STATE OF MAINE CUMBERLAND, ss.	SUPERIOR COURT BUSINESS AND CONSUMER COURT LOCATION: PORTLAND DOCKET NO. BCD-RE-18-01

ARS ARCHITECTURE, PA, Plaintiff, v. MERRILL DRIVE, LLC, et al., Defendants.	)))))))))	COMBINED ORDER ON DEFENDANT MERRILL DRIVE, LLC'S MOTION TO DISMISS COUNT I AND COUNT II, DEFENDANT JACOB DOWLING'S MOTION TO DISMISS AND PLAINTIFF'S SECOND MOTION TO AMEND COMPLAINT

This matter comes before the Court on Defendant Merrill Drive, LLC's ("Merrill Drive") motion to dismiss Count I and Count II of—and Jacob Dowling's ("Dowling") (collectively, "Defendants") motion to dismiss *in toto*—Plaintiff ARS Architecture, PA's ("ARS") Complaint pursuant to M.R. Civ. P. 12(b)(6). ARS opposed the motions, and Defendants timely replied. The Court heard oral argument on the motions on March 2, 2018. All parties were represented through counsel and were heard. Plaintiff's Second Motion to Amend Complaint was filed after the argument and is opposed by Defendants.

PROCEDURAL POSTURE AND FACTUAL BACKGROUND

This is a dispute over work that was allegedly done by ARS for the benefit of Defendants, and for which ARS claims it has not been paid. ARS claims it is owed $101,503.48 for this work. ARS filed its four-count Complaint on September 5, 2017, seeking recovery for breach of contract (Count II), as well as equitable relief under a theory of quantum meruit (Count III) and unjust enrichment (Count IV). ARS also seeks to recover under a purported mechanic's lien (Count I) on the Defendants' premises. A copy of the mechanic's lien filed with the Knox County Registry of

Deeds (the "Mechanic's Lien") is attached to the Complaint as Exhibit B.[1] Merrill Drive seeks dismissal of only Count I and Count II. Dowling seeks dismissal of the entire Complaint.

Jacob Dowling is allegedly Merrill Drive's owner. (Pl's Compl. ¶ 4.)[2] ARS alleges that its contract for design and architectural services was with one or both Defendants, and that the work was done for the benefit of both.

STANDARD OF REVIEW

In reviewing a motion to dismiss under Rule 12(b)(6), courts "consider the facts in the complaint as if they were admitted." *Bonney v. Stephens Mem. Hosp*., 2011 ME 46, ¶ 16, 17 A.3d 123. The complaint is viewed "in the light most favorable to the plaintiff to determine whether it sets forth elements of a cause of action or alleges facts that would entitle the plaintiff to relief pursuant to some legal theory." *Id*. (quoting *Saunders v. Tisher*, 2006 ME 94, ¶ 8, 902 A.2d 830). "Dismissal is warranted when it appears beyond a doubt that the plaintiff is not entitled to relief under any set of facts that he might prove in support of his claim." *Id*.

DISCUSSION

I. THE EXHIBITS ATTACHED TO THE COMPLAINT DO NOT DEFEAT ARS'S BREACH OF CONTRACT CLAIM

Defendants' principal argument is that ARS did not have a contract with either Merrill Drive or Dowling, and urge the Court to rely on Exhibit A,[3] an attachment to the Complaint, to rule that ARS has failed to state a claim for breach of contract against them. (Merrill Drive Mot. Dismiss 4, Dowling Mot. Dismiss 7-8.)

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[1] Because this document was attached to the pleading, the Court may consider it on this motion to dismiss without converting the motion to one for summary judgment. M.R. Civ. P. 10(c). *See also Moody v. State Liq. & Lott. Comm'n*, 2004 ME 20, ¶ 10, 843 A.2d 43.

[2] The Court notes that there are two paragraphs numbered 4 in the Complaint. For the sake of simplicity, the Court simply treats both paragraphs as a single paragraph, numbered 4.

[3] See note 1 *supra*.

Exhibit A is titled "Proposal for Design Services: 15 Merrill Drive, Rockland, Maine." Page 14 of Exhibit A includes a signature line for "Jake Dowling, Winter Street LLC." The document is signed by a Joseph Russillo for ARS, but the signature line for "Jake Dowling, Winter Street LLC" is blank. At oral argument, ARS asserted that Exhibit A contains the material terms of the contract that it alleges it had with Merrill Drive and Dowling. Citing law from other jurisdictions, Defendants argue that ARS has therefore "pleaded itself out of court" by attaching Exhibit A, presumably because the signature line on page 14 of Exhibit A renders the exhibit inconsistent with ARS's allegation that it had a contract with Merrill Drive or Dowling individually. (Merrill Drive Mot. Dismiss 7, Dowling Mot. Dismiss 10-11.) *See McCready v. eBay, Inc.*, 453 F.3d 882, 888 (7th Cir. 2006); *Groeb Farms, Inc. v. Alfred L. Wolff, Inc*., No. 08-CV-14624, 2009 U.S. Dist. LEXIS 15395, at *9 (E.D. Mich. Feb. 27, 2009); *Wilson v. O'Brien*, No. 07 C 3994, 2007 U.S. Dist. LEXIS 91555, at *7 (N.D. Ill. Dec. 13, 2007).

The Court declines to accept Defendants' presumption. If the Court is to adopt any presumption when deciding a motion to dismiss, it must be to the plaintiff's advantage. *See Napieralski v. Unity Church of Greater Portland*, 2002 ME 108, ¶ 4, 802 A.2d 391 (quoting *In re Wage Payment Litig*., 2000 ME 162, ¶ 3, 759 A.2d 217) (courts must "examine the complaint in the light most favorable to the plaintiff" when deciding a motion to dismiss). In fact, one of the cases cited by Merrill Drive implicitly applied this principle in denying the defendant's motion to dismiss the plaintiff's claim for breach of contract. *Groeb Farms, Inc.,* No. 08-CV-14624, 2009 U.S. Dist. LEXIS 15395, at *8-10 ("A party may allege factually inconsistent theories of recovery . . . Plaintiff's Complaint could be read as pleading factually inconsistent theories . . . [or] as simply providing detail . . . . Plaintiff's breach of contract claim survives under either interpretation.") (emphasis removed).

ARS explicitly alleges that it had a contract with Defendants. (Pl's Compl. ¶¶ 5-7, 17-19.) Other factual allegations in the Complaint could give rise to the inference that ARS had an enforceable agreement with Defendants. (*Id.*) ARS will eventually have to reconcile the signature line of Exhibit A with its assertion at oral argument that Exhibit A contains the terms of the alleged agreement between ARS and Defendants, but it is not required to do so to survive this motion to dismiss. The Court cannot rule as a matter of law that between the allegations in the Complaint and Exhibit A there is no set of facts that would entitle ARS to relief for breach of contract. *See Bonney*, 2011 ME 46, ¶ 16, 17 A.3d 123.

Dowling raises additional grounds for his dismissal that are unique to him and are discussed in Part II of this Order, *infra*. However, Merrill Drive relies exclusively on this Court ruling that Exhibit A mandates dismissal of Count II. Because this Court rules otherwise, Merrill Drive's motion to dismiss Count II is DENIED. Merrill Drive's motion to dismiss Count I is premised on the Court dismissing Count II. (Merrill Drive Mot. Dismiss 7.) Because the Court determines that ARS has stated a claim in Count II, Merrill Drive's motion to dismiss Count I is also DENIED.

II. DOWLING'S MOTION TO DISMISS

A. Count I is Dismissed Against Dowling

ARS has conceded that its lien claim should be dismissed as to Dowling in his individual capacity. (Pl's Opp. Mot. Dismiss 6.) The Court therefore GRANTS Dowling's motion to dismiss as to Count I.

B. ARS Has Stated A Claim for Breach of Contract Against Dowling

Dowling urges dismissal of Count II based on the "conspicuous absence of any legally binding contract concluded between ARS and Mr. Dowling." (Dowling Mot. Dismiss 8.) Dowling's position is that he was never a party to any contract ARS may have had with either

Merrill Drive or Winter Street. A person who is not a party to a contract cannot be held liable for breach of that contract. *Cty. Forest Prods. v. Green Mt. Agency, Inc.*, 2000 ME 161, ¶ 42, 758 A.2d 59 (citing *Mueller v. Penobscot Valley Hosp*., 538 A.2d 294, 299 (Me. 1988)).

However, the issue before the Court on this motion is whether ARS has alleged facts that are sufficient to state a claim for breach of contract, not whether a contract concluded between ARS and Dowling. ARS's Complaint alleges that it had an agreement with Dowling whereby it would provide architectural services in return for payment, and that Dowling has not paid as agreed. (Pl's Compl. ¶¶ 4-8, 17-19.) *See Me. Energy Recovery Co. v. United Steel Structures, Inc*., 1999 ME 31, ¶ 7, 724 A.2d 1248 (breach of contract elements). ARS has thus stated a claim for breach of contract against Dowling. The Court therefore DENIES Dowling's motion to dismiss as to Count II.

C. A Plaintiff May Allege the Existence of a Contract and Seek Recovery in Equity in the Same Pleading

Dowling argues that Count III and Count IV (the "equitable claims") must be dismissed because ARS "has pleaded itself out of court" as to these counts by alleging the existence of a binding contract in the same pleading. (Dowling Mot. Dismiss 8-9.) Dowling's argument is based on the rule that recovery for quantum meruit or unjust enrichment is limited to those situations in which "there is no contractual relationship." *Nadeau v. Pitman,* 1999 ME 104, ¶14, 731 A.2d 863. *See also June Roberts Agency, Inc. v. Venture Properties, Inc.,* 676 A.2d 46, 49 n. 1 (Me. 1996).

Maine law allows a plaintiff to plead alternative, and even inconsistent, claims for relief. M.R. Civ. P. 9(e)(2). The *June Roberts Agency* Court clarified that although the existence of a contractual agreement "precludes *recovery* on a theory of unjust enrichment," a plaintiff "is not precluded from *pleading* both theories because a factfinder may find that no contract exists and may still award damages on the theory of unjust enrichment." *June Roberts Agency, Inc.,* 676 A.2d

46, 49 n. 1 (Me. 1996) (emphasis added). The Court declines to deviate from this controlling authority. That ARS has alleged the existence of a binding agreement between itself and Dowling does not foreclose its ability to pursue equitable relief.

D. Count III and Count IV State A Claim Against Dowling in His Individual Capacity

Dowling next urges dismissal of the equitable claims on the grounds that his involvement in this dispute was exclusively in his capacity as a member/ manager of Merrill Drive and not as an individual. (Dowling Mot. Dismiss 7-8, 10-11.)

A LLC is "an entity distinct from its members." 31 M.R.S. § 1504(1). A member of a LLC "is not liable, solely by reason of being a member" for a liability of the LLC. 31 M.R.S. § 1544. In order to recover in quantum meruit or unjust enrichment against a defendant, a plaintiff must prove that the defendant received a benefit from the plaintiff. *See Cummings v. Bean*, 2004 ME 93, ¶ 9, 853 A.2d 221; *Smith v. Cannell*, 1999 ME 19, ¶ 12, 723 A.2d 876.

Dowling points to language in the Complaint and Mechanic's Lien that suggests ARS's work was for the benefit of Merrill Drive, and not necessarily Dowling as an individual. (Pl's Compl. ¶ 5; Ex. B ¶¶ 4, 7.) Elsewhere, however, the Complaint and the Mechanic's Lien allege that both Defendants benefitted from ARS's work. (Pl's Compl. ¶¶ 6, 13, 21, 25; Ex. B. ¶ 5.) Dowling argues that this renders the Complaint inconsistent, with the upshot that the inconsistent allegations defeat essential elements of ARS's claims in Count III and Count IV (*i.e.* that Dowling as an individual received some benefit from ARS's labors), mandating dismissal. (Dowling Mot. Dismiss 10-11.)

The Court disagrees. *See* M.R. Civ. P. 9(e)(2). ARS's allegations against Merrill Drive do not negate those allegations that are addressed to the Defendants more broadly. To the extent that there is any ambiguity regarding who benefitted from ARS's work, that ambiguity must be

resolved in favor of the plaintiff on a motion to dismiss. *See Bonney,* 2011 ME 46, ¶ 16, 17 A.3d 123.

ARS has stated a claim against Dowling individually for equitable relief under a theory of quantum meruit or unjust enrichment. The Court therefore DENIES Dowling's motion to dismiss as to Count III and Count IV.

CONCLUSION

Based on the foregoing it is hereby ORDERED:

That Defendant Merrill Drive's motion to dismiss Count I and Count II is DENIED.

That Defendant Dowling's motion to dismiss is GRANTED IN PART AND DENIED IN PART. Dowling's motion is GRANTED as to Count I. Dowling's motion is DENIED as to Count II, Count III, and Count IV.

That Plaintiff's Second Motion to Amend Complaint is GRANTED.

Defendants shall answer Plaintiff's Amended Complaint within 21 days. The matter will be set for an initial case management conference after that.

The Clerk is requested to enter this Order on the docket for this case by incorporating it by reference. M.R. Civ. P. 79(a).

Dated: March 27, 2018

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Richard Mulhern
Judge, Business and Consumer Court