IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

ITEC DRYWALL, LLC, a Delaware limited liability company,	)	
Plaintiff,	)	
v.	)	C.A. No. N20L-01-011 WCC
SOUTH MAIN ST. PLAZA, LLC, a Delaware limited liability company, and GGA, LLC, a/k/a GG+A, LLC a limited liability company,	)	
Defendants.	)	

Submitted: July 15, 2020
Decided: August 3, 2021

Defendant GGA, LLC's Motion to Dismiss – GRANTED in Part and DENIED in Part

Defendant South Main St. Plaza, LLC's Motion to Dismiss – GRANTED in Part and DENIED in Part

MEMORANDUM OPINION

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CARPENTER, J.

Before the Court are Defendant GGA, LLC's ("GGA") and Defendant South Main St. Plaza, LLC's ("South Main St.") Motions to Dismiss. For the reasons set forth in this Opinion, Defendants' Motions are **GRANTED in part** and **DENIED in part**.

I. Factual & Procedural Background

Plaintiff ITEC Drywall, LLC ("Plaintiff") subcontracted with GGA, a general contractor, to supply labor and materials to two structures located at 139 and 165 South Main St. Newark, New Castle County, Delaware ("the Premises").[1] The Premises are owned by South Main St.[2] The first structure, (the "Small Structure"), contains approximately 5,339 square feet of retail space and 12 apartment units.[3] The second structure, (the "Large Structure"), contains approximately 14,143 square feet of retail space and 24 apartment units.[4]

Plaintiff and GGA executed a Trade Contractor Agreement ("TCA" or "Agreement") on November 2, 2017 and, subsequently, several "contractors invoices" were issued to GGA by ITEC for additional work on the project.[5] Plaintiff filed a Complaint and Statement of Claim for Mechanic's Lien on January 6, 2020,

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[1] Compl. ¶ 3.
[2] Def. South Main St. Plaza, LLC's Mot. to Dismiss ¶ 1.
[3] Compl. ¶ 7.
[4] *Id.*
[5] *Id.* ¶ 4.

asserting that it is owed $610,633.44 for labor and materials.[6] Plaintiff claims that $203,817.63 is owed for work performed on the Small Structure and $406,815.81 is owed for the Large Structure.[7] Plaintiff alleges that, pursuant to the TCA and the additional invoices, it is owed payment for services including framing, steel erection, drywall, carpentry, painting, millwork, and canopy work.[8]

Plaintiff claims that South Main St. knew that Plaintiff entered into the TCA with GGA, intending for Plaintiff to render services to "improve and increase the value of the Structures" owned by South Main St.[9] As such, Plaintiff claims that South Main St. benefitted at Plaintiff's expense and has asserted a claim for *quantum meruit* against South Main St., the property owner.[10] Additionally, Plaintiff claims that South Main St. is liable to Plaintiff for the reasonable full value of the unpaid labor and materials supplied for the Small and Large Structures under a theory of *quantum valebant*.[11]

The Court heard oral argument and reserved judgment on Defendants' Motions to Dismiss. In the meanwhile, the Court ordered Plaintiff and Defendant GGA to mediation on the remaining claims as required by the terms of their

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[6] *Id.* ¶¶ 2-4. *See also* Compl., Ex. B [hereinafter "Bill of Particulars"].
[7] Compl. ¶ 8.
[8] *Id.* ¶ 4. *See also* Bill of Particulars.
[9] Compl. ¶ 10.
[10] *Id.* ¶¶ 10-12.
[11] *Id.* ¶¶ 14-16.

contractual agreement. To date, mediation has been unsuccessful.[12] As such, this is the Court's decision on Defendants' Motions to Dismiss.

II. Standard of Review

When considering a Rule 12(b)(6) motion to dismiss, the Court "must determine whether the claimant 'may recover under any reasonably conceivable set of circumstances susceptible of proof.'"[13] It must also accept all well-pleaded allegations as true and draw every reasonable factual inference in favor of the non-moving party.[14] At this preliminary stage, dismissal will be granted only when the claimant would not be entitled to relief under "any set of facts that could be proven to support the claims asserted" in the pleading.[15]

III. Discussion

a. Mechanic's Lien and Leave to Amend the Bill of Particulars

Defendants claim that Plaintiff was required to attach a bill of particulars to the Complaint and, although Plaintiff attached a document identified as the bill of particulars, it fails to meet the strict requirements of 25 Del. C. § 2712(b)(4).[16] South

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[12] Pl.'s Letter to the Court of Jan. 22, 2021 Reporting on Status of Meditation, D.I. 35.
[13] *Sun Life Assurance Co. of Can. v. Wilmington Tr., Nat'l Ass'n*, 2018 WL 3805740, at *1 (Del. Super. Ct. Aug. 9, 2018) (quoting *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978)).
[14] *Id.*
[15] *Furnari v. Wallpang, Inc.*, 2014 WL 1678419, at *3–4 (Del. Super. Ct. Apr. 16, 2014) (citing *Clinton v. Enter. Rent–A–Car Co.*, 977 A.2d 892, 895 (Del. 2009)).
[16] Def. GGA, LLC's Mot. to Dismiss ¶¶ 1, 6, 8.

Main St. further notes that the bill of particulars is critical to their evaluation of the claim because, as the owner of the Premises, "as opposed to the general contractor who had a direct contractual relationship with the Plaintiff, South Main St. was not privy to the potentially many communications between Plaintiff and the general contractor regarding the base contract as well as any change orders."[17]

Delaware courts have consistently held that "the mechanic's lien statute must be 'strictly construed and pursued.'"[18] Accordingly, "a statement of claim failing to meet the requirements of the statute is totally insufficient to warrant the entry of a lien."[19] In order to meet the requirements of the mechanic's lien statute, a complaint must set forth, among other things:

> (4) The amount claimed to be due, and, *if the amount is not fixed by the contract, a statement of 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 or construction management services provided*; provided, that if the amount claimed to be due is fixed by the contract, then a true and correct copy of such contract, including all modifications or amendments thereto, shall be annexed…[20]

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[17] Def. South Main St. Plaza, LLC's Mot. to Dismiss ¶ 4.
[18] *Builders' Choice, Inc. v. Venzon*, 672 A.2d 1, 2 (Del. 1995) (citing *Ceritano Brickwork, Inc. v. Kirkwood Indus., Inc.*, 276 A.2d 267, 268 (Del. 1971)); *Pearce & Moretto, Inc. v. Hyetts Corner, LLC*, 2020 WL 532748, at *3 (Del. Super. Ct.).
[19] *Ceritano Brickwork, Inc. v. Kirkwood Indus., Inc.*, 276 A.2d 267, 268 (Del. 1971).
[20] 25 Del. C. § 2712(b)(4) (emphasis added).

This requirement is intended to inform a defendant of the basis of a plaintiff's claim and "it should be a detailed statement of the facts" providing "sufficient particularity that the interested parties can have no doubt as to the details of the claim."[21]

In *Deluca v. Martelli*, the Delaware Superior Court identified certain "essential" questions that the bill of particulars should satisfy.[22] The *Deluca* Court was especially concerned that the bill of particulars did not provide sufficient information for the defendant to determine "how [the] plaintiff arrived at the amount which he claims to be due."[23] More specifically, the Court inquired: "Was the claim based on an hourly or a daily rate or a formula contained in a contract?"[24] The Court ultimately concluded that "[w]e do not know, nor can we determine the answer by studying the bill of particulars."[25]

In the instant matter, Plaintiff seeks payment based on the TCA, as well as 23 pages of handwritten "contractors invoices" which are allegedly change orders for additional work ITEC performed at the request of GGA.[26] The invoices provided a general description of the work performed with a note as to the number of hours that was needed to complete it.[27] However, none of the invoices reflect a cost associated with the work allegedly performed and there is no indication whether this was work

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[21] *Deluca v. Martelli,* 200 A.2d 825, 826 (Del. Super. 1964).
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] Compl., Ex. A, Part 2 of 2.
[27] *Id.*

requested by GGA or the owners of the Premises.[28] The Court also finds characterizing these documents as change orders is somewhat misleading as they mostly appear to be additional work requested by GGA and not changes to the original agreement.[29]

Since these invoices have neither any degree of specificity nor the cost associated with the work allegedly performed, Plaintiff could have satisfied the statutory requirement of the mechanic's lien by its bill of particulars. Instead of providing a precise calculation of the amount demanded and how that amount was calculated, Plaintiff simply gave a total of $610,633.44 and attached the TCA and invoices.[30] The Court finds that the documents submitted by Plaintiff to its bill of particulars are insufficient to meet the standard required to impose a mechanic's lien on an individual's property.

As in *Deluca*, the bill of particulars fails to answer essential questions pertaining to how Plaintiff arrived at the alleged amount due. Since counsel believed that the majority of the amount demanded related to the handwritten invoices, it is detrimental to the mechanic's lien claim that Plaintiff did not calculate any cost, either labor or material, in any invoice. As presented, the owner of the project would be required to guess how Plaintiff calculated the alleged non-payment and whether

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[28] *See id.*
[29] *See id.*
[30] *See* Bill of Particulars.

the amount demanded was from the original contract or the handwritten paper invoices. Even when the Court asked Plaintiff's counsel how the $610,633.44 figure was determined and what Defendants could use to ascertain the basis of the cost requested, the response was simply that it was an issue for discovery.[31] The Court disagrees. The placing of a mechanic's lien on a property has significant ramifications to the property owner and thus the amount requested should be adequately supported. It is not here. Plaintiff's Statement of Claim for Mechanic's Lien and the attached documents are insufficient to inform Defendants of the basis of Plaintiff's claim.

As an aside, Plaintiff has only himself to blame for the Court finding that the Statement of Claim for Mechanic's Lien is insufficient. The Court believes that mechanic's liens are an appropriate and effective method to ensure an innocent subcontractor has a remedy for the non-payment by the general contractor for work they have completed. But to take advantage of this remedy, they must appropriately document the work performed and the cost associated with it. No contractor should expect this Court to allow a mechanic's lien to survive when they fail to undertake even the most fundamental of business practices. The typical response that "they are good workmen, but terrible businessmen" is simply no longer an acceptable excuse.

[31] Rough Draft Tr. at 15-16.

If that is the case, the recourse is to litigate the matter with the contractor and not jeopardize the property rights of the owner.

Considering the Court's finding that Plaintiff's Mechanic's Lien is insufficient, Plaintiff requests leave to amend its bill of particulars.[32] "Normally, a mechanic's lien complaint cannot be amended after the time for filing the lien has passed."[33] However, a bill of particulars may be amended so long as the amendment "in no way changes the basic claim."[34] The Court grants Plaintiff's request for leave to amend its bill of particulars solely for the purpose of providing sufficient detail as to how it calculated the amount demanded and relating it to specific invoices or contract provisions. Plaintiff has until August 20, 2021 to file its amended bill of particulars. If Plaintiff fails to file its bill of particulars as such, the Mechanic's Lien will be dismissed.[35]

b. Arbitration Under the TCA Between Plaintiff and GGA

The dispute mechanisms under the TCA executed between Plaintiff and GGA are found in Article 12 of the agreement. The first provision found in section 12.2

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[32] Pl.'s Resp. to GGA, LLC's Mot. to Dismiss, at 6.
[33] *Harrogate Const. Co. v. Joseph Haas Co.*, 250 A.2d 376, 377 (Del. Super. 1969).
[34] *Deluca v. Martelli,* 200 A.2d 825, 827-28 (Del. Super. 1964). *See Ceritano Brickwork, Inc. v. Kirkwood Indus.*, Inc., 276 A.2d 267, 269 (Del. 1971).
[35] Plaintiff argues that GGA, as the general contractor, does not have standing to pursue a motion to dismiss with regards to the mechanic's lien. However, because South Main St.— owner of the property—does have standing to bring such a motion, and in fact is seeking to dismiss the mechanic's lien, the Court finds it unnecessary to address this argument. Pl.'s Resp. to GGA, LLC's Mot. to Dismiss ¶ 3.

requires that "[a]ll claims, disputes or other matters of controversy arising under this Agreement shall be subject to mediation as a condition precedent to any further proceedings."[36] If mediation is unsuccessful, Article 12.3 becomes applicable, which reads as follows:

> *Claims not resolved by meditation shall be subject to arbitration or litigation at the sole discretion of the Construction Manager [GGA].* If the Construction Manager elects to resolve a dispute through arbitration it shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association in effect on the date of this Agreement. Any award rendered in arbitration or other legal or equitable proceeding shall include the prevailing party's costs, which shall include attorney's fees, arbitration fees, filing fees and experts' fees. Any award for punitive damages is expressly prohibited.[37]

Under these two provisions, it is clear that when a dispute arises, the parties are first required to mediate that dispute. Here, at the insistence of the Court, the parties have attempted mediation but to date it has not resolved the issues. If mediation is unsuccessful, there is no contesting that the agreement allows the Construction Manager, in this case GGA, to choose between proceeding to arbitration or litigation. GGA has informed the Court that, per the TCA's Article 12.3, it elects to arbitrate Plaintiff's claims.[38] These provisions provide a clear and precise method to resolve disputes between the parties. There is no ambiguity in

[36] Compl., Ex. A, Part 1 of 2, Trade Contractor Agreement, at 15.
[37] *Id.* (emphasis added).
[38] Def. GGA, LLC's Mot. to Dismiss ¶ 9.

what is required and as GGA correctly notes the Court "does not have subject matter jurisdiction where a claim is properly committed to arbitration."[39]

In spite of the clarity of the dispute mechanism set forth in Article 12, Plaintiff maintains there is an ambiguity in Article 12's clauses stemming from the language in section 12.4 of the Agreement. Plaintiff maintains that Article 12.4 which confers "exclusive jurisdiction over all claims and disputes" to Delaware courts is inconsistent with the arbitration provision which would strip Delaware courts of jurisdiction.[40] In essence, Plaintiff argues "[t]here is a patent ambiguity in Article 12 of the TCA about how 'claims and disputes' will be adjudicated."[41] Plaintiff concludes that as a result of the ambiguity its decision to litigate the matter in a Delaware court pursuant to Article 12.4 should govern, and thus arbitration is not required.[42]

However, the Court believes that arbitration is required. Delaware courts have a "strong public policy in favor of arbitration" and because "arbitration is a mechanism of dispute resolution created by contract," "[t]o determine an arbitration clause's validity, the Court starts with the contract's text."[43] On its face, Article 12.3

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[39] *Id.* ¶ 11. *NAMA Holdings, LLC v. Related World Mkt. Ctr., LLC*, 922 A.2d 417, 429 (Del. Ch. 2007) (citing *Elf Atochem N. Am., Inc. v. Jaffari*, 727 A.2d 286, 295 (Del.1999)).
[40] Pl.'s Resp. to GGA, LLC's Mot. to Dismiss ¶ 10.
[41] *Id.*
[42] *Id.* ¶¶ 10-11.
[43] *NAMA Holdings, LLC*, 922 A.2d at 429; *Parfi Holding AB v. Mirror Image Internet, Inc.*, 817 A.2d 149, 156 (Del. 2002); *Mikkilineni v. PayPal, Inc.*, 2021 WL 2763903, at *11 (Del. Super. Ct.) (citing *Parfi Holding AB*, 817 A.2d at 156.).

instructs that if mediation is unsuccessful, GGA must decide between litigating or arbitrating the dispute. Although Plaintiff asserts that Article 12.4 and Article 12.3 are contradictory, thus creating an ambiguity, the Court finds that Article 12.4 and 12.3 can be read in conjunction. Even when arbitration is required, the Court may be called on to resolve disputes related to the arbitration process such as forcing a party to participate in arbitration or enforcing an award given by the arbitrator. Here, if such circumstance were to occur, the parties have agreed those disputes would be handled by Delaware's courts regardless of the home venues of the parties. The Court has no question that an appropriate and logical dispute resolution has been created in the Agreement and there is no ambiguity as to the process or the rights of each party.

Thus, the Court does not believe that Article 12.4 trumps 12.3 and if chosen by GGA, arbitration is the controlling dispute mechanism under the TCA. Consequently, the Court does not find that an ambiguity exists within Article 12. With mediation being unsuccessful, and in accordance with the TCA and GGA's election, the Court finds that Plaintiff and GGA must arbitrate. The Court also does not accept Plaintiff's argument that the arbitration decision is not binding on the parties.[44] To read these three provisions as requiring mediation and then if chosen, arbitration and still allow the matter to be litigated is simply nonsensical. Each

[44] Pl.'s Resp. to GGA, LLC's Mot. to Dismiss ¶ 9.

provision of a contract should be given full effect and meaning, and interpreting the Article 12 provisions as argued by Plaintiff would undercut and make meaningless the provisions of 12.2 and 12.3 and would be contrary to any reasonable and common-sense intent of the parties to the Agreement.[45] The TCA gives the Construction Manager the option to choose how the dispute will be finally determined and, absent fraud or misconduct, if arbitration is chosen the outcome of arbitration is final and binding.[46]

c. *Quantum Meruit* and *Quantum Valebant*

South Main St. asks this Court to dismiss Plaintiff's *quantum meruit* and *quantum valebant* claims against it, because Plaintiff has failed to "state a claim as required by Superior Court Rule 12(b)(6)."[47] South Main St. argues that "[a]s a matter of law, Plaintiff cannot have any quasi contractual claims against South Main St. because Plaintiff has an express contract with GGA and Plaintiff has failed to allege any privity between it and South Main St."[48] Plaintiff contends that not only has it sufficiently pled all elements for a *quantum meruit* claim, Plaintiff and South Main St. did not enter into a contract and therefore *quantum meruit* relief is not

[45] *See Osborn ex rel. Osborn v. Kemp*, 991 A.2d 1153, 1159 (Del. 2010).
[46] *See* 10 Del. C. §§ 5713-5715.
[47] Def. South Main St. LLC's Mot. to Dismiss ¶ 7.
[48] *Id.*

barred.[49] Additionally, Plaintiff argues that it has pled facts sufficient to state a *quantum valebant* claim.[50]

In Delaware, it is well established that the Court will not consider a *quantum meruit* claim against an owner when a party has a contractual avenue for recovery.[51] *Quantum meruit* is not an alternative method of recovery simply because a general contractor has failed to meet their contractual financial obligations to a subcontractor. The remedy in such situations is the filing of a mechanic's lien, not an independent litigation claim against the property owner. A *quantum meruit* claim, which literally means to give one "as much as he deserves," is only established where a party has received a benefit for which they have not paid.[52] The reason being that, even in the absence of a contractual relationship, that receiving party has a financial obligation to those that have provided service.[53]

Nevertheless, as long as the property owner has complied with their financial obligations to the general contractor, there is no benefit that the landowner has received that he has not paid for.[54] As such, the subcontractor has no *quantum meruit* claim available to them against the landowner. The Delaware Superior Court has

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[49] Pl.'s Resp. to South Main St. LLC's Mot. to Dismiss Counts I, II, and III of the Complaint ¶¶ 13-14, 18.
[50] *Id.* ¶¶ 19-21.
[51] *See Griffin Dewatering Corp. v. B.W. Knox Const. Corp.*, 2001 WL 541476, at *7 (Del. Super. Ct.).
[52] *Marta v. Nepa*, 385 A.2d 727, 730 (Del. 1978). *See Griffin Dewatering Corp.*, 2001 WL 541476, at *7.
[53] *See Marta v. Nepa*, 385 A.2d at 730; *Petrosky v. Peterson,* 859 A.2d 77, 79 (Del. 2004).
[54] *See Griffin Dewatering Corp.*, 2001 WL 541476, at *7.

reasoned that "*quantum meruit* is a remedy rooted in equity" and to force a property owner to pay twice for the same services is to "distort the principles of equity."[55]

The situation described above has occurred here. Plaintiff has a legal contractual remedy against GGA and that is their sole remedy beyond the mechanic's lien statute. As far as the Court is aware, South Main St. has fully paid its financial obligation to GGA. By doing so, South Main St. has in essence paid for the services provided by Plaintiff. Thus, Plaintiff, as subcontractor, has no *quantum meruit* claim against the property owner. As *quantum valebant* is also a remedy based in equity, the Delaware Superior Court has used the *quantum meruit* analysis and principles in *quantum valebant* claims.[56] For the above reasons, the Court grants South Main St.'s Motion to Dismiss Plaintiff's *quantum meruit* and *quantum valebant* claims.

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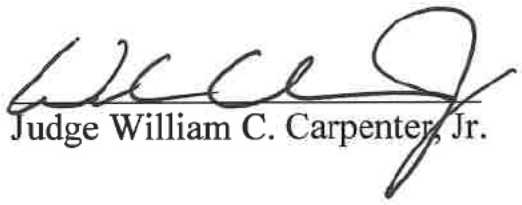
[55] *Id.* The Delaware Superior Court has held that if an owner has not fully paid the general contractor and, thus they are unable to meet the financial obligations to their subcontractors, a subcontractor may then have a *quantum meruit* claim against the owner. *E. Coast Plumbing & HVAC, Inc. v. Edge of the Woods*, 2004 WL 2828286, at *5 (Del. Super. Ct.). In such a case, the property owner has received a benefit for which he has not paid and the reasoning of *quantum meruit* would apply.

[56] *E. Coast Plumbing & HVAC, Inc. v. Edge of the Woods*, 2004 WL 2828286, at *5 (Del. Super. Ct.).

IV. Conclusion

For the foregoing reasons, Defendants' Motions are **GRANTED in part and DENIED in part**. Plaintiff's Counts II, III, and IV are hereby dismissed.

IT IS SO ORDERED.



Judge William C. Carpenter, Jr.