

# Commonwealth of Virginia

FIFTEENTH JUDICIAL CIRCUIT

## JUDGES

Gordon F. Willis  
Joseph J. Ellis  
J. Overton Harris  
Charles S. Sharp  
Sarah L. Deneke  
Michael E. Levy  
Patricia Kelly  
Herbert M. Hewitt  
Victoria A. B. Willis  
R. Michael McKenney  
Ricardo Rigual



**J. Overton Harris**  
Hanover Circuit Court  
Post Office Box 505  
Hanover, Virginia 23069-0505  
(804) 365-6161

January 27, 2017

## RETIRED JUDGES

Joseph E. Spruill, Jr., Retired  
William H. Ledbetter, Jr., Retired  
H. Harrison Braxton, Jr., Retired  
Ann Hunter Simpson, Retired  
John R. Alderman, Retired  
Horace A. Revercomb, III, Retired  
J. Martin Bass, Retired  
David H. Beck, Retired  
Harry T. Taliaferro, III, Retired

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Glen Allen, VA 23060  
*Counsel for Defendant*

**Re: G.H. Watts Construction, Inc. v. Cornerstone Builders, LLC**  
**Hanover Circuit Court Case Number CL16003197-00**

Dear Counsel:

This matter is before the Court on Defendant's Demurrer and Motion to Release Bond. A hearing was held on January 11, 2017. The Court heard argument and took the matter under advisement. Following a thorough review of the pleadings, exhibits, and the law, the Court finds as follows.

### **I. Background**

Accepting the allegations in the Complaint as true, Plaintiff in this case presented Defendant with a proposal to perform work on a residential lot owned by Defendant. At Plaintiff's recommendation, Defendant agreed to have Atlantic Geotechnical Services, Inc. dig test holes

and assess subsurface conditions of the property. Based on a soil report provided by Atlantic Geotechnical Services, Inc., Plaintiff presented Defendant with an amended proposal that provided a total cost of \$23,110, including the \$800 expense for Atlantic Geotechnical Services, Inc.'s work. Defendant accepted Plaintiff's proposal.

By the time Plaintiff began work on the property, the soil conditions had worsened. Defendant's on-site engineer directed Plaintiff to perform additional work beyond what Plaintiff included in its proposal. Based on the additional labor and materials necessary to complete its work, Plaintiff provided Defendant with an invoice totaling \$39,060, or \$15,950 above the proposal amount. Plaintiff claims a current balance owed to Plaintiff of \$16,750.

On July 19, 2016, Plaintiff recorded a Memorandum for Mechanic's Lien (the "Memorandum"), claiming \$16,750, plus costs and interest. Plaintiff provided notice of the filing of the Memorandum to Defendant by mail. On August 16, 2016, this Court entered a Decree permitting Defendant to file a cash bond to discharge and release the lien against the real property arising from the filing of the Memorandum. The cash bond was filed with the Clerk and the lien was released. Within the required time limits, Plaintiff commenced this action by the filing of its Complaint with a copy of the Memorandum attached and incorporated by reference into the Complaint as "Exhibit E."

Count I of Plaintiff's Complaint asks this Court to enter an order establishing the validity, priority, and amount of Plaintiff's lien, and to enforce the lien by ordering payment of the lien bond to Plaintiff in full. Count II, pled in the alternative, asks this Court to enter judgment for Plaintiff in the amount of \$16,750, plus all costs incurred and accrued interest, based on Defendant's breach of contract. Count III, pled in the alternative, asks this Court to enter judgment for Plaintiff in the amount of \$16,750, plus all costs incurred and accrued interest,

based on Defendant's unjust enrichment. Defendant demurs to all three Counts, moves to discharge the lien and release the lien bond, and to dismiss the Complaint with prejudice.

## **II. Rule of Law and Analysis**

In ruling on a demurrer, the Court considers "whether the facts alleged in the complaint are legally sufficient to state a cause of action upon which the requested relief may be granted." *Ramos v. Wells Fargo Bank, NA*, 289 Va. 321, 322, 770 S.E.2d 491, 493 (Va. 2015). "The facts admitted on demurrer are those expressly alleged..., those which fairly can be viewed as impliedly alleged, and those which can be reasonably inferred from the facts alleged." *W.S. Carnes, Inc. v. Board of Supervisors*, 252 Va. 377, 384, 478 S.E.2d 295, 300 (Va. 1996). "A demurrer accepts as true all facts properly pled, as well as reasonable inferences from those facts." *Desetti v. Chester*, 290 Va. 50, 56, 772 S.E.2d 907, 909 (Va. 2015) (quoting *Steward v. Holland Family Props., LLC*, 284 Va. 282, 726, S.E. 2d 251, 253 (Va. 2012)). "On demurrer, a court may examine not only the substantive allegations of the pleading attacked but also any accompanying exhibit mentioned in the pleading." *Flippo v. F & L Land Co.*, 241 Va. 15, 17, 400 S.E.2d 156, 156 (Va. 1991). "A demurrer, however, does not admit the correctness of the pleader's legal conclusions." *Ramos v. Wells Fargo Bank, NA*, 289 Va. 321, 323, 770 S.E.2d 491, 493 (Va. 2015).

As to Count I, Defendant argues the Memorandum was deficient and the lien was not perfected as required by statute. Va. Code § 43-1 defines "general contractor" as including contractors, laborers, mechanics, and persons furnishing materials, who contract directly with the owner, and the term "sub-contractor" as including all such contractors, laborers, mechanics, and persons furnishing materials, who do not contract with the owner but with the general contractor. Accepting as true the allegations of the Complaint, Plaintiff is proceeding under Va. Code § 43-7 as a sub-contractor. In order to have the lien provided for in Va. Code § 43-3 a sub-contractor

must comply with Va. Code § 43-4 and in addition give notice in writing to the owner of the property or his agent of the amount and character of his claim. The memorandum, affidavit and notice required by Va. Code § 43-7 are sufficient if substantially in form and effect as provided in Va. Code § 43-8.

Despite Plaintiff's arguments to the contrary, the Court finds the Memorandum attached to the Complaint as "Exhibit E" is not substantially in form and effect as provided in Va. Code § 43-8. On the first page of the Memorandum the claimant is identified as "G.H. Watts Construction, Inc." On page two the claimant is identified as "Gary H. Watts." The affidavit of the Notary states that "Gary Watts" signed as "claimant" and not as "agent for claimant." The Memorandum does not substantially in form and effect identify the claimant as required by Va. Code § 43-8. The Demurrer to Count I is sustained. The Court need not address Defendant's additional arguments in demurring to Count I.

"The elements of a breach of contract action are (1) a legally enforceable obligation of a defendant to a plaintiff; (2) the defendant's violation or breach of that obligation; and (3) injury or damage to the plaintiff caused by the breach of obligation." *Filak v. George*, 267 Va. 612, 619, 594 S.E.2d 610, 614 (Va. 2004). To state a cause of action for unjust enrichment, a plaintiff has to allege (1) that he conferred a benefit on the defendant; (2) that the defendant knew of the benefit and should reasonably have expected to repay the plaintiff; and (3) that the defendant accepted or retained the benefit without paying for its value. *Schmidt v. Household Fin. Corp., II*, 276 Va. 108, 116, 661 S.E.2d 834, 838 (Va. 2008).

The Plaintiff here has stated causes of action for breach of contract and unjust enrichment. All of the elements for each cause of action are alleged in the Complaint and accompanying exhibits.

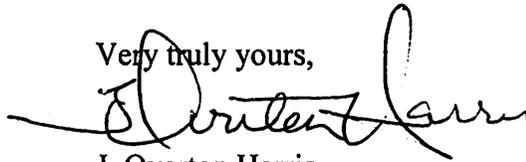
### **III. Conclusion**

Defendant's demurrer to Count I is sustained, and Count I is dismissed with prejudice.

Therefore, Defendant's motion to discharge the lien and release the lien bond is granted.

Defendant's demurrer to Counts II and III is overruled. Counsel for Defendant is to prepare and submit an order consistent with the Court's ruling within two weeks.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. Overton Harris", written over the typed name below.

J. Overton Harris

Hanover County Circuit Court Judge