

STATE OF MAINE  
SAGADAHOC, ss.

BUSINESS AND CONSUMER DOCKET  
Location: West Bath  
Docket No. BCD-WB- CV-08-28

DION WEST d/b/a  
MIDCOAST CONSTRUCTION,

Plaintiff

v.

ORDER ON PLAINTIFF'S MOTION  
FOR SUMMARY JUDGMENT

DAMON REFRIGERATION CO., INC.  
d/b/a DAMON MECHANICAL SERVICES

Defendant

Before the court is the motion of Plaintiff Dion West d/b/a Mid-Coast Construction, for summary judgment on all counts of his complaint.

#### FACTUAL BACKGROUND

Plaintiff is the former principal of Mid-Coast Construction ("Mid-Coast"), a Maine corporation engaged in commercial excavation services. (Supp. S.M.F. ¶ 1; Opp. S.M.F. ¶ 1.) In April 2001, Mid-Coast was engaged in excavation work at the Brunswick Naval Air Station pursuant to a written contract with Third-Party Defendant/Cross-Claim Plaintiff Coakley & Williams Construction, Inc. ("Coakley"),<sup>1</sup> which was the general contractor in charge of renovations to the base. (Supp. S.M.F. ¶ 2; Opp. S.M.F. ¶ 2.) Also in April 2001, Defendant Damon Refrigeration Company, Inc. ("Damon"), was a subcontractor working for Coakley at the Brunswick Naval Air Station. Damon's work included installation of mechanical systems, such as heating, air conditioning, and ventilation. Damon does not generally undertake excavation work. (Supp. S.M.F. ¶ 3; Opp. S.M.F. ¶ 3.)

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<sup>1</sup> Coakley is a third-party defendant and cross-claim plaintiff in this case. Coakley has not, however, taken a position on Plaintiff's motion.

On or about April 20, 2001, Coakley issued a “Field Work Directive” asking Damon to undertake certain excavation work at the site, which work would be included within the scope of Damon’s contract with Coakley. (Supp. S.M.F. ¶ 4; Opp. S.M.F. ¶ 4.) According to Plaintiff, Damon then contracted with Mid-Coast to complete the excavation work on a time and material basis. Plaintiff further contends that Mid-Coast performed the excavation work and timely submitted invoices for its work but has not been paid by Damon. (Supp. S.M.F. ¶¶ 7-11.)

In opposition to Plaintiff’s motion, Damon asserts that it did not have a contract with Mid-Coast. Rather, according to Damon, it approached Mid-Coast regarding the excavation work on behalf of and at the request of Coakley. (Opp. S.M.F. ¶ 5). Therefore, Damon asserts that it was not a party to any contract with Mid-Coast; rather, Mid-Coast contracted with Coakley to provide excavation services and Damon simply acted as agent for Coakley. (Reply S.M.F. ¶¶ 3-7 & 10.)

Plaintiff’s Complaint alleges claims for Suit on Account (Count I); Violation of Maine’s Prompt Payment Statute, 10 M.R.S. §§ 1111-1120 (Count II); Breach of Contract (Count III); and Unjust Enrichment (Count IV). He now seeks summary judgment in his favor on all counts of the complaint.

## DISCUSSION

### I. STANDARD OF REVIEW

Under M.R. Civ. P. 56(c), summary judgment is warranted if “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” M.R. Civ. P. 56(c)). For purposes of summary judgment, a “material fact is one having the potential to affect the outcome of the suit.” *Burdzel v. Sobus*, 2000 ME 84, ¶ 6, 750 A.2d 573, 575. “A genuine issue of material fact exists when there is sufficient evidence to require a fact-

finder to choose between competing versions of the truth at trial.” *Lever v. Acadia Hosp. Corp.*, 2004 ME 35, ¶ 2, 845 A.2d 1178, 1179. If ambiguities in the facts exist, they must be resolved in favor of the non-moving party. *Beaulieu v. The Aube Corp.*, 2002 ME 79, ¶ 2, 796 A.2d 683, 685.

II. COUNTS I, II & III

In support of his motion, Plaintiff asserts that this case represents “a simple contract claim for services rendered.” He asserts he is entitled to summary judgment on all counts of the complaint because he provided services to Damon for which he has not been paid. Although Plaintiff may be correct that his allegations are relatively straightforward, the court concludes that he is not entitled to summary judgment on this motion record. He alleges that he is owed money pursuant to a contract between Mid-Coast and Damon. However, there is a dispute as to whether Damon was a party to any such contract, which is material to Counts I, II and III. Accordingly, Plaintiff’s motion cannot be granted as to those counts.

III. COUNT IV

As outlined above, Count IV of Plaintiff’s complaint is for unjust enrichment. Under Maine law,

in order “[t]o establish unjust enrichment, the complaining party must show that: (1) it conferred a benefit on the other party; (2) the other party had appreciation or knowledge of the benefit; and (3) the acceptance or retention of the benefit was under such circumstances as to make it inequitable for it to retain the benefit without payment of its value.

*Me. Eye Care Assocs., P.A. v. Gorman*, 2008 ME 36, ¶ 17, 942 A.2d 707, 712 (citations omitted).

Plaintiff asserts that he is entitled to summary judgment on this count because Damon was benefited by the labor, materials and excavation services performed by Mid-Coast and has not paid for that benefit. In opposition, Damon denies that it received any benefit from Mid-Coast because the labor, materials and services were provided for the benefit of Coakley, the general contractor.

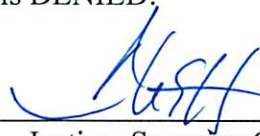
In light of the parties' disagreement as to whether and to what extent the services provided by Mid-Coast benefited Damon, the court concludes that there is a dispute of material fact precluding summary judgment on Count IV of the Complaint.

DECISION

Pursuant to M.R. Civ. P. 79(a), the Clerk is directed to enter this Order on the Civil Docket by a notation incorporating it by reference, and the entry is

Plaintiff's Motion for Summary Judgment is DENIED.

Dated: October 7, 2008



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Justice, Superior Court