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IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION - CIVIL

MEIZINGER CONSTRUCTION SERVICES,
INC.,

Claimant,

v.

POST 4701 PINE STREET, LP,

Owner

: August Term 2022
:
: No. M0020
:
:
: COMMERCE PROGRAM
:
: Control Number 24013152

DOCKETED

JUL 11 2024

R. POSTELL
COMMERCE PROGRAM

ORDER

AND NOW, this 11th day of July 2024, upon consideration of Owner Post 4701 Pine Street, LP's motion for summary judgment, which includes a preliminary objection to the amended mechanics' lien, the response of claimant Meizinger Construction Services, Inc., the reply, and in accord with the attached opinion, it is **ORDERED** that the preliminary objection is **SUSTAINED**. In the alternative, the motion for summary judgment to the mechanics' lien claim is **GRANTED**. Accordingly, the mechanics' lien is **STRICKEN** and the complaint to enforce the lien is **DISMISSED** with prejudice.

BY THE COURT:

Asse F. Fletman
ABBE F. FLETMAN, J.

WSJDM-Meizinger Construction Services, Inc. Vs Post 4701



22080002003061

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION - CIVIL**

MEIZINGER CONSTRUCTION SERVICES, INC.,	:	August Term 2022
	:	
Claimant,	:	No. M0020
	:	
v.	:	
	:	
POST 4701 PINE STREET, LP,	:	COMMERCE PROGRAM
	:	
Owner.	:	Control Number 24013152
	:	

OPINION

This is an action to enforce a mechanics lien' in the amount of \$337,357.63. Before the Court is a motion for summary judgment, which includes a preliminary objection to the amended mechanics' lien claim filed by Post 4701 Pine Street, LP. ("Post 4701"), the owner of the subject property. For the reasons discussed below, the preliminary objection is sustained. In the alternative, the motion for summary judgment is granted.

BACKGROUND

On July 28, 2021, the claimant Meizinger Construction Services Inc. ("Meizinger Construction") submitted a proposal for concrete and masonry restoration work for a parking garage located at Garden Court Plaza Apartments, 4701 Pine Street, Philadelphia, PA 19143 ("the Property"). (Docket ("Dkt.") 1/16/24, Motion for Summary Judgment filed by Owner, Exhibit D) On August 19, 2021, Meizinger Construction submitted a revised proposal. (Dkt. 1/16/24, Motion for Summary Judgment filed by Owner, Exhibit E) On August 23, 2021, Meizinger Construction entered into a subcontract for a fixed sum of \$676,543.00 with H.C.

Pody¹, the general contractor on the project. (Dkt. 1/16/24, Motion for Summary Judgment filed by Owner, Exhibit F)

The subcontract identified two ways to generate, process and approve change orders. First, under Article XI(b), Meizinger Construction was required to submit “substantiating evidence deemed satisfactory” to H.C. Pody in support of any claims for changes directed by Post 4701. (*Id.*) Second, under Article XI (d), Meizinger Construction was required to submit justification for equitable adjustment to H.C. Pody in support of any claims for changes ordered by H.C. Pody. (*Id.*)

The subcontract stated that “TIME IS OF THE ESSENCE” and required the parties to proceed in a prompt and diligent manner in accordance with the project schedule. (*Id.* at Article X) The subcontract was fully executed on December 10, 2021. (*Id.*)

Meizinger Construction contends that throughout the subcontract, H.C. Pody failed to exert control over the Property and eliminate physical obstacles. (Dkt. 2/16/24, Response in Opposition to Motion for Summary Judgment filed by Claimant Exhibits I, J, K, Q, and R) As a result, Meizinger Construction alleges it was delayed in performing its work. (*Id.*)

Meizinger Construction submitted several applications and certificates for payment to H. C. Pody. (Dkt. 1/16/24, Motion for Summary Judgment filed by Owner, Exhibit H) In return for payment, Meizinger Construction executed and delivered to H.C. Pody lien waivers on the following dates in consideration for the following amounts:

September 29, 2021- \$84,216.30
November 24, 2021-\$147,854.24
January 6, 2022- \$220,820.56
March 1, 2022- \$87,517.39

¹ H.C. Pody, pursuant to its contract with Post 4701, agreed to post security on behalf of Post 4701 for Metzinger Construction’s mechanics’ lien claim and defend this matter on behalf of Post 4701. (Dkt. 3/17/23).

March 1, 2022- \$158,984.08
May 11, 2022- \$135,233.55

(Dkt. 1/16/24, Motion for Summary Judgment filed by Owner ¶17 and Dkt. 2/16/24, Response in Opposition to Motion for Summary Judgment filed by Plaintiff ¶ 17)

Meizinger President Gregory Meizinger signed the lien waivers. (Dkt. 1/16/24, Motion for Summary Judgment filed by Owner, Exhibit H) Each of the lien waivers identified the project and confirm that the wavier was given “in consideration” of receiving a sum certain of money, and Meizinger Construction acknowledged receipt of the payments. (*Id.*) In consideration for payment received, Meizinger Construction agreed to:

waive ...and further release any and all lien or claim of right to lien under the statutes of this State relating to mechanics’ liens, with respect to and on the above described premises and the improvements thereon, and the material, fixtures, apparatus or machinery furnished during the Period mentioned above, and on the moneys of other considerations due or to become due from the Owner and Contractor, on account of labor services, material, fixtures, apparatus or machinery heretofore furnished, of which may be furnished at any time hereafter, by the undersigned, to or on account of the said contractor of the said Owner, for the above described premises.

(*Id.*)

Meizinger Construction contends it completed its work on May 31, 2022. (Dkt. 8/18/22) On June 6, 2022, counsel for Meizinger Construction wrote to counsel for H.C. Pody requesting payment for added “General Conditions” due to delays allegedly caused by H.C. Pody in preparing the work site and payment for the “tooled joint unit.”² (Dkt. 1/16/24, Motion for

² Meizinger Construction was paid \$50,000 for the line item described as “General Conditions,” which is the full amount owed under the subcontract. (Dkt. 1/16/24, Motion for Summary Judgment filed by Owner, Exhibit H)

Summary Judgment filed by Owner, Exhibit I) Meizinger Construction alleged that H.C. Pody was in breach of the subcontract, but it was willing to perform the final cement pour and remove equipment as part of the wind-down period. (*Id.*)

On June 9, 2022, Meizinger Construction submitted two change order requests to H.C. Pody, Change Order-006 for additional quantity slab repair pour 6 totaling \$177,555 (Change Order 006, Dkt. 1/16/24, Motion for Summary Judgment filed by Owner, Exhibit I) and Change Order-007-added General Conditions Rev 2 for \$244,375, which included \$212,500 for “General Conditions” and \$31,875.00 in “OH & P.”³ (Dkt. 1/16/24, Motion for Summary Judgment filed by Owner ¶ 24 and Dkt. 2/16/24, Response in Opposition to Motion for Summary Judgment filed by Claimant ¶ 24, Exhibit J) H.C. Pody did not execute the June 9, 2022, change orders. (*Id.* ¶25)

On August 19, 2022, Meizinger Construction filed a mechanics’ lien claim in the amount of \$502,457.85, plus interest. (Dkt. 8/19/22) The subcontract between Meizinger Construction and H.C. Pody is attached as an exhibit to the mechanics’ lien claim. (*Id.*) On February 6, 2023, H.C. Pody wrote to Meizinger Construction notifying it of incomplete or deficient work items on the project. (Dkt. 1/16/24, Motion for Summary Judgment filed by Owner, Exhibit K) H.C. Pody requested that Meizinger Construction address the items to the satisfaction of the project engineer, Conn Shaffer Consulting Engineers.⁴ (*Id.*) Additionally, H.C. Pody requested that Meizinger Construction complete its work on the project. Meizinger Construction did not respond to the February 6, 2023, letter and on February 21, 2023, H.C. Pody terminated

³ Overhead and Profit.

⁴ Attached to the letter was Conn Shaffer’s Consulting Engineers Field Report # 30.

Meizinger Construction for fault for its failure to prosecute the work in accordance with the amended Project Schedule. (*Id.*)

On February 7, 2023, Meizinger Construction filed an amended mechanics' lien claim reducing the amount sought to \$337,257.63 based on a partial payment H.C. Pody had made in the amount of \$165,200.22. (Dkt. 2/7/23) The subcontract was the only attachment to the amended claim. (*Id.*) On March 1, 2023, Meizinger Construction filed a complaint to enforce the amended mechanic' lien claim. (Dkt. 3/1/23) On March 17, 2023, the Court entered an order discharging the mechanics' lien against the Property as H.C. Pody posted a bond against the lien. (Dkt. 3/17/23) On March 21, 2023, Post 4701 filed an answer and new matter to the complaint to enforce the lien. (Dkt/ 3/21/23) On April 11, 2023, Meizinger Construction filed its reply to new matter. (Dkt. 4/11/23) On December 4, 2023, discovery closed. (Dkt. Case Management Order 5/16/23)

Meizinger Construction filed a motion for summary judgment, including a preliminary objection to the amended mechanics' lien, on January 16, 2024. (Dkt. 1/16/24) Post 4701 filed a response (Dkt. 2/16/24) and Meizinger Construction filed a reply. (Dkt. 3/1/23) The motion is now ripe for consideration.

DISCUSSION

1. Post 4701's Preliminary Objection is Sustained Because Meizinger Construction's amended mechanics' lien claim Is deficient under § 1503 (6) of the Mechanics' Lien Law.

A mechanics' lien is an expeditious *in rem* statutory proceeding that provides a contractor with a priority lien on property.⁵ *Terra Firma Builders, LLC v. King*, 249 A.3d 976, 983 (Pa. 2021). To secure a valid and enforceable lien, a contractor must judiciously adhere to the requirements of the Mechanic' Lien Law. (*Id.*) The Mechanics' Lien Law explicitly requires that a claim by a subcontractor include a detailed statement of the kind or character of the labor or materials furnished, or both, and the prices charged for each. 49 PA. STAT. AND CONS. STAT §1503 (4) and (6) (West, Westlaw through 2024 Act 13)

Pennsylvania cases interpreting the "contents of the claim" section of the Mechanics' Lien Law have long held that in considering a mechanics' lien claim substantial compliance with the statute is sufficient. This is shown to exist wherever enough appears in the statement of claim filed by the contractor to help the owner investigate the claim and resolve the issues raised in the claim. *Commerce Bank/Harrisburg, N.A. v. Kessler*, 46 A.3d 724, 735 (Pa. Super. 2012).

Meizinger Construction's claim neither satisfies nor substantially complies with the requirements of Section 1503 (6). The claim nowhere describes the labor or material furnished at the Property. Meizinger Construction attached no change orders or logs to its claim, and failed to describe the labor or materials that remains to be paid, or the hours, labor, and materials

⁵ In its motion for summary judgment, Post 4701 includes a preliminary objection that challenges the amended mechanics' lien claim for "lack of conformity" with the Mechanics' Lien Law, 49 PA. STAT. AND CONS. STAT § 1505 (West, Westlaw through 2024 Act 13). Section 1505 specifies no time limit for raising a preliminary objection and a failure to file an objection does not constitute a waiver. *See, Terra Firma Builders, LLC v. King*, 249 A.3d 976, 984 (Pa. 2021)(striking the claimant's unperfected and invalid lien five years after the claim had been filed and after two trials).

furnished. The claim does not direct Post 4710 to a successful inquiry to aid in the resolution of the claim.⁶ Therefore, Post 4710's preliminary objection is sustained, and the claim is stricken.

Under certain circumstances, a claimant may be given an opportunity to amend its claim to provide the necessary detail required by the Mechanics' Lien Law. *See*, 49 PA. STAT. AND CONS. STAT §1504 (West, Westlaw through 2024 Act 13) Any amendment to Meizinger Construction's claim, however, would be futile because, as discussed below, Meizinger Construction waived its right to assert a mechanics' lien and sought damages that are not recoverable under the Mechanics' Lien Law.

2. Post 4701's motion for summary judgment is granted because Meizinger Construction waived its right to assert a lien and because the amended claim is not a debt subject to the Mechanics' Lien Law.

a. Meizinger Construction waived its right to file a lien or claim against the Property for Change Order -007.

A waiver of lien agreement is a contract between two parties in which one party promises not to file a lien against the property of the other. *Malin v. Nuss*, 338 A.2d 676, 678 (Pa. Super. 1975). A subcontractor may execute a waiver of lien rights if it is given in consideration for payment for work, services, materials or equipment provided and only to the extent that such payment is actually received. 49 PA. STAT. AND CONS. STAT § 1401 (b)(2) (West, Westlaw through 2024 Act 13). Additionally, Section 1402 requires that any waiver must be intentional. It states, "A release signed by the claimant shall not operate as a waiver of the right to file a claim for labor or materials subsequently furnished, unless it shall appear thereby that such was the express intent of the party signing same." 49 PA. STAT. AND CONS. STAT § 1402 (West,

⁶ *See, Baker v. Liptak*, 2022 WL 333768, at *5 (Pa. Super. 2022)(amended complaint that exclusively relied on the attached exhibits instead of providing "detailed statement" did not substantially comply with Section 1503(6)). While not authoritative, *Baker* does have persuasive value here. *See* 210 Pa. Code § 65.37 (B) (West, Westlaw through 2024 legislation).

Westlaw through 2024 Act 13). The party asserting waiver of a mechanics' lien must clearly prove its existence. *Sullivan Construction Co. v. Historical Arch Street Development Associates*, 528 A.2d 248 (Pa. Super. 1987).

The dispute before the Court centers upon Change Order-007, which was submitted by Meizinger Construction to Post 4701 on June 9, 2022, for \$ 244,375.⁷ (Dkt. 2/16/24, Response in Opposition to Motion for Summary Judgment filed by Claimant ¶ 24, Exhibit J) Meizinger Construction submitted Change Order-007 to H.C. Pody seeking payment of \$212,500 for added "General Conditions" and \$31,875 for overhead and profit because of delay allegedly caused by H.C. Pody. (Dkt. 2/16/24 Response in Opposition to Motion for Summary Judgment filed by Claimant, Exhibit E) "General Conditions" was included as a line item in the Revised Proposal submitted to H.C. Pody on August 19, 2021, as a lump sum amount of \$50,000, which was paid in full. (*Id.*) According to Meizinger Construction, Change Order-007 was necessary because the project should have been completed by November 26, 2021, but was delayed because of H.C. Pody. Meizinger Construction argues it had no choice but to terminate the subcontract in May 2022. In Change Order-007, Meizinger Construction calculated the added "General Conditions" as \$25,000 for the 8.5 months delay and added overhead and profit for the delay, $\$25,000 \times 8.5 \text{ months} = \$212,500 + \$31,875.00 = \$244,375$. (Dkt. 2/16/24 Response in Opposition to Motion for Summary Judgment filed by Claimant pg. 35). Meizinger Construction waived and released its right to lien or file a claim for the 8.5 months of delay.

⁷ The amended lien claim, and complaint assert that the amount owed is \$337,257.63, not the \$244,375 requested in Change Order-007. Meizinger Construction nowhere explains or provides evidence to support the difference of \$92,882.63. This is further support that the Meizinger Construction's mechanics' lien claim is deficient under the Mechanics' Lien Law.

On September 29, 2021, November 24, 2021, January 6, 2022, March 1, 2022, and May 11, 2022, the period that covers the alleged delay attributed to H.C. Pody, Meizinger Construction signed lien waivers giving up its right to lien or file a claim for any monies due for work performed up until the time the waivers were signed. (Dkt. 1/16/24, Motion for Summary Judgment filed by Owner, Exhibit H) Meizinger Construction certainly knew about the alleged delays for which it now seeks payment in Change Order-007 as evidenced by emails to H.C. Pody. (Dkt. 2/16/24, Response in Opposition to Motion for Summary Judgment filed by Claimant, Exhibits I, J, K, Q, and R) Yet each time Meizinger Construction submitted payment applications and certifications during that 8.5-month period and each time it signed lien waivers it never made reservations or exceptions for added “General Conditions” and related overhead and profit. Meizinger Construction did execute a Partial Release and Waiver of Lien by Subcontractor on January 4, 2024, which included an exception for the amounts being claimed, but that exception does not change the outcome with respect to Change Order- 007, which was already waived and released by the prior lien waivers. Based on the foregoing, Meizinger Construction waived its right to lien and file a claim for Change Order-007.

b. Change Order-007 is not a debt due for labor and materials furnished under the Mechanics’ Lien Law.

In addition, the charges claimed in Change Order-007 are inappropriate for a mechanics’ lien claim. The Mechanics’ Lien Law expressly limits the lien to amounts owed for labor and materials only. 49 PA. STAT. AND CONS. STAT § 1301 (West, Westlaw through 2024 Act 13). The Mechanics’ Lien Law is intended to protect the prepayment of labor and materials that a contractor invests in another’s property, by allowing the contractor to obtain a lien interest in the property involved. *Id.* Under the statute, “materials” is defined as “building materials and supplies of all kinds, and also includes fixtures, machinery and equipment reasonably necessary

to and incorporated into the improvement.” 49 PA. STAT. AND CONS. STAT § 1201 (7) (West, Westlaw through 2024 Act 13). “Labor” is defined as the furnishing of skill or superintendence. *Id.* at § 1201 (9). Change Order-007 is not for labor or materials but for damages allegedly related to delay. Delay damages are contract damages and are not recoverable under the Mechanics’ Lien Law. Consequently, the charges in Change Order-007 are improper in a mechanics’ lien claim and therefore, the lien is stricken.⁸

CONCLUSION

For the forgoing reasons, the preliminary objection of Post 4701 Pine Street, LP. is sustained. In the alternative, the motion for summary judgment is granted. Under either alternative, the lien is stricken and the complaint to enforce the lien is dismissed.

BY THE COURT:



ABBE F. FLETMAN, J.

⁸ The Mechanics’ Lien Law does entitle contractors/subcontractors to profits on unpaid invoices. *Wyatt Inc. v. Citizens Bank of Pennsylvania*, 976 A.2d 557, 568 (Pa. Super. 2009). The overhead and profits in Change Order-007, however, are not subject to a mechanics’ lien claim because the profit is related to the alleged delay caused by H.C. Pody and not overdue invoices for labor or materials.