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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Roscoe Moss Manufacturing Company,

No. CV-20-08229-PCT-MTL

10 Plaintiff,

ORDER

11 v.

12 Drill-Tech Incorporated, et al.,

13 Defendants.
14

15 The Court now considers Third-Party Defendant Southwest Ground-Water
16 Consultants, Inc.’s (“Southwest”) Motion to Dismiss (the “Motion”) Defendant Drill-Tech,
17 Inc.’s (“Drill-Tech”) Third-Party Complaint (Doc. 25), arguing, first, that the Court lacks
18 subject matter jurisdiction and, second, that the Third-Party Complaint fails to state viable
19 claims for relief. The Motion is granted on jurisdictional grounds.

20 **I.**

21 This factual summary derives from Drill-Tech’s Third-Party Complaint against
22 Southwest (Doc. 17). In 2018, the Town of Prescott Valley (the “Town”) and Southwest
23 executed a professional services agreement under which Southwest would “perform siting,
24 permitting, design and drilling and testing oversight of three (3) new production wells.”
25 (Doc. 17-1 at 12.) The agreement also required that Southwest maintain oversight over
26 construction activities. (Doc. 17 ¶ 17.)

27 The Little Pete Well is one of the three new wells in the professional services
28 agreement. (Doc. 17-1 at 12.) According to the Third-Party Complaint, Southwest prepared

1 and provided “technical specifications to construct the Little Pete Well. Those technical
2 specifications were intended by [Southwest] to be included, and were included, in the bid
3 package issued by the Town to well contractors.” (Doc. 17 ¶ 8.)

4 After evaluating bids, the Town awarded the Little Pete Well construction contract
5 to Drill-Tech. (*Id.* ¶ 9.) Drill-Tech was tasked with “construct[ing] the well according to
6 [Southwest’s] technical specifications and to use the exact equipment and materials
7 specified therein without deviation.” (*Id.* ¶¶ 10, 11.) Drill-Tech alleges that only one
8 supplier manufactured the material and equipment needed to satisfy the technical
9 specifications developed by Southwest. (*Id.*) That supplier was Roscoe Moss
10 Manufacturing Company (“Roscoe Moss”). (*Id.*)

11 Drill-Tech drilled and cased the Little Pete Well following Southwest’s
12 specifications and directions. (*Id.* ¶¶ 20, 21.) Drill-Tech ordered and installed piping,
13 manufactured by Roscoe Moss, that satisfied the contractual specifications. (*Id.* ¶ 12.) The
14 pipe failed. (*Id.* ¶¶ 16, 22–23.) Drill-Tech alleges that the failure required it to provide a
15 \$30,000 discount to the Town on its construction contract. (*Id.* ¶ 25.) Drill-Tech also
16 alleges damages of at least \$94,000 associated with repairing the pipe and the well resulting
17 from the failure. (*Id.*)

18 Roscoe Moss invoiced Drill-Tech for \$103,822.40 representing material supplied
19 for the Little Pete Well project. (Doc. 1 ¶¶ 10–13.) Drill-Tech refused to pay. (*Id.* ¶ 14.)

20 Roscoe Moss launched this suit against Drill-Tech asserting breach of contract and
21 account stated. (*Id.* ¶¶ 15–19, 20–22.) Drill-Tech, in turn, counterclaimed against Roscoe
22 Moss. (Doc. 13.) Drill-Tech then filed its Third-Party Complaint against Southwest
23 alleging that, even if Drill-Tech is liable to pay Roscoe Moss, Southwest is liable to Drill-
24 Tech under the state-law theories of indemnity, contribution, and breach of express and
25 implied warranties. (Doc. 17 ¶¶ 26–37, 50–54.) Drill-Tech also claims negligence and
26 negligent misrepresentation relating to Southwest’s technical specifications and its project
27 supervision. (*Id.* ¶¶ 38–49.)

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1 **II.**

2 “A motion to dismiss for lack of subject matter jurisdiction under Rule 12(b)(1) may
3 attack either the allegations of the complaint as insufficient to confer upon the court subject
4 matter jurisdiction, or the existence of subject matter jurisdiction in fact.” *Renteria v.*
5 *United States*, 452 F. Supp. 2d 910, 919 (D. Ariz. 2006) (citing *Thornhill Publ’g Co. v.*
6 *Gen. Tel. & Elecs. Corp.*, 594 F.2d 730, 733 (9th Cir. 1979)). A court has subject matter
7 jurisdiction over claims that “arise under the Constitution, laws, or treaties of the United
8 States” or over “civil actions where the matter in controversy exceeds the sum or value of
9 \$75,000, exclusive of interest and costs, and is between” diverse parties. 28 U.S.C.
10 §§ 1331, 1332. The party asserting jurisdiction bears the burden of proof. *Indus. Tectonics,*
11 *Inc. v. Aero Alloy*, 912 F.2d 1090, 1092 (9th Cir. 1990). When evaluating a jurisdictional
12 challenge, the court assumes the veracity of a plaintiff’s allegations and “draws all
13 reasonable inferences in the plaintiff’s favor.” *Doe v. Holy See*, 557 F.3d 1066, 1073 (9th
14 Cir. 2009).

15 **III.**

16 This Court has diversity jurisdiction over this case’s underlying claims between
17 Roscoe Moss and Drill-Tech. *See* 28 U.S.C. § 1332(a)(1). As to its third-party claims
18 against Southwest, Drill-Tech acknowledges that the Court lacks both federal question and
19 diversity jurisdiction. (Doc. 17 ¶ 4.) It therefore asks that the Court exercise supplemental
20 jurisdiction over its state-law claims under 28 U.S.C. § 1367. Drill-Tech alleges the
21 following:

22 This Court may not have jurisdiction over [Southwest] as there
23 is no federal question and diversity jurisdiction is not proper.
24 Alternatively, this Court may have supplemental jurisdiction
25 over [Southwest] under 28 U.S.C. § 1367 because the third
party claims arise from the same well drilling project and the
same operative facts.

26 (*Id.*)

27 A federal court may exercise supplemental jurisdiction over state-law claims “that
28 are so related to claims in the action within such original jurisdiction that they form part of

1 the same case or controversy under Article III of the United States Constitution.” 28 U.S.C.
2 § 1367(a). Section 1367(c) provides, in part, that “[t]he district courts may decline to
3 exercise supplemental jurisdiction over a claim under subsection (a) if— (1) the claim
4 raises a novel or complex issue of State law [or] (2) the claim substantially predominates
5 over the claim or claims over which the district court has original jurisdiction.” Whether to
6 exercise supplemental jurisdiction is within the District Court’s discretion. *San Pedro*
7 *Hotel Co., Inc. v. City of Los Angeles*, 159 F.3d 470, 478 (9th Cir. 1998). When exercising
8 its discretion, the court considers the interest in “economy, convenience, fairness, and
9 comity.” *Acri v. Varian Assocs., Inc.*, 114 F.3d 999, 1001 (9th Cir. 1997).

10 Southwest apparently concedes that the third-party claims here satisfy § 1367(a)’s
11 threshold requirement for supplemental jurisdiction because they share a common
12 nucleus of operative fact—the Little Pete Well project. Southwest argues that the Court
13 should decline supplemental jurisdiction, however, because Drill-Tech’s “five (5) separate
14 contract-based and tort-based claims against [Southwest] would substantially predominate
15 over Roscoe Moss’s simple collection action.” (Doc. 25 at 5.) Drill-Tech disagrees, arguing
16 that Southwest is an indispensable party to the action because “either Roscoe Moss or
17 [Southwest] caused this well and pipe to fail.” (Doc 27 at 11.) Drill-Tech asserts that its
18 third-party claims do not present novel issues of state law. (*Id.*)

19 The Court agrees with Southwest. Maintaining Drill-Tech’s third-party causes of
20 action would lead to those claims substantially predominating over Roscoe Moss’s
21 underlying claims. The Roscoe Moss dispute involves basic breach-of-contract claims.
22 Roscoe Moss supplied material and Drill-Tech failed to pay for it. Drill-Tech countersued,
23 asserting that it is not liable for the bill.

24 The Third-Party Complaint against Southwest adds state-law tort and additional
25 contract claims to the mix. And Drill-Tech’s theories of derivative liability are not as
26 straightforward as the underlying claims. *See Schutza v. Cuddeback*, 262 F. Supp. 3d 1025,
27 1030 (S.D. Cal. 2017). As Southwest observes in its Motion, “Drill-Tech’s Third-Party
28 Complaint against [Southwest] alleges secondary and/or derivative liability, only, to that

1 of Drill-Tech.” (Doc. 25 at 5.) Lurking underneath that surface issue is the lack of
2 contractual privity because Drill-Tech was not a party to Southwest’s contract with the
3 Town. “[A]s a general rule only the parties and privies to a contract may enforce it.” *Lofts*
4 *at Fillmore Condo. Ass’n v. Reliance Commercial Const., Inc.*, 190 P.3d 733, 734 (Ariz.
5 2008) (quoting *Treadway v. W. Cotton Oil & Ginning Co.*, 10 P.2d 371, 375 (Ariz. 1932)).
6 That is, if Drill-Tech breached the contract, the focus shifts to a more complex inquiry into
7 whether Southwest is liable for all or some of those damages.

8 The elements of proof for Drill-Tech’s negligence claim and its negligent
9 misrepresentation claim differ substantially from Roscoe Moss’s breach of contract claim.
10 *See, e.g.*, Restatement (Second) of Torts § 552. The negligence and negligent
11 misrepresentation claims, by their nature, require exploring the scope of Southwest’s duty
12 to Drill-Tech. Again, Drill-Tech’s status as a third-party to the relationship between
13 Southwest and the Town implicates whether and to what extent Southwest owed a duty of
14 care to Drill-Tech. The tort claims likely require expert witness opinion to evaluate and
15 opine on the specifications for the Little Pete Well and its component materials. The tort
16 claims may also require evaluating the geological features of the surrounding area to
17 determine what role those features had, if any, in the pipe’s failure. Indeed, at oral
18 argument, Drill-Tech’s counsel confirmed the need for expert witnesses to provide
19 testimony on the third-party claims.

20 Drill-Tech argues that “[i]t would be inefficient to adjudicate the third party
21 complaint in a separate lawsuit, waste judicial resources, and run the risk of inconsistent
22 results.” (Doc. 27 at 11.) The Court disagrees. The nature of the third-party claims will
23 require an expansion of evidentiary complexity to sort through. *See* 28 U.S.C. § 1367(c)(1).
24 As described above, the third-party claims expand the original complaint’s simple breach
25 of contract controversy into a more complex tort paradigm. The predominant issue would
26 shift from whether Drill-Tech owes Roscoe Moss a discernable amount of damages to
27 whether an engineering company owed and breached a duty of care to a third party.
28 Causation would also become an inquiry. Did Southwest’s negligence cause the loss or

1 was it something else? The Arizona state court system is well-equipped to handle these
2 claims.

3 Finally, the Court has concerns that, should the controversy between Roscoe Moss
4 and Drill-Tech terminate pursuant to a settlement or summary judgment, the third-party
5 claims may remain. That will lead the Court to have *only* supplemental jurisdiction over
6 the remaining controversy. Under those circumstances, the Court may end up dismissing
7 Drill-Tech's Third-Party Complaint for lack of jurisdiction after all. *See Ventura Content,*
8 *Ltd. v. Motherless, Inc.*, 885 F.3d 597, 619 (9th Cir. 2018).

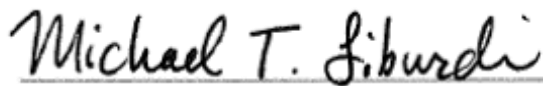
9 **IV.**

10 Accordingly,

11 **IT IS ORDERED** granting Third-Party Defendant Southwest Ground-Water
12 Consultants, Inc.'s Motion to Dismiss under Rule 12(b)(1), Fed. R. Civ. P. (Part of Doc.
13 25.) The Third-Party Complaint is dismissed for lack of jurisdiction. The Clerk of Court
14 shall terminate Southwest Ground-Water Consultants, Inc. from this action.

15 **IT IS FURTHER ORDERED** denying, as moot, the Motion to the extent it seeks
16 dismissal of the Third-Party Complaint under Rule 12(b)(6), Fed. R. Civ. P. (Part of Doc.
17 25.)

18 Dated this 20th day of January, 2021.

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22 Michael T. Liburdi
23 United States District Judge
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