IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

ADVANCED PAVING SERVICES, LLC., Plaintiff, v. METRA INDUSTRIES, INC., Defendant.	C.A. No. N25C-03-232 SSA
METRA INDUSTRIES, INC., Counter-Claim Plaintiff, v. ADVANCED PAVING SERVICES, LLC., Counter-Claim Defendant.	
METRA INDUSTRIES, INC., Third-Party Plaintiff, v. ARTESIAN WATER COMPANY, INC., Third-Party Defendant.	

Date Submitted: August 7, 2026
Date Decided: September 4, 2026

On Artesian Water Company, Inc.'s Motion for Judgment on the Pleadings

DENIED

Kasey DeSantis, Esq., FOX ROTHSCHILD, LLP, *Attorney for Third-Party Defendant Artesian Water Company*.

Gaston Loomis, Esquire, McElroy, Deutsch, Mulvaney & Carpenter, LLP and William Groscup (*pro hac vice*), Watt, Tieder, Hoffar & Fitzgerald, LLP, *Attorneys for Defendant/Counter-Claim Plaintiff/Third-Party Plaintiff Metra Industries*.

Augusthy, J.

The Court must determine whether a release in a later agreement bars this action for breach of contract, quantum meruit, and unjust enrichment.[1] Third-Party Defendant Artesian Water Company, Inc. ("Artesian") moves for judgment on the pleadings, contending the First Amendment to its Contractor Agreement with Metra Industries, Inc. ("Metra") released and fully satisfied all of Metra's claims. Metra counters that the First Amendment's release "is limited to restoration work and preserves Metra's change order rights";[2] thus, Metra asserts it may pursue its claims for the extra work which Artesian has not paid for.

Factual Background

The Project, Contract, and Amendment

In April 2023, Artesian contracted with Metra as general contractor for the Kirkwood Highway Water Main Renewal project in New Castle County.[3] The Contractor Agreement set a lump sum price, with further compensation available "on a unit-price and change-order basis for extra work."[4] Metra had to submit change orders in writing to Artesian within five business days; such orders were "valid only when accepted in writing by Artesian."[5] Metra agreed to indemnify Artesian against claims arising from Metra's acts or omissions; the Contract contains

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[1] D.I. 14; D.I. 35. The Third-Party Complaint also stated claims for indemnification and contribution, which Artesian challenged. After oral argument, Metra agreed to their dismissal.
[2] D.I. 38, at 2.
[3] *See* Contractor Agreement [hereinafter "Contract"], D.I. 35, Ex. A, ¶¶ 1, 4, at 1.
[4] D.I. 14, ¶ 15. *See also* Contract ¶ 9.
[5] Contract ¶ 7(p).

no indemnity running the other way.[6] The parties designated that the Contract "be construed as jointly drafted…."[7]

The Contract required Metra to renew pipe, hydrants, and water services; it also covered "all related appurtenances and restoration."[8] Further, "within 100 calendar days from the date of first shipment of pipe for the project[,]" the Contract obligated Metra to "have the water mains, services, fire hydrants, appurtenances, related facilities and restoration complete…."[9] Metra subcontracted restoration to Advanced Paving Services, LLC ("APS").[10]

On February 27, 2024, Metra and Artesian executed the First Amendment to the Contractor Agreement,[11] in which they acknowledged remaining restoration work.[12] The First Amendment reduces the total lump sum price—i.e., the amount Artesian owes to Metra—by $597,250, to an "Amended Lump Sum Price" of $2,391,750.[13] Recognizing APS's role as the restoration subcontractor, the Amendment restructures that $597,250 into three payments for Artesian to make

[6] Contract ¶ 7(gg).
[7] Contract ¶ 12.
[8] Contract ¶ 4.
[9] Contract ¶ 6.
[10] D.I. 14, ¶ 4; D.I. 35, Ex. B, at 1.
[11] D.I. 28, ¶ 43.
[12] First Am., at 1. The parties defined "Remaining Restoration Work" to "include all labor, materials, and other actions necessary to complete the work[.]" *Id.*
[13] First Am. ¶ 1.

directly to APS: \$300,000, \$100,000, and \$197,250, each triggered by a stage of APS's completion.[14]

Aside from a then-pending change order,[15] the Amendment establishes that those "three payments" constitute "full and complete satisfaction of any Artesian payment obligations related to restoration work under the Contractor Agreement…."[16] For "changes or unforeseen circumstances relating to the Remaining Restoration Work," the Amendment also preserves Metra's right to submit change orders pursuant to the Contractor Agreement's terms.[17] In short, "[u]nder no circumstances will Artesian's total obligation for the Remaining Restoration Work exceed \$597,250.00, excepting any valid change orders submitted to and approved by Artesian."[18]

Additional provisions flesh out the three payments, amended lump sum payment, and other obligations. Amendment Paragraph 8 leaves all other Metra–APS payment obligations with Metra and restates Metra's indemnity to Artesian.[19] Paragraph 9 provides that, "[e]xcepting the Pending Change Order and any change

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[14] *Id.* ¶¶ 2–4.

[15] Paragraph 5 recognizes "a pending, informal request from Metra related to extra work associated with added concrete thickness…." *Id.* ¶ 5. It discusses "any Artesian payment obligations related to restoration work under the Contractor Agreement (excepting the Pending Change Order, if approved by Artesian), as performed by Contractor or APS…." *Id.*

[16] *Id.* ¶ 5.

[17] *Id.* ¶ 5.

[18] *Id.* ¶ 6.

[19] *Id.* ¶ 8.

orders approved in accordance with paragraph 7(p)…, Artesian's payment of the Amended Lump Sum Price to [Metra] shall be in full and complete satisfaction of Artesian's payment obligations under the Contractor Agreement."[20] And under Paragraph 10, "[e]xcept as modified in this First Amendment, all other terms and conditions of the Contractor Agreement remain unchanged and shall continue in full force and effect."

Metra's Performance

According to Metra, difficulties arose "[a]lmost immediately" when it "began performing work on the Project as scheduled."[21] Various conditions "materially impacted the sequencing, cost, and duration of Metra's work."[22] Artesian allegedly "directed [Metra] to perform significant extra work" and denied "Metra's verbal request for schedule relief…."[23] Metra says these circumstances prolonged its performance by 570 days, with outstanding costs quantified at $3,381,250.73.[24] Yet, "[d]espite Metra's good faith efforts to complete the Project," it asserts Artesian has not paid "amounts due for out of scope work and for additional costs attributable to

[20] *Id*. ¶ 9.
[21] D.I. 14, ¶ 18.
[22] D.I. 14, ¶ 18. For instance, Metra alleges that it "encountered extensive differing site conditions, conflicting directives from Artesian and the Delaware Department of Transportation…, deficiencies in the Owner-provided plans and specifications, and logistical constraints that materially impacted the sequencing, cost, and duration of Metra's work." *Id.*
[23] D.I. 14, ¶¶ 19, 21.
[24] *Id*. ¶¶ 21–23, 25, 26.

Owner-caused delays, errors and omissions or related third party interference with Metra's means and methods."[25]

Initial Lawsuit

APS sued Metra in March 2025 for an unpaid subcontract balance of $344,040.84, pleading breach of contract, quantum meruit, and violation of 6 *Del. C.* ch. 35.[26] Metra answered, counterclaimed against APS, and in August 2025 filed this Third-Party Complaint against Artesian.[27] Artesian answered and counterclaimed for breach of contract; it also sought a declaratory judgment that the First Amendment controls and has been satisfied, or, in the alternative, contractual indemnification from Metra.[28] Metra answered those counterclaims in December 2025.[29]

Parties' Contentions

Artesian now moves for judgment on the pleadings. It seeks a declaration that: the First Amendment controls, it has fully paid, and Metra's claims are precluded by the First Amendment.[30] Metra responds that Artesian conflates restoration work—which it says the First Amendment is limited to—with the fuller

[25] *Id.* ¶ 24.
[26] D.I. 1, ¶¶ 15–30.
[27] D.I. 4; D.I. 14, ¶¶ 28–50.
[28] D.I. 22, ¶¶ 42–63.
[29] D.I. 28.
[30] D.I. 35, at 4–6.

scope of work under the Contractor Agreement.[31] Further, Metra argues the First Amendment preserves its right to seek additional compensation.[32]

Legal Standards

Judgment on the Pleadings Under Rule 12(c)

"After the pleadings are closed[,] ... any party may move for judgment on the pleadings."[33] In determining a motion under Rule 12(c) for judgment on the pleadings, the Court accepts the non-moving party's well-pleaded allegations as true, draws all reasonable inferences in that party's favor, and grants judgment "only when no material issue of fact exists and the movant is entitled to judgment as a matter of law."[34] But the Court "will 'not rely upon conclusory allegations ... [and] neither inferences nor conclusions of fact unsupported by allegations of specific facts ... are accepted as true.'"[35] Where, as here, the movant seeks judgment against the party asserting the claims, the motion fails unless that party "could not recover under any reasonably conceivable set of circumstances susceptible of proof."[36]

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[31] D.I. 38, at 2–3.
[32] D.I. 38, at 2–3.
[33] Super. Ct. Civ. R. 12(c).
[34] *Desert Equities, Inc. v. Morgan Stanley Leveraged Equity Fund, II, L.P.*, 624 A.2d 1199, 1204–05, 1204 n.7 (Del. 1993) (citations omitted).
[35] *Festival Fun Parks, LLC v. MS Leisure Co.*, 2023 WL 8714994, at *4 (Del. Super.) (alterations in original) *quoting McMillan v. Intercargo Corp.*, 768 A.2d 492, 500 (Del. Ch. 2000).
[36] *Cent. Mortg. Co. v. Morgan Stanley Mortg. Cap. Holdings LLC*, 27 A.3d 531, 536 (Del. 2011) *citing Savor, Inc. v. FMR Corp.*, 812 A.2d 894, 896–97 (Del. 2002).

A written instrument attached to a pleading "is a part thereof for all purposes."[37] The Court will consider the Contract and the First Amendment without converting this Motion into one for summary judgment.[38] However, considering an instrument is not the same as construing a disputed one. What the Court may take from a contract at this stage are its *unambiguous* terms.[39]

Contract Interpretation

Delaware enforces unambiguous contracts according to their plain meaning; when "'the contract's language is clear and unambiguous, the parties' intent is ascertained by giving the language its ordinary and usual meaning.'"[40] In that circumstance, the Court "will not resort to extrinsic evidence to determine the parties' intentions."[41] Ambiguity, by contrast, exists where the disputed provisions "are fairly susceptible of different interpretations or may have two or more different meanings."[42] The instrument is read as a whole,[43] so that each provision is given effect in light of the others, and "where reasonable minds could differ as to the

[37] Super. Ct. Civ. R. 10(c).
[38] Metra filed an affidavit in its response, *see* D.I. 38, but for the reasons discussed at oral argument, it has not been considered by the Court.
[39] *OSI Sys., Inc. v. Instrumentarium Corp.*, 892 A.2d 1086, 1090 (Del. Ch. 2006).
[40] *Dover Mall, LLC v. Tang*, 2023 WL 6536975, at *3 (Del. Super.) *quoting John Petroleum, Inc. v. Parks*, 2010 WL 3103391, at *4 (Del. Super.), *amended*, 2023 WL 7903639 (Del. Super.).
[41] *BLGH Holdings LLC v. enXco LFG Holding, LLC*, 41 A.3d 410, 414 (Del. 2012) (citation omitted).
[42] *GMG Cap. Invs., LLC v. Athenian Venture Partners I, L.P.*, 36 A.3d 776, 780 (Del. 2012) (citation omitted).
[43] *Id.* at 779 *quoting E.I. du Pont de Nemours & Co., Inc. v. Shell Oil Co.*, 498 A.2d 1108, 1113 (Del. 1985).

contract's meaning, a factual dispute results and the fact-finder must consider admissible extrinsic evidence."[44] Summary disposition is unavailable where the instrument is ambiguous.[45]

Claims Pleaded in the Alternative

Delaware bars quasi-contractual recovery where an express, enforceable contract governs the same subject matter.[46] On the pleadings, however, that bar applies only where it is clear from the pleadings that the contract controls; alternative contract and quasi-contract pleading is permitted where doubt surrounds the contract's existence or enforceability.[47]

Under Rule 8, a plaintiff may plead alternative theories of recovery;[48] the Court need not "wrestle at the pleading stage how one claim might interact with another."[49] This flexibility is not absolute. For instance, "alternative quasi-contract

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[44] *Id.* at 783 (citations omitted).
[45] *Id.* ("In those cases, summary judgment is improper.").
[46] *Kuroda v. SPJS Holdings, L.L.C.*, 971 A.2d 872, 891 (Del. Ch. 2009) (ellipses in original) (citations omitted) *quoting Bakerman v. Sidney Frank Importing Co.*, 2006 WL 3927242, at *18 (Del. Ch.) ("When the complaint alleges an express, enforceable contract that controls the parties' relationship . . . a claim for unjust enrichment will be dismissed.").
[47] *Id.* at 891–92 (dismissal is proper only where it is "clear from the face of the complaint that" an express contract governs). *See also Albert v. Alex. Brown Mgmt. Servs., Inc.*, 2005 WL 2130607, at *8 (Del. Ch.) (alternative pleading permitted "only when there is doubt surrounding the enforceability or the existence of the contract.").
[48] Super. Ct. Civ. R. 8(a), (e)(2). Of course, proviso Rule 11's obligations. R. 8(e)(2).
[49] *Julian's Foods, LLC v. Julian Bakery, Inc.*, 2025 WL 1826173, at *8 (Del. Super.) *quoting Garfield ex rel. ODP Corp. v. Allen*, 277 A.3d 296, 361 (Del. Ch. 2022). Indeed, questionable is the "utility at the early stage of … litigation in 'delving into the alternative theories to assess how they may interact.'" *V-ME Media, Inc. v. Faith7, Inc.*, 2024 WL 4524844, at *5 (Del. Super.) (alteration to punctuation) *quoting Garfield ex rel. ODP Corp.*, 277 A.3d at 362.

claims …. do not apply 'where a fully integrated, enforceable contract governs….'"[50] However, a disputed contract opens the door to pleading such alternative claims.[51] Thus, a plaintiff may simultaneously pursue contract and quasi-contract recovery—but the parties' treatment of the alleged contract is significant.

The quasi-contractual claims at issue have several elements. Unjust enrichment requires "(1) an enrichment, (2) an impoverishment, (3) a relation between the enrichment and impoverishment, (4) the absence of justification, and (5) the absence of a remedy provided by law."[52] As for quantum meruit, "a plaintiff must show (1) its services were performed 'with the expectation that the recipient would pay for them' and (2) 'the recipient should have known ... [plaintiff] expected to be paid.'"[53]

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[50] *Ney v. 3i Grp. PLC*, 2025 WL 1455872, at *9 (Del. Super.) (citation omitted) *quoting Neurvana Med., LLC v. Balt USA, LLC*, 2020 WL 949917, at *21 (Del. Ch.). After all, quasi-contract and contract-based recovery are mutually exclusive, since the former is predicated on the absence of an enforceable contract. *Urb. Green Techs., LLC v. Sustainable Strategies 2050 LLC*, 2017 WL 527565, at *5 (Del. Super.).

[51] *Hiller & Arban, LLC v. Rsrvs. Mgmt., LLC*, 2016 WL 3678544, at *3 (Del. Super.) (citations omitted). And even when an enforceable contract exists, promissory estoppel may be available for promises not "incorporated into the contract." *Alltrista Plastics, LLC v. Rockline Indus., Inc.*, 2013 WL 5210255, at *9 (Del. Super.) *citing Grunstein v. Silva*, 2009 WL 4698541, at *8 (Del. Ch.).

[52] *Ford Motor Co. v. Earthbound LLC*, 2024 WL 3067114, at *13 (Del. Super.) *quoting Garfield ex rel. ODP Corp.*, 277 A.3d at 341.

[53] *Hiller & Arban, LLC*, 2016 WL 3678544, at *2 (alterations in original) *quoting Petrosky v. Peterson*, 859 A.2d 77, 79 (Del. 2004).

Analysis

Artesian's Motion turns on the First Amendment to the Contractor Agreement. The First Amendment is not quite three pages, yet it makes at least ten references to restoration work. Paragraph 10 confirms "[e]xcept as modified in this First Amendment, all other terms and conditions of the Contractor Agreement remain unchanged and shall continue in full force and effect."[54] Because the Contractor Agreement retains independent force—such as for change orders—and the First Amendment addresses only restoration work specifically, the plain language precludes judgment on the pleadings.

Artesian relies heavily on Paragraph 9.[55] But, the Court must review the instrument as a whole. As noted, the First Amendment repeatedly limits its scope to restoration work, which is just one subset of the work under the Contractor Agreement.[56] The Amendment's language explicitly contemplates the remaining restoration work.[57] Triggers for Artesian's three payments to APS hinge on the remaining restoration work's commencement and completion of the concrete and

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[54] First Am., ¶ 10.

[55] D.I. 40, at 2–3. Even that provision's language does not preclude additional liability: "*[e]xcepting the Pending Change Order and any change orders approved in accordance with paragraph 7(p) of the Contractor Agreement*, Artesian's payment of the Amended Lump Sum Price to Contractor shall be in full and complete satisfaction of Artesian's payment obligations under the Contractor Agreement."

[56] *See* Contract, ¶ 4 ("work to be performed" includes renewal "and all related appurtenances and restoration."); *id.* ¶ 7(o) (addressing installation and restoration defects).

[57] *See* First Am., at 1.

paving portions.[58] Those payments satisfy "any Artesian payment obligations *related to restoration work* under the Contractor Agreement…."[59]

The First Amendment specifically states it does not otherwise impact the remaining terms and conditions of the Contractor Agreement.[60] Although Paragraph 9 includes a release "under the Contractor Agreement," when read as a whole, this Amendment concerns just one aspect of the Project. Metra's Third-Party Complaint alleges more than restoration-related obligations.[61] Accepting Metra's well-pleaded allegations as true and drawing reasonable inferences in its favor, the Court cannot conclude the release secured within the First Amendment fully satisfied Metra's current claims. Summary disposition is unavailable.

IT IS SO ORDERED.

/Sonia Augusthy
Judge Sonia Augusthy

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[58] First Am., ¶¶ 2–4.
[59] *Id.* ¶ 5 (emphasis added).
[60] *Id.* ¶ 10.
[61] For example, Metra alleges it "perform[ed] significant extra work[,]" for instance: "reinstallation and relocation of unidentified directly conflicting underground utilities, … and thicker-than-specified concrete demolition." D.I. 14, ¶ 19. Further, Metra incurred costs for—among other things—"out of scope work" for which "Artesian continues to fail to pay Metra…." *Id.* ¶ 24. *See also id.* ¶ 25 (discussing "prolonged … presence on the Project by at least 570 days beyond the contract time."); ¶ 31 ("Artesian materially breached the Contract by failing to pay for base scope and extra work, delaying completion, failing to issue proper time extensions, and failing to equitably compensate Metra for damages resulting from Artesian's actions.").