

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

CUEVAS MACHINE COMPANY, INC.	§	PLAINTIFF
	§	
v.	§	Civil No. 1:24-cv-114-HSO-BWR
	§	
CALGON CARBON CORPORATION	§	DEFENDANT
	§	

**MEMORANDUM OPINION AND ORDER GRANTING DEFENDANT
CALGON CARBON CORPORATION’S MOTION [5] TO DISMISS**

Defendant Calgon Carbon Corporation’s (“Calgon”) Motion [5] to Dismiss seeks dismissal of Plaintiff Cuevas Machine Company, Inc.’s (“Cuevas”) claims for foreclosure on its construction liens, quantum meruit, and unjust enrichment. Because Cuevas’s liens do not comply with their governing statute and because its equitable claims are foreclosed by Mississippi Supreme Court precedent, the Motion [5] to Dismiss should be granted.

I. BACKGROUND

A. Factual Background

This case arises out of a private construction project in Hancock County, Mississippi. Plaintiff Cuevas Machine Company, Inc., is a Mississippi corporation which provides fabrication and machining services. Compl. [1-1] at 1. Defendant Calgon Carbon is a multinational corporation specializing in water and air purification and filtration in industrial and municipal settings. *Id.* Cuevas’s Complaint [1-1] alleges that Calgon hired O’Neal Constructors, LLC (“O’Neal”)—which is not party to this suit—as prime contractor for the expansion of its filtration plant in Bay St. Louis, Mississippi (the “Project”). *Id.* at 2. O’Neal then

subcontracted with Cuevas (the “Subcontract”) to perform fabrication and machining services on the Project. *Id.*; *see also* Subcontract [1-1].

Under the Subcontract, Cuevas “furnished labor, services, materials, and tools, and performed its work as directed by O’Neal” between May 2022 and June 2023. Compl. [1-1] at 2. Despite the fact that, by June 2023, “O’Neal ceased paying Cuevas for its work[,] . . . Cuevas continued work through . . . August 24, 2023.” *Id.* Cuevas then made several demands on O’Neal for payment of past-due invoices, but O’Neal “responded that the owner, Calgon, had not paid O’Neal, and thus O’Neal could not pay Cuevas.” *Id.* So, on October 24, 2023, Cuevas filed two real estate liens (the “Liens”) against the Project property (the “Property”) under Mississippi Code Section 85-7-403—one for \$471,660.45 and the other for \$763,244.50. *Id.* at 3; *see also* Ex. [1-2] at 10-39 (the Liens); Miss. Code Ann. § 85-7-403. Cuevas mailed the Liens to both Calgon and O’Neal via certified mail on October 26, 2023. Compl. [1-1] at 3; Ex. [1-2] at 40-43. Then, on March 8, 2024, Cuevas filed a notice of lis pendens along with the Complaint [1-1] initiating this lawsuit in the Chancery Court of Hancock County, Mississippi. *See* Ex. [1-2] at 44-57.

B. Procedural History

The Complaint [1-1] advanced claims for: (1) enforcement of the Liens against the Property pursuant to Mississippi Code Section 85-7-405; (2) quantum meruit for the value of improvements made to the Property; and (3) unjust enrichment for the same. Compl. [1-1]. Calgon removed the case to this Court on April 12, 2024, *see* Not. [1], and filed the current Motion [5] to Dismiss.

In its Motion [5], Calgon asserts: (1) that “Cuevas did not satisfy the requirements of the Mississippi lien law[,]” and therefore it “cannot state a cause of action for lien enforcement[;]” and (2) that “it is well-settled under Mississippi law that a subcontractor such as Cuevas cannot recover on quasi-contractual claims against the owner of a construction project[,]” warranting dismissal of the claims for quantum meruit and unjust enrichment. Mem. [6] at 2-3. In support of its lien argument, Calgon contends that Cuevas’s Liens “do not meet the requirements imposed by Miss. Code Ann. § 85-7-405[,]” because they “fail to state the date the claim was due, which the Mississippi lien statute expressly requires a lien claimant to state.” *Id.* at 6. Therefore, according to Calgon, the Liens are “invalid as a matter of law.” *Id.*

With respect to the quasi-contractual claims, Calgon argues that “Cuevas’ claims . . . for quantum meruit (Count II) and unjust enrichment (Count III) also fail as a matter of Mississippi law, because the work that is the subject of those claims was covered by an express agreement between Cuevas and **O’Neal**.” *Id.* at 7 (emphasis in original). And, “[a]s a result, Cuevas has not pled (nor could it plead) that it had a reasonable expectation of payment from Calgon Carbon, which is an essential element of these claims.” *Id.*

Cuevas responds that its Liens were valid because they do, indeed, “provide the last date labor, services or materials were provided to the premises . . . in the invoices made part of the liens.” Mem. [9] at 10. Cuevas maintains that its claims for quantum meruit and unjust enrichment survive dismissal because

subcontractors should be able to “pursue property owners for unjust enrichment, even when there is a contract between the subcontractor and general contractor, when the property owner has not paid the general contractor for the full value for the construction work.” *Id.* at 15 (emphasis removed). And, further, it claims that because “Calgon, not O’Neal, directed Cuevas to perform portions of the work comprising the \$1,234,904.95 at issue in this litigation[,]” it “had a reasonable expectation of payment from Calgon if O’Neal would or could not pay for the work.” *Id.* at 17.

In the alternative, Cuevas seeks leave to amend its Complaint to incorporate the facts stated in the Declaration of Linda Smith, its long-time bookkeeper. *See id.* at 23; Ex. [8-1] (Declaration of Linda Smith). In her Declaration, Smith provides additional detail about the business relationship between Cuevas and Calgon, and, in sum, asserts that “[b]ased on Calgon’s knowledge that Cuevas was again performing work [on the Project] for Calgon, and based on the long, mutually beneficial history between the two companies, Cuevas expected that Calgon would make payment directly to Cuevas if O’Neal did not or could not.” Ex. [8-1] at 2-3.

II. DISCUSSION

A. Relevant Legal Standards

1. Motions to Dismiss under Federal Rule of Civil Procedure 12(b)(6)

To survive a motion to dismiss filed pursuant to Rule 12(b)(6), a complaint “must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting

Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)) (quotation omitted); *see also Yumilicious Franchise, L.L.C. v. Barrie*, 819 F.3d 170, 174 (5th Cir. 2016). A claim does not need detailed factual allegations, but must provide “more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Twombly*, 550 U.S. at 555. While a court must accept all well-pleaded facts as true and view those facts in the light most favorable to the claimant, *Varela v. Gonzales*, 773 F.3d 704, 707 (5th Cir. 2014) (citations omitted), a claimant must plead “factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged,” *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 556).

In resolving a Rule 12(b)(6) motion to dismiss, a court “will not look beyond the face of the pleadings to determine whether relief should be granted based on the alleged facts.” *United States ex rel. Jamison v. Del-Jen, Inc.*, 747 F. App’x 216, 219 (5th Cir. 2018). But a court “may rely on the complaint, its proper attachments, ‘documents incorporated into the complaint by reference, and matters of which a court may take judicial notice.’” *Randall D. Wolcott, M.D., P.A. v. Sebelius*, 635 F.3d 757, 763 (5th Cir. 2011) (quoting *Dorsey v. Portfolio Equities, Inc.*, 540 F.3d 333, 338 (5th Cir. 2008)).

2. Motions to Amend Pleadings

A party may amend its pleading once as a matter of course no later than “21 days after serving it, or . . . if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a

motion under Rule 12(b), . . . whichever is earlier[.]” Fed. R. Civ. P. 15(a)(1). After the time for amending a pleading once as a matter of right has passed, a party may amend its pleading “only with the opposing party’s written consent or the court’s leave.” Fed. R. Civ. P. 15(a)(2). Here, in lieu of an Answer, Calgon filed the current Motion [5] on April 26, 2024. That means Cuevas’s time to amend its Complaint [1-1] as a matter of right ran until May 17, 2024, *see* Fed. R. Civ. P. 15(a)(1), which is the same date it filed its Response to the current Motion [5]. In that Response, Cuevas “respectfully requests that the Court . . . provide Cuevas leave to amend its Complaint to incorporate the facts stated in the declaration of Linda Smith submitted as Exhibit 1.” Mem. [9] at 23. Although Cuevas made its request within the 21-day time period it had to amend as of right, it opted to seek the Court’s leave to amend rather than simply filing an amended complaint. Thus, as a threshold procedural matter, the Court is faced with the question of how to resolve Cuevas’s request to amend its Complaint [1-1], and whether to exclude the Declaration of Linda Smith.

But, as the Court will explain *infra*, it is ultimately immaterial whether the Court grants Cuevas’s request to amend as of right or treats it as an independent motion seeking leave to amend. Either way, the facts included in the Declaration of Linda Smith do not change the outcome—Cuevas’s Complaint [1-1] still fails to state a claim upon which relief can be granted. Mindful that courts should freely grant leave to amend “when justice so requires,” Fed. R. Civ. P. 15(a)(2), the Court will nevertheless grant Cuevas’s request to amend its Complaint [1-1], and will

evaluate the current Motion [5] as if the Declaration of Linda Smith were incorporated in the Complaint [1-1] as a proper attachment.

3. Subject-Matter Jurisdiction and Relevant Mississippi Law

Because subject-matter jurisdiction in this case is premised upon diversity of citizenship, the Court applies Mississippi substantive law. *See Compliance Source, Inc. v. GreenPoint Mortg. Funding, Inc.*, 624 F.3d 252, 259 (5th Cir. 2010); *see also Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938). Under the *Erie* doctrine, the Court must

examine Mississippi law to determine whether any final decisions of the Mississippi Supreme Court are dispositive. If there is no apposite decision, this court must forecast how the Mississippi Supreme Court would rule. This prediction may be based on Mississippi case law, dicta, general rules on the issue, decisions of other states, and secondary sources. If there is no evidence to the contrary, this court will presume a Mississippi court would adopt the prevailing rule if the case was before it.

Paz v. Brush Engineered Materials, Inc., 555 F.3d 383, 392 (5th Cir. 2009)

(quotations and citations omitted). The “task is to attempt to predict state law, not to create or modify it.” *Keen v. Miller Env’t Grp., Inc.*, 702 F.3d 239, 243 (5th Cir. 2012) (quotation omitted).

As to the claim on the Liens, the present Motion [5] turns upon a question of statutory interpretation, namely of Miss. Code Ann. § 85-7-405. The Mississippi Supreme Court has explained that, “[i]f the words of a statute are clear and unambiguous, [it] applies the plain meaning of the statute and refrains from using principles of statutory construction.” *Am. Tower Asset Sub, LLC v. Marshall Cnty.*, 324 So. 3d 300, 302 (Miss. 2021) (quotations omitted). “But if the statute is

ambiguous or silent on a specific issue, statutory interpretation is appropriate, and the Court must ‘ascertain the intent of the legislature from the statute as a whole and from the language used therein.’” *Id.* (quoting *In re Guardianship of Duckett*, 991 So. 2d 1165, 1181-82 (Miss. 2008)).

The Court’s duty “is to carefully review the statutory language and apply its most reasonable interpretation and meaning to the facts of a particular case.” *Hall v. State*, 241 So. 3d 629, 631 (Miss. 2018) (quotations omitted). “It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.” *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (quotations omitted); *see also Legislature of State v. Shipman*, 170 So. 3d 1211, 1217 (Miss. 2015) (“Traditional statutory construction requires that a statute receive such construction as will, if possible, make all its parts harmonize with each other, and render them consistent with its scope and object.” (quotations omitted)).

B. Analysis

1. Plaintiff’s Lien Claims

The Parties dispute whether Cuevas complied with a specific requirement of the lien statute—namely, that the proponent of the lien “specify the date the claim was due, which is the same as the last date the labor, services or materials were supplied to the premises[.]” Miss. Code Ann. § 85-7-405(1). Cuevas maintains that it complied with that requirement because it attached a series of invoices to each Lien containing invoice dates and payment terms. *See* Mem. [9] at 1; Ex. [1-2] at 10-39. According to Cuevas, this satisfied the statute because the “last date labor,

services, or materials were provided to the premises . . . is reflected in the invoices made part of the liens.” Mem. [9] at 10. Calgon counters that merely attaching invoices containing invoice dates does not satisfy the strict requirements of the statute, rendering the Liens invalid as a matter of law. Mem. [6] at 6.

Turning to the governing statute, the section of the Mississippi Code outlining the requirements for an enforceable lien states that:

The claim shall be *in substance* as follows:

“A.B., a mechanic, contractor, subcontractor, materialman, machinist, manufacturer, registered architect, registered forester, registered land surveyor, registered professional engineer, or other person (as the case may be) claims a lien in the amount of (specify the amount claimed) on the building, structure, house, factory, mill, machinery, or railroad (as the case may be) and the premises or real estate on which it is erected or built, of C.D. (describing the houses, premises, real estate, or railroad), *for satisfaction of a claim which became due on (specify the date the claim was due, which is the same as the last date the labor, services or materials were supplied to the premises) for work performed or labor, services provided (or whatever the claim may be).*”

Miss. Code Ann. § 85-7-405(1) (emphasis added). Cuevas attached its two Liens to its Complaint [1-1]. See Ex. [1-2] at 11-39. Each Lien states, in pertinent part, the following:

**NOTICE OF CONSTRUCTION LIEN
PURSUANT TO MISS. CODE ANN. § 85-7-405(1)(c) (Rev.
2014)**

TO THE CLERK OF THE CHANCERY COURT OF HANCOCK COUNTY, MISSISSIPPI, AND ALL PERSONS INTERESTED IN THE PROPERTIES AND LANDS HEREINAFTER DESCRIBED LOCATED IN HANCOCK COUNTY, MISSISSIPPI:

NOTICE IS HEREBY GIVEN that CUEVAS MACHINE COMPANY, INC., a contractor, claims a lien for satisfaction of a

claim for work, labor and materials provided in the amount of [dollar amount claimed for each lien], plus interest thereon at the maximum legal rate, attorney's fees, and costs pursuant to Miss. Code Ann. § 85-7-405(3)(c) (Rev. 2014), for O'Neal Constructors, LLC on the building and premises belonging to Calgon Carbon Corporation and located at 13121 Webre Road, Bay St. Louis, Mississippi 39520, being more particularly described as follows, to-wit:

[legal description of land subject to the liens]

BLANK SPACE LEFT HERE PURPOSELY

THIS CLAIM OF LIEN EXPIRES AND IS VOID ONE HUNDRED EIGHTY (180) DAYS FROM THE DATE OF FILING OF THE CLAIM OF LIEN IF A PAYMENT ACTION IS NOT FILED BY THE CLAIMANT WITHIN THAT TIME PERIOD.

NOTICE OF OWNER OF PROPERTY: You have the right to contest this claim of lien pursuant to Mississippi law.

See Ex. [1-2] at 11-12, 27-28.

Attached to each Lien are a series of invoices (the first Lien has twelve separate invoices attached, the second Lien has seven), which appear to have been generated and issued by Cuevas (each invoice has Cuevas's company logo emblazoned at the top left) and billed to "O'Neal Constructors, LLC[.]" *See* Ex. [1-2]. In the middle of each invoice are fields marked "P.O. NUMBER," "TERMS," and "PROJECT," with a corresponding purchase order number, the phrase "Net 30" for payment terms, and the phrase "See Below" under the project field. *See id.* The invoices also contain a field with entries for various services rendered, the rate for each service, and the total amount billed. *See id.* Finally, at the top right of each invoice is a field marked

“DATE” and “INVOICE #” with a corresponding date and invoice number.

See id. Cuevas asserts that it is this field, the one marked “DATE,” which satisfies the statute by providing the date the claims became due. *See* Mem. [9] at 1.

The Court is aware of no opinion from the Mississippi Supreme Court which squarely answers the question before it—namely, whether a date on an invoice attached to a lien “in substance” satisfies the statutory requirement that the proponent “specify the date the claim was due.” Miss. Code Ann. § 85-7-405(1). After careful review of the statutory text, Mississippi case law, and relevant secondary sources, the Court is of the view that, even if an attached invoice containing information required by the lien statute can in theory satisfy its requirements, the invoices in this case do not meet that test.

The Court first turns to the words of the statute itself, which, “read in their context and with a view to their place in the overall statutory scheme[.]” *Brown & Williamson Tobacco Corp.*, 529 U.S. at 133, indicate that the date of an attached invoice is insufficient. The first sentence of the “[r]equirements of an enforceable lien” provision of the statute requires that “[t]o make good a [special lien on real estate], it must be created and declared in accordance with the following provisions, and *on failure of any of them the lien shall not be effective or enforceable[.]*” Miss. Code Ann. § 85-7-405(1) (emphasis added). The statute then lists five of these mandatory provisions, the second of which states in pertinent part as follows:

The lien shall include a statement regarding its expiration pursuant to Section 85-7-421(1) and a notice to the owner of the property on which a

claim of lien is filed that the owner has the right to contest the lien; the absence of the statement or notice shall invalidate the lien. The claim shall be *in substance* as follows:

“A.B., a mechanic, contractor, subcontractor, materialman, machinist, manufacturer, registered architect, registered forester, registered land surveyor, registered professional engineer, or other person (as the case may be) claims a lien in the amount of (specify the amount claimed) on the building, structure, house, factory, mill, machinery, or railroad (as the case may be) and the premises or real estate on which it is erected or built, of C.D. (describing the houses, premises, real estate, or railroad), for satisfaction of a claim which became due on (*specify the date the claim was due, which is the same as the last date the labor, services or materials were supplied to the premises*) for work performed or labor, services provided (or whatever the claim may be).”

Miss. Code Ann. § 85-7-405(1)(b) (emphasis added).

The statute therefore appears to require that a claim, *in substance*, state all of the information included in the statute’s “example” provision, including “the date the claim was due[.]” *Id.* The question becomes whether, “in substance,” Cuevas adequately “specif[ied] the date the claim was due[.]” *id.*, when it attached a series of invoices to the Liens containing invoice dates and payment terms. The Court finds that, under the circumstances of this case, it did not.

As a threshold matter, the Court acknowledges the statute states only that a lien shall *in substance* contain the information set forth in the “example” provision. According to *Black’s Law Dictionary*, the word “substance” refers to “[t]he essence of something; the essential quality of something, as opposed to its mere form[.]” *Substance, Black’s Law Dictionary* (12th ed. 2024). Therefore, as Cuevas points out, it may not be necessary for a lien claimant to use language identical to that which is set forth in this portion of the statute. But the statute does require that the lien

claimant must still “*specify* the date the claim was due[,]” *id.* (emphasis added), and to “specify” is “to name or state explicitly or in detail[,]” *Specify*, Merriam-webster.com, <https://www.merriam-webster.com/dictionary/specify> (last visited Mar. 5, 2025). Mindful that its “task is to attempt to predict state law, not to create or modify it[,]” *Keen*, 702 F.3d at 243, the Court declines to articulate a rule encompassing all of the circumstances under which documents attached to a lien may—or may not—satisfy the statute’s requirements. But whatever the precise contours of that rule may be, Cuevas has not satisfied them here. That is because the invoices attached to the Liens in this case do not actually specify the “last date the labor, services or materials were supplied to the premises[.]” Miss. Code Ann. § 85-7-405(1).

Cuevas’s Liens in this case illustrate why the statute requires specificity in listing the date the claim became due. Regarding the first Lien, Cuevas asserts in its brief that “[t]he claim became due upon the last date Cuevas provided labor, services, or materials to the premises, which is reflected in the last invoice—August 29, 2023.” Mem. [9] at 10. But, upon review, that is neither apparent from the Lien itself, nor from its attachments. The Lien itself does not mention any date that the claim became due. *See* Ex. [1-2] at 11-13. Instead, Plaintiff attached twelve different invoices, each containing a section at the top of the page labeled “DATE,” and each containing a date (indeed, there are seven different dates across twelve different invoices). *See id.* at 14-25. But without understanding more about Cuevas’s invoicing procedures or how these particular invoices were generated, it is

not clear whether the date stamp at the top of the last attached invoice represents “the date the claim was due, which is the same as the last date the labor, services or materials were supplied to the premises[.]” Miss. Code Ann. § 85-7-405(1)(b), or whether it represents the date the invoice itself was generated, or indeed whether it has some other accounting significance of which the Court is unaware. The point here is that the Court—and presumably the Defendant—cannot say with certainty exactly *what* the dates on the attached invoices represent. Such uncertainty demonstrates why Cuevas in this case has not sufficiently *specified* the date the claim was due, as required by statute. Even if attaching an invoice to a lien could be considered complying “in substance” with § 85-7-405(1)(b), the Liens here do not meet that standard because their attached invoices are not clear, and thus do not specify when the claim was due, that is, the last date services or materials were supplied to the premises. *See* Ex. [1-2] at 11-38.

The importance of specificity in stating the date the claim became due is confirmed by other provisions of the Mississippi Code dealing with special liens on real estate. For example, the provision dealing with discharge of a lien by filing a bond explains that “[t]he failure to specify both the amount claimed due under the lien and the date the claim was due shall result in the lien not constituting notice for any purposes.” Miss. Code Ann. § 85-7-415(3). And a leading secondary source on Mississippi law confirms this understanding, explaining that “a lien claimant must state the amount of his lien and the date that it became due, ‘[t]he failure to specify both the amount claimed due under the lien and the date the claim was due

shall result in the lien not constituting notice for any purpose.” 3A Donald E. Campbell et al., *MS Prac. Encyclopedia MS Law* § 19A:35 (3d ed.) (citing Miss. Code Ann. § 85-7-415(3)).

Mississippi case law appears to support this outcome. Although the Mississippi Supreme Court has not spoken to the precise issue presented here, it has repeatedly explained that because statutory liens did not exist at common law, they necessitate strict adherence to their statutory requirements. *See Strauss v. Baley*, 58 Miss. 131, 133 (Miss. 1880) (“The landlord’s lien is of statutory creation, with a statutory remedy. Statutory remedies should be strictly construed.”); *Jones Supply Co. v. Ishee*, 163 So. 2d 470, 472 (Miss. 1964) (“Mechanics’ and materialmen’s liens are not recognized at common law nor in equity. They are creatures of and dependent upon statute. Statutory prerequisites, therefore, must be strictly complied with for the lienor to gain the benefits offered by statute.” (internal citations omitted)); *KD Oak Grove, LLC v. Warren & Warren Asphalt Paving, LLC*, 324 So. 3d 1134, 1135 (Miss. 2021) (explaining that Miss. Code Ann. § 85-7-405 has “strict requirements”).

Cuevas cites the Mississippi Supreme Court’s decision in *Land Holdings I, LLC v. GSI Services, LLC* for the proposition that when there is a dispute about the date a claim became due, “the court should conduct an evidentiary hearing, not dismiss the claim or expunge the lien.” Mem. [9] at 14; *see also Land Holdings I, LLC v. GSI Servs., LLC*, 265 So. 3d 147 (Miss. 2019). But the precise issue the Court grappled with in *Land Holdings I* was how to interpret the statutory phrase

“last work performed,” and, specifically, whether that phrase included remedial or corrective work, even if performed as a contractual duty. *See Land Holdings I, LLC*, 265 So. 3d at 150. Further, that case is distinguishable from the facts here. In *Land Holdings I*, the lien claimant *did* specify a date the claim became due in the lien—thus satisfying the strict requirements of the Miss. Code Ann. § 85-7-405—but the property owner disputed whether the date listed in the lien was actually the date work was last performed. *See id.* at 148-49. So, the Chancery Court held an evidentiary hearing to determine whether the date listed on the lien was accurate. *See id.* at 148. But that is not the issue here. Here, Cuevas has not strictly complied with the statute because, as the Court has explained, neither the Liens in this case nor their attachments specify any last date that the labor, services, or materials were supplied. *See Ex. [1-2]* at 11-39.

And the Court declines to conduct an evidentiary hearing in this case because, as a threshold matter, Cuevas has not specified any date the claim became due, as required by statute. Thus, even if the Court were to conduct an evidentiary hearing, it would not change the outcome of this case. That is because regardless of what such a hearing might reveal about the date the claim became due, the simple fact would remain that at the outset Cuevas did not comply with the requirements of Miss. Code Ann. § 85-7-405 by specifying a date in the Liens (or their attachments). As such, the Court is not required to conduct an evidentiary hearing on this matter, and indeed declines to do so.

The Court's conclusion today also makes sense as a practical matter. The statute requires the lien holder to file the claim of lien within ninety days after the date the claim became due, *see* Miss. Code. Ann. § 85-7-405(1)(b), which "is the same as the last date the labor, services or materials were supplied to the premises[.]" *id.* Failure to clearly specify that date in the lien (or in an attachment) provides insufficient notice to the lienee and makes it difficult to ascertain whether the lien was timely filed. As a practical matter, then, the lien (or its attachments) must clearly and affirmatively specify the date the claim became due. *See* Miss. Code. Ann. § 85-7-405(1)(b). Cuevas's Liens fail to do so, and for these reasons its lien claims must be dismissed.

2. Plaintiff's Claims for Quantum Meruit and Unjust Enrichment

"An unjust-enrichment action is based on a promise, which is implied in law, that one will pay a person what he is entitled to according to 'equity and good conscience.'" *Langham v. Behnen*, 39 So. 3d 970, 976 (Miss. Ct. App. 2010) (quoting *1704 21st Avenue, Ltd. v. City of Gulfport*, 988 So. 2d 412, 416 (Miss. Ct. App. 2008)). "Unjust enrichment only applies to situations where there is no legal contract and 'the person sought to be charged is in possession of money or property which in good conscience and justice he should not retain but should deliver to another.'" *Id.* (quoting *Powell v. Campbell*, 912 So. 2d 978, 982 (Miss. 2005)). A claim for quantum meruit works similarly, requiring that "(1) valuable services were rendered or materials furnished; (2) for the person sought to be charged; (3) which services and materials were accepted by the person sought to be charged,

used and enjoyed by him; and (4) under such circumstances as reasonably notified person sought to be charged that plaintiff, in performing such services, was expected to be paid by person sought to be charged.” *Tupelo Redevelopment Agency v. Gray Corp., Inc.*, 972 So. 2d 495, 514-15 (Miss. 2007).

The Mississippi Supreme Court has articulated two important principles which are fatal to the implied-contract claims advanced here. The first is the “general rule [that], in order to recover for work and labor on the theory of an implied contract, it is ordinarily deemed essential to show that the services were rendered under the reasonable expectation *that they would be paid for by the person sought to be charged*, and the person sought to be charged knew that the services were being performed with the expectation that he would pay for such work.” *Ground Control, LLC v. Capsco Indus., Inc.*, 214 So. 3d 232, 243-44 (Miss. 2017) (quoting *Redd v. L & A Contracting Co.*, 151 So. 2d 205, 209 (Miss. 1963)) (emphasis in original); *see also Heber E. Costello, Inc. v. Edwards & Son, Inc.*, 1998 WL 94925, at *2 (N.D. Miss. Jan. 22, 1998). The second principle is that, “[w]here there is a contract, parties may not abandon same and resort to quantum meruit[.]” *id.* at 243 (quoting *Redd*, 151 So. 3d at 208), meaning “that a sub-subcontractor cannot sue on quantum meruit against a primary contractor for work done under an express contract with another person[.]” *id.* And, by extension, “[a subcontractor] may not maintain a claim of quantum meruit against [an owner] for work it performed under an express contract with [a general contractor].” *Sentinel Indus. Contracting Corp. v. Kimmins Indus. Serv. Corp.*, 743 So. 2d 954, 970 (Miss. 1999). Cuevas’s

implied-contract claims run afoul of both of these principles, and therefore cannot survive dismissal.

Regarding the first principle, Cuevas has not pled factual content that allows the Court to draw a reasonable inference that it worked on the Project under the reasonable expectation that it would be paid by Calgon, or that Calgon “knew that the services were being performed with the expectation that [it] would pay for such work.” *Ground Control, LLC*, 214 So. 3d at 244. The Complaint [1-1] states that Cuevas “entered into a Subcontract Agreement with [O’Neal] to perform fabrication and machining services to Defendant Calgon’s filtration plant[,]” Compl. [1-1] at 4, that “[p]ursuant to the Subcontract Agreement, change orders, and requests by O’Neal, Cuevas furnished labor, services, materials, and tools, and performed its work as directed by O’Neal[,]” *id.*, and that after O’Neal ceased paying Cuevas, it “made several demands on O’Neal for payment of the past due invoices[,]” *id.* These allegations all indicate that Cuevas performed the work pursuant to a valid contract with O’Neal—not Calgon—and that Cuevas expected to be paid by O’Neal—not Calgon. That is insufficient to state a claim for relief under a theory of implied contract. *See Ground Control*, 214 So. 3d at 243-44.

Turning to the second principle, Cuevas’s claims appear to be precluded by the Mississippi Supreme Court’s rule “that [a subcontractor] may not maintain a claim of quantum meruit against [an owner] for work it performed under an express contract with [a general contractor].” *Sentinel Indus. Contracting Corp.*, 743 So. 2d at 970. As discussed, the Complaint [1-1] clearly states that the work was

performed “[p]ursuant to the Subcontract Agreement [with O’Neal], change orders, and requests by O’Neal[.]” Compl. [1-1] at 4. Thus, it appears from the face of the Complaint [1-1] that Cuevas is attempting to maintain claims against Calgon, the owner, for quantum meruit and unjust enrichment for work entirely covered by an express contract with O’Neal, a result foreclosed by Mississippi Supreme Court precedent. And none of the attachments to the Complaint [1-1], including the Declaration of Linda Smith, indicate otherwise.

Finally, the Court is not persuaded by Cuevas’s attempts to demonstrate why its claims are not foreclosed by Mississippi law. Cuevas first argues that “[s]everal courts have allowed subcontractors to pursue property owners for unjust enrichment, even when there is a contract between the subcontractor and the general contractor, when the property owner has not paid the general contractor for the full value of the construction work.” Mem. [9] at 15. Cuevas has not cited any Mississippi case law to support that proposition. Next, Cuevas asserts that it “performed, at Calgon’s behest and O’Neal’s instructions, additional work exceeding the value of the subcontract[.]” such that it should be able to sue Calgon directly for unjust enrichment. *Id.* at 16. But there are no factual allegations in the Complaint [1-1] that plausibly support such a claim, and, in any event, change orders or additional work performed “at Calgon’s behest and O’Neal’s instructions” would still be governed by the Subcontract. *Id.*

Lastly, Cuevas contends that it *did, indeed* reasonably expect to be paid by Calgon—and that Calgon expected to render payment if O’Neal did not—because

“Calgon knew Cuevas was performing work on [the Project],” *id.*, because Calgon has paid Cuevas for other work presumably separate from that at issue in this case, *id.* at 17, and because Calgon would provide “punch lists to general contractor O’Neal, and O’Neal would in turn provide the punch lists to Cuevas[,]” *id.*

The Court is not persuaded by any of these arguments. Whether Calgon knew Cuevas was working on the Project and whether it provided punch lists to O’Neal is immaterial—the fact remains that, as alleged in the Complaint [1-1], Cuevas performed the work at issue in this litigation “[p]ursuant to the Subcontract Agreement” with O’Neal. Compl. [1-1] at 2. And whether Calgon has paid Cuevas for other jobs does not bear on the issue of whether Cuevas had a reasonable expectation of payment from Calgon for the work at issue *in this case*, which Cuevas acknowledges was performed pursuant to its Subcontract with O’Neal, not Calgon. Nor does it establish that these were circumstances under which Calgon was reasonably notified that Cuevas expected payment from it. As such, Cuevas’s claims for unjust enrichment and quantum meruit are insufficient as a matter of Mississippi law.

The facts contained in Linda Smith’s Declaration do not change this outcome. In sum, Smith merely reiterates Cuevas’s arguments that it reasonably expected to be paid by Calgon—and that Calgon reasonably expected to render payment if O’Neal did not—because of a longstanding working relationship between the parties and because “Calgon, not O’Neal, directed Cuevas to perform portions of the work” at issue in this litigation. Ex. [8-1] at 2 (Declaration of Linda Smith). But, as the

Court has explained, whether Calgon has paid Cuevas for *other jobs* does not bear on the issue of whether Cuevas had a reasonable expectation of payment from Calgon for the work *in this case*, which Cuevas acknowledges was performed pursuant to the Subcontract with O’Neal, not Calgon. That remains true even if, as Smith alleges, some of that work also happened to relate to the same construction work as the Project at issue in this case.

Nor is the Court persuaded by Smith’s assertion that it was Calgon, not O’Neal, directing Cuevas to perform the work in this case. That is because Smith immediately follows that statement by explaining that “[s]pecifically, Calgon would provide punch lists to general contractor O’Neal, and O’Neal would in turn provide the punch lists to Cuevas.” *Id.* And “[w]hen Cuevas had questions concerning the work on the punch lists that O’Neal could not answer, Cuevas went directly to Calgon, which provided specific instructions on completing the work on the punch lists.” *Id.* Even assuming their truth, these statements merely seem to describe the ordinary working relationship between an owner, a general contractor, and a subcontractor. The Court is not convinced that punch lists or other communications between a subcontractor and an owner give rise to a reasonable expectation of payment outside the ambit of a valid contract, or place Calgon on notice that Cuevas would expect payment from it. Cuevas’s claims for unjust enrichment and quantum meruit must be dismissed.

III. CONCLUSION

To the extent the Court has not specifically addressed any of the parties' remaining arguments, it has considered them and determined that they would not alter the result.

IT IS, THEREFORE, ORDERED AND ADJUDGED that, Defendant Calgon Carbon Corporation's Motion [5] to Dismiss is **GRANTED**.

IT IS, FURTHER, ORDERED AND ADJUDGED that, Plaintiff Cuevas Machine Company, Inc.'s claims against Defendant Calgon Carbon Corporation are **DISMISSED WITH PREJUDICE**. The Court will enter a separate Final Judgment in accordance with Federal Rule of Civil Procedure 58.

SO ORDERED AND ADJUDGED, this the 20th day of March, 2025.

s/ Halil Suleyman Ozerden

HALIL SULEYMAN OZERDEN
CHIEF UNITED STATES DISTRICT JUDGE