

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

GEO-TECHNOLOGY ASSOCIATES, :
INC., : C.A. No. K19L-11-019WLW
 :
 :
 Plaintiff, :
 :
 :
 CAPITAL STATION DOVER, LLC, :
 a Delaware corporation, :
 :
 :
 Defendant. :

Submitted March 12, 2020
Decided: May 15, 2020

ORDER

Upon Defendant’s Motion to Dismiss
Granted.

Patrick M. McGrory, Esquire of Tighe & Cottrell, P.A., Wilmington, Delaware;
attorney for Plaintiff.

Sally J. Daugherty, Esquire of Cohen, Seglias, Pallas, Greenhall & Furman, P.C.,
Wilmington, Delaware; attorney for Defendant.

WITHAM, R.J.

INTRODUCTION

Presently before the Court is Defendant's Motion to Dismiss the Complaint of GEO-Technology Associates Inc. pursuant to Rule 12(b) of the Delaware Superior Court Rules of Civil Procedure. After considering the Defendant's Motion, the Plaintiff's Response in Opposition, and the record, it appears to the Court that:

FACTUAL AND PROCEDURAL HISTORY

1. Geo-Technology Associates, Inc. ("GTA"), Plaintiff in this case, performed geotechnical and construction observation services for the building of three structures owned by Capital Station Dover, LLC ("Capital").¹ GTA performed such services as observation of the placement and compaction of controlled fill soils within the building sites, roadways and parking lots; testing the efforts to document compaction and evaluating the bearing capacities of the excavation; observation and testing of the concrete placement of slabs and foundations; observation of the reinforcing steel and structural steel during the construction and evaluation for compliance with the approved plans and code.² Capital failed to pay GTA in full for the services performed.³ Plaintiff brought an *in rem* mechanics' lien action, as well as an *in personum* breach of contract and Prompt Pay Act claims against Capital, and Defendant filed a Motion to Dismiss.⁴

PARTIES' CONTENTIONS

2. Defendant first claims that Plaintiff does not have standing to bring a mechanics' lien action because the services it performed are not covered by the

¹ Plaintiff's Response in Opposition to Defendant's Motion to Dismiss ¶ 1.

² *Id.*

³ *Id.* at ¶ 2.

⁴ *See Id.* at ¶ 2-3.

statute authorizing this remedy.⁵ Defendant claims that Plaintiff did not perform any services furnishing labor or materials for the erection, alteration, or repair of the structures, which would entitle Plaintiff to a lien.⁶ Defendant further claims that this Court lacks subject matter jurisdiction over the dispute because the parties' Contract requires all non-payment related disputes to be mediated as a condition precedent to litigation.⁷ Defendant claims that this dispute is not a payment dispute because it focuses on the services contracted for and allegedly not performed as opposed to the payment for these services.⁸ Defendant also argues that this Court lacks personal jurisdiction and is an improper venue for the litigation of this dispute based on the Forum and Governing Law Selection Clauses of the Contract between the parties ("Contract"), which designates Maryland as an exclusive venue for the disputes not related to payments.⁹

3. Plaintiff claims that it is entitled to a lien on the property because it did, in fact, provide labor and materials in furtherance of the construction or repair of the buildings on Defendant's property.¹⁰ Plaintiff further claims that this Court has subject matter jurisdiction over this matter because the dispute between the parties is a payment dispute, which is not covered by the Mediation Clause of the Contract.¹¹

⁵ Defendant's Motion to Dismiss Plaintiff's Complaint and Statement of Claim for Mechanics' Lien (Def. Mot.) ¶ 3-4.

⁶ *Id.* at ¶ 3.

⁷ *Id.* at ¶ 6.

⁸ *See Id.* at ¶ 7.

⁹ *Id.* at ¶ 9. The parties also agreed that Maryland law would apply to all disputes other than the payment ones.

¹⁰ Pl. Response ¶ 2, ¶ 8.

¹¹ *Id.* at ¶ 11.

Similarly, Plaintiff states that this Court has personal jurisdiction over the matter and is a proper venue because the Forum Selection Clause of the Contract does not cover payment disputes.¹² Furthermore, Plaintiff claims that enforcing the Forum Selection and the Choice of Law would be against public policy in this case.¹³

STANDARD OF REVIEW

4. Defendant appears to seek the dismissal of the Complaint based on several grounds: failure to state a claim upon which relief can be granted, lack of subject matter jurisdiction, lack of personal jurisdiction, and improper venue. On a motion to dismiss pursuant to Rule 12(b)(1), the Court should dismiss an action for lack of subject matter jurisdiction if the record shows that the Court lacks jurisdiction over the claim.¹⁴ “To prevail on a motion to dismiss pursuant to Rule 12(b)(1), a movant needs only show that the Court lacks jurisdiction.”¹⁵

5. On a motion to dismiss pursuant to Superior Court Civil Rule 12(b)(2) for lack of personal jurisdiction over a defendant, the plaintiff “bear[s] the burden to articulate a non-frivolous basis for this court's assertion of jurisdiction.12(b)(2).¹⁶ Upon a motion to dismiss for improper venue in accordance with Superior Court

¹² *Id.* at ¶ 12.

¹³ *Id.*

¹⁴ *B&B Financial Services, LLC v. RFGV Festivals, LLC*, 2019 WL 2006487 at *3 (Del. Super. May 2, 2019) (citing *Airbase Carpet Mart, Inc. v. AYA Associates, Inc.*, 2015 WL 9302894, at *2 (Del. Super. Dec. 15, 2015)).

¹⁵ *Id.*

¹⁶ *Prime Rock Energy Capital, LLC v. Vaquero Operations, Ltd.*, 2017 WL 4856851 at *2 (Del. Super. Oct. 26, 2017) (quoting *IM2 Merch. & Mfg., Inc. v. Tirex Corp.*, 2000 WL 1664168, at *4 (Del. Ch. Nov. 2, 2000)).

Rule 12(b)(3), this Court “may consider materials outside the complaint.”¹⁷ Additionally, the Court should “give effect to the terms of private agreements to resolve disputes in a designated judicial forum out of respect for the parties' contractual designation.”¹⁸

6. On a motion to dismiss pursuant to Rule 12(b)(6), the moving party bears the burden of demonstrating that “under no set of facts which could be proven in support of its [complaint] would the [plaintiff] be entitled to relief.”¹⁹ Upon this Court's review of a motion to dismiss, “(i) all well-pleaded factual allegations are accepted as true; (ii) even vague allegations are well-pleaded if they give the opposing party notice of the claim; (iii) the Court must draw all reasonable inferences in favor of the non-moving party; and (iv) dismissal is inappropriate unless the plaintiff would not be entitled to recover under any reasonably conceivable set of circumstances susceptible of proof.”²⁰

DISCUSSION

7. The Supreme Court of Delaware held that “a challenge based on lack of personal jurisdiction as to a defendant (Rule 12(b)(2)) must be ruled upon before a motion to dismiss for failure to state a claim under Rule 12(b)(6) can be considered.”²¹ Analogous to a Rule 12(b)(2) motion to dismiss for lack of personal

¹⁷ *Degregorio v. Marriott International, Inc.*, 2018 WL 3096627 at *5 (Del. Super. June 20, 2018) (quoting *Simon v. Navellier Series Fund*, 2000 WL 1597890, at *4 (Del. Ch. Oct. 19, 2000)).

¹⁸ *Id.* (quoting *Loveman v. Nusmile, Inc.*, 2009 WL 847655, at *2 (Del. Super. 2009)).

¹⁹ *Alpha Contracting Services, Inc.*, 2019 WL 151482, at *1 (Del. Super. Jan. 9, 2019) (citing *Daisy Constr. Co. v. W.B. Venables & Sons, Inc.*, 2000 WL 145818, at *1 (Del. Super. Jan. 14, 2000)).

²⁰ *Savor, Inc. v. FMR Corp.*, 812 A.2d 894, 896-97 (Del. 2002).

²¹ *Solomon v. Pathe Communications Corp.*, 672 A.2d 35, 40 (Del. 1996) (citing *Branson v. Exide Electronics Corp.*, Del. Supr., 625 A.2d 267, 269 (1993)).

jurisdiction, “a motion to dismiss premised on a forum selection clause does not challenge whether the complaint states a claim upon which relief can be granted, [but]... challenges where the plaintiff may assert his claim”²²

8. Delaware courts are usually “strongly inclined” to adhere to the widely recognized and fundamental principle of the freedom to contract.²³ The courts will not interfere unless there is “a strong showing that dishonoring the contract is required to vindicate a public policy interest even stronger than freedom of contract.”²⁴ Furthermore, “[u]pholding freedom of contract is a fundamental policy of this State.”²⁵

9. In Delaware, a Mechanic’s Lien is available “for any person having performed or furnished labor or material, or both, to an amount exceeding \$25 in or for the erection, alteration or repair of any structure...”²⁶ Liens may also be obtained for providing a variety of other services, including iron works and some improvements to the land.²⁷ Furthermore, no lien should attach in case the improvements are to the land only, unless, among other things, a contract contains “a description by the metes and bounds of the land to be affected and by a statement

²² *Id.* (internal citation omitted).

²³ *Change Capital Partners Fund I, LLC v. Volt Electrical Systems, LLC*, 2018 WL 1635006 at *4 (Del. Super. Apr. 3, 2018) (internal citation omitted).

²⁴ *Id.* (internal citation omitted).

²⁵ *Id.* (quoting *Ascension Ins. Holdings, LLC v. Underwood*, 2015 WL 356002, at *4 (Del. Ch. Jan. 28, 2015)).

²⁶ 25 *Del. C.* § 2702(a).

²⁷ 25 *Del. C.* § 2702(b).

of the general character of the work to be done...”²⁸ The Delaware Mechanics’ Lien Statute must be strictly construed.²⁹

10. In this case, the dispute appears to be a payment one. The dispute focuses on one party not paying the other, and the reason for this non-payment is irrelevant for the purposes of classifying the dispute. Therefore, this Court has subject matter jurisdiction over the claim because payment disputes are not required to be submitted to mediation, according to the Contract.³⁰ This Court has personal jurisdiction over the parties but is an improper venue because the parties agreed to designate Maryland as the exclusive forum for their dispute resolutions.³¹ “Where the action is filed in a proper venue but the contract contains a forum selection clause, the Court should decline to proceed where the parties agreed that litigation should be conducted in another forum.”³² A forum selection clause should be enforced “unless [the party seeking to invalidate the clause] could clearly show that enforcement would be unreasonable and unjust, or that the clause was invalid for such reasons as fraud or overreaching.”³³

11. Plaintiff claims that the choice of forum applies to non-payment disputes only and that a different provision governs payment disputes.³⁴ Provision 4 of the Contract indeed relates to payments, but it does not refer to the manner in which

²⁸ 25 Del. C. § 2703.

²⁹ *King Const., Inc. v. Plaza Four Realty, LLC*, 976 A.2d 145, 152 (Del. 2009).

³⁰ Compl. Ex. C at 2 ¶ 16.

³¹ *Id.*

³² *Double Z Enterprises, Inc. v. General Marketing Corp.*, 2000 WL 970718 at *2 (Del. Super. June 1, 2000).

³³ *Id.* (quoting *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 15 (1972)).

³⁴ Pl. Response ¶ 12.

payment disputes are to be litigated.³⁵ Provision 16, however, states that “all claims, disputes or other matters in question arising under this Agreement shall be determined by a state or federal court located in Maryland.”³⁶ Reading these two provisions together points out to the parties’ intention to litigate all disputes, including the payment ones, in the state of Maryland.

12. Additionally, 25 *Del. C.* § 2706 provides that “any contract, any agreement or understanding whereby the right to file or enforce any lien created under this chapter is waived, shall be void as against public policy and wholly unenforceable.”³⁷ Because a Mechanics’ Lien claim is an *in rem* action and can only be litigated where the property is located, it follows that contracting around litigating the Lien in Delaware in light of 25 *Del. C.* § 2706 would not be enforceable.³⁸ However, Plaintiff here does not fall under the category of person’s entitled to a Mechanics’ Lien based on the services performed.

13. The provisions of the Mechanics’ Lien statute governing persons entitled to a Mechanics’ Lien do not represent an exclusive list of types of work for which such liens may be obtained.³⁹ However, the list is “an explanation and expansion of the general rule stated in [25 *Del. C.* § 2702(a)] which permits the obtaining of a lien by ‘any person having performed or furnished labor or material, or both, . . . in

³⁵ See Compl. Ex. C at 2 ¶ 4.

³⁶ See *Id.*; see also Compl. Ex. C at 2 ¶ 16.

³⁷ 25 *Del. C.* § 2706(b).

³⁸ *Iannotti v. Kalmbacher*, 156 A. 366, 367 (Del. Super. 1931) (stating that Mechanics’ Lien actions are *in rem* actions); See also *Delmarva Power & Light Co. v. City of Seaford*, 523 A.2d 973, 975 (Del. Super. 1987) (internal citations omitted) (stating that *in rem* actions are to be brought where the property is located).

³⁹ *Wilmington Trust Co. v. Branmar, Inc.*, 353 A.2d 212, 216 (Del. Super. 1976).

or for the erection, alteration, or repair of any structure.”⁴⁰ In *Branmar*, the plaintiff performed such services as (a) installing a new entrance driveway into the shopping center, and (b) installing plantings required by New Castle County in a project of this nature.⁴¹ The Court found that the types of services fell under the statutory requirements.⁴² In this case, Plaintiff performed such services as *observations and testing*.⁴³ Because Delaware courts held that the Mechanics’ Lien Statute must be strictly construed, Plaintiff’s services do not fall under the statute based on their general character. Additionally, under the American Rule, “prevailing litigants are responsible for the payment of their own attorney’s fees.”⁴⁴ Moreover, the Contract in this case does not provide for Capital to recover attorney’s fees. Accordingly, Defendant is not entitled to the fees.

CONCLUSION

14. For the reasons mentioned above, Defendant’s Motion to Dismiss is **GRANTED**.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.
Resident Judge

WLW/dmh

⁴⁰ *Id.* (quoting 25 Del. C. § 2702(a)).

⁴¹ *Id.* at 213.

⁴² *See Id.* at 216.

⁴³ Pl. Response ¶ 1.

⁴⁴ *Goodrich v. E.F. Hutton Group, Inc.*, 681 A.2d 1039, 1044 (Del. 1996) (quoting *Walsh v. Hotel Corp. of America*, 231 A.2d 458, 462 (Del. 1967)).