

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2023-CP-26-00053

Paint Design, LLC,

Plaintiff,

vs.

Westgate Myrtle Beach, LLC a/k/a Westgate
Resorts, Ltd.; and RNR Construction, LLC,

Defendants.

**ORDER DENYING PLAINTIFF PAINT
DESIGN, LLC'S NOTICE OF MOTION
AND MOTION TO AMEND ITS
AMENDED COMPLAINT**

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Jan 30 2024

SC Court of Appeals

THIS CAUSE having come before the Court on August 14, 2023, before the undersigned Honorable Judge for the Fifteenth Judicial Circuit, upon Plaintiff Paint Design, LLC's ("Plaintiff") Notice of Motion and Motion to Amend its Amended Complaint, Plaintiff's Motion is hereby **DENIED**.

I. PROCEDURE HISTORY AND FACTS ALLEGED BY PLAINTIFF

On January 5, 2023, Plaintiff filed a Verified Complaint in this civil action. On February 1, 2023, Defendant Westgate Myrtle Beach, LLC (Westgate") filed a Motion to Dismiss. On March 3, 2023, Plaintiff filed an Amended Verified Complaint. The pertinent allegations of Plaintiff's Amended Verified Complaint are as follows. On or about October 25, 2021, Westgate entered into a general contractor's agreement with Defendant RNR Construction, LLC ("RNR") for the purpose of hiring RNR to furnish labor, materials, equipment and/or other services for the Hotel 2nd Floor Room Conversion project ("Project"). Amended Verified Complaint at ¶ 6. On or about October 22, 2021, RNR entered into a subcontract agreement ("Subcontract") with the Plaintiff. Id. at ¶ 7. A true and accurate copy of the subcontract agreement is attached hereto as **Exhibit A** and incorporated herein by reference. Id. Between the dates of January 18, 2022

through May 7, 2022, the Plaintiff furnished equipment, services labor and/or materials which were actually used on the Project. See Id. at ¶ 10. On July 8, 2022, Plaintiff filed a mechanic's lien on Westgate's property. See Id. at ¶ 14. On January 4, 2023, Plaintiff filed a Lis Pendens with this Court. See Id. at ¶ 15.

In its Amended Verified Complaint, Plaintiff asserted, among other claims, quantum meruit, unjust enrichment, and mechanic's lien foreclosure causes of action against Westgate, as well as a breach of contract cause of action against Defendant RNR Construction, LLC. See Amended Verified Complaint. On March 29, 2023, Westgate filed a Motion to Dismiss all Plaintiff's claims against Westgate. See Motion to Dismiss. Westgate's Motion to Dismiss was heard by the Honorable William H. Seals Jr. on May 9, 2023. On May 10, 2023, this Court issued an Order granting Westgate's Motion to Dismiss. See Form 4 Order. On June 8, 2023, this Court entered a more detailed Order granting Westgate's Motion to Dismiss. Prior to issuance of this Court's Order granting Defendant Westgate's Motion to Dismiss, on May 22, 2023, Plaintiff filed a Motion to Reconsider Pursuant to Rules 52 and 59 of the South Carolina Rules of Civil Procedure. This Court denied Plaintiff's Motion to Reconsider. On May 22, 2023, Plaintiff also filed Plaintiff's Notice of Motion and Motion to Amend its Amended Complaint ("MFLTA"). In its MFLTA, Plaintiff sought to amend its complaint again to include a single claim against Defendant Westgate on a quantum meruit/unjust enrichment theory. This Court heard arguments on the MFLTA on August 14, 2023. On August 15, 2023, this Court issued a Form 4 Order denying Plaintiff's MFLTA.

II. STANDARD, ANALYSIS, AND CONCLUSIONS OF LAW

The standard that this Court must consider when determining whether to grant a motion for leave to amend a complaint, is that amendment should be allowed "when justice so requires

and does not prejudice any other party.” (*emphasis added.*) South Carolina Rules of Civil Procedure, Rule 15. This Court concludes that justice does not require that Plaintiff be granted leave to amend its Amended Complaint to include a quantum meruit cause of action against Defendant Westgate.

In South Carolina, quantum meruit and unjust enrichment are the same claims. See Webb v. First Federal Savings & Loan Ass’n of Anderson, 300 S.C. 507388 S.E.2d 823, 827 (Ct.App. 1989). When there exists a valid and enforceable written contract, a claim for unjust enrichment/quantum meruit fails as a matter of law. See Johnston v Brown, 292 S.C. 478, 357 S.E.2d 450 (1987). See also Gantt v. Morgan, 199 S.C. 138, 18 S.E.2d 672 (1942). Despite the fact that a claim for unjust enrichment/quantum meruit fails where there exists a valid and enforceable contract, some courts have allowed unjust enrichment/quantum meruit claims to continue if plead in the alternative to a claim for breach of contract.

Rule 8 of the South Carolina Rules of Civil Procedure states in pertinent part, “[r]elief in the alternative or of several different types may be demanded.” SCRCP, Rule 8. Pleading a claim for quantum meruit relief in the alternative to a breach of contract claim requires more than simply using the words “in the alternative.” Several cases have allowed breach of contract and quantum meruit as alternative claims. For example, in Harmon & Bore, Inc. v Jenkins, the court held that the Plaintiff need not elect between a remedy under quantum meruit or express contract because “[t]he two actions are included[,] because of an obvious uncertainty...as to which cause of action Harmon would be able to prove or recover on” and further stating that, “[t]he plaintiff may be required to elect between causes of action prior to trial if the complaint states distinct causes which are so inherently repugnant that the assertion of one necessarily constitutes an election and precludes an assertion of the other. See Harmon & Bore, Inc. v Jenkins, 282 S.C. 189, 198, 318

S.E.2d 371, 376 (Ct. App. 1984) (internal citations omitted) (emphasis added).

Similarly, in H.G. Hall Const. Co. v. J.E.P. Enterprises, the court held that, “in cases where the complaint states different causes of action, but only one recovery is sought, and the causes are so stated because of an uncertainty as to which the evidence may establish or on which it may appear that plaintiff is entitled to recover, no election is required.” H.G. Hall Const. Co. v. J.E.P. Enterprises, 283 S.C. 196, 321 S.E.2d 267 (Ct. App. 1984). The Court of Appeals in both Hall and Harmon, make clear that alternative claims are allowed when there is “uncertainty as to which [remedy] the evidence may establish[,]” and that where one claim is repugnant to the existence of an alternative claim, facts must be plead showing there is an “uncertainty as to which cause of action [Plaintiff] would be able to prove or recover on..”

Through its Motion, Memorandum of Law and at the hearing, Plaintiff argued that South Carolina law requires the court to grant its Motion because Defendant Westgate would not be prejudiced, and that courts allow pleading quantum meruit claims to breach of contract claims in the alternative. Plaintiff also argued that its breach of contract cause of action is related to a contract with Defendant RNR, not with Defendant Westgate, therefore seeking a remedy in quantum meruit against Defendant Westgate is permissible.

On the other hand, Defendant Westgate, through its Memorandum of Law and at the hearing, argued that it would be prejudiced, and that justice does not require that Plaintiff’s Motion be granted because Plaintiff cannot plead an unjust enrichment/quantum meruit claim in the alternative because the claim is repugnant to Plaintiff’s breach of contract claim, and allowing the amendment is futile.

The cases allowing unjust enrichment/quantum meruit causes of action to proceed in the alternative to a breach of contract cause of action are distinguishable from the present case. In

support of Plaintiff's argument that courts allow quantum meruit claims to proceed in the alternative to breach of contract claims, Plaintiff cites Williams Carpet Contractors, Inc. v. Skelly, 400 S.C. 320, 734 S.E.2d 177 177 (Ct. App. 2012). In Williams Carpet, Plaintiff plead breach of contract and quantum meruit, but Plaintiff dismissed its breach of contract cause of action after jury selection. Id. This Court finds that Williams Carpet is both instructive and distinguishable from the present case. The Court of Appeals noted in Williams Carpet that "[i]f the tasks the plaintiff is seeking compensation for under a quantum meruit theory are encompassed within the terms of an express contract which has not been abandoned or rescinded, the plaintiff may not recover under quantum meruit." Id. In this case, Plaintiff is seeking the same recovery under its breach of contract cause of action as it attempts to seek under a quantum meruit cause of action against Westgate. Therefore, Plaintiff clearly asserts that it is seeking compensation under a quantum meruit theory that is encompassed within the terms of an express contract which has not been abandoned or rescinded. As a result, the law is clear that Plaintiff cannot recover in quantum meruit.

Williams' Carpet is distinguishable from the present case because,

Williams Carpet abandoned its breach of contract claim without any objection from Skelly and instead proceeded only under the quantum meruit theory. The jury never considered whether Skelly and Williams Carpet formed a contract. Because a finding was never made on whether there was an express contract, Williams Carpet could pursue recovery under quantum meruit. Id.

In this case, Plaintiff has not abandoned its breach of contract claim, and Defendant Westgate has repeatedly raised the existence of an express contract as a defense to a quantum meruit claim. Additionally, Plaintiff, in its Verified Amended Complaint, swore to the existence of a written contract, and swore that a true and accurate copy of the written contract is attached to the Verified Amended Complaint as an exhibit. A written contract between Plaintiff and

Defendant RNR is attached to the Verified Amended Complaint. Defendant RNR, the party against which the existence of the written contract is plead, has failed to file a responsive pleading, and by default has admitted to the allegations of Plaintiff's Verified Amended Complaint. Plaintiff is bound by the sworn allegations included in its Verified Amended Complaint, including its sworn allegation of the existence of a written contract. On the other hand, Plaintiff has not alleged any facts showing, or from which this Court could infer, that the existence of an express written contract is in question. When there exists a valid and enforceable written contract, a claim for unjust enrichment/quantum meruit fails as a matter of law. See Johnston v Brown, 292 S.C. 478, 357 S.E.2d 450 (1987). See also Gantt v. Morgan, 199 S.C. 138, 18 S.E.2d 672 (1942). Therefore, there is no uncertainty in this case that Plaintiff and Defendant RNR entered into an express written contract relating to the work Plaintiff performed on the Project, under which Plaintiff has a remedy. As a result, the law is clear that Plaintiff cannot assert an alternative claim in unjust enrichment/quantum meruit, because the existence of an express contract is repugnant to an unjust enrichment/quantum meruit cause of action.

Because an unjust enrichment/quantum meruit cause of action would fail as a matter of law, justice does not require the court to allow Plaintiff to amend its complaint to add an unjust enrichment/quantum meruit cause of action, because doing so would be futile. Therefore, for the reasons stated above, Plaintiff's Notice of Motion and Motion to Amend its Amended Complaint is hereby **DENIED**.

THEREFORE, having reviewed the Verified Complaint, Amended Verified Complaint, and the parties' Memorandum in Support and in Opposition to Plaintiff's Notice of Motion and Motion to Amend its Amended Complaint, as well as other filings in this case, and having heard

the arguments of counsel, Plaintiff's Notice of Motion and Motion to Amend its Amended Complaint is hereby **DENIED**.

_____, 2023
Horry County, South Carolina

The Honorable William H. Seals Jr.
Presiding Judge for the Fifteenth Judicial Circuit



Horry Common Pleas

Case Caption: Paint Design LLC VS Westgate Myrtle Beach LLC , defendant, et al

Case Number: 2023CP2600053

Type: Order/Other

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157