UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-1416

US METHANOL, LLC, a Delaware limited liability company,

Plaintiff - Appellant,

v.

CDI CORPORATION, a Pennsylvania business corporation,

Defendant - Appellee.

Appeal from the United States District Court for the Southern District of West Virginia, at Charleston. Joseph R. Goodwin, District Judge. (2:19-cv-00219)

Argued: May 4, 2022 Decided: July 14, 2022

Before KING, AGEE, and HEYTENS, Circuit Judges.

Affirmed by unpublished per curiam opinion.

ARGUED: Kenneth Eugene Webb, Jr., BOWLES RICE, LLP, Charleston, West Virginia, for Appellant. Peter John Raupp, STEPTOE & JOHNSON PLLC, Charleston, West Virginia, for Appellee. **ON BRIEF:** Patrick C. Timony, William M. Lorensen, BOWLES RICE, LLP, Charleston, West Virginia, for Appellant. Joseph U. Leonoro, James E. McDaniel, STEPTOE & JOHNSON PLLC, Charleston, West Virginia, for Appellee.

PER CURIAM:

Plaintiff US Methanol, LLC, appeals from rulings made in the Southern District of West Virginia dismissing three negligence claims and awarding summary judgment to defendant CDI Corporation on a breach of contract claim. US Methanol initiated this lawsuit in 2019 against CDI after a civil engineer supplied to US Methanol by CDI failed to adequately design the foundation for a new methanol plant at Institute, West Virginia. The district court first dismissed US Methanol's three negligence claims as being barred under West Virginia law by the so-called "gist of the action" and "borrowed servant" doctrines. *See US Methanol, LLC v. CDI Corp.*, No. 2:19-cv-00219 (S.D.W. Va. Oct. 21, 2019), ECF No. 50 (the "Dismissal Opinion"). Following discovery proceedings, the court granted summary judgment to CDI on the breach of contract claim, ruling that the plain language of the staffing agreement between the parties precluded any relief thereon. *See US Methanol, LLC v. CDI Corp.*, No. 2:19-cv-00219 (S.D.W. Va. June 5, 2020), ECF No. 112 (the "Summary Judgment Opinion"). As explained herein, we are satisfied to affirm the district court.

I.

A.

US Methanol owns and has recently relocated a methanol production plant from Brazil to Institute, West Virginia. In assessing the geographic conditions at the proposed Institute plant site in 2016, US Methanol ascertained that uneven bedrock existed beneath the property, such that "deep concrete foundations" and "auger cast piles" would be

required to support the facility's heavy structures. *See* J.A. 414-19.[1] US Methanol then approached CDI — a business that provides both direct engineering services as well as "staff augmentation services" — seeking assistance in locating a civil engineer to design the required plant foundation. *Id.* at 40, 526.

US Methanol's project manager — a professional civil engineer named Jeff Beverly — initially informed CDI in October 2016 that US Methanol was seeking a "[c]ivil engineer with the ability to design piles and foundations." *See* J.A. 1130. In a follow-up email to CDI, Beverly described US Methanol's need for a "Senior Civil Engineer" with a "[c]hemical, industrial background" who could engineer and design "civil and structural systems (structural steel, concrete foundations)." *Id.* at 202. Project manager Beverly later characterized his omission of "piling work" from that job description as an "oversight." *Id.* at 181. Using the information supplied in Beverly's email, a CDI recruiter identified an engineer named Randall Chase as a potential candidate for the US Methanol position. Chase informed CDI that he was a "Civil Engineer with over 30 years of experience in heavy construction" and that he was "quite interested in this opportunity." *Id.* at 215.

After interviewing Randall Chase and believing him to be a "great fit" for US Methanol's project at Institute, CDI forwarded Chase's resumé — which reflected that his experience included developing "piling and deep foundations for structures and surface facilities" — to project manager Beverly. *See* J.A. 219, 553. In response, Beverly

[1] Citations herein to "J.A. __" refer to the contents of the Joint Appendix filed by the parties in this appeal.

indicated that he was "concerned that [Chase] has no plant experience on his resumé or large structures, but if he has good skills we would still be interested," and requested that an interview of Chase by US Methanol be arranged. *Id.* at 224. During that interview, Beverly and US Methanol's engineering manager discussed the scope of the Institute project with Chase, specifically inquiring about his experience designing auger cast piles. Chase represented that he possessed the requisite skills, but also disclosed that he was not a licensed professional engineer. US Methanol did not extend an offer at the conclusion of the initial interview, but Beverly was satisfied that Chase was qualified for the project. *Id.* at 187.

In a November 4, 2016, email to CDI regarding Chase's billing rate, project manager Beverly remarked that "[w]hile we are looking for an experienced engineer, [Chase] has far more qualifications than we need or can justify paying for. He has more qualifications that anyone I've ever met!" *See* J.A. 227. After contacting Chase's references, Beverly described Chase in a subsequent email to CDI as a "ho[t] commodity" and requested that another interview of Chase be conducted with US Methanol's Chief Operating Officer, Richard Wolfli, who was also an engineer and had the final say on whether to hire Chase. *Id.* at 230. After that second interview, Wolfli authorized Beverly to complete the process of securing Chase's services for US Methanol. Beverly then notified CDI that Chase should begin his work at US Methanol the following Monday.

To memorialize Chase's placement at the Institute project, US Methanol and CDI entered into an "On-Site Staffing Services Agreement" (the "Staffing Agreement") on November 10, 2016. *See* J.A. 40-41. The Staffing Agreement provides that staff

augmentation services would be provided by CDI to US Methanol, and would be performed by "assigning the following temporary personnel to work for you [US Methanol]. . . . Name: Randall Chase." *Id.* at 40. According to the Staffing Agreement, Chase would be a CDI employee, but would "perform all assigned tasks under [US Methanol's] day-to-day supervision." *Id.* Importantly, regarding the quality of Chase's work, the Staffing Agreement specifies the following:

> We [CDI] are committed to providing you [US Methanol] with personnel whose abilities meet or exceed your expectations. However, we cannot accept responsibility for matters outside of our reasonable control. Accordingly, if you become dissatisfied with the performance of any of the personnel we send to you for any lawful reason, you may cancel their assignment by notifying us that you are dissatisfied. If you do so during the first 40 hours of a person's assignment, you will not have to pay us for the hours worked by that person and we will immediately seek to supply you with a replacement. If you keep a person on assignment for more than 40 hours, it is agreed that the person's performance will be considered satisfactory and you will pay the bill for the person when it is rendered. Technical direction of the work being performed by Randall Chase on assignment, and the content of such work, will be your responsibility.

Id. at 40-41. The Staffing Agreement otherwise provides that CDI would be responsible for processing Chase's pay and handling other administrative matters.

Chase began his work with US Methanol in November 2016, designing the auger cast piles to be used for the Institute methanol plant's concrete foundation. Chase submitted his designs to US Methanol about three months later in February 2017, and project manager Beverly thereafter approved — as the licensed professional engineer —

the designs for construction.[2] As the auger cast piles were being installed about six months thereafter in August and September 2017, however, it became apparent that Chase's engineering work was fatally flawed. Specifically, despite the varying bedrock depths beneath the plant, Chase had designed every auger cast pile to the same length, such that the piles did not "socket" into the bedrock and could not support the anticipated weight of the plant's facilities. *See* J.A. 1280. As a result, US Methanol terminated Chase in November 2017 for the errors in his work, which required a complete redesign of the plant foundation and caused US Methanol to incur substantial additional engineering and construction costs.

B.

On March 8, 2019, US Methanol initiated this civil action against both CDI and Randall Chase in the Circuit Court of Kanawha County, West Virginia. US Methanol alleged four claims against CDI: (1) breach of contract, relative to CDI's purported commitment in the Staffing Agreement to supply US Methanol with an engineer qualified to design the Institute methanol plant's foundation; (2) professional negligence, in connection with CDI's allegedly deficient design of the foundation "through its employee" Chase; (3) negligent selection, recommendation, and placement of Chase; and (4) vicarious liability for Chase's own alleged professional negligence. *See* J.A. 28. CDI promptly

[2] Under West Virginia law, non-licensed engineers such as Chase may only practice engineering under the supervision of a professional engineer, such as project manager Beverly. *See* W. Va. Code §§ 30-13-2, -24(c).

removed the proceedings to the Southern District of West Virginia, pursuant to 28 U.S.C. §§ 1441, 1332.

CDI thereafter moved to dismiss the claims against it for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). In October 2019, the district court denied CDI's motion to dismiss as to the breach of contract claim, ruling that US Methanol's complaint properly stated a claim for breach of contract because "in looking at the plain language of the [Staffing Agreement], by committing to provide US Methanol with an employee who meets or exceeds their expectations, CDI was promising to perform this action." *See* Dismissal Opinion 5. But the court dismissed all three of US Methanol's negligence claims, concluding that "[e]ach negligence claim relies upon the contractual relationship between the parties," and that US Methanol had improperly recast its breach of contract claim as a series of tort claims, in contravention of West Virginia's gist of the action doctrine. *Id.* at 6-7. The Dismissal Opinion alternatively dismissed US Methanol's vicarious liability claim under the borrowed servant doctrine, concluding that US Methanol possessed extensive control over Chase's work at Institute, such that CDI could not be held liable for Chase's negligent acts under West Virginia law.

Following extensive discovery, the parties filed cross-motions for summary judgment on the breach of contract claim. By its Summary Judgment Opinion of June 5, 2020, the district court ruled in favor of CDI on that final claim. The court observed that it was undisputed that US Methanol had retained and used Chase's services for nearly a year, and ruled that any "promise to provide a qualified person is circumscribed by the [Staffing Agreement's] limitation of satisfaction after 40 hours of performance." *See*

Summary Judgment Opinion 9. That is, "[o]nce US Methanol accepted the 40 hours of performance, they could no longer bring a claim that they were dissatisfied with Chase pursuant to the terms of the Agreement." *Id.*

US Methanol and Chase ultimately settled the claim of professional negligence that had been lodged against Chase, and the district court dismissed Chase on April 12, 2021. US Methanol has timely noted this appeal, challenging both the Dismissal Opinion and the Summary Judgment Opinion. We possess jurisdiction pursuant to 28 U.S.C. § 1291.

II.

We review de novo a district court's Rule 12(b)(6) dismissal for failure to state a claim, and we review an award of summary judgment under the same de novo standard. *See Benjamin v. Sparks*, 986 F.3d 332, 351 (4th Cir. 2021). In reviewing a dismissal order, we assess the complaint's factual allegations in the light most favorable to the plaintiff, evaluating whether those facts are sufficient "to state a claim to relief that is plausible on its face." *See Bonds v. Leavitt*, 629 F.3d 369, 385 (4th Cir. 2011). Summary judgment, on the other hand, is appropriate "only where there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law." *See Reyazuddin v. Montgomery Cnty.*, 789 F.3d 407, 413 (4th Cir. 2015).

III.

On appeal, US Methanol principally pursues the district court's award of summary judgment to CDI on the breach of contract claim, maintaining that the court erred in

applying the Staffing Agreement's "40-hour provision" to insulate CDI from liability on that claim. *See* Br. of Appellant 19-26. US Methanol also argues that the court erroneously dismissed its negligence claims against CDI, in that CDI was engaged in the "practice of engineering" under West Virginia law and accordingly owed to US Methanol certain statutory duties, thereby precluding application of the gist of the action doctrine. *Id.* at 37. Finally, US Methanol contends that the court prematurely applied the borrowed servant doctrine to its vicarious liability claim at the Rule 12(b)(6) dismissal stage. We conclude that none of US Methanol's contentions amounts to reversible error.

A.

In West Virginia, a breach of contract claim "requires proof of the formation of a contract, a breach of the terms of that contract, and resulting damages." *See Sneberger v. Morrison*, 776 S.E.2d 156, 171 (W. Va. 2015). By its complaint, US Methanol alleges that, in the Staffing Agreement, CDI promised to provide US Methanol with "an engineer qualified to . . . design . . . the foundation for a methanol plant." *See* J.A. 25-26. Chase's failure to adequately design such a foundation, according to US Methanol, resulted in a breach of CDI's contractual duties. The terms of the Staffing Agreement, however, actually show that CDI's principal obligation was to provide only a specific engineer — Randall Chase, the engineer that US Methanol had already vetted and agreed to. *See id.* at 40 ("[This Staffing Agreement] is to confirm the staff augmentation services we will perform by assigning the following temporary personnel to work for you. . . . Name: Randall Chase."). The parties, of course, cannot and do not dispute that CDI fulfilled that obligation.

Nevertheless, US Methanol insists that CDI breached the provision of the Staffing Agreement under which it "committed to providing you with personnel whose abilities meet or exceed your expectations." *See* J.A. 40. But as CDI correctly explains, that language does not contain a promise to perform that is drafted in definite and concrete terms. The provision identified and relied on is aspirational at best — merely a goal to "meet or exceed," or to go above and beyond reasonable expectations. It simply does not — under West Virginia law — rise to the level of an enforceable, contractual obligation. *See Younker v. E. Associated Coal Corp.*, 591 S.E.2d 254, 259 (W. Va. 2003) (finding no breach of contract where provisions did not "reach that very definite level of specificity" and "embodied only aspirational goals rather than contractual terms" (internal quotation marks omitted)); *accord Ullmo ex rel. Ullmo v. Gilmour Acad.*, 273 F.3d 671, 677 (6th Cir. 2001) ("Indefinite and aspirational language does not constitute an enforceable promise . . . . [A] breach of contract claim will not arise from the failure to fulfill a statement of goals or ideals."). Put differently, the allegedly breached provision of the Staffing Agreement is essentially "puffery," boasting of how well CDI believes it can do its job and how deeply "committed" it is. The provision relied on by US Methanol is not the broad warranty against any defects in Chase's work that US Methanol now makes it out to be.[3]

[3] In resolving that the allegedly breached "expectations" provision is not an enforceable term of the Staffing Agreement, we recognize that the district court concluded to the contrary. *See* Dismissal Opinion 5 ("[B]y committing to provide US Methanol with an employee who meets or exceeds their expectations, CDI was promising to perform this action."). Although US Methanol disputes our ability to part ways with the district court on that point, legal interpretation of the terms of the Staffing Agreement falls within the scope of our de novo review. And we are "entitled to affirm on any ground appearing in (Continued)

To the extent that the Staffing Agreement's "expectations" provision might be read as setting forth an enforceable promise, the undisputed facts demonstrate that US Methanol's expectations were fully satisfied. After project manager Beverly reviewed Randall Chase's resumé, US Methanol interviewed him — in the presence of other engineers and even the company's Chief Operating Officer — not just once, but twice. Chase's references bolstered Beverly's favorable impression of him, and through the two interviews, US Methanol ascertained that Chase was not a professional engineer. Additionally, the company discussed Chase's skills and prior experience, and ultimately decided that he was the man for the US Methanol job at Institute. Put most simply, US Methanol contracted for Chase's placement on the Institute project and received exactly that.

At bottom, CDI fulfilled its duties under the Staffing Agreement, even if the "expectations" provision is taken as an enforceable term thereof. Before the parties entered into the Staffing Agreement, US Methanol selected Chase as its ideal candidate. US Methanol then requested that CDI send Chase to work on the Institute project, and CDI did as much. Accordingly, we are satisfied that the district court correctly awarded summary judgment to CDI on the breach of contract claim.

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the record, including theories not relied upon or rejected by the district court." *See Scott v. United States*, 328 F.3d 132, 137 (4th Cir. 2003).

B.

US Methanol also takes issue with the district court's application of the gist of the action doctrine in dismissing its negligence claims alleged against CDI — those of professional negligence; negligent selection, recommendation, and placement; and vicarious liability for Chase's professional negligence. Under West Virginia law, the gist of the action doctrine is intended "to prevent the recasting of a contract claim as a tort claim." *See Gaddy Eng'g Co. v. Bowles Rice McDavid Graff & Love, LLP*, 746 S.E.2d 568, 577 (W. Va. 2013). The doctrine "requires plaintiffs seeking relief in tort to identify a non-contractual duty breached by the alleged tortfeasor." *See Dan Ryan Builders, Inc. v. Crystal Ridge Dev., Inc.*, 783 F.3d 976, 980 (4th Cir. 2015). A recovery in tort is barred under the gist of the action doctrine in the following scenarios:

> (1) where liability arises solely from the contractual relationship between the parties; (2) when the alleged duties breached were grounded in the contract itself; (3) where any liability stems from the contract; and (4) when the tort claim essentially duplicates the breach of contract claim or where the success of the tort claim is dependent on the success of the breach of contract claim.

See Gaddy Eng'g Co., 746 S.E.2d at 577.

Here, we need not decide whether the district court erred in dismissing US Methanol's negligence claims based on the gist of the action doctrine because US Methanol has identified no non-contractual duties owed to it by CDI. Seeking to "identify a non-contractual duty breached by" CDI, US Methanol argues that CDI was engaged in the "practice of engineering" within the meaning of West Virginia law, and that CDI accordingly owed US Methanol a variety of binding statutory duties. *See Dan Ryan Builders, Inc.*, 783 F.3d at 980. West Virginia law defines the "practice of engineering" as

"any service or creative work, the adequate performance of which requires engineering education, training and experience in the application of special knowledge of the mathematical, physical and engineering sciences to such services or creative work." *See* W. Va. Code § 30-13-3(e). To be certain, CDI provides direct engineering services that would likely fall within the scope of the statutory definition of engineering. In these circumstances, however, CDI provided US Methanol with staff augmentation services only — it searched for ideal job candidates using the information supplied by project manager Beverly, arranged for two interviews between Chase and US Methanol, and agreed to perform payroll and other administrative functions on US Methanol's behalf. Put simply, none of those services require "engineering education, training and experience" or "special knowledge of the mathematical, physical and engineering sciences." *Id.* As a result, CDI did not engage in the "practice of engineering" during its relations with US Methanol.[4]

[4] US Methanol also contends that Chase owed it duties under this statutory scheme, and that CDI is vicariously responsible for Chase's failure to meet those duties. We disagree. Under the borrowed servant doctrine, a "general employer" remains liable for the negligent conduct of his employee unless he has "completely relinquished control" of the employee's conduct to a third party for whom the employee is performing some service. *See Burdette v. Maust Coal & Coke Corp.*, 222 S.E.2d 293, 299 (W. Va. 1976). Although this doctrine usually requires factual analysis, here the terms of the contract clearly specified that Chase would "perform all assigned tasks under [US Methanol's] day-to-day supervision" and that "[t]echnical direction of the work being performed by Randall Chase on assignment, and the content of such work, [would] be [US Methanol's] responsibility." J.A. 40–41. Under those circumstances, the district court did not err in concluding at the pleading stage that CDI's vicarious liability claims are barred by the borrowed servant doctrine.

IV.

Pursuant to the foregoing, we affirm the district court.

AFFIRMED