

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

Morin corporation a/k/a)
METECNO-MORIN CORPORATION, a)
foreign corporation,)
)
Plaintiff,)
)
v.)
)
INTEGRATED CONSTRUCTION SERVICES,)
INC., a foreign corporation, NASON)
CONSTRUCTION INC., a foreign corporation,)
and, CIBA SPECIALTY CHEMICALS)
CORPORATION, a Delaware corporation,)
)
Defendants.)
)

C.A. No. 05L-07-005 JRJ

Date Submitted: November 16, 2005

Date Decided: December 22, 2005

OPINION

Upon Defendants' Motion to Dismiss and Motion for Judgment on the Pleadings—

DENIED

Theodore J. Tacconelli, Esquire, 824 Market Street, Suite 904, P.O. Box 1351,
Wilmington, Delaware 19899 for the Plaintiff.

Donald L. Logan, Esquire, First Federal Plaza, Suite 500, P.O. Box 1031, Wilmington,
Delaware 19899 for the Defendants.

JURDEN, J.

Before the Court is Defendants' Nason Construction, Inc. and Ciba Specialty Chemicals Corporation's Motion to Dismiss and Motion for Judgment on the Pleadings. For the reasons set forth below, the Motion is **DENIED**.

I. PROCEDURAL AND FACTUAL BACKGROUND

On August 26, 2004, the Plaintiff Morin Corporation a/k/a Metecno-Morin Corporation (hereinafter "Morin") contracted with Defendant Intergrated Construction Services, Inc., (hereinafter "ICS") to provide sheet metal panels and other related roofing materials to a property owned by Ciba Specialty Chemicals Corporation (hereinafter "Ciba") and located at the Ciba chemical manufacturing plant at 205 South James Street, Building A202, Newport, Wilmington Delaware 19804 (hereinafter the "Property" or "Project"). On July 6, 2005, Morin filed a Mechanic's Lien Complaint against ICS, Nason Construction, Inc., (hereinafter "Nason") and Ciba in the amount of \$41,557.96 for building materials provided to the Project.¹ On October 18, 2005, Nason and Ciba jointly filed the present Motion to Dismiss the Mechanic's Lien and a Motion for Judgment on the Pleadings.² On November 16, 2005, Morin filed its response.³ On November 23, 2005, the Court heard argument on the motion.

In its complaint, Morin sets forth three arguments in support of its request for a Mechanic's Lien: (1) failure to comply with 25 *Del. C.* §2712(b)(8), (2) failure to comply with 25 *Del. C.* §2712(b)(7), and (3) failure to comply with 25 *Del. C.* §2711. Morin withdrew arguments one and two at the hearing. Thus, the only remaining issue before the Court is the timeliness of the Mechanic's Lien Complaint.

¹ On September 30, 2005 a default judgment in the amount of \$45,285.61 was entered against Defendant Intergrated Construction Services Inc.

² D.I. 11.

The Defendants argue that the Mechanic's Lien was not timely filed within the 120-day period mandated by 27 *Del. C.* §2711(6). The Defendants contend that Morin's \$21.12, March 11, 2005 delivery, which occurred three months after the Project was completed, is "trivial" in light of the \$44,000 contract and, therefore, cannot serve as a basis to extend the statute of limitations.⁴ Instead, the Defendants assert the last delivery of materials to the site occurred on January 6, 2005.⁵ This assertion is supported by a bill of lading signed by Nason's Project Manager. Further, the Defendants argue that Morin failed to prove that the materials listed on the March 11, 2005 bill of lading and delivered to ICS in Norristown, Pennsylvania were ever received at the Project site. According to the Defendants, because Morin cannot prove receipt of these materials at the Project site, it cannot maintain a Mechanic's Lien based on their delivery.

In its reply, Morin argues that this Motion is premature and that the complaint asserts a valid claim. Morin argues that discovery is necessary for it to prove its claims. Finally, Morin argues that the purpose of a bill of particulars is to identify the materials furnished to a project, not to establish where or when the materials were delivered. Morin disputes the Defendants' claim that the March 11, 2005 delivery was of a "trivial nature," and argues that the Court needs to consider more than just that delivery. According to Morin, the Court must also consider whether those materials were included in the contract and whether the contract was substantially performed prior to that delivery. Such questions, Morin argues, are disputed issues of material fact, and thus the Court cannot grant a Motion to Dismiss or a Motion for Judgment on the Pleadings.

³ D.I. 12.

⁴ The invoice dated March 16, 2005, indicates shipment of ninety-six items described as Z248 Closure YR (Reversible) for a total charge of \$21.12 plus \$36 in shipping costs. There is no further indication in the pleadings of the purpose or materiality of these materials.

II. STANDARD OF REVIEW

Consideration of a Motion to Dismiss requires that the Court accept all factual allegations within a complaint as true.⁶ Moreover, all reasonable inferences must be drawn in favor of the non-moving party.⁷ Such motions present questions of law and may not be granted where the pleadings raise any issue of material fact.⁸ “A motion for judgment on the pleadings is viewed as in the nature of a...motion to dismiss because it admits, for the purpose of the motion, the allegations of the opposing party’s pleadings but contends that they are insufficient at law.”⁹ The test for sufficiency is whether a plaintiff may recover under any plausible circumstances capable of proof under the complaint.¹⁰ Thus, the Court’s decision on such a matter must only be based on the record presented, to include all pleadings, affidavits, depositions, admissions, and answers to interrogatories, and not what evidence may be “potentially possible.”¹¹

II. DISCUSSION

A Mechanic’s Lien proceeding is entirely statutory in origin.¹² Because such actions are in derogation of the common law, Delaware courts have consistently held that “the mechanic’s lien statute must be strictly construed and pursued.”¹³ The *ratio decidendi* of those holdings is: “The right to ‘obtain a lien’ is subject to certain ‘restrictions, limitations and qualifications’...[t]hese statutory requirements are positive and substantial in character. It follows, therefore, that if the statement of claim fails to

⁵ D.I. 12.

⁶ *Plant v. Catalytic Constr. Co.*, 287 A.2d 682, 686 (Del. Super. Ct. 1972).

⁷ *Sweetman v. Strescon Indus.*, 389 A.2d 1319, 1324 (Del. 1978).

⁸ *Fagani v. Integrity Finance Corp.*, 167 A.2d 67, 75 (Del. Super. Ct. 1960).

⁹ *Id.*

¹⁰ *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978).

¹¹ *Rochester v. Katalan*, 320 A.2d 704, 708 (Del. 1974).

¹² *Ceritano Brickwork, Inc. v. Kirkwood Industries, Inc.*, 276 A.2d 267, 268 (Del. 1971).

meet the requirements of the statute, the right to the lien is not implemented...[t]he court cannot assume to arrogate to itself the power to make a lien and thereby to destroy the provisions of the statute.”¹⁴

Mindful of the aforementioned principles of statutory construction, the Court concludes that the pleadings raise several issues of material fact.¹⁵ The Court finds that discovery is necessary to determine the date of the last delivery, whether the materials shipped were in fact received at the Project site, whether the materials listed on the March 11, 2005 bill of lading were part of the contract, and whether the contract was substantially performed prior to the March 11, 2005 delivery. Consequently, the Defendants’ Motion to Dismiss and Motion for Judgment on the Pleadings is **DENIED**.

IT IS SO ORDERED.

Jan R. Jurden, Judge

¹³ *Id.*

¹⁴ *E.J. Hollingsworth Co. v. Continental-Diamond Fiber Co. et al.*, 175 A.266, 268 (Del. Super. Ct. 1934).

¹⁵ *Fagani v. Integrity Finance Corp.*, 167 A.2d 67, 75 (Del. Super. Ct. 1960).