

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

APPLIED POWER & LIGHT, INC.,

Plaintiff,

v

Case No. 2014-139244-CK  
Hon. Wendy Potts

NATIONAL RENOVATION CONTRACTORS, LLC,

Defendant.

OPINION AND ORDER RE: PLAINTIFF'S MOTION FOR LEAVE TO FILE A FIRST  
AMENDED COMPLAINT

At a session of Court  
Held in Pontiac, Michigan  
On

SEP 30 2014

The matter is before the Court on Plaintiff's request for leave to file an amended complaint to add a count for unjust enrichment. The complaint, filed on March 3, 2014 alleges breach of an agreement wherein Plaintiff subcontractor provided electrical services to Defendant general contractor for a Hyatt Regency hotel in New Jersey. The Court is deciding the matter without a hearing. MCR 2.119(E)(3).

Leave to amend pleadings shall be freely given when justice so requires. MCR 2.118(A)(2). Amendments should only be denied for compelling reasons, such as undue delay, actual prejudice, or futility. *Weymers v Khera*, 454 Mich 639, 658-659 (1997).

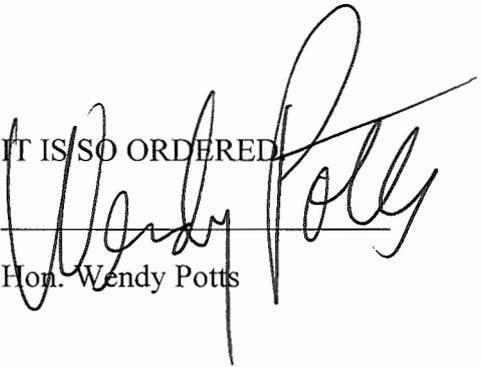
Plaintiff argues that Defendant received a benefit of electrical services to the extent of \$308,346.00 which remains unpaid. Plaintiff further argues, and Defendant concedes, that neither party actually signed the initial agreement. Further, the parties executed numerous change orders throughout the course of the over two-year construction project and that course of dealings directed the parties' agreement. Plaintiff further argues that it need not elect to pursue this litigation on either an express or implied theory of recovery, but rather, Plaintiff's complaint may proceed on both contract theories citing *HJ Tucker & Assoc., Inc., v Allied Chucker & Engineering*, 234 Mich App 550, 574 (1999).

Defendants' response argued that the Court should deny the motion because the amendment is futile. Specifically, Defendant argues that despite neither party signing the agreement, this litigation has focused on the express agreement between the parties. Where an express agreement exists, the Court cannot grant equitable relief under a quantum meruit theory of recovery. Defendant also requests the Court enter an order of sanctions for filing a frivolous pleading.

Defendant is correct that the Court cannot imply a contract where an enforceable express contract covers the same subject matter. See *HJ Tucker & Assoc, Inc, supra*, at 573. Defendant does not argue any other basis for denying the motion other than futility. At this stage of the litigation, and given the parties' concession that neither signed the agreement, it is premature to rule, as a matter of law, whether the parties' agreement was express or implied. Therefore, the Court cannot deem Plaintiff's proposed amendment as futile at this time. To the extent Defendant believes the amendment lacks legal or factual support, Defendant can address those arguments in a dispositive motion.

For all of these reasons, the Court grants Plaintiff's request for leave to amend. See MCR 2.118(A)(2); *Weymers, supra*. Because the Court granted the motion, Defendant's request for sanctions under MCR 2.114(E) is denied. Plaintiff must file the amended complaint within 7 days.

Dated: **SEP 30 2014**

IT IS SO ORDERED  
  
Hon. Wendy Potts