

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

ABACUS SPORTS INSTALLATIONS,)
LTD.)

Plaintiff,)

v.)

C.A. No. N10L-08-062 CLS

CASALE CONSTRUCTION, 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 7, 2011

Date Decided: February 14, 2012

On Defendant Reinvestment II, LLC's Motion to Dismiss Crossclaim of
Defendant Casale Construction, LLC. **DENIED.**

ORDER

Janet Z. Charlton, Esq., and Michael A. Cianci, Esq., The Chartwell Law Offices, LLP, 300 Delaware Avenue, Suite 800A, Wilmington, Delaware 19801. Attorneys for Plaintiff.

Douglas A. Shachtman, Esq., The Shachtman Law Firm, 1200 Pennsylvania Avenue, Suite 302, Wilmington, Delaware 19806. Attorney for Defendant Casale Construction, LLC.

Charles J. Brown, III, Esq., Archer & Greiner, P.C., 300 Delaware Avenue, Suite 1370, Wilmington, Delaware 19801. Attorney for Defendant Reinvestment II, LLC.

Scott, J.

Introduction

Before this Court is Defendant Reinvestment II, LLC's ("Reinvestment") Motion to Dismiss, Defendant's Casale Construction, LLC ("Casale") crossclaim. Because Casale's allegations in the crossclaim are sufficient at this stage of the proceedings to withstand a motion to dismiss, the motion is **DENIED**.

Facts

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

In June 2009, Sills/Moyer contracted with Casale to renovate an existing building, to be called a "gymnasium", and construct a gymnasium (collectively "gyms"), at 610 East 17th Street, Wilmington, Delaware 19802. The gyms were intended to serve the Maurice J. Moyer Academy ("Moyer Academy"). On June 15, 2009, Casale, the general contractor, entered into an agreement with Plaintiff, the subcontractor, to furnish labor and materials required for the gyms. Casale and Plaintiff eventually executed an agreement in the fixed amount of \$101,116.00.

Casale made applications for payment from Sills/Moyer at various stages of the construction's completion. Payments were initially made but eventually they stopped. In Spring 2010, the Delaware Department of Education decided not to renew Moyer Academy's charter. As a consequence, the flow of funds used to pay Casale was no longer available. The gyms' construction was materially completed in June 2010. On or about July 15, 2010, Sills/Moyer deeded 610 E. 17th Street and 601 E. 17th Street ("Properties") to Reinvestment.¹ Sills/Moyer owes Casale \$34,545.19 in unpaid invoices.

Plaintiff filed a Mechanic's Lien on August 6, 2010. Default Judgment was entered against Sills/Moyer on April 26, 2011. Casale filed a crossclaim against Reinvestment on September 16, 2011. Reinvestment filed its Motion to Dismiss Casale's crossclaim on September 23, 2011. Casale filed its response on November 8, 2011.

Standard of Review

Superior Court Civil Rule 12(b)(6) allows a defendant to file a motion to dismiss for "failure to state a claim upon which relief can be granted."² The threshold showing a party must make to survive a motion to dismiss is

¹ It is alleged in Casale's Response that Reinvestment is a "straw company" of Reinvestment Funds, Inc., the lender for Sills/Moyer.

² Super. Ct. Civ. R. 12(b)(6).

low. All the facts pled in the complaint are accepted as true.³ Because Delaware is a notice pleading jurisdiction, the motion will be granted “only where it appears with reasonable certainty that the plaintiff could not prove any set of facts that would entitle him to relief.”⁴ “Conclusory allegations will not be accepted as true without specific supporting factual allegations.”⁵

Parties’ Contentions

Casale argues Reinvestment is indebted to it under two theories: (1) *quantum meruit*; and (2) unjust enrichment. Specifically, because Reinvestment is now the owner of the properties that contain the gyms, it benefitted from the materials and labor Casale provided. That benefit, Casale argues, indebts Reinvestment in the amount of \$34,545.19. In addition, it would be unjust and inequitable to allow Reinvestment to be enriched by Casale’s labor and materials without adequate compensation.

Reinvestment argues Casale fails to allege facts that support an argument under *quantum meruit* or unjust enrichment. In addition, Reinvestment argues that Casale admits that there was a contract between it and Sills/Moyer for the gym and the construction was finalized before Sills/Moyer transferred the property to Reinvestment. Finally, Reinvestment

³ *Highland Capital Mgmt, L.P. v. T.C. Grp., LLC*, 2006 WL 2128677, at *2 (Del. Super. Ct. July 27, 2006).

⁴ *Ramunno v. Cawley*, 705 A.2d 1029, 1034 (Del. 1998) (citation omitted).

⁵ *In re Santa Fe Pac. Corp. S’holder Litig.*, 669 A.2d 59, 65-66 (Del. 1995) (citation omitted).

argues that under the *Twombly-Iqbal* “plausibility” standard, Casale’s Crossclaim fails.

Discussion

The Quantum Meruit Claim Does Survive the Motion to Dismiss.

Quantum meruit is a well-known and preferred remedy in construction litigation that is rooted in equity.⁶ “It is a quasi-contractual remedy by which a plaintiff, in the absence of an express agreement, can recover the reasonable value of the materials or services it rendered to the defendant.”⁷ “[A] party [can] recover the reasonable value of his or her services if: (i) the party performed the services with the expectation that the recipient would pay for them; and (ii) the recipient should have known that the party expected to be paid.”⁸

Casale has set forth the elements necessary to bring forth a crossclaim in *quantum meruit*. First, although Casale fully intended to be paid for its labor and materials by Sills/Moyer, Reinvestment purchased the property from Sills/Moyer. While generally, Casale would not be able to recover against Reinvestment as the owner of the property, an exception exists in

⁶ *Middle States Drywall, Inc. v. DMS Properties-First, Inc.*, 1996 WL 453418, at *10 (Del. Super. May 18, 1996).

⁷ *Id.*

⁸ *Petrosky v. Peterson*, 859 A.2d 77, 79 (Del. 2004).

this case.⁹ An exception to this general rule permits Casale to recover from the landowner of the property if Casale cannot recover from Sills/Moyer, the original contracting party.¹⁰ Construction of the gyms was finalized in June 2010; Sills/Moyer deeded the property to Reinvestment on July 15, 2010, a month after construction was completed. Taking all well-pled allegations in the complaint in the light most favorable to Casale there are facts to suggest that: (1) Casale expected Reinvestment to pay for its services at the time Casale performed its services; and (2) Reinvestment should have known that Casale expected to be paid for its services. Thus, the *quantum meruit* claim crossclaim does not mandate dismissal pursuant to Superior Court Civil Rule 12(b)(6).

The Unjust Enrichment Claim Does Not Warrant Dismissal.

Additionally, the unjust enrichment alleged in the crossclaim does not warrant dismissal at this time. “Unjust enrichment is the unjust retention of a benefit resulting in a loss to another, or the retention of money or property of another against the fundamental principles of justice or equity and good conscience.”¹¹ To recover under an unjust enrichment theory, a plaintiff must prove: “(1) an enrichment[;](2) an impoverishment[;](3) a relation

⁹ *Cohen v. Delmar Drive-In Theater*, 84 A.2d 597, 598 (Del. Super. Nov. 5, 1951).

¹⁰ *Builders Supply of Delmarva, Inc. v. Manbeck*, 1998 WL 442845, at *3 (Del. Super. June 23, 1998).

¹¹ *Fleer Corp. v. Topps Chewing Gum, Inc.*, 539 A.2d 1060, 1062 (Del. 1988).

between the enrichment and impoverishment[;](4) the absence of justification[;]and (5) the absence of a remedy provided by law.”¹²

Casale has alleged enough facts in the crossclaim that if true, show that: (1) the construction of the two gyms was an enrichment to the property; (2) an impoverishment represented by failure to pay the invoices in the amount of \$34,545.19; (3) a relation between the construction of the gyms and the failure to pay; (4) absence of a justification for paying; and (5) absence of a remedy provided by law because Sills/Moyer is no longer an entity. Thus, at this stage in the proceedings, the motion to dismiss is **DENIED.**

Conclusion

Based on the foregoing, Casale’s Motion is **DENIED.**

IT IS SO ORDERED.

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

¹² *Cantor Fitzgerald, L.P. v. Cantor*, 724 A.2d 571, 585 (Del. Ch. 1998).