

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

PERFICIENT, INC.,

Plaintiff,

v.

SHI INTERNATIONAL CORP.,

Defendant.

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C.A No. N25C-12-584 CEB

ORDER

This 16th day of September 2026 the Court enters the following Order:

1. Plaintiff Perficient, Inc. (“Perficient”) is a technology consulting firm “developing, marketing, and selling its software, computer peripherals, computer hardware, and associated IT services.”¹ Defendant SHI International Corp. (“SHI”) engaged Perficient to supply services and products to customers of SHI.² The “SHI-Vendor Products/Services Resale Agreement” (“the Contract”) permitted SHI to market and resell Perficient products to SHI customers, and Perficient would invoice such orders to SHI as the “fulfillment agent.”³

2. Perficient alleges that between October and December 2024 it provided \$347,576 in services and products to a customer of SHI.⁴ In a signed writing, the

¹ Amend. Compl. ¶4.

² *Id.*

³ *Id.*, Ex. A.

⁴ *Id.* ¶¶6-10.

customer indicated the work had been completed and Perficient allegedly provided the document to SHI along with an invoice.⁵

3. Article 7 of the Contract outlines the invoice and payment process: “Subject to reconciliation with the terms of this Agreement and the Order, including verification that the Product was delivered, the invoice shall be paid . . . net 45 days after SHI’s receipt of the Vendor’s accurate invoice or Customer’s receipt of the Products, whichever is later.”⁶

4. According to Perficient, an invoice for the work was provided to SHI, but the bill remains unpaid and Perficient has “been met only with silence.”⁷ Perficient filed the present action for breach of contract and unjust enrichment. SHI shortly thereafter filed this Motion to Dismiss.

5. In its motion, SHI alleges 1) the claim is not ripe because Perficient failed to follow the dispute resolution procedures outlined in the Contract before bringing suit in Superior Court, 2) Perficient has not stated a claim for breach of contract because it failed to allege that payment was due and SHI was in breach, and 3) Perficient has failed to plead the elements of unjust enrichment.⁸

⁵ *Id.* ¶¶6-8.

⁶ *Id.*, Ex. A.

⁷ Pl.’s Answering Br. at 6.

⁸ *See generally* Def.’s Mot. to Dismiss.

The Claim is Ripe

6. Article 25 of the Contract describes a process to be followed should any claims or disputes arise between the parties. SHI characterizes Article 25 as a “mandatory dispute resolution provision” which until completed, renders the complaint not ripe.⁹ SHI seeks dismissal under Superior Court Rule 12(b)(1) for lack of subject matter jurisdiction.

7. On a motion to dismiss under Rule 12(b)(1), courts may “assume the truth of the factual allegations in the complaint but also consider facts beyond the pleadings.”¹⁰

8. Perficient argues it complied with the first step of the dispute resolution process by contacting SHI about the outstanding balance within 30 days of providing the invoice.¹¹ The next step in the process is for “the Parties’ Contract Representatives” to use their “best efforts” to negotiate settlement.¹² Exactly who has the onus of initiating such discussions isn’t articulated, nor is it clear how Perficient could satisfy this step in the process in light of SHI’s silence. Taking the allegations in the Complaint as true, SHI asks the Court to dismiss Perficient’s claim on the basis of a contractual provision that SHI itself declined to follow.

⁹ *Id.* at 6-8.

¹⁰ *Anew Ventures II, LLC v. Terra Glob. Inv. Mgmt., LLC*, 2025 WL 3188312, at *3 (Del. Super. Nov. 14, 2025).

¹¹ Amend. Compl. ¶11; Pl.’s Answering Br. at 7-8.

¹² Amend. Compl., Ex. A, Article 25.

9. In the cases relied on by SHI, the court’s jurisdictional analysis was limited to whether the parties attended mediation or arbitration as required by a dispute resolution provision in the parties’ contract.¹³ Here, SHI asks the Court to decline jurisdiction based upon SHI’s failure or refusal to use its best efforts to negotiate a settlement. Assuming, as we must, the truthfulness of the allegations in the Complaint, Perficient has sufficiently alleged that it satisfied the conditions precedent to filing suit. SHI’s motion to dismiss pursuant to 12(b)(1) is **DENIED**.

Perficient Adequately Pled Breach of Contract

10. SHI next argues the breach of contract claim should be dismissed because Perficient has failed to demonstrate that payment of the invoice was due under the terms of the contract.¹⁴ Exhibit B of the Complaint is a “Customer POE For ECIF Projects” which describes in detail the services provided to the customer, the date each service was completed, and a signature from the customer.¹⁵ According to Perficient, this document was submitted to SHI as proof of the invoiced work.¹⁶ SHI counters that Perficient has not alleged that SHI actually received this document and therefore Exhibit B cannot be proof that “verification” was satisfied.¹⁷

¹³ See, e.g., *Lennox Indus. Inc. v. All. Compressors LLC*, 2020 WL 4596840, at *4 (Del. Super. Aug. 10, 2020) (holding the court did not have jurisdiction over claims that were not submitted to a “Dispute Resolution Committee” which would mediate and provide a non-binding recommendation).

¹⁴ Def.’s Mot. to Dismiss at 8-11.

¹⁵ Amend. Compl., Ex. B.

¹⁶ *Id.* ¶¶6-8.

¹⁷ Def.’s Mot. to Dismiss at 11.

11. “When considering a defendant’s motion to dismiss, a trial court should accept all well-pleaded factual allegations in the Complaint as true, accept even vague allegations in the Complaint as ‘well-pleaded’ if they provide the defendant notice of the claims, draw all reasonable inferences in favor of the plaintiff, and deny the motion unless the plaintiff could not recover under any reasonably conceivable set of circumstances susceptible of proof.”¹⁸

12. To survive a motion to dismiss for failure to state a breach of contract, the plaintiff must show the existence of a contract, breach of an obligation imposed by the contract, and damages incurred from the breach.¹⁹ Perficient has met this burden and adequately stated a claim for breach of contract. Both parties agree to the existence of a valid contract and Perficient has provided what it claims is proof of services rendered to a customer of SHI pursuant to that contract. The invoice and Customer POE provide sufficient support for Perficient’s factual allegations, and it is reasonably conceivable that Perficient is entitled to relief. Whether Exhibit B qualifies as “verification received” is a matter of contractual interpretation not ready for resolution at this stage of the pleadings.²⁰ The motion to dismiss the breach of contract claim is **DENIED**.

¹⁸ *Cent. Mortg. Co. v. Morgan Stanley Mortg. Cap. Hldgs. LLC*, 27 A.3d 531, 535 (Del. 2011).

¹⁹ *VLIW Tech., LLC v. Hewlett-Packard Co.*, 840 A.2d 606, 612 (Del. 2003).

²⁰ *Id.* at 615 (“Dismissal, pursuant to Rule 12(b)(6), is proper only if the defendants’ interpretation is the *only* reasonable construction as a matter of law.”) (emphasis in original).

The Unjust Enrichment Claim Is Dismissed

13. SHI's final argument in its motion is that Perficient is precluded from asserting an unjust enrichment claim due to the existence of the Contract, and even if the claim could stand, Perficient has failed to adequately plead its elements.

14. "Before considering a claim for unjust enrichment, 'courts will engage in the threshold inquiry of determining whether a contract already governs the parties' relationship; if it does, the contract provides the measure of the plaintiff's right.'" ²¹ Thus, "[w]hen the complaint alleges an express, enforceable contract that controls the parties' relationship . . . a claim for unjust enrichment' is not cognizable." ²²

15. Perficient has not challenged the enforceability of the Contract or the adequacy of relief afforded by it. For an unjust enrichment claim to proceed alongside a claim for breach of contract, the plaintiff must demonstrate that there is some right or obligation that is not subject to the contract. ²³ Perficient can be made whole through SHI's contractual promise to pay Perficient for products provided to SHI customers. Since Perficient has not asserted any right that is not governed by

²¹ *Wells Fargo Bank, N.A. v. Est. of Malkin*, 278 A.3d 53, 69 (Del. 2022) (citing *Metcap Secs. LLC v. Pearl Senior Care, Inc.*, 2009 WL 513756, at *5 (Del. Ch. Feb. 27, 2009), *aff'd*, 977 A.2d 899, 2009 WL 2470336 (Del. Aug. 13, 2009)).

²² *Textron Inc. v. Endurance Am. Ins. Co.*, 346 A.3d 639, 653 (Del. Super. 2025) (citing *Bakerman v. Sidney Frank Imp. Co.*, 2006 WL 3927242, at * 18 (Del. Ch. Oct. 10, 2006)).

²³ *Palisades Collection, LLC v. Unifund CCR P'rs*, 2015 WL 6693962, at *8 (Del. Super. Nov. 3, 2015).

the Contract or raised any doubt regarding the enforceability of the Contract, the motion to dismiss is **GRANTED** as to the unjust enrichment claim.

IT IS SO ORDERED.

/s Charles E. Butler
Charles E. Butler, Resident Judge

cc: All Counsel of record via File&ServeXpress