

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

FLOORING SOLUTIONS, INC.,)
)
 Plaintiff,)
) C.A. No.: N23L-10-009 KMM
 v.)
)
 COLUMBIA WEGMAN NEWARK,)
 LLC, and KBE BUILDING)
 CORPORATION.,)
)
 Defendants.)

Submitted: March 13, 2026
Decided: June 17, 2026

Post Trial Decision

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I. *Introduction*

A subcontractor submitted a proposal for flooring installation for a commercial construction project.¹ After the general contractor requested pricing on additional work, the subcontractor submitted a second proposal, which included the full scope of work, with various price adjustments. In this action, the subcontractor seeks payment for the work performed as reflected in the second proposal. The uncontroverted evidence shows that this work was performed, the subcontractor incurred the corresponding expenses from its vendors, and the general contractor accepted the work. Despite the subcontractor's experience of parties working out pricing disputes, the parties here did not do so.

Unfortunately for the subcontractor, the written contract, signed after the second proposal, reflected a contract price based on the lower first proposal quote. The subsequent change order for the relevant additional work, also signed by the parties, did not include the additional work at issue here. Because the parties' relationship is governed by an express contract, the subcontractor cannot use the second proposal to modify the terms of the contract or as an alternate ground for recovery.

¹ After the lien on the property was discharged by stipulation, the case proceeded to trial only against the general contractor. *See* D.I. 18.

Just as the subcontractor is bound by the terms of the express contract, so is the general contractor. It did not comply with the terms of the contract and therefore, it is not entitled to “charge back” costs to the subcontractor.

It is undisputed that the general contractor owes the subcontractor \$33,000. Thus, the subcontractor filed a valid mechanics lien and is entitled to judgment in that amount.

Finally, the general contractor seeks an award of attorneys’ fees and costs. The subcontract permits some fee shifting. The amount of any fee award will be determined after additional submissions from the parties.

II. *Factual Background*

A. *The Parties*

Flooring Solutions, Inc. (“Flooring Solutions”) provides and installs various types of flooring for commercial construction and fit-out projects.² Dominic Marra has been in the flooring business for over 52 years, starting as an installer.³ He started Flooring Solutions 25 years ago, overseeing the day-to-day operations as its president.⁴

² Trial Transcript (“Tr.”) at 20-21.

³ *Id.* at 20.

⁴ *Id.* at 20-22.

Defendant KBE Building Corporation (“KBE”) is a general contractor. It solicited subcontractor bids for the Newark Senior Living construction project (the “Project”) through an online application called Blue Book.⁵

B. *The Proposals*

Flooring Solutions submitted a proposal based on the blueprint for the Project, dated June 17, 2021 for “Plans IFC 8/28/2020” (“Proposal 1”).⁶ “IFC” stands for Intended for Construction.”⁷ This is the set of drawings general contractors use to solicit bids.⁸ Proposal 1 included various carpeting finishes and with installation, totaled \$538,390.⁹ Mr. Woodruff, a Flooring Solutions project manager, signed Proposal 1.¹⁰

In July 2021, Flooring Solutions submitted a second proposal (“Proposal 2”). Some of the line item pricing for the flooring finishes that were included in Proposal 1 increased, some quantities changed, and Proposal 2 included additional flooring finishes such as quarry tile.¹¹ Mr. Marra explained that in 2021, still feeling the

⁵ *Id.* at 22.

⁶ Joint Exhibit (“JX”) 1.

⁷ Tr. at 85.

⁸ *Id.* at 144.

⁹ JX 1; Tr. at 23-24.

¹⁰ JX 1; Tr. at 28. Mr. Marra testified that Ray Woodruff did not have authority to sign contracts on Flooring Solutions’ behalf. Tr. at 75-76. While Mr. Woodruff’s actual authority may be in question, there is no dispute that he had apparent authority. Therefore, Mr. Woodruff’s actions bind Flooring Solutions. *Caribbean Sun Airlines Inc. v. Halevi Enterprises LLC*, 339 A.3d 24, 35-36 (Del. 2025). Mr. Woodruff left Flooring Solutions in January 2023, without giving any explanation or notice of his departure. Tr. at 84-85, 101. He was not called as a witness at trial.

¹¹ JX 3.

effects of COVID, vendors' pricing on products was volatile and the price for finishes in Proposal 1 had increased.¹² Mr. Woodruff signed Proposal 2, which increased the total price by \$152,664 for a grand total of \$691,054.¹³

Proposal 2 identified the Plans as "ASI005 6/4/21."¹⁴ "ASI" stands for Architect Supplemental Instructions.¹⁵ Here, ASI005 was the fifth set of design changes on which the architect wanted pricing.¹⁶

C. The Subcontract

Flooring Solutions and KBE entered into a Subcontract Agreement, dated as of September 2, 2021 (the "Subcontract").¹⁷ The first page of the Subcontract identifies the contract price as \$538,390, subject to change through change orders.¹⁸ Attached to the Subcontract is a Flooring Solutions document titled "SOV" which lists the work to be performed by category, with a subtotal for each.¹⁹ The "Total Base Contract" price is listed as \$538,390.²⁰ Final payment was due 90 days after completion of the Project and conditioned on KBE receiving full payment from the

¹² JX 3.

¹³ JX 2, JX 3.

¹⁴ JX 3.

¹⁵ Tr. at 86, 144.

¹⁶ *Id.* at 144-45.

¹⁷ JX 4; Tr. at 27.

¹⁸ JX 4.

¹⁹ *Id.*

²⁰ *Id.*

owner, and Flooring Solutions providing certifications that there are no outstanding liens from any of its vendors.²¹

Under Section 14 of the Subcontract, if Flooring Solutions fails to comply with terms of the agreement or the Construction Documents, after providing three business days written notice, KBE may have the work performed and charge Flooring Solutions for the work.²² In the event of a dispute between KBE and Flooring Solutions, it “shall pay all costs and expense, including reasonable attorneys’ fees” incurred by KBE in successfully defending the claim in whole or in part.²³

D. *Change Order 2 and Payment Requests*

Mr. Woodruff submitted another proposal, dated October 13, 2021, advising KBE’s project manager that Mr. Woodruff contacted his vendors again and adjusted each line item accordingly (“Proposal 3”).²⁴ Proposal 3 listed the full scope of the work, for a total of \$623,080.²⁵ Proposal 3 identifies the Plans as “ASI005 6/24/21.”²⁶

The parties executed several change orders. On March 15, 2022, Mr. Woodruff signed KBE’s Change Order 2, adding work described as “ASI-005

²¹ JX 4, §§ 3.e., 11, and 12.c.

²² *Id.* § 14.a.

²³ *Id.* § 14.b.

²⁴ JX 5; Tr. at 33-34.

²⁵ JX 5.

²⁶ *Id.*

Flooring” for a total of \$70,773.²⁷ With the addition of this amount to the total of Proposal 1, Change Order 2 identified the new Subcontract total as \$609,163.²⁸

Carmen Marra has worked for Flooring Solutions fulltime since 2019 and is the Office Manager, with responsibilities that include warehousing and scheduling.²⁹ She was not involved in bidding on the Project. After Ray Woodruff left the company, which was near the end of Flooring Solutions’ work, she took over his responsibilities.³⁰ Ms. Marra was responsible for ensuring materials were delivered to the Project and scheduling the installers.³¹

Ms. Marra was also responsible for ensuring that punch list items were completed.³² KBE sent two punch lists: one on February 12, 2023 and another on March 6, 2023.³³ Some of the items on the punch list were not work within Flooring Solutions’ responsibilities and therefore, Ms. Marra worked with KBE’s representative Bob Keenan, to sort out the discrepancies.³⁴ Growing frustrated at multiple punch lists and other work delays caused by KBE, Ms. Marra told KBE that

²⁷ JX 6; Tr. at 32.

²⁸ JX 6.

²⁹ Tr. at 99-100.

³⁰ *Id.* at 101.

³¹ *Id.* at 102.

³² *Id.* at 103.

³³ *Id.* at 104; JX 10, JX 11, JX 12.

³⁴ Tr. at 103, 105.

Flooring Solutions would not do any further punch list work if KBE were to “magically find something.”³⁵

Ms. Marra was also responsible for submitting payment requests. An online application called “GC Pay” was used for this Project.³⁶ With each payment request, Flooring Solutions was required to sign a waiver.³⁷ GC Pay also required Flooring Solutions to complete a form certifying that the subcontractor paid all of its vendors and subcontractors, and include proof of payment and subcontractors’ lien waivers.³⁸ Ms. Marra initially refused to complete this form or provide the waivers.³⁹

She testified that Flooring Solutions had difficulty getting paid and after she made phone calls, KBE would make a payment.⁴⁰

Flooring Solutions completed all the items on the two punch lists, except approximately \$4,000 worth of items.⁴¹ Ms. Marra later learned that KBE was “back charging” Flooring Solutions for an April 4 punch list that was never sent to Flooring Solutions.⁴²

On January 16, 2023, Ms. Marra signed an Application for Payment, which contains a Subcontractor Conditional Partial Release and Waiver of Claims, also

³⁵ *Id.* at 119.

³⁶ *Id.* at 111.

³⁷ *Id.*

³⁸ *Id.* at 111-13.

³⁹ *Id.* at 111, 121-22.

⁴⁰ *Id.* at 112.

⁴¹ *Id.* at 114, 120.

⁴² *Id.* at 112, 120.

signed by Ms. Marra, for work through that date.⁴³ The conditional waiver acknowledges payment of \$500,300.37 to date and provides in part:

Conditioned upon receipt of the amount set forth above as payments received for the period indicated, [the Subcontractor] waives and releases any claim, mechanic's lien and claim of lien which it may now have upon the land and improvements described above in the Project Description, or against [KBE] or [the Owner], arising out of or relating to Subcontractor's/Supplier's work pursued and material supplied up to and through, and including, the period indicated above.⁴⁴

Ms. Marra signed another Subcontractor Conditional Release dated as of March 29, 2023.⁴⁵

Despite completing all the requested work, in Flooring Solutions' view, KBE failed to pay Flooring Solutions in full. Ms. Mara continued to follow up with KBE on payment. As of September 12, 2023, after credit for the items Flooring Solutions did not perform, KBE still owed at least \$33,000.⁴⁶

Flooring Solutions last completed work at the Project in March 2023.⁴⁷ Ms. Mara believes that additional material was delivered after that date, but does not know when that occurred.⁴⁸

⁴³ JX 7.

⁴⁴ *Id.*

⁴⁵ JX 8; Tr. 90-91.

⁴⁶ Tr. at 116.

⁴⁷ *Id.* at 124.

⁴⁸ *Id.* at 124-25.

A final release was never signed.⁴⁹ Mr. Marra testified that prior to this litigation, KBE never asserted that Flooring Solutions was not entitled to payment due to it waiving any such claims *via* a conditional release.⁵⁰

E. *The Disputed Balance*

1. *Flooring Solutions' Reconciliation Letter*

When KBE failed to make payment by September, 2023, Mr. Marra audited the services perform and payments received from KBE.⁵¹ He sent KBE a reconciliation letter dated September 27, 2023.⁵² The letter states that the original proposal was \$538,390, but should have been \$691,054. The letter identifies Change Order 2 for \$70,773 and other change orders totaling \$89,283.50. Thus, according to Flooring Solutions' records, Change Order 2 captures only \$70,773 of the \$152,664 increase after Proposal 1, leaving a balance due of \$81,891. With the other change orders, KBE owed Flooring Solutions an additional \$171,174.50.⁵³

Mr. Marra acknowledges that some line items in Proposal 2 were not performed: installation of the quarry tile, waterproofing, applying a sealer, and some portion of specified mats.⁵⁴ After applying a credit for the work not performed,⁵⁵

⁴⁹ *Id.* at 116.

⁵⁰ *Id.* at 116-17.

⁵¹ *Id.* at 116.

⁵² JX 16 (reconciliation letter); Tr. at 29, 45-48.

⁵³ JX 16; Tr. at 38.

⁵⁴ JX 16; Tr. at 39, 47-48.

⁵⁵ Mr. Marra applied a credit for quarry tile work of \$31,064. JX 16. This is the total for the tile items in Proposal 2. JX 3.

Mr. Marra determined that KBE owed \$115,131.71 (contract price \$538,390, plus \$127,992.16 in changes, less \$551,252.45 paid by KBE).⁵⁶

Mr. Marra also questioned KBE's "back charges" as he could not identify any demand letters for these charges.⁵⁷

On October 6, 2023, Flooring Solutions filed a mechanics lien for \$115,131.71.⁵⁸

2. *KBE's Holdback and Request for Fees and Expenses*

Robert Dunn, General Counsel for KBE, testified on its behalf. Mr. Dunn has no personal knowledge of the contract negotiations, the work performed, or the punch list items. His testimony mostly consisted of pointing out certain provisions in the Subcontract.⁵⁹ Mr. Dunn testified that KBE is seeking a recovery of attorneys' fees from Flooring Solutions under Sections 5 and 14 of the Subcontract.⁶⁰ Mr. Dunn testified that the Subcontract allows KBE to withhold funds to cover work the subcontractor did not perform.⁶¹

Mr. Dunn testified that KBE does not owe a final payment to Flooring Solutions because it failed to satisfy all the conditions precedent.⁶² Because KBE is

⁵⁶ JX 16; Tr. at 48

⁵⁷ JX 16.

⁵⁸ D.I. 1; Tr. at 73-74.

⁵⁹ Tr. at 129-35.

⁶⁰ *Id.* at 132-33.

⁶¹ *Id.* at 134.

⁶² *Id.* at 155.

seeking a recovery of attorneys' fees, and Mr. Dunn wants the fees for the trial to be included in any award, he testified that KBE does not know the final amount owed, so it is entitled to continue to withhold funds from Flooring Solutions.⁶³ In addition, he testified, Flooring Solutions has not provided all the vendor lien waivers,⁶⁴ a final bill (even though KBE received Mr. Marra's September 2023 letter and the complaint in this matter), or proof of insurance for five years.⁶⁵

In addition to attorneys' fees and deductions for work Flooring Solutions did not perform, KBE is seeking to deduct the cost of the bond it was required to post to remove the mechanics lien from the property, for a total of \$1,726.⁶⁶

Ronald Rinaldi, a project manager for KBE, who, along with his assistant project manager Akshay Pabbi, was responsible for the Project's costs and change orders.⁶⁷ Mr. Rinaldi testified that in response to an ASI request, the subcontractor is required to include only the items in the ASI and should not resubmit the full bid.⁶⁸ Proposal 2 did not comply with this procedure.

⁶³ Tr. at 155.

⁶⁴ Mr. Rinaldi testified that Flooring Solutions provided the required lien waiver, but has not provided the lien waivers from its vendors and subcontractors. Tr. at 197.

⁶⁵ Tr. at 155-56, 163.

⁶⁶ *Id.* at 157; JX 17; D-1. KBE's post-trial briefs seek \$2,589 for the bond. There is no evidentiary support in the record for that amount. KBE substantiated only \$1,726 for the bonds. *See* D-1 and Change Order 13.

⁶⁷ Tr. at 176-77.

⁶⁸ *Id.* at 182-83.

Mr. Rinaldi was not involved in negotiations over Change Order 2, but he signed it, as of March 15, 2022, as did Mr. Woodruff.⁶⁹ Until Mr. Marra sent KBE and email in August 2023, Mr. Rinaldi never received a protest or complaint from Flooring Solutions that it was underpaid.⁷⁰ Mr. Rinaldi testified that Ms. Marra signed a final reconciliation letter sent by KBE, which was a final accounting for the project.⁷¹ KBE did not produce the reconciliation letter at trial and Mr. Rinaldi could not remember the final figures in the letter.⁷² He did recall, however, that Flooring Solutions responded with some adjustments, which matched KBE's internal accounting, but nothing in the magnitude of what Flooring Solutions is seeking in this action.⁷³

Mr. Rinaldi testified that Flooring Solutions last worked on the Project on March 22, 2023.⁷⁴ He also testified that the additional material Flooring Solutions delivered would have been delivered before it finished its work.⁷⁵

With respect to credits for the quarry tile Flooring Solutions did not install, Mr. Rinaldi calculated the amount of the credit—\$35,000—using the pricing in Flooring Solutions' bid on ceramic tile as a proxy.⁷⁶

⁶⁹ *Id.* at 184-85; JX 6.

⁷⁰ Tr. at 187.

⁷¹ *Id.* at 190-91.

⁷² *Id.* at 191.

⁷³ *Id.* at 182.

⁷⁴ *Id.* at 198.

⁷⁵ *Id.*

⁷⁶ *Id.* at 199-200, 203-04; JX 7.

III. *The Parties' Contentions*

Flooring Solutions filed this action seeking recovery of \$115,131.71. Even if the Court were to find the Flooring Solutions is not entitled to this amount, it argues that KBE owes Flooring Solutions \$33,000, which is undisputed. Flooring Solutions contends KBE breached the Subcontract. In the alternative, Flooring Solutions contends it is entitled to recover the full amount owed based on *quantum meruit*. Finally, Flooring Solutions asserts a mechanics' lien, which it argues is not limited by any contractual provisions.

KBE responds that the Subcontract controls and therefore, Flooring Solutions is not owed \$115,131.71. KBE admits it withheld \$33,000, but asserts it is permitted to do so under the Subcontract because Flooring Solutions has not provided all the required documentation and it intends to apply these funds to the amount Flooring Solutions owes in attorneys' fees and costs, if awarded by the Court. KBE also seeks to back charge Flooring Solutions for alleged unperformed punch list items.

Because a written contract controls the parties' relationship, KBE argues that Flooring Solutions cannot recover under a *quantum meruit* theory. Finally, KBE argues that the mechanics lien is untimely and therefore, it fails as a matter of law. On the merits, KBE asserts that Flooring Solutions failed to show it is entitled to a lien judgment.

IV. *Discussion*

A. *Applicable Standard*

In a bench trial, the Court is the finder of fact. Thus, it is the Court's function to weigh the credibility of the witnesses' testimony and attempt "to reconcile it, if reasonably possible, so as to make one harmonious story of it all."⁷⁷ But if this is not possible, the Court will accept the testimony it finds most believable.⁷⁸ To find the facts, the Court considers the evidence admitted during trial, both circumstantial and direct.⁷⁹

The party seeking relief must prove its claim by a preponderance of the evidence. Proof by a preponderance of the evidence means proof that something is more likely than not.⁸⁰ Stated differently, it is the "side on which 'the greater weight of the evidence' is found."⁸¹ If the evidence on any particular point is evenly balanced, the party having the burden of proof has failed to satisfy its burden.⁸²

⁷⁷ *Baltimore Pile Driving and Marine Const., Inc. v. Wu & Assoc., Inc.*, 2021 WL 5711454, at *2 (Del. Super. Dec. 1, 2021); Civil Pattern Jury Instruction 23.9.

⁷⁸ Civil Pattern Jury Instruction 23.9; *Feenix Payment Sys., LLC v. Blum*, 2024 WL 2768386, at *2 (Del. Super. May 29, 2024).

⁷⁹ Civil Pattern Jury Instruction 23.1.

⁸⁰ Civil Pattern Jury Instruction 4.1.

⁸¹ *Taylor v. State*, 2000 WL 313501, at *2, 748 A.2d 914 (Del. Feb. 23, 2000) (TABLE) (quoting *Reynolds v. Reynolds*, 237 A.2d 708, 711 (Del. 1967)).

⁸² *Feenix Payment Sys.*, 2024 WL 2768386, at *10.

B. Breach of Contract

A party asserting a breach of contract claim must prove: (1) the existence of a contract, (2) a breach of the contract, and (3) resulting damages.⁸³

Flooring Solutions submitted a detailed breakdown of the work performed on the Project based on Proposal 2 and for each line item, it attached supporting documents from its vendors (where applicable) to show the expenses were actually incurred.⁸⁴ The list reflected as “deleted” the items Flooring Solutions agreed were not provided.⁸⁵ The Flooring Solutions vendors for the work performed as identified in Proposal 2 have been paid in full.⁸⁶ Based on this evidence, Flooring Solutions seeks an award of \$115,538.05.⁸⁷

The Court finds Mr. Marra’s testimony credible. Aside from the undisputed “deleted” items, KBE presented no evidence that the items identified in Proposal 2 were not furnished on the Project.

In Delaware, “the contract’s the thing.”⁸⁸ As a contractarian state, a party entering into a contract governed by Delaware law “will be deemed to have

⁸³ *VLIW Tech., LLC v. Hewlett-Packard Co.*, 840 A.2d 606, 612 (Del. 2003).

⁸⁴ JX 18; Tr. at 50-51, 53-67.

⁸⁵ JX 18, Tr. at 52, 63-64, 71.

⁸⁶ Tr. at 72-73.

⁸⁷ JX 19.

⁸⁸ *R&R Capital, LLC v. Buck & Doe Run Valley Farms, LLC*, 2008 WL 3846318, at *1 (Del. Ch. Aug. 19, 2008).

knowingly agreed to the plain terms of the instrument.”⁸⁹ Where a contract is unambiguous, the court must construe the contract within the bounds of the four corners of the agreement and may not consider outside evidence to vary or contradict its terms.⁹⁰

Here, the Subcontract is clear and unambiguous. Flooring Solutions agreed to perform the work for \$538,390.⁹¹ Flooring Solutions cannot attempt to modify the contractual terms *via* Proposal 2. With Change Order 2, the total Subcontract price was \$609,163.⁹²

If Flooring Solutions wanted to contest or protest the original contract price or Change Order 2, the Subcontract provides a mechanism to do so.⁹³ Section 9.a. provides that if the Subcontractor “intends to make a claim for extra compensation or time as a result of [changes to the scope of work], it must, prior to proceeding with the work associated with the change, provide [KBE] with a written notice that it is proceeding with the changed work under protest.”⁹⁴ Mr. Marra acknowledged

⁸⁹ See *Paperless Solutions Group, Inc. v. MIB Group, Inc.*, 2025 WL 1466603, at *3 (Del. Super. May 21, 2025) (citing *Chapter 7 Trustee Constantino Flores v. Strauss Water Ltd.*, 2016 WL 5243950, at *6 (Del. Ch. Sept. 22, 2016)).

⁹⁰ *GMG Capital Investments, LLC v. Athenian Venture Partners I, L.P.*, 36 A.3d 776 (Del. 2012).

⁹¹ This is confirmed by the terms of the signed contract, which was executed after Proposal 2, and which was not incorporated into the terms of the signed contract.

⁹² With this ruling, the Court does not address KBE’s waiver argument.

⁹³ JX 4, § 9.a.; Tr. at 78-79.

⁹⁴ JX 4, § 9.a.

that the first time notice of the pricing and scope of work dispute was given was his September 27, 2023 reconciliation letter.⁹⁵

Having determined the Subcontract price, the Court next addresses KBE's credits for unperformed work. It is undisputed that Flooring Solutions did not complete all the work required under the Subcontract. Section 3.a. of the Subcontract provides: "No payment shall be required to be made which will reduce the contract balance below the sum which, in the opinion of [KBE] will be adequate to fully cover the cost of completing Subcontractor's obligations under this agreement." With this provision, there is no dispute that KBE was entitled to withhold payment to the extent of the unperformed work. KBE withheld \$35,000 for the quarry tile work Flooring Solutions did not perform.⁹⁶ KBE provided credible testimony on how this figure was derived and Flooring Solutions does not challenge it. Accordingly, KBE was entitled to charge back \$35,000 for work not performed.

KBE also seeks to charge back \$3,792.26 for cleanup work it alleges Flooring Solutions did not perform.⁹⁷ Section 16.k. of the Subcontract, upon which KBE relies,⁹⁸ provides that if the Subcontractor fails to keep the construction area clean,

⁹⁵ Tr. at 79; JX 16.

⁹⁶ JX 14; Tr. at 199.

⁹⁷ JX 6, Change Order 12.

⁹⁸ Tr. at 161.

“after 24 hours notice” the Contractor has the right to perform the work and charge the Subcontractor. KBE offered no evidence that it provided Flooring Solutions with 24 hours’ notice, let alone any notice. Moreover, KBE offered no competent evidence to substantiate this amount. Mr. Dunn, the only witness who spoke to the charge back amount, had no personal knowledge of the work allegedly covered by this charge back.⁹⁹ Accordingly, KBE is not entitled to charge back \$3,792.26.

It is undisputed that KBE owes Flooring Solutions \$33,000 for work that was within the scope of the Subcontract and was performed. KBE relies on Section 5.d. to withhold these funds for future liabilities; that is, an award of fees and costs resulting from this litigation. That section provides: “to cover any costs or liability [KBE] has incurred or *may incur* for which Subcontractor may be responsible,” KBE may withhold amounts otherwise due.¹⁰⁰ Accordingly, KBE had the contractual right to withhold funds in the event Flooring Solutions may be liable for the fees and costs.

Finally, while acknowledging that it owes Flooring Solutions \$33,000, KBE asserts that it is not currently payable because the Subcontract requires Flooring Solutions to provide lien waivers from its vendors. Ms. Marra testified that after she initially refused to provide the documentation, she later submitted it. Mr. Rinaldi

⁹⁹ See Tr. at 166-67.

¹⁰⁰ JX 4, § 5.d. (emphasis added).

testified that these sub-waivers have not been provided. The purpose of the sub-waivers is to ensure the sub-vendors were paid and no liens are placed on the property. Flooring Solutions established at trial that the sub-vendors have been paid in full and no liens were placed on the property. Thus, to the extent Flooring Solutions breached the Subcontract by not timely providing the sub-waivers, the Court finds it was not a material breach and not a basis to withhold payment. Flooring Solutions is entitled to judgment in the amount of \$33,000.

C. *Quantum Meruit*

“*Quantum meruit*” means “as much as he deserves.”¹⁰¹ *Quantum meruit* is a quasi-contract claim that allows recovery if: “(i) the party performed the services with the expectation that the recipient would pay for them; and (ii) the recipient should have known that the party expected to be paid.”¹⁰² On a successful *quantum meruit* claim, a plaintiff may recover the reasonable value of the services provided.¹⁰³ *Quantum meruit* “is a well-known and preferred remedy in construction litigation.”¹⁰⁴ However, *quantum meruit* has no application when an express

¹⁰¹ *Middle States Drywall, Inc. v. DMS Properties-First, Inc.*, 1996 WL 453418, at *10 (Del. Super. May 28, 1996) (citing *Marta v. Nepa*, 385 A.2d 727, 730 (Del. 1978)).

¹⁰² *Urban Green Technologies, LLC v. Sustainable Strategies 2050 LLC*, 2017 WL 527565, at *5 (Del. Super. Feb. 17, 2017) (citations omitted).

¹⁰³ *Id.*

¹⁰⁴ *Abacus Sports Installations, Ltd. v. Cases Const., LLC*, 2012 WL 1415603, at *2 (Del. Super. Feb. 14, 2012) (citing *Middle States Drywall*, 1996 WL 453418, at *10)).

contract governs the parties' relationship and the work covered by the *quantum meruit* claim is the same subject matter of the contract.¹⁰⁵

Here, Flooring Solutions may have had a viable *quantum meruit* claim for the work it performed and KBE accepted, but an express contract governs the parties' relationship, thereby barring any claim for *quantum meruit*. To allow Flooring Solutions to recover on this alternative theory, would run contrary to Delaware's policy of enforcing the parties' written contract because it would allow a party to obtain relief it did not secure at the bargaining table.¹⁰⁶ Thus, this theory provides no relief for Flooring Solutions.

D. *Mechanics Lien*

Flooring Solutions filed a mechanics lien on October 6, 2023.¹⁰⁷ It is undisputed that Flooring Solutions last performed work or delivered materials to the Project in March 2023. KBE argues that the mechanics lien is untimely because Flooring Solutions failed to file it within 120 days after completion of labor or

¹⁰⁵ *Middle States Drywall*, 1996 WL 453418, at *10; *Boissonneault v. Del. Podiatric Medicine, P.A.*, 2024 WL 5055538, at *4 (Del. Super. Dec. 9, 2024). A *quantum meruit* claim will not be barred "where the facts establish that the parties waived the contractual provisions governing" the change order process. *Foraker v. Voshell*, 2022 WL 2452396, at *13 (Del. Super. July 1, 2022); *Daystar Sills, Inc. v. Anchor Inv., Inc.*, 2007 WL 1098129 (Del. Super. Apr. 12, 2007) (same). No facts were developed at trial to suggest that the terms of the written contract were waived.

¹⁰⁶ See *Wood v. Coastal States Gas Corp.*, 401 A.2d 932, 943 (Del. 1979) (If "the contract is the measure of [plaintiff's] right, there can be no recovery under an [alternative] theory independent of it."); *Ameristar Casinos, Inc. v. Resorts Int'l Holdings, LLC*, 2010 WL 1875631, at *13 (Del. Ch. May 11, 2010).

¹⁰⁷ D.I. 1.

delivery of materials.¹⁰⁸ Flooring Solutions, however, relies on a different provision in the statute, which permits a lien to be filed within 120 days after the general contractor (who has a contract with the owner) receives final payment. KBE concedes that it received final payment in early 2024.¹⁰⁹ Thus, if the provision Flooring Solutions relies on applies, its lien was timely filed.

The statute of limitations for mechanics liens is found in 25 *Del. C.* § 2711.¹¹⁰ Section 2711(b) applies to all persons, other than the contractor who had a direct contract with the owner.¹¹¹ For such persons, a statement of claim must be filed “within 120 days from the date from the completion of the labor performed or from the last delivery of materials furnished.” Section 2711(b) then states:

For purposes of this subsection, and without limitation, a statement of claim on behalf of such person shall be deemed timely if it is filed within 120 days of either of the following:

- (1) The date final payment, including all retainage, is due to such person; or
- (2) The date final payment is made to the contractor:
 - a. Who has contracted directly with the owner or reputed owner of any structure for the erection, alteration or repair of same; and
 - b. With whom such person has a contract, express or implied, for the furnishing of labor or materials, or both, in connection with such erection, alteration or repair.

¹⁰⁸ D.I. 48, pp. 11-12.

¹⁰⁹ Tr. at 166.

¹¹⁰ Mr. Dunn provided his opinion on whether the mechanics lien complied with the statute and whether it was timely filed. The Court puts no weight on this testimony as he has no expertise with the Delaware mechanics lien statute (admitting that his basis of knowledge is from reading the statute (Tr. at 163)), and it is not a topic on which the Court would accept expert testimony, not that he would qualify as an expert.

¹¹¹ 25 *Del. C.* § 2711(b).

As applied here, Section 2711(b)(2) permits Flooring Solutions (a subcontractor) to file a claim within 120 days after final payment was made to KBE (the contractor) because KBE contracted directly with the owner and Flooring Solutions had a contract with KBE.¹¹² Flooring Solutions filed its mechanics lien before KBE received final payment. Thus, Flooring Solutions timely complied with the terms of the statute.

Turning to the merits of the mechanics lien, Flooring Solutions argues that it is entitled to judgment because it satisfied the element of Section 2712 and contractual waivers do not bar the claim.¹¹³ KBE does not argue that the statement of claim fails to satisfy the requirements of Section 2712(b)(1)-(11).¹¹⁴ Rather, it argues Flooring Solutions must still show that it is entitled to the amount sought, which it cannot do here.

Section 2712(b)(4) requires the claim state “[t]he amount claimed to be due.”¹¹⁵ When a mechanics lien is filed, it grants the claimant a “‘cautionary lien’ only.”¹¹⁶ Only the issuance of a writ of scire facias can “‘bring the parties into court

¹¹² See *King Const. Inc. v. Plaza Four Realty, LLC*, 976 A.2d 145, 156 (Del. 2009) (citing S.B. 130, 140th Gen. Assem. (Del. 1999) (synopsis)).

¹¹³ D.I. 49, pp. 8-10.

¹¹⁴ 25 *Del. C.* § 2712(b)(1)-(11) (identifying the required elements of a mechanics lien claim)

¹¹⁵ 25 *Del. C.* § 2702(b)(4).

¹¹⁶ *Eastern Electric and Heating, Inc. v. Pike Creek Professional Center, Inc.*, 1986 WL 9031, at *1 (Del. Super. Aug. 5, 1986) (citing *Armstrong & Latta Co. v. Wilmington Sugar Refining Co.*, 120 A. 94 (Del. Super. 1922)).

for adjudication of the obligation on which the lien is based.”¹¹⁷ “The finality of such lien depends upon whether a judgment is eventually obtained in the action, after due notice and hearing.”¹¹⁸ Thus, a claimant is not entitled to judgment merely by filing a claim that complies with the statute. The claimant must ultimately prove that it is entitled to the claimed amount.

As discussed above, Flooring Solutions is owed \$33,000 under the Subcontract but it has not established that it is entitled to the additional \$82,131.71. Flooring Solutions timely filed a valid mechanics lien and is entitled to a mechanics lien judgment.

E. Request for Attorneys’ Fees and Costs

As the party seeking recovery of an award of fees and costs, KBE bears the burden of proof. It relies on Sections 5.b. and 14.b. of the Subcontract.¹¹⁹

Section 5.b. provides that the Subcontractor shall indemnify Contractor for costs incurred as a result of Subcontractor’s failure to perform, including “attorney’s fees and related costs incurred by Contractor against Subcontractor ... to enforce any of Contractor’s rights or defenses as provided herein.” The unperformed work

¹¹⁷ *Accu-Fire Fabrication, Inc. v. Corrozi-Fountainview, LLC*, 2009 WL 537152, at *4 (Del. Super. Mar. 3, 2009) (quoting *First Fla. Bldg. Corp. v. Robino-Ladd Co.*, 1980 WL 324483, at *2 (Del. Super. Nov. 12, 1980)) (cleaned up).

¹¹⁸ *Eastern Electric and Heating*, 1986 WL 9031, at *1 (citing *Stockman v. McKee*, 71 A.2d 875 (Del. Super. 1950)); *Accu-Fire Fabrication, Inc.*, 2009 WL 537152, at *4.

¹¹⁹ *Mahani v. Edix Media Grp., Inc.*, 935 A.2d 242, 245 (Del. 2007) (when parties include a fee-shifting provision in their contract, Delaware courts will enforce that provision as written).

here was either undisputed (with respect to the quarry tile) or unsubstantiated (with respect to the cleanup costs). Thus, KBE cannot recover attorneys' fees under Section 5.b.

Section 14.b. permits KBE to recovery of attorney's fees and costs "to successfully defend the claim, in whole or in part, and to prosecute a claim against" Flooring Solutions. KBE successfully defended a portion of Flooring Solutions' claim. As noted, it was unsuccessful in prosecuting its claim for the cleanup charge back. Within the parameters of the rulings in this decision, KBE may make an application for fees and costs within 10 days. If Flooring Solutions objects to the application, the parties shall confer on a briefing schedule and submit a stipulation and proposed order.

The parties are to confer and file a proposed form of implementing Order.

/s/Kathleen M. Miller
Kathleen M. Miller, Judge