25 Del. C. § 2712*, the statute authorizing the lien. Specifically, Ms. Levine argues that: (1) Mr. Capossere is not the proper party to seek the lien because there is no evidence that Mr. Capossere individually performed any of the work at issue; (2) the complaint fails for lack of a bill of particulars; (3) the complaint fails for lack of a definitive start and completion date for the work; (4) the complaint fails because separate mechanic's liens reflecting the separate requests for work were not filed; (5) the complaint fails because the separate liens were not timely filed; and (6) the complaint fails to indicate what type of mortgage exists on the property. In response, Mr. Capossere argues that the complaint is sufficient because he has complied with all of the elements set forth in *25 Del. C. § 2712*. Oral argument on the motion was held before this Court on December 10, 2007. The Court reserved decision and asked the parties to file additional briefing on the matter. The Court received the supplemental briefing on December 20, 2007. The matter is ripe for decision.

A. Standard of Review

5. In evaluating a Motion to Dismiss under Superior Court Civil Rule 12(b)(6), the Court must assume all well pleaded facts in the complaint to be true.² A complaint will not be dismissed unless the plaintiff would not be entitled to recover under any reasonable set of circumstances susceptible of proof.³ Stated differently, a complaint may not be dismissed unless it is clearly without merit, which may be determined as a matter of law or fact.⁴

6. The law in Delaware is well settled that the mechanic's lien statute requires strict compliance from those seeking a lien.⁵ "The idea behind strict construction of mechanics' liens complaints and intolerance for deficiencies in them is that the mechanics' lien statute is in derogation of the common law."⁶ Strict construction, however, does not require an unreasonable or unwarranted construction of the statute.⁷ "The validity of a mechanic's lien depends upon an affirmative

²*Ramunno v. Cawley*, 705 A.2d 1029, 1034 (Del. 1998).

³*Nix v. Sawyer*, 466 A.2d 407, 410 (Del. Super. 1983).

⁴*Diamond State Telephone Co. v. University of Delaware*, 269 A.2d 52 (Del. 1970).

⁵*Builder's Choice v. Venzon*, 672 A.2d 1, 2 (Del. 1996).

⁶*Construction by Franco v. Reed*, 1994 WL 750306, at *1 (Del. Super. Dec. 12, 1994).

⁷*Pittman-Berger Co. v. Parkinson*, 180 A. 645, 648 (Del. 1935). See also *Joseph Rizzo & Sons v. Christina Momentum, L.P.*, 1992 WL 51850 at *5 (Del. Super.)("The mechanics' lien provisions should be strictly, but not unreasonably construed.").

demonstration that each statutory prerequisite for the creation of such an encumbrance has been followed.”⁸

B. The Complaint Complies with 25 Del. C. § 2712

7. Section 2712(b) requires that the complaint set forth:

- (1) The name of the plaintiff or claimant;
- (2) The name of the owner or reputed owner of the structure;
- (3) The name of the contractor and whether the contract of the plaintiff - claimant was made with such owner or his agent or with such contractor;
- (4) The amount claimed to be due, the nature and kind of the labor done or materials furnished with a bill of particulars annexed, showing the kind and amount of labor done or materials furnished;
- (5) The time when the doing of the labor or the furnishing of the materials was commenced;
- (6) The time when the doing of the labor or the furnishing of the materials was finished;
- (7) The location of the structure with such description as may be sufficient to identify the same;
- (8) That the labor was done or the materials were furnished on the credit of such structure;
- (9) The amount of plaintiff’s claim (which must be in excess of \$25) and that neither this amount nor any part thereof has been paid to plaintiff; and
- (10) The amount which plaintiff claims to be due him on each structure
- (11) The time of recording of a first mortgage, or a conveyance in the nature of a first mortgage, upon such structure which is granted to secure an existing indebtedness

⁸*Builder’s Choice*, 672 A.2d at 4.

8. Ms. Levine challenges Mr. Capossere's assertion that he is the individual entitled to this lien, as required under 25 *Del. C. § 2702(a)*. In support of this argument, Ms. Levine relies upon the invoices Mr. Capossere attached to the complaint and points to the headings on the invoices which read "A.R.C. Painting and Remodeling," not "Alexander Ronald Capossere" individually. Ms. Levine's understanding of the requirements of section 2712(b)(1) is misplaced. Mr. Capossere's complaint will not be dismissed at this stage of the litigation for naming a plaintiff who eventually proves to be the incorrect party. The statute simply requires that the complaint set forth the name of the plaintiff or claimant. Mr. Capossere's complaint does just that. Whether or not he is the *proper* plaintiff or claimant is a matter to be determined on another day on a more complete record.

9. Ms. Levine also argues that the complaint should be dismissed for failing to attach a bill of particulars. The point of the bill of particulars is to "inform the defendants of the basis for the plaintiff's claim."⁹ Mr. Capossere detailed in the body of the complaint the dates of the agreements, the type of work contracted for and the cost of labor and materials. He also attached to the complaint copies of the invoices that memorialize these agreements. This was sufficient to put Ms. Levine on notice of the factual bases of his claim. This court has previously held that when parties

⁹*Deluca v. Martelli*, 200 A.2d 825, 826 (Del. 1964).

have contracted for labor and materials in a continuous contract to be collected as a lump sum, the plaintiff need not attach a breakdown of the charges in the complaint.¹⁰ Here, Mr. Capossere alleges that the parties bargained for a project to be performed on a continuous basis and to be paid for in accordance with a single agreement (the January 25, 2007 promissory note). Under these circumstances, a designated bill of particulars was not required.

10. Ms. Levine also attacks the sufficiency of the complaint on the ground that Mr. Capossere failed to provide the correct start and completion dates for the work. Mr. Capossere's purported failure to list the *correct* dates is not fatal to his complaint under the same reasoning discussed above - the statute requires only that dates be given; the accuracy of those dates is a matter for trial.¹¹

11. Ms. Levine next argues that Mr. Capossere should have filed a separate lien for each individual contract and, therefore, this complaint was not timely filed.¹² This "is a question of fact [for] trial."¹³ Whether multiple contracts are deemed

¹⁰*Joseph Rizzo & Sons v. Christina Momentum, L.P.*, 1992 WL 51850, at *4 (Del. Super.).

¹¹25 *Del. C.* § 2712(b)(5) and (6).

¹²The renovations on the Levine home were performed through a series of separate contracts negotiated between Mr. Capossere and Mr. Levine. Ms. Levine argues that because there were separate contracts indicating specific work to be done, Mr. Capossere should have filed a separate mechanic's lien to correspond with each of the individual contracts.

¹³*Joseph Rizzo & Sons, supra* at * 4.

continuous in Delaware depends on whether the work was done for the same “general purpose.”¹⁴ Mr. Capossere first agreed to perform work on the Levine residence on September 15, 2006 and completed the work on June 30, 2007. Mr. Capossere sought a mechanic’s lien on August 15, 2007. While the filing was not within ninety days of when the first contract was performed, it was within ninety days of when the final contract was performed. Whether these contracts should be construed together or separately is not a matter to be determined in this procedural context. The manner in which each contract should be construed *vis-a-vis* the others is not clear on the face of the invoices. Further evidence is required before the Court can engage in a meaningful construction of these agreements.¹⁵

12. Finally, Ms. Levine moves to dismiss Mr. Capossere’s mechanic’s lien claim on the ground that he failed to specify the type of mortgage in existence on the property. She relies upon *Builder’s Choice Inc. v. Venzon*¹⁶ in support of her argument. In *Builder’s Choice*, plaintiff’s complaint failed to mention the existence of any mortgage that might be applicable under section 2712(b)(11).¹⁷ The Supreme

¹⁴*Joseph Rizzo & Sons*, 1992 WL 51850, at *3.

¹⁵ *Id.*

¹⁶672 A.2d 1 (Del. 1996).

¹⁷*Id.*, at 3.

Court of Delaware affirmed the dismissal of the mechanic's lien because "the failure of [the plaintiff] to even attempt to comply with Section 2712(b)(11) in the statement of claim or complaint was a dispositive defect in its action for a mechanic's lien."¹⁸ *Builder's Choice* is distinguishable from the facts of this case. In paragraph twenty five of his complaint, Mr. Capossere stated that the "property is subject to a mortgage held by Washington Mutual Bank" and that this mortgage was recorded with the New Castle County Recorder of Deeds.¹⁹ Mr. Capossere also attached a copy of the mortgage to the complaint as an exhibit and incorporated the mortgage into the complaint by reference. The complaint and accompanying exhibits sufficiently described the existing mortgage to comply with section 2712(b)(11).

C. The Complaint States A Claim for Quantum Meruit

13. Although Ms. Levine does not specifically address the quantum meruit claim in her motion, the Court will address it briefly here for the sake of completeness. To recover under the "restitutionary principle" of quantum meruit, plaintiff must establish that "he provided services to defendant, that he performed the services with the expectation the defendant would pay for them, [and] that the circumstances should have put defendant on notice that plaintiff expected to be

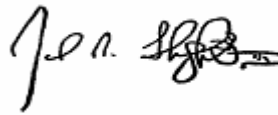
¹⁸*Id.*, at 4.

¹⁹Pl.'s Compl. at 6.

paid.”²⁰ Mr. Capossere’s complaint adequately pleads facts that could allow him to recover on a theory of unjust enrichment and/or quantum meruit against Ms. Levine. Viewing the plead facts as true, as the Court must at this stage, the claim for quantum meruit cannot be dismissed.

14. Based on the foregoing, the Defendant’s Motion to Dismiss is **DENIED**.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "J. R. Slights, III". The signature is written in a cursive, somewhat stylized font.

Judge Joseph R. Slights, III

Original to Prothonotary

cc: John L. Williams, Esquire
Scott G. Wilcox, Esquire

²⁰ *Hynanski v. 1492 Hosp. Group, Inc.*, 2007 Del. Super. LEXIS 235, at *3.