

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

ARDEN INVESTMENTS, LLC, )  
)  
Plaintiff, )  
)  
v. ) C.A. No. N24C-02-098 JRJ  
)  
JOHNATHAN LEBRON and )  
LEBRON CONSTRUCTION LLC, )  
)  
Defendants. )  
)

Date Submitted: September 9, 2024  
Date Decided: September 19, 2024

**MEMORANDUM OPINION**

*Upon Defendant Johnathan Lebron’s Motion to Dismiss: **GRANTED***  
*Upon Defendant Lebron Construction LLC’s Motion to Dismiss: **GRANTED in***  
**part, and DENIED in part**

Mark A. Denney, Jr., Esq., Baird Mandalas Brockstedt & Federico, LLC, 2711 Centerville Road, Suite 401, Wilmington, DE 19808. Attorney for Plaintiff.

Daniel F. McAllister, Esq., McAllister Firm LLC, 800 N. King Street, Suite 203, Wilmington, DE 19801. Attorney for Defendants.

**Jurden, P.J.**

## I. INTRODUCTION

This civil action arises from an alleged contract between Arden Investments, LLC (“Plaintiff”), Lebron Construction LLC, and Johnathan Lebron (collectively “Defendants”) to complete construction work on a home. Plaintiff claims three causes of action against Lebron Construction LLC, including Breach of Contract (“Count I”), Breach of the Implied Covenant of Good Faith and Fair Dealing (“Count II”), and Fraud (“Count III”). Plaintiff alleges Lebron Construction LLC failed to perform the bargained-for scope of work and made a series of misrepresentations. Plaintiff claims Fraud (“Count IV”) against Johnathan Lebron (“Mr. Lebron”), invoking the Personal Participation Doctrine to sue Mr. Lebron in his individual capacity. Defendants move to dismiss Plaintiff’s Amended Complaint for failure to state a claim and insufficient pleading. Lebron Construction LLC argues Plaintiff terminated the contract before any breach occurred, warranting the dismissal of Counts I and II. Lebron Construction LLC and Mr. Lebron both argue that Plaintiff failed to sufficiently plead fraud according to Civil Rule 9(b)<sup>1</sup>, warranting the dismissal of Counts III and IV. For the reasons that follow, Lebron Construction LLC’s Motion to Dismiss Counts I and II are **DENIED**, while Lebron Construction LLC and Johnathan Lebron’s Motions to Dismiss Counts III and IV are **GRANTED**.

---

<sup>1</sup> Del. Super. Ct. Civ. R. 9(b). Pleading special matters – fraud, negligence, mistake, condition of mind.

## II. BACKGROUND

### A. Alleged Facts

On June 26, 2023, Plaintiff and Defendants completed a walk-through of a Cedar Street home in anticipation of completing home improvements and renovations.<sup>2</sup> Following the walk-through, from July 6, 2023 to July 11, 2023, Plaintiff and Defendants exchanged communications.<sup>3</sup> On July 11, 2023, Plaintiff notified Mr. Lebron that Plaintiff chose him as its contractor.<sup>4</sup>

Plaintiff alleges that throughout its time working with Defendants, Defendants failed to complete the bargained-for scope of work and made a series of misrepresentations while Plaintiff continued making payments.<sup>5</sup> Specifically, Plaintiff alleges that Defendants did not complete the agreed upon work by the original September 21, 2023 deadline, nor the extended October 25, 2023 deadline.<sup>6</sup>

Plaintiff also alleges Defendants made the following misrepresentations:

- On August 7, 2023, Defendants represented to Plaintiff that permits were approved, even though on November 3, 2023, the City of Wilmington confirmed there were no permits obtained.<sup>7</sup>
- On August 31, 2023 or September 1, 2023, Defendants requested an additional \$2,000 following the selection of items at Home Depot, even though Plaintiff never received all the selected materials.<sup>8</sup>

---

<sup>2</sup> Am. Compl. ¶ 3, 5, Trans. ID 72861033 (April 30, 2024).

<sup>3</sup> Am. Compl. ¶ 5.

<sup>4</sup> Am. Compl. ¶ 6.

<sup>5</sup> Am. Compl. ¶ 3.

<sup>6</sup> Am. Compl. ¶¶ 13-14, 18.

<sup>7</sup> Am. Compl. ¶ 9; Am. Compl. Ex. I at ARD0021; Am. Compl. Ex. AA at ARD0071.

<sup>8</sup> Am. Compl. ¶ 12.

- On September 18, 2023, Plaintiff discovered that Defendants did not repair a floor, rather Defendants merely used molding and scraps to make the floor appear repaired.<sup>9</sup>
- On October 5, 2023, Lebron Construction LLC extended its deadline to perform due to a delay in flooring via text message.<sup>10</sup> Plaintiff later confirmed with LL Flooring that Defendants never ordered the flooring.<sup>11</sup>
- On October 6, 2023, Mr. Lebron claimed the cabinets were purchased.<sup>12</sup> Plaintiff later confirmed with Master Countertops that Defendants never ordered or paid for the cabinets.<sup>13</sup>
- On October 19, 2023, Mr. Lebron claimed the plumbing was fixed via text message.<sup>14</sup> Plaintiff later confirmed with two plumbers that Defendants did not fix the plumbing according to code.<sup>15</sup>

As a result of the allegations noted above, Plaintiff terminated the contract with Defendants on October 29, 2023.<sup>16</sup>

## **B. Procedural History**

On February 9, 2024, Plaintiff filed its Complaint alleging breach of contract and breach of the implied covenant of good faith and fair dealing.<sup>17</sup> On April 30, 2024, Plaintiff filed an Amended Complaint alleging fraud against Lebron Construction LLC and Mr. Lebron in his individual capacity.<sup>18</sup>

---

<sup>9</sup> Am. Compl. ¶ 13.

<sup>10</sup> Am. Compl. ¶ 14; Am. Compl. Ex. Q at ARD0042.

<sup>11</sup> Am. Compl. ¶ 14; Am. Compl. Ex. Q at ARD0042.

<sup>12</sup> Am. Compl. ¶ 15.

<sup>13</sup> Am. Compl. ¶ 15; Am. Compl. Ex. R at ARD0044.

<sup>14</sup> Am. Compl. ¶ 16; Am. Compl. Ex. T at ARD0048.

<sup>15</sup> Am. Compl. ¶ 16; Am. Compl. Ex. T at ARD0048.

<sup>16</sup> Am. Compl. ¶ 19.

<sup>17</sup> Compl. ¶ 25, 29, Trans. ID 72005543 (February 9, 2024).

<sup>18</sup> Am. Compl. ¶¶ 31-40.

### III. STANDARD OF REVIEW

Pursuant to Delaware Superior Court Civil Rule 12(b)(6), the Court may dismiss an action for failure to state a claim upon which relief can be granted.<sup>19</sup> In reviewing a motion to dismiss, the Court accepts all well-pled allegations as true and draws every reasonable factual inference in favor of the non-moving party.<sup>20</sup> To survive a motion to dismiss, the non-moving party must show there is a reasonable conceivability for their contentions.<sup>21</sup> The Court will dismiss a complaint only if it appears “with reasonable certainty that, under any set of facts that could be proven to support the claims asserted, the plaintiff would not be entitled to relief.”<sup>22</sup>

### IV. DISCUSSION

#### A. Count I – Breach of Contract

To survive a motion to dismiss for failure to state a breach of contract claim, the plaintiff must demonstrate: the existence of the contract – whether express or implied; breach of an obligation imposed by the contract; and damages resulting from the breach.<sup>23</sup>

The Amended Complaint alleges that Plaintiff entered into a contract with Defendants through an agreement to perform work that was memorialized by

---

<sup>19</sup> Del. Super. Ct. Civ. R. 12(b)(6).

<sup>20</sup> Del. Super. Ct. Civ. R. 12(b)(6).

<sup>21</sup> *Cent. Mortgage Co. v. Morgan Stanley Mortgage Cap. Holdings, LLC*, 27 A.3d 531, 536-537 (Del. 2011).

<sup>22</sup> *Clinton v. Enterprise Rent-A-Car Co.*, 977 A.2d 892, 895 (Del. 2009).

<sup>23</sup> *VLIW Tech., LLC v. Hewlett-Packard Co.*, 840 A.2d 606, 612 (Del. 2003).

Plaintiff's monetary payments.<sup>24</sup> Defendants do not contest the existence of a contract with Plaintiff, but even if they did, the allegation of the existence of a contract meets the general pleading requirements of Civil Rule 12(b)(6).

The Amended Complaint alleges multiple breaches of obligations imposed by the contract, including:

- Plaintiffs downloaded the Defendants' software and completed bathroom and kitchen layouts themselves when Defendants failed to complete them.<sup>25</sup>
- Defendants failed to complete the scope of work by the original deadline of September 21, 2023.<sup>26</sup>
- Two days prior to the extended deadline of October 23, 2023, the agreed upon work was not close to completion.<sup>27</sup>
- The alleged misrepresentations previously listed.<sup>28</sup>

Defendants state Plaintiff failed to allege Defendants breached any obligation under the contract.<sup>29</sup> The Court disagrees. The above allegations of breach meet the general pleading requirements of Civil Rule 12(b)(6).

Lastly, the Amended Complaint alleges Plaintiff has incurred monetary damage caused by the breach.<sup>30</sup> Specifically, Plaintiff alleges damages in the amount of \$34,700.00 paid to Lebron Construction LLC and \$43,482.05 for the damage to Plaintiff's property and the corrective work required to fix Defendant's

---

<sup>24</sup> Am. Compl. ¶ 25.

<sup>25</sup> Am. Compl. ¶¶ 10-11.

<sup>26</sup> Am. Compl. ¶ 13.

<sup>27</sup> Am. Compl. ¶ 18.

<sup>28</sup> See Section II(A) – Allegations.

<sup>29</sup> Def. Lebron Construction LLC's Mot. ¶ 8.

<sup>30</sup> Am. Compl. ¶ 26.

breach.<sup>31</sup> Defendants do not contest the existence or amount of damages, but even if they did, Plaintiff's allegation of damages meets the general pleading requirements of Civil Rule 12(b)(6).

Accepting the above allegations as true and drawing all reasonable factual inferences in favor of the non-movants, Plaintiff has shown there is a reasonable conceivability for its contentions by pointing to the existence of a contract, a breach of said contract, and resulting damages. Accordingly, Lebron Construction Company LLC's Motion to Dismiss is **DENIED** as to Count I.

#### **B. Count II – Breach of Implied Covenant of Good Faith and Fair Dealing**

The implied covenant of good faith and fair dealing is used to imply terms into a contract that were not expressly included in the contract's provisions.<sup>32</sup> "Parties are liable for breaching the covenant when their conduct frustrates the overarching purpose of the contract by taking advantage of their position to control implementation of the agreement's terms."<sup>33</sup> To successfully plead "a breach of an implied covenant of good faith and fair dealing, the plaintiff must allege a specific implied contractual obligation, a breach of that obligation by the defendant, and resulting damage to the plaintiff."<sup>34</sup>

---

<sup>31</sup> Am. Compl. ¶ 26.

<sup>32</sup> *Patel v. State Farm Fire & Casualty Co.*, 2024 WL 3425787, at \*2 (Del. Super. Ct. July 16, 2024).

<sup>33</sup> *Patel*, 2024 WL 3425787, at \*2 (citing *Dunlap v. State Farm Fire and Casualty Co.*, 878 A.2d 434, 442 (Del. 2005)).

<sup>34</sup> *Cantor Fitzgerald, L.P. v. Cantor, et al.*, 1998 WL 842316, at \*1 (Del. Ch. Nov. 10, 1998).

The Amended Complaint alleges that there are implied contractual obligations in the contract, including Defendant’s obligation to perform the work and obtain proper permits while refraining from causing damages, creating undue delay, and making misrepresentations.<sup>35</sup> Plaintiff further alleges that Defendants breached the covenant “purposefully and in bad faith” and that Plaintiff was damaged by Defendants’ breach.<sup>36</sup>

A party may plead both Breach of Contract and Breach of Implied Covenant of Good Faith and Fair Dealing claims if the party pleads additional facts that “provide a separate basis for its implied covenant . . . claim.”<sup>37</sup> Here, Plaintiff uses identical facts to allege Counts I and II. Specifically, the Amended Complaint states that Plaintiff “repeats and realleges each and every allegation contained in the above paragraphs . . .”<sup>38</sup> Plaintiff does not separate facts that are indicative of breach of contract from those that show a violation of the implied covenants. Instead, Plaintiff references Defendants’ previously alleged misrepresentations as grounds for both causes of action.<sup>39</sup>

---

<sup>35</sup> Am. Compl. ¶ 25.

<sup>36</sup> Am. Compl. ¶ 29.

<sup>37</sup> *Cent. Mortgage Co.*, 27 A.3d at 539.

<sup>38</sup> Am. Compl. ¶ 27.

<sup>39</sup> Am. Compl. ¶ 29.

Further, a “plaintiff must allege . . . how the violation of [the implied covenant] obligation denied the plaintiff the fruits of the contract.”<sup>40</sup> The Court finds that Plaintiff’s recitation of the breach of contract damages alleges an injury related to Plaintiff’s monetary interests and its ability to complete the construction as contemplated by the contract.

Despite Plaintiff’s questionable pleadings of a separate basis for its implied covenant claim, Lebron Construction LLC does not challenge Count II based on Plaintiff’s pleadings. The LLC Motion merely quotes a case, stating that the use of such an implied covenant should be “rare.”<sup>41</sup> Although the Court agrees that the use of the implied covenant should be rare to avoid circumventing parties’ agreements, Plaintiff has pled facts that, without contest, allege unreasonable conduct under implied covenants which caused harm to Plaintiff. Accepting the above allegations as true and drawing all reasonable factual inferences in favor of the non-movants, Plaintiff has shown there is a reasonable conceivability for its contentions by pointing to specific implied covenants, breaches of said covenants, and resulting

---

<sup>40</sup> See *Data Centers, LLC v. 1743 Holdings LLC*, 2015 WL 9464503, at \*7 (Del. Super. Ct. Oct. 27, 2015) (Motion to Dismiss claim for breach of the implied covenant of good faith and fair dealing denied because plaintiff properly alleged that defendant’s conduct “deprived it of the ability to complete the project as contemplated by contracts.”); *Kuroda v. SPJS Holdings, L.L.C.*, 971 A.2d 872, 888 (Del. Ch. 2009) (Motion to Dismiss claim for breach of the implied covenant of good faith and fair dealing granted because plaintiff did not allege an injury to its contractual interest other than defendant’s failure to pay money plaintiff was entitled to under the contract).

<sup>41</sup> Def. Lebron Construction LLC’s Mot. ¶ 7 (citing *Cincinnati SMSA Limited Partnership v. Cincinnati Bell Cellular Sys. Co.*, 708 A.2d 989, 992 (Del. 1998)).

damages. If a jury believes the terms of the contract are insufficient to justify finding a breach of the contract, it may alternatively find that the alleged conduct was a breach of the implied covenant.<sup>42</sup>

Accordingly, Lebron Construction Company LLC's Motion to Dismiss is **DENIED** as to Count II.

### **C. Count III – Fraud Against Lebron Construction LLC**

Pursuant to Delaware Superior Court Civil Rule 9(b), averments of fraud must be stated with particularity.<sup>43</sup>

To state a claim for fraud, a plaintiff must plead with particularity to the following elements: 1) a false representation of material fact; 2) the defendant's knowledge of or belief as to the falsity of the representation or the defendant's reckless indifference to the truth of the representation; 3) the defendant's intent to induce the plaintiff to act or refrain from acting; 4) the plaintiff's action or inaction taken in justifiable reliance upon that representation; and 5) damage to the plaintiff as a result of such reliance.<sup>44</sup>

Plaintiff alleges that Defendants made “numerous false representations of material fact,”<sup>45</sup> referring to the alleged facts previously listed.<sup>46</sup> “To satisfy Civil Rule 9(b), a complaint must allege: (1) the time, place, and contents of the false

---

<sup>42</sup> See *Ridley v. Bayhealth Med. Ctr., Inc.*, 2018 WL 1567609, at \*9 (Del. Super. Ct. Mar. 20, 2018) (Motion to Dismiss claim for breach of the implied covenant of good faith and fair dealing denied because it was “too early to rule out the possibility that the implied covenant might apply.”).

<sup>43</sup> Del. Super. Ct. Civ. R. 9(b).

<sup>44</sup> *Sens Mech., Inc. v. Dewey Beach Enterprises, Inc.*, 2015 WL 4498900, at \*3 (Del. Super. Ct. June 23, 2015); see also *Lord v. Souder*, 748 A.2d 393, 402 (Del. 2000).

<sup>45</sup> Am. Compl. ¶ 31.

<sup>46</sup> See *supra* Section II(A) – Allegations.

representation; (2) the identity of the person making the representation; and (3) what the person intended to gain by making the representations.”<sup>47</sup> After piecing together information from the allegations in the Amended Complaint and exhibits attached thereto, the Court finds there is only one factual allegation that meets this particularity requirement. The successful allegation is that on August 7, 2023, Mr. Lebron represented to Plaintiff that permits were approved, even though on November 3, 2023, the City of Wilmington confirmed there were no permits obtained.<sup>48</sup> The Amended Complaint contends that Defendants intended to induce Plaintiff to continue providing funds when they made this misrepresentation.<sup>49</sup>

The following two elements, Defendants’ knowledge of falsity and Defendants’ intent to induce, may be averred generally.<sup>50</sup> The Amended Complaint alleges that “Defendant Lebron Construction LLC had knowledge of the falsity of the representations”<sup>51</sup> and “Defendant Lebron Construction LLC had the intent to induce Plaintiff to act, including by providing additional funds . . . .”<sup>52</sup> These allegations meet the requirements of Civil Rule 9(b) for elements two and three of fraud.

---

<sup>47</sup> *EZLinks Golf, LLC v. PCMS Datafit, Inc.*, 2017 WL 1312209, at \*3 (Del. Super. Ct. Mar. 13, 2017) (citing *Abry Partners V, L.P. v. F & W Acquisition LLC*, 891 A.2d 1032 (Del. Ch. 2006)).

<sup>48</sup> Am. Compl. ¶ 9; Am. Compl. Ex. I at ARD0020; Am. Compl. Ex. AA at ARD0071.

<sup>49</sup> Am. Compl. ¶ 33.

<sup>50</sup> Del. Super. Ct. Civ. R. 9(b).

<sup>51</sup> Am. Compl. ¶ 32.

<sup>52</sup> Am. Compl. ¶ 33.

The Amended Complaint also alleges that “Plaintiff’s actions, including payments, or inactions, including not taking corrective actions, not inspecting or enforcing agreed-upon deadlines, were taken in justifiable reliance upon Defendant Lebron Construction LLC’s representations.”<sup>53</sup> This is sufficient to meet the particularity requirement for the fourth element of fraud because the Amended Complaint explains the actions taken by Plaintiff in response to the alleged misrepresentations.

Although Plaintiff meets the particularity requirements of the first four elements of fraud for one of their allegations, Plaintiff fails to plead fraud damages with particularity. Allegations of damages based on fraud may not “simply ‘rehash’ the damages allegedly caused by the breach of contract.”<sup>54</sup> Failure to plead separate damages is an independent ground for dismissal.<sup>55</sup> The Amended Complaint simply states “Plaintiff has suffered damages . . .” from the fraud.<sup>56</sup> Plaintiff specifically alleges damages in the amount of (1) \$34,700.00 paid to Defendants, (2) \$43,482.05

---

<sup>53</sup> Am. Compl. ¶ 34.

<sup>54</sup> *ITW Global Inv. Inc. v. Am. Indus. Partners Cap. Fund IV, L.P.*, 2015 WL 3970908, at \*5 (Del. Super. Ct. June 24, 2015) (dismissing claim for fraud where plaintiff pleaded materially identical damages); *See also Ridley*, 2018 WL 1567609, at \*6 (dismissing claim for fraud where plaintiff’s damages claims “are virtually identical”); *Khushaim v. Tullow, Inc.*, 2016 WL 3594752, at \*6–7 (Del. Super Ct. June 27, 2016) (dismissing claim for fraud where plaintiff “merely pled identical damages”); *Greenstar, LLC v. Heller*, 934 F.Supp.2d 672, 697 (Del. 2013) (claim for fraud failed because plaintiff failed to demonstrate fraud damages “separate and apart from” the alleged breach of contract damages).

<sup>55</sup> *Ridley*, 2018 WL 1567609, at \*6.

<sup>56</sup> Am. Compl. ¶ 35.

of remedial work, and (3) attorneys' fees. However, Plaintiff connects these damages to both its breach of contract and misrepresentation claims.<sup>57</sup> In fact, the monetary figures are used as damages for Count I and are simply realleged in Count III.<sup>58</sup> Even the attorneys' fees are claimed as a remedy for "having to bring an action to enforce a contract, and because of Defendants' bad faith as exhibited by their repeated misrepresentations."<sup>59</sup> Nowhere in its pleadings does Plaintiff allege damages that solely resulted from Defendants' alleged fraud. Therefore, Plaintiff fails to separate breach of contract damages from fraud damages as required by Civil Rule 9(b).

Accordingly, Plaintiff fails to plead fraud with sufficient particularity and Lebron Construction LLC's Motion to Dismiss is **GRANTED** as to Count III.

#### **D. Count IV – Fraud Against Johnathan Lebron**

The Lebron Motion asserts that Delaware law supports Mr. Lebron having a separate legal existence from Lebron Construction LLC.<sup>60</sup> The Court is not required to review this assertion since Count IV was not pled with the particularity required by Civil Rule 9(b)<sup>61</sup> as explained in the Court's analysis of Count III.<sup>62</sup> Accordingly, Johnathan Lebron's Motion to Dismiss is **GRANTED** as to Count IV.

---

<sup>57</sup> Am. Compl. ¶ 26.

<sup>58</sup> Am. Compl. ¶ 26, 30.

<sup>59</sup> Am. Compl. ¶ 44.

<sup>60</sup> Def. Johnathan Lebron's Mot. ¶ 14.

<sup>61</sup> Del. Super. Ct. Civ. R. 9(b).

<sup>62</sup> See Section IV(C) – Count III.

## V. CONCLUSION

Accepting all well-pled allegations as true and drawing every reasonable factual inference in favor of the non-moving party, the Court finds that Plaintiff showed a reasonable conceivability for its contentions regarding Counts I and II. Therefore, Lebron Construction LLC's Motion to Dismiss is **DENIED** regarding Count I and Count II.

However, the Court finds that due to the lack of required particularity, Plaintiff insufficiently pled Counts III and IV. Therefore, Lebron Construction LLC's Motion to Dismiss is **GRANTED** regarding Count III and Johnathan Lebron's Motion to Dismiss is **GRANTED** in full.

Accordingly, Plaintiff's surviving claims are Count I for Breach of Contract against Lebron Construction LLC and Count II for Breach of the Implied Covenant of Good Faith and Fair Dealing against Lebron Construction LLC.

**IT IS SO ORDERED.**

/s/ Jan R. Jurden  
Jan R. Jurden, President Judge

cc: Prothonotary