STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND
BUSINESS COURT

ECI ENVIRONMENTAL CONSULTANTS & ENGINEERS, LLC, a Michigan limited liability Company,

Plaintiff,

Case No. 20-185003-CB
(On Remand)
Hon. Victoria A. Valentine

v.

HOUSE OF PROVIDENCE, a Michigan nonprofit Corporation,

Defendant.

_____/

OPINION AND ORDER REGARDING DEFENDANT HOUSE OF PROVIDENCE'S MOTION FOR SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C)(10)

This matter is before the Court on Defendant House of Providence's Motion for Summary Disposition pursuant to MCR 2.116(C)(10). The Court has reviewed the pleadings, motion, and response and has heard oral argument by the parties.

OPINION

I.

Overview

The background facts of this case have been described by the Michigan Court of Appeals as follows:

> [This case] arises from work defendant allegedly performed to plaintiff's property and the extent to which the parties had an agreement as to the scope and amount of work to be performed by plaintiff. Defendant contracted with plaintiff in April 2017, to provide environmental consulting services on defendant's property, including preparing a plan acceptable to the Michigan Department of Environmental Quality (MDEQ). Defendant sought to develop the subject property to remove toxins from the land and to facilitate the building of a foster home for at-risk youth. In June 2020, Oakland County was awarded a Brownfield Grant to fund defendant's redevelopment project by the Michigan Department of Environment, Great Lakes, and Energy (EGLE). Although there is a discrepancy on when plaintiff asserts defendant stopped paying for plaintiff's labor, plaintiff contends defendant has not compensated it for the work done on the property from June 2019 to August 2020. Defendant does not contest that plaintiff provided services but contests it authorized plaintiff to continue working until August 2020.
>
> Plaintiff obtained a construction lien on the property to obtain the outstanding balance it alleged it was owed. Soon after, plaintiff filed a complaint against defendant to foreclose on the construction lien under the Construction Lien Act (CLA), MCL 570.1101 *et seq.* and a claim for breach of contract.
>
> Defendant moved for summary disposition under MCR 2.116(C)(8) and MCR 2.116(C)(10). It argued plaintiff failed to state a claim for which relief may be granted because the property involves a residential structure and plaintiff did not provide an improvement as required under the relevant statutory provisions, citing MCL 570.1114. Defendant also alleged there was no written contract. Plaintiff responded that a written contract was not required, relying on its 2017 letter of engagement with defendant and an alleged oral contract, citing MCL 570.1107. Defendant also alleged that plaintiff's services did constitute an "improvement" as contemplated and defined by MCL 570.1104(6).[1]

This Court's predecessor granted Defendant Summary Disposition under MCR 2.116(C)(8) and also denied Plaintiff's motion for reconsideration. Plaintiff appealed as of right to the Michigan Court of Appeals. The Court of Appeals found that the trial court erred when it granted Defendant's motion for Summary Disposition under MCR 2.116(C)(8) in reliance on MCL

[1] *ECI Environmental Consultants and Engineers, LLC v House of Providence and Assemblies of God Loan Fund*, unpublished per curiam opinion of the Court of Appeals, issued March 30, 2023 (Docket No. 361803), p 1.

570.1114. Rather, the trial court should have applied MCL 570.1107(1) regarding the rights of a contractor who "provides an improvement to real property" to a construction lien and MCL 570.1104(6) regarding the definition of "improvement." The Court of Appeals also determined that "Plaintiff's environmental consulting services could be construed as an 'improvement,' as contemplated by MCL 570.1104(6)" and that the complaint provided sufficient notice of a breach of contract claim. Accordingly, the Court of Appeals stated:

> [O]n remand the trial court will need to address the alternative statutory provisions set forth in this opinion coupled with the ability of plaintiff to establish a contractual obligation and its parameters. Along with such considerations, the trial court should revisit the question of whether to permit amendment of plaintiff's complaint to include a more specific claim of breach of contract.[2]

After remand, Plaintiff filed a Second Amended Complaint alleging: Breach of Contract (Count I); Unjust Enrichment (Count II); Quantum Meruit (Count III); and Foreclosure of Construction Lien (Count IV). Defendant now seeks summary disposition pursuant to MCR 2.116(C)(10) as to all counts of the Second Amended Complaint.

II

STANDARD OF REVIEW

A motion under MCR 2.116(C)(10) tests the factual support for a claim. *Universal Underwriters Group v Allstate Ins Co,* 246 Mich App 713, 720; 635 NW2d 52 (2001). The court, in reviewing a motion under MCR 2.116(C)(10), "considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties in the light most favorable to the party opposing the motion." *Quinto v Cross and Peters Co*, 451 Mich 358,

[2] *ECI Environmental Consultants and Engineers, LLC v House of Providence and Assemblies of God Loan Fund*, unpublished per curiam opinion of the Court of Appeals, issued March 30, 2023 (Docket No. 361803), p 8.

362; 547 NW2d 314 (1996) (citation omitted). The motion may be granted "if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law." *Id.*

III

ANALYSIS

Breach of Contract (Count I)

Under Michigan law "[a] party asserting a breach of contract must establish by a preponderance of the evidence that (1) there was a contract (2) which the other party breached (3) thereby resulting in damages to the party claiming breach." *Miller-Davis Co v Ahrens Constr, Inc*, 495 Mich 161, 178; 848 NW2d 95 (2014). There are five elements necessary to establish a valid contract: "(1) parties competent to contract, (2) a proper subject matter, (3) legal consideration, (4) mutuality of agreement, and (5) mutuality of obligation." *AFT Mich v Michigan*, 497 Mich 197, 235; 866 NW2d 782 (2015).

A. The Existence of a Contract

It is alleged in the Second Amended Complaint that:

> 7. [O]n September 26, 2019, Defendant HOP contracted with Plaintiff to perform environmental consulting services to aid Plaintiff in securing a $1,000,000.00 Brownfield Development Grant ("BDG") from Oakland County.
>
> 8. Plaintiff and Defendant HOP agreed that Defendant HOP would pay Plaintiff at the rates that Defendant had previously compensated Plaintiff on other projects, in exchange for Plaintiff performing the services set forth in Exhibit 3 (hereinafter "Contract").
>
> 9. Pursuant to the Contract, Plaintiff performed the requested environmental services with respect to the Real Estate through October 15, 2020, at which time Plaintiff's services were terminated.

10. The total amount billed by Plaintiff to Defendant HOP for services rendered was $287,803.30.[3]

Plaintiff asserts that there was an oral contract to secure the Brownfield Development Grant and prepare a Work Plan acceptable to Oakland County.[4]

It is Defendant's position that the parties had an agreement pursuant to a April 2017 letter of engagement, that Plaintiff regularly invoiced for its services between 2017 and 2019 and that final payment was issued to Plaintiff in October 2019.[5] Defendant also asserts that it considered hiring Plaintiff in connection with the Brownfield Grant Agreement entered in July 2020, but that Plaintiff was required to sign a written agreement in order to be eligible and Plaintiff did not do so by the August 26, 2020 deadline.[6] Defendant asserts that "[P]laintiff has failed to produce any documentary evidence supporting the existence of mutuality of agreement and mutuality of obligation for the $287,803.30 [P]laintiff alleges is owed, or that any contractual obligation existed at all after the fall of 2019."[7]

In order to determine whether there was mutual assent to a contract "[the court] use[s] an objective test looking to the expressed words of the parties and their visible acts, and ask[s] whether a reasonable person could have interpreted the words or conduct in the manner that is alleged." *Rood v Gen Dynamics Corp*, 444 Mich 107, 119; 507 NW2d 591 (1993) (internal quotation marks and citations omitted). In making this determination, the court looks to "all the

[3] Second Amended Complaint, ¶¶ 7-10.
[4] Response, p 9; *Id.,* Exh 1, Stokes Affidavit, ¶ 7.
[5] Motion, Exh B, Dunn Affidavit, ¶¶ 6-12.
[6] *Id.* ¶¶16-21. Plaintiff asserts that the draft contract "was not to memorialize the work previously contracted for and performed, but was to memorialize the future work to be performed as required by the Work Plan upon its acceptance by Oakland County. Paragraph D of the Recitals provision of the Proposed Environmental Consulting Agreement states: "Owner now wishes to retain Consultant to act as its agent and its third-party environmental professional (as that term is used in the Brownfield Grant Agreement) to undertake and oversee the work to be completed on the Property in compliance with the Brownfield Grant Agreement." Pl's Response, Exh 12, Proposed Environmental Consulting Agreement.
[7] Motion, p 13.

relevant circumstances surrounding the transaction, including all writings, oral statements, and other conduct by which the parties manifested their intent." *Id. See also Barber v SMH (US), Inc*, 202 Mich App 366, 369-370; 509 NW2d 791 (1993).

The Court disagrees with Defendant's assertion that Plaintiff has not presented evidence in support of its claim that an oral contract existed after the fall of 2019. In support of its position Plaintiff provides evidence such as:

1. An email dated August 23, 2019, a Brownfield Coordinator for the State of Michigan offered Defendant the ability to apply for a $1,000,000 grant. Jason Dunn ("Dunn"), the founder of Defendant and Lance Stokes ("Stokes"), the sole member of Plaintiff were copied on the email. The email stated that the offer was conditioned on the hiring of a third-party oversight professional and "[t]his was requested because this is the first award for the township, the developer, and the developer's consultant."[8]
2. Stokes' Affidavit states that "Prior to August 23, 2019, Mr. Dunn and I discussed Plaintiff performing environmental services to secure a Brownfield Development Grant ("BDG") in the amount of "$1,000,000.00" and that "Mr. Dunn and I agreed that Plaintiff would be retained as the environmental consultant to procure the BDG and complete a Brownfield Grant Work Plan . . . ." Stokes also stated that between August 20, 2019 and August 26, 2020, Plaintiff performed significant consulting services for the BDG and the Work Plan.[9]
3. A document signed by Dunn on September 26, 2019, granting Plaintiff and its "contractors, subcontractors and consultants" among others, access to the property "only for duration of the Brownfield Redevelopment Grant."[10]

[8] Pl's Response. Exh 5, 8/23/19 Email.
[9] *Id.* Exh 1, Stokes' Affidavit, ¶¶ 6-8.
[10] *Id.* Exh 6, 9/26/19 Document. Access was granted to:

1. Perform due care and response activities, demolition, construction, and work described in Appendix A of the Brownfield Redevelopment Grant. I understand that the scope of the work described in Appendix A may include digging, excavating, vehicle access, sampling, demolition, and other activities that would materially change the condition of my property and confirm the presence or extent of environmental contamination present.
2. Undertake other actions necessary to administer and perform the scope of work, under the Brownfield Redevelopment Grant.
3. Photograph and create images of or on the property with an aerial drone and/or video. These images may be used by EGLE, [Plaintiff], or the Grantee to describe the project, promote the Brownfield program, post on social media or a website. *Id.*

4. An email date February 3, 2020 to Oakland County (copying Dunn) from Stokes referencing a "Word format document of the Brownfield Grant Application."[11]

5. An email dated June 9, 2020 from the State of Michigan Brownfield Coordinator announcing that "the requested grant for the House of Providence project was officially approved on June 4, 2020." Dunn and Stokes were copied on the email.[12]

6. A Permit Application submitted by Plaintiff on June 18, 2020 for construction of a temporary access to Defendant's Property.[13] Dunn acknowledged that Defendant reimbursed Plaintiff for the cost of the permit on July 24, 2020.[14]

7. Plaintiff's draft of the work plan dated August 7, 2020.[15] Stoke attests that the draft was "prepared from the significant work performed as authorized by Mr. Dunn's September 29, 2019 correspondence and the various discussion between myself and Mr. Dunn."[16]

8. An August 26, 2020 email from Oakland County to Stokes (copied to Dunn) regarding review of the work plan.[17]

9. An August 26, 2020 email (Subject Line: "HOP Brownfield Grant Contract") from Dunn to Stokes stating:

> [Plaintiff] appreciates all your prior hard work and effort, but before you proceed any further and as previously and repeatedly requested of ECI, we need ECI to execute and return the contract immediately. If I don't have [sic] fully executed copy by this Friday August 27 at 12 noon I will regretfully inform Oakland County and EGLE of this circumstance and request Oakland County to proceed with their own vendor selection; or [Plaintiff] may also retain a different qualified consultant willing to enter into that contract.[18]

Viewing the evidence in the light most favorable to Plaintiff, as this Court must do in considering a motion for summary disposition under MCR 2.116(C)(10), the Court determines that a question of fact exists as to the existence of the agreement alleged by Plaintiff. The statements,

[11] Pl's Response, Exh 7, 2/3/20 Email.
[12] Pl's Response, Exh 9, 6/9/20 Email.
[13] *Id.*, Exh 8, Permit Application.
[14] Motion, Exh B, Dunn Affidavit, ¶14.
[15] Pl's Response, Exh 10, 8/7/20 "Brownfield Work Plan."
[16] Pl's Response, Exh 1, Stokes Affidavit ¶ 10.
[17] Pl's Response, Exh 13, 8/26/20 Email.
[18] *Id.*, Exh 11, 8/26/20 Dunn Email.

documents, and memorandum discussed above support the allegation of an ongoing relationship whereby Plaintiff was to perform work related to the Brownfield Development Grant and the Work Plan.[19]

B. Statute of Frauds

Pursuant to MCL 566.132(1)(a) "[a]n agreement that, by its terms, is not to be performed within 1 year from the making of the agreement" is void unless that agreement "is in writing and signed with an authorized signature by the party to be charged with the agreement. . . ."

Defendant argues that "it is evident that the parties never contemplated that any agreement, if it existed, would be completed within one year."[20] However, this is not the test to determine the applicability of MCL 566.132(1)(a). Rather,

> if there is *any possibility* that an oral contract is capable of being completed within a year, it is not within the statute of frauds, even though it is clear that the parties may have intended and thought it probable that it would extend over a longer period and even though it does so extend. [*Hill v General Motors Acceptance Corp*, 207

[19] The Court of Appeals stated the following when reviewing much of the same evidence presented in support of the existence of an oral contract:

> There are a number of documents and memorandum that support the existence, at the very least, of an ongoing relationship and work to be performed between the parties. We note the September 26, 2019 writing setting forth defendant's grant of access to plaintiff and others to the property related to the application to secure the Brownfield Grant. Further, on August 7, 2020, a draft of the Brownfield Grant Work Plan was prepared, the completion or development of which was pertinent to the 2017 letter of engagement, and identifying work to be performed by plaintiff. Defendant's e-mail on August 26, 2020, foreshadowed the termination of defendant's relationship with plaintiff, unless a formal, written contract was effectuated: "HOP appreciates all your prior hard work and effort, but before you proceed any further and as previously and repeatedly requested of ECI, we need ECI to execute and return the contract." Termination of a working relationship necessarily implies the existence of such a relationship. Lance Stokes, plaintiff's sole officer and employee, asserted, in an affidavit, despite the absence of a writing, that defendant instructed plaintiff to continue its work and efforts on defendant's behalf. On October 5, 2020, having failed to receive a signed contract from plaintiff, defendant retained another firm as its environmental services consultant going forward. This prompted plaintiff to respond, on October 15, 2020, with an invoice for unbilled services performed for defendant, seeking payment, and precipitating the filing of the construction lien. [*ECI Environmental Consultants and Engineers, LLC v House of Providence*, unpublished per curiam opinion of the Court of Appeals, issued March 30, 2023 (Docket No. 361803), p 7.]

[20] Motion, p 15.

Mich App 504, 509-510; 525 NW2d 905 (1994) (emphasis in original) (citation omitted).]

The relevant question is whether there is *any possibility* that an oral contract is capable of being completed within a year. Defendant, aside from stating that the alleged contract was incapable of being performed within one year, provides no analysis of why this is so.[21] As the party asserting the affirmative defense of the statute of frauds, Defendant has the burden of proof regarding the affirmative defense.[22] *Williamstown Twp v Sandalwood Ranch, LLC*, 325 Mich App 541, 552; 927 NW2d 262 (2018). Furthermore, the failure to adequately brief a position constitutes abandonment of that position. *See also Walters v Nadell*, 481 Mich 377, 388; 751 NW2d 431 (2008) (It is well-settled that "[t]rial courts are not the research assistants of the litigants" and that "the parties have a duty to fully present their legal arguments to the court for its resolution of their dispute."); *Mitcham v Detroit,* 355 Mich 182, 203; 94 NW2d 388 (1959) (It is not enough for a party to "simply announce a position or assert an error and leave it up to this Court to discover and rationalize the basis for [its] claims . . . ."); *Moses, Inc v Southeast Mich Council of Governments*, 270 Mich App 401, 417; 716 NW2d 278 (2006) ("If a party fails to adequately brief a position, or support a claim with authority, it is abandoned.")

Based upon the foregoing, the Court cannot conclude, as a matter of law, that the alleged oral contract was not capable of being completed within a year.

Foreclosure of Construction Lien (Count IV)

On November 4, 2020 Plaintiff recorded a construction lien as to Parcels 1-4 of the Property. Plaintiff asserts that its allegations in support of foreclosure on the lien in Count IV are

[21] It is evident, that less than a year had passed between the time the opportunity to apply for the BDG arose on August 23, 2019 and the time the application was approved in June 2020.
[22] The statute of frauds is an affirmative defense. *See* MCR 2.111((F)(3)(a).

"for collection purposes only and are not the gravamen of Plaintiff's underlying breach of contract cause of action."

Pursuant to MCL 570.1107(1) (footnote omitted):

> Each contractor, subcontractor, supplier, or laborer who provides an improvement to real property has a construction lien upon the interest of the owner or lessee who contracted for the improvement to the real property, as described in the notice of commencement given under section 108 or 108a, the interest of an owner who has subordinated his or her interest to the mortgage for the improvement of the real property, and the interest of an owner who has required the improvement. A construction lien acquired pursuant to this act shall not exceed the amount of the lien claimant's contract less payments made on the contract.

As the Court of Appeals stated in its opinion in this case "in order to state a valid claim under the [Construction Lien Act], plaintiff must have pleaded there was a contract, 'of whatever nature,' which authorized plaintiff to provide an 'improvement' on the property through August 2020." *ECI Environmental Consultants and Engineers, LLC v House of Providence and Assemblies of God Loan Fund*, unpublished per curiam opinion of the Court of Appeals, issued March 30, 2023 (Docket No. 361803), p 3.

A. Improvement to Property

As was discussed above, Defendant denies the existence of a contract and this Court has concluded that there is a question of fact in that regard. Defendant further argues that summary disposition should be granted as to Count IV because "even if Plaintiff is able to establish the existence of an oral contract between the parties, plaintiff cannot maintain a valid construction lien when ECI did not provide an improvement to the property as defined by MCL 570.1104(6)."[23]

[23] Motion, p 16.

MCL 570.1104(6) defines "improvement" as:

> "Improvement" means the result of labor or material provided by a contractor, subcontractor, supplier, or laborer, including, but not limited to, surveying, engineering and architectural planning, construction management, clearing, demolishing, excavating, filling, building, erecting, constructing, altering, repairing, ornamenting, landscaping, paving, leasing equipment, and installing or affixing a fixture or material, pursuant to a contract.

Defendant argues that "under a strict interpretation of the statute, there is no genuine issue of material fact that ECI did not complete any improvement to the subject property that added value."[24] Defendant also argues that Plaintiff's invoice "consists primarily of administrative tasks that cannot be verified, nor is there any indication of how each alleged task resulted in an improvement to the property."[25]

Contrary to Defendant's argument, the plain language of the statute does not require that Plaintiff demonstrate a value added to the property.[26] As was stated above, under MCL 570.1104(6) "'[i]mprovement'" means the result of labor or material provided by a contractor . . . ." There is no language in the statute requiring "value added" and this Court is bound by the plain language of the statute.[27] *See Spectrum Health Hosp v Farm Bureau Mut Ins Co of Mich*, 492

[24] *Id.* at 18.

[25] Motion, p 18. The Court of Appeals determined that there was a question of fact as to whether Plaintiff''s environmental consulting services are contemplated by [MCL 570.1104(6)]. *ECI Environmental Consultants and Engineers, LLC v House of Providence*, unpublished per curiam opinion of the Court of Appeals, issued March 30, 2023 (Docket No. 361803), p 5. Apparently in response to the Court of Appeals' opinion Defendant does not argue, as it did in its previous motion for summary disposition, that "there is no plausible interpretation of 'environmental consulting' services that would qualify as an actual physical improvement" to the property.

[26] Defendant cites *Woodman v Walter*, 204 Mich App 68; 514 NW2d 190 (1994) as "suggesting that the proper inquiry is whether work conferred any value." However, the Court in *Woodman* was specifically only addressing the issue of whether subsequent warranty work served to extend the ninety-day period for the filing of a construction lien. *Id.* at 69.

[27] To the extent that Defendant argues that a majority of the time entries constitute administrative work which would not result in "improvement" to the property, the Defendant provides no support for this argument. And, as the Court of Appeals stated in its Opinion, the term "improvement" as defined in MCL 570.1104(6) is "broad in its meaning." *ECI Environmental Consultants and Engineers, LLC v House of Providence*, unpublished per curiam opinion of the

Mich 503, 515; 821 NW2d 117 (2012) (quotation marks and citation omitted) ("The primary goal of statutory interpretation is to ascertain the legislative intent that may reasonably be inferred from the statutory language. The first step in that determination is to review the language of the statute itself."); *Whitman v City of Burton*, 493 Mich 303, 311; 831 NW2d 223 (2013) ("If the language of a statute is clear and unambiguous, the statute must be enforced as written and no further judicial construction is permitted.") Additionally, to the extent that Defendant argues that the entries on the invoices cannot be verified or were not discussed with Defendant the question of whether such work was performed or authorized under the alleged oral agreement is a question of fact and is not a basis for granting summary disposition.

B. Timeliness of Filing of Construction Lien

Next, Defendant asserts that the construction lien is invalid because it was not recorded within 90 days after last furnishing the improvement. Pursuant to MCL 570.1111(1):

> Notwithstanding section 109, the right of a contractor, subcontractor, laborer, or supplier to a construction lien created by this act shall cease to exist unless, within 90 days after the lien claimant's last furnishing of labor or material for the improvement , pursuant to the lien claimant's contract, a claim of lien is recorded in the office of the register of deeds for each county where the real property to which the improvement was made is located. A claim of lien shall be valid only as to the real property described in the claim of lien and located within the county where the claim of lien has been recorded.

In this case, the construction lien was executed by Plaintiff on October 29, 2020 and was recorded on November 4, 2020.[28] The evidence presented indicates that Plaintiff was instructed by Defendant to stop work on August 26 and/or was terminated by Defendant on August 28 2020.[29]

Court of Appeals, issued March 30, 2023 (Docket No. 361803), p 5. Therefore, the Court will not find, as a matter of law, that any "administrative work" invoiced cannot result in "improvement" under the statute.

[28] Motion, Exhibit H.

[29] Pl's Response, Exh 11, August 26, 2020 Email. *See also* Motion, Exh B, Dunn Affidavit, ¶ 22 ("I directed the attorney for House of Providence, Paul Bohn, to terminate ECI on August 28, 2020 because ECI refused to enter into a written contract. House of Providence did not authorize ECI to complete any further work.")

Accordingly, it is arguable that the construction lien was recorded with the 90 day period stated by MCL 570.1111(1) and summary disposition will be denied as to the alleged invalidity of the lien under MCL 570.1111(1).

C. Lien on Parcels 2 and 4

The construction lien filed by Plaintiff lists Parcels 1-4.[30] Defendant argues that Summary Disposition should be granted to the extent that Plaintiff seeks foreclosure on Parcels 2 and 4 because there was no need for work on these parcels after 2018 and "the parcels were specifically excluded from the Grant Application and Grant Agreement."[31] Therefore, Plaintiff could not have provided an improvement to those parcels and could not obtain a lien as to those parcels. Plaintiff does not address Defendant's argument in this regard and therefore abandons any counterargument. *Walters*, 481 Mich at 388; *Mitcham v Detroit,* 355 Mich at 203; 94 NW2d 388 (1959); *Moses, Inc*, 270 Mich App at 417.

Moreover, Defendant's argument as to Parcels 2 and 4 is supported by the Grant Application which does state, as Defendant asserts, that:

> From April of 2017 through June of 2019, ECI conducted environmental assessments, investigations, response activities, and due care activities, and removed an above ground storage tank (AST) that previously held leaded gasoline. ECI analyzed more than 2,000 soil samples for lead across the118 acres.
>
> ***
>
> Environmental response activities were completed during the above time frame for Parcels 2 and 4. *No further action is required on Parcels 2 or 4.* The final Due Care Activities that remain to be done are on Parcels 1 and 3.[32]

[30] Motion, Exhibit H.
[31] Motion, p 17.
[32] Motion, Exhibit I, Grant and Loan Application, p 3 (emphasis added).

As was previously stated, under MCL 570.1107(1), a contractor "who provides an improvement to real property has a construction lien upon the interest of the owner or lessee who contracted for the improvement to the real property." Here Plaintiff alleges an oral contract to secure the Brownfield Development Grant and prepare a Work Plan acceptable to Oakland County. However, Parcels 2 and 4 were apparently not part of the activities for which funding was sought under the grant application.

Based upon the foregoing, Summary Disposition is granted as to Count IV with regard to any Claimed liens on Parcels 2 and 4.

Unjust Enrichment (Count II) and Quantum Meruit (Count III)

Plaintiff alleges, as alternate counts to the breach of contract claim, unjust enrichment and quantum meruit. Under these equitable doctrines, the law "indulges in the fiction of a quasi or constructive contract, with an implied obligation to pay for benefits received to ensure that exact justice is obtained." *Kammer v Asphalt Paving Co, Inc v East China Twp Schs*, 443 Mich 176, 185-186; 504 NW2d 635 (1993) (quotation marks and citations omitted). "Because this doctrine vitiates normal contract principles, the courts employ the fiction with caution. . . ." *Id.* at 186.

In order "to sustain a claim of quantum meruit or unjust enrichment, a plaintiff must establish (1) the receipt of a benefit by the defendant from the plaintiff and (2) an inequity resulting to the plaintiff because of the retention of the benefit by the defendant."[33] *Morris Pumps v Centerline Piping, Inc*, 273 Mich App 187, 195; 729 NW2d 898 (2006).

The Court first disagrees with Defendant that the Second Amended Complaint is insufficiently pled. Michigan is a notice-pleading state, and a complaint is required only to contain

[33] "Claims for unjust enrichment and quantum meruit have historically been treated in a similar manner." *NL Ventures VI Farmington, LLC v City of Livonia*, 314 Mich App 222, 241; 886 NW2d 772 (2015).

enough information "reasonably to inform the defendant of the nature of the claim against which he must defend." *Veritas Auto Machinery, LLC v FCA Int'l Operations, LLC*, 335 Mich App 602, 615; 968 NW2d 1 (2021). The allegations in the Second Amended Complaint meet this requirement and are sufficient "reasonably to inform Defendant" that Plaintiff is seeking to be compensated for the value of environmental consulting services allegedly provided to Defendant.

Defendant also argues that summary disposition is proper on Counts II and III because Plaintiff "has failed to raise a question of fact regarding whether House of Providence received any improvements to the subject property, and if so, whether such receipt was unjust or inequitable." First, the question is not whether Defendant received "improvements" in the statutory sense discussed previously. Rather, the question is whether Defendant received a benefit from Plaintiff. Second, as was previously discussed there is evidence of work performed by Plaintiff on behalf of defendant. The question of whether an inequity resulted from nonpayment presents a question of fact. *Morris Pumps*, 273 Mich App at 193 ("Whether a specific party has been unjustly enriched is generally a question of fact.")

ORDER

Based upon the foregoing Opinion:

IT IS HEREBY ORDERED that House of Providence's Motion for Summary Disposition under MCR 2.116(C)(10) is **DENIED** as to Count I (Breach of Contract);

IT IS FURTHER ORDERED that House of Providence's Motion for Summary Disposition under MCR 2.116(C)(10) is **GRANTED** to the extent that Plaintiff is seeking foreclosure of lien on Parcels 2 and 4 and is otherwise **DENIED** as to Count IV (Foreclosure of Construction Lien);

IT IS FURTHER ORDERED that House of Providence's Motion for Summary Disposition under MCR 2.116(C)(10) is **DENIED** as to Counts II (Unjust Enrichment) and Count III (Quantum Meruit);

IT IS SO ORDERED.

This Order does NOT resolve the last pending matter and does NOT close the case.

/s/Victoria A. Valentine

HON. VICTORIA A. VALENTINE
CIRCUIT COURT JUDGE

Dated: 12/8/23