IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

BATH/KITCHEN & TILE SUPPLY COMPANY, a division of CERAMIC TILE SUPPLY COMPANY, a Delaware corporation,	:	C.A. No. 09L-10-005 WLW
Plaintiff,	:	
v.	:	
EASTSIDE PROPERTIES 10, LLC, a Delaware limited liability company, SHOAL CONSTRUCTION, INC., a Delaware corporation, DOC IN A BOX 2008-1, LLC, a Delaware limited liability company, DOC IN A BOX 2008-2, LLC, a Delaware limited liability company, MONTY-LEONE HEALTH WORKS INC., a Delaware corporation,	:	
Defendants.	:	

Submitted: February 5, 2010
Decided: February 18, 2010

ORDER

Upon Defendants Eastside Properties 10, LLC, Doc in a Box 2008-1, LLC, Doc in a Box 2008-2, LLC, and Monty-Leone Health Works, Inc.'s Motion to Dismiss.
Denied.

Bath/Kitchen & Tile Supply Co. v. Eastside Properties, et al.
C.A. No. 09L-10-005 WLW
February 18, 2010

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James D. Heisman, Esquire, Max B. Walton, Esquire and Josiah R. Wolcott, Esquire of Connolly Bove Lodge & Hutz, LLP, Wilmington, Delaware; attorneys for Eastside Properties 10, LLC, Doc In a Box 2008-1, LLC, Doc In a Box 2008-2, LLC, and Monty-Leone Health Works, Inc.

Patrick M. McGrory, Esquire of Tighe & Cottrell, P.A., Wilmington, Delaware; attorneys for Shoal Construction, Inc.

WITHAM, R.J.

Defendants Eastside Properties 10, LLC ("Eastside"), Doc In A Box 2008-1, LLC, Doc In A Box 2008-2, LLC (collectively, "Doc In A Box"), and Monty-Leone Health Works, Inc. ("Monty-Leone") (collectively "the Eastside Defendants") filed this Motion to Dismiss on December 31, 2009. Based upon the reasons set forth below, Defendants' motion must be denied.

FACTS

On October 1, 2009, Plaintiff Bath/Kitchen & Tile Supply Company ("Bath/Kitchen") filed a Complaint and Statement of Mechanic's Lien ("the Statement"). Bath/Kitchen supplied material and labor for a construction project in Dover ("the Project"). Eastside allegedly owns the property at issue. Eastside leased the structure on the property to Doc In A Box.

Doc In A Box hired Shoal Construction, Inc. ("Shoal") as the general contractor for the Project. Shoal then entered into a subcontract with Bath/Kitchen. Bath/Kitchen contends that this subcontract was entered into with the prior knowledge and written consent of "Gateway, Doc In A Box and Monty-Leone."[1]

Defendants' Arguments

The Eastside Defendants raise three arguments in favor of dismissal: (1) Bath/Kitchen's Bill of Particulars is deficient; (2) Bath/Kitchen failed to include a copy of the *entire* subcontract; and (3) Bath/Kitchen failed to allege properly that "Eastside" had given its prior written approval.

[1] Bath/Kitchen maintains that its reference to "Gateway," instead of Eastside, was an inadvertent clerical error.

The Eastside Defendants assert that the Bill of Particulars lacks sufficient detail to provide adequate notice of the claims. In addition, the Eastside Defendants maintain that the submitted copy of the contract between Bath/Kitchen and Shoal is deficient because it is missing one page. Finally, the Eastside Defendants contend that Bath/Kitchen incorrectly alleged that the subcontract was "entered into with prior knowledge and written approval of Gateway, Doc In A Box and Monty-Leone." The Eastside Defendants note that this is incorrect because Bath/Kitchen failed to allege that *Eastside*, Doc In A Box and Monty-Leone provided prior written approval.

Plaintiff Bath/Kitchen's Arguments

Bath/Kitchen maintains that the Bill of Particulars provides sufficient detail to enable the Eastside Defendants to defend the action. Bath/Kitchen contends that the Bill of Particulars, along with the Statement, identifies the property and total cost of the materials and labor. In the alternative, Bath/Kitchen requests leave to amend the Bill of Particulars.

Bath/Kitchen concedes that it inadvertently failed to include one page of the contract. Bath/Kitchen has therefore requested leave to amend and include the missing page. Nevertheless, Bath/Kitchen asserts that the Eastside Defendants have since been provided a full copy of the contract. Consequently, Bath/Kitchen contends that the Eastside Defendants have not been prejudiced by any associated delay.

Bath/Kitchen also concedes that it inadvertently named "Gateway" in a portion of its Complaint and Statement of Mechanic's Lien. Bath/Kitchen notes that "Gateway West Urgent Care Fitup" was the project name and that the use of

"Gateway" instead of "Eastside" was a clerical error. Nevertheless, Bath/Kitchen asserts that it still made the requisite allegation that the Eastside Defendants gave prior written consent to the work in question. Bath/Kitchen emphasizes that, although the mechanic's lien statute is to be construed strictly, it is not to be applied in an unreasonable or unwarranted manner.

Standard of Review

The Court's standard of review on a motion to dismiss is well-settled. When deciding a motion to dismiss, all well-pleaded factual allegations in the complaint are accepted as true.[2] If the complaint and facts alleged are sufficient to support a claim on which relief may be granted, the motion is not proper and should be denied.[3] The question, therefore, is "whether a plaintiff may recover under any conceivable set of circumstances susceptible to proof under the complaint."[4] Consequently, dismissal will only be warranted when "under no reasonable interpretation of the facts could the complaint state a claim for which relief might be granted."[5]

DISCUSSION

The Court finds that Bath/Kitchen's three arguments lack merit. First, the Bill of Particulars is sufficient. In *Deluca v. Martelli*, the Court noted that the Mechanic's

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[2] *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978).

[3] *Id.*

[4] *Id.*

[5] *Hedenberg v. Raber*, 2004 WL 2191164, at *1 (Del. Super.).

Lien Statute requires that a Bill of Particulars "specify the kind and amount of labor done."[6] The Court further noted that the Bill of Particulars "should be a detailed statement of the facts and must set forth the facts upon which [a] plaintiff bases his claim with sufficient particularity that the interested parties can have no doubt as to the details of the claim."[7] A Bill of Particulars, however, is to be read in conjunction with the Statement when determining whether it sufficiently apprises a defendant of the basis of a plaintiff's claim.[8]

Here, the Bill of Particulars identifies the property, provides an itemized invoice indicating the amount charged for the work and materials provided, and roughly outlines the hours worked. The Court agrees with the Eastside Defendants' assertion that the attached "work sheets" are difficult to decipher.[9] Any resulting doubt, however, is resolved upon consideration of both the Bill of Particulars and the Statement. Together, these documents identify the basis of Bath/Kitchen's claim, including how Bath/Kitchen arrived at its alleged outstanding amount.[10]

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[6] 200 A.2d 825, 827 (Del. Super. Ct. 1964).

[7] *Id.* at 826 (citation omitted)

[8] *Wilmington Trust Co, v. Branmar, Inc.*, 353 A.2d 212, 216 (Del. Super. Ct. 1976).

[9] *See Wilmington Trust Co.*, 353 A.2d at 216 (noting that a Bill of Particulars, although somewhat unclear, does not render the Statement invalid when the Bill of Particulars and Statement, taken together, apprise the defendant of the basis of a plaintiff's claim).

[10] *See generally*, *Weymouth v. Tall Trees, L.P.*, 1987 WL 6460, at *1 (Del. Super.) (denying a motion to dismiss and noting that information in the Statement, even absent a Bill of Particulars, was sufficient to meet the basic requirements of 25 *Del. C.* § 2712).

Second, a single page unintentionally excluded from the submitted "full" contract does not warrant dismissal. Similarly, a single clerical error naming an incorrect entity in the body of a filing does not require dismissal. The Eastside Defendants are correct that the Delaware Mechanic's Lien Statute must be "strictly construed and pursued."[11] Strict construction, however, "does not mean unreasonable or unwarranted construction."[12]

It is well-settled that courts should not be overly technical or excessively strict.[13] It would be unreasonable and unwarranted for this Court to dismiss this action because of minor clerical errors, especially given that the Eastside Defendants have failed to identify any prejudice resulting from these errors. For the sake of the record, however, it would appear prudent for Bath/Kitchen to correct these mistakes.

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[11] *King Constr., Inc. v. Plaza Four Realty, LLC*, 976 A.2d 145, 152 (Del. 2009) (citation omitted).

[12] *Rockland Builders, Inc. v. Endowment Mgmt., LLC*, 2006 WL 2053418, at *3 (Del. Super.) (citation omitted).

[13] *Id.* (citation omitted).

CONCLUSION

For the foregoing reasons, the Defendants' Motion to Dismiss is **DENIED**. IT IS SO ORDERED.

/s/ William L. Witham, Jr.
Resident Judge

WLW/dmh
oc: Prothonotary
xc: Counsel