IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
BIG STONE GAP DIVISION

VAUGHN & MELTON CONSULTING ENGINEERS, INC.,	)	
Plaintiff,	)	Case No. 2:16CV00005
v.	)	**OPINION AND ORDER**
TOWN OF PENNINGTON GAP, VIRGINIA,	)	By: James P. Jones United States District Judge
Defendant.	)	

Eric W. Reecher, Elliott Lawson & Minor, P.C., Bristol, Virginia, for Plaintiff and Counterclaim Defendant; C. Adam Kinser, Kinser Law PLC, Pennington Gap, Virginia, and Gregory D. Edwards, Jonesville, Virginia, for Defendant and Counterclaim Plaintiff.

In this diversity action, plaintiff Vaughn & Melton Consulting Engineers, Inc. ("V&M") has asserted three breach of contract claims against the Town of Pennington Gap, Virginia, ("Town") arising out of a greenway trail project, an all-terrain-vehicle trail project, and a drinking water system capital improvement project. V&M contends that the Town has not paid in full for services V&M performed for these projects. The Town has asserted a Counterclaim, alleging that V&M did not perform as required under its contracts with the Town. The Town has moved for partial summary judgment as to Count I of the Complaint, and

V&M has moved for summary judgment on the Counterclaim. For the following reasons, I will deny both motions.

I.

The following facts are taken from the summary judgment record.

V&M and the Town entered into a Short Form of Agreement between Owner and Engineer for Professional Services for a Greenway Trail System project ("Greenway Agreement"), effective December 19, 2011. The Greenway Agreement generally describes V&M's services as "Basic Services for Design, Bidding & Negotiating, Construction and Post-Construction Phases supporting the Town's Greenway Trail System development." (Compl. Ex. A at 1, ECF No. 1-2.) The greenway project was funded by the Virginia Department of Transportation.

On March 13, 2014, V&M sent a letter to the Town's mayor indicating, among other things, that there were no outstanding invoices at that time, but that there were some fees for which V&M had not yet billed the Town. The Town had previously received and paid two V&M invoices related to the Greenway Agreement. The Town received no additional invoices related to the Greenway Agreement for more than two years. Then, in April, 2014, V&M notified the Town in a letter that it was terminating the Greenway Agreement. The letter did not state a reason for the termination, but a representative of V&M told a representative of the Town that V&M was terminating the Greenway Agreement

due to nonpayment. In June, 2014, V&M sent the Town an invoice for $181,263.20 for work allegedly performed and expenses allegedly incurred under the Greenway Agreement.

V&M and the Town also entered into a Short Form of Agreement between Owner and Engineer for Professional Services for an all-terrain-vehicle trail system project ("ATV Trail Agreement"), effective December 19, 2011. The ATV Trail Agreement generally describes V&M's services as "Basic Services for Design, Bidding & Negotiating, Construction and Post-Construction Phases supporting the Town's Stone Mountain ATV Trail System development." (Compl. Ex. C at 1, ECF No. 1-4.) V&M performed work under the ATV Trail Agreement and invoiced the Town, but the Town has not fully paid the invoiced amounts.

V&M and the Town entered into an Agreement between Owner and Engineer for Study and Report Professional Services for a drinking water system capital improvement plan project ("CIP Agreement"), effective June 1, 2013. The CIP Agreement states that V&M will "Assemble an Infrastructure Asset Management (IAM) document and update the Capital Improvements Plan (CIP) for the Town's drinking water system." (Compl. Ex. E at 1, ECF No. 1-6.) V&M performed work under the CIP Agreement and invoiced the Town, but the Town has not fully paid the invoiced amounts.

The motions for summary judgment have been fully briefed and are ripe for decision.[1]

II.

Summary judgment is appropriate when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). To raise a genuine issue of material fact sufficient to avoid summary judgment, the evidence must be "such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). In making this determination, "the court is required to view the facts and draw reasonable inferences in a light most favorable to the nonmoving party." *Shaw v. Stroud*, 13 F.3d 791, 798 (4th Cir. 1994).

It is clear from the summary judgment record that the parties dispute a number of facts material both as to Count I of the Complaint and the Counterclaim. These disputed facts include the reason for V&M's termination of the Greenway Agreement, whether that termination was justified, whether V&M's charges are supported and reasonable, whether certain work was authorized by the Town, whether V&M performed satisfactorily under the contract, and which party

[1] I will dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court, and argument would not significantly aid the decisional process.

committed the first breach. Therefore, summary judgment is not appropriate, and I will deny the motions.

III.

For the foregoing reasons, it is **ORDERED** as follows:

1. The Motion for Summary Judgment filed by Vaughn & Melton Consulting Engineers, Inc. (ECF No. 41) is DENIED; and
2. The Motion for Summary Judgment filed by the Town of Pennington Gap, Virginia, (ECF No. 43) is DENIED.

ENTER: December 14, 2016

/s/ James P. Jones
United States District Judge