

Received
8/17/26

DISTRICT COURT, JEFFERSON COUNTY, STATE OF COLORADO 100 Jefferson County Parkway Golden, CO 80419	DATE FILED August 5, 2026
Plaintiff: ADVANCED CONSULTING INC., a Colorado corporation, v. Defendant: PETER C. PFEIFFER, an individual.	▲ COURT USE ONLY ▲ Case No.: 2025CV31047 Div.: 7
PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT WITH PREJUDICE AND FOR SANCTIONS	

Plaintiff Advanced Consulting, Inc., d/b/a AC INC. Roofing ("AC INC"), by and through counsel, respectfully submits this Response in Opposition to Defendant Peter C. Pfeiffer's Motion to Dismiss Plaintiff's Complaint With Prejudice and for Sanctions Pursuant to C.R.S. § 13-17-102 and C.R.C.P. 11 (the "Motion").

CONFERRAL RESPONSE

Defendant contends that Plaintiff's counsel has been unavailable for approximately three weeks and maintains unreliable methods of correspondence. This is not the case. Defendant's attempted conferral email of July 14, 2026, arrived while Plaintiff's counsel was out-of-office, and was met with an auto-reply stating the same. Plaintiff's counsel returned to the office on July 21, 2026, by which time Defendant had filed the Motion. For the reasons below, Plaintiff opposes the motion.

INTRODUCTION

Defendant's Motion asks the Court to dismiss Plaintiff's Complaint with prejudice and impose sanctions based not on a pleading defect, but on Defendant's disputed version of the facts. Defendant believes that informing Plaintiff's counsel that he disputes the allegations in the complaint requires Plaintiff and Plaintiff's counsel to dismiss the action. Furthermore, Defendant argues that failure to do so constitutes vexation conduct sufficient to support significant sanctions under Rule 11. Motion, §IV(A)-(B).

Ultimately, the Motion is not a motion to dismiss as it relies upon several pieces of previously undisclosed evidence, several of which appear to only be available through his personal website. See Motion Exhibits B, C, D, E, F, G, J, N¹, O, P. The Motion seeks summary judgment on Plaintiff's claims but rests entirely on what would be considered disputed facts. Dismissal at this stage, whether by Rule 12 or Rule 56 is improper.

Defendant also requests sanctions under C.R.S. § 13-17-102 and Rule 11. Defendant provides nothing more than assertions and potential contrary evidence in support of this request. For the reasons set forth below, neither sanctions under Rule 11 nor an award of attorneys fees under § 13-17-102 are warranted. The Motion should be denied in its entirety.

STANDARD OF REVIEW

A motion to dismiss under C.R.C.P. 12(b)(5) tests the sufficiency of the complaint, not the merits of disputed facts. Colorado applies the *Twombly/Iqbal* plausibility standard to C.R.C.P. 12(b)(5) motions. *Warne v. Hall*, 373 P.3d 588, 595 (Colo. 2016). In deciding such a motion, the Court accepts the complaint's factual allegations as true, views them in the light most favorable to the plaintiff, and considers only the pleadings, attached or incorporated documents, and matters proper for judicial notice. *Norton v. Rocky Mountain Planned*

¹ Exhibit N to the Motion is a hypothetical exhibit labeled "Process Server History" that Defendant claims was "Missing; not provided by Plaintiff"

Parenthood, Inc., 409 P.3d 331, 334 (Colo. 2018). Dismissal is proper only when the plaintiff's factual allegations do not, as a matter of law, support a claim for relief. *Id.*

Summary judgment is appropriate where the pleadings, affidavits, depositions, and admissions show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. See C.R.C.P. 56(c); *Civil Service Comm'n v. Pinder*, 812 P.2d 645, 649 (Colo. 1991); *Cont'l Air Lines v. Keenan*, 731 P.2d 708, 712-13 (Colo. 1987). The party moving for summary judgment bears the initial burden of establishing the absence of any genuine issue of material fact. *Greenberg v. Perkins*, 845 P.2d 530, 531 (Colo. 1993). Once the moving party has met its initial burden, the burden shifts to the nonmoving party to establish that there is a triable issue of fact. *Mancuso v. United Bank of Pueblo*, 818 P.2d 732, 736 (Colo. 1991). Mere allegations, arguments of counsel, and legal conclusions are insufficient to establish a genuine issue of fact. *Mishek v. Stanton*, 616 P.2d 135, 137 (Colo. 1980); *Villalpando v. Denver Health & Hosp. Auth.*, 181 P.3d 357, 363 (Colo. App. 2007).

C.R.S. § 13-17-102 and C.R.C.P. 11 impose a separate and higher standard for sanctions. Inquiry under Rule 11 "concerns whether the attorney (1) has read the pleading in question; (2) has undertaken reasonable inquiry into the pleading's factual and legal assertions; and (3) possessed a proper purpose in filing the pleading." *People v. Trupp*, 51 P.3d 985, 991 (Colo. 2002) ("The test is one of objective reasonableness concerning the attorney's pre-filing behavior").

An award of attorneys fees under § 13-17-102(2) is appropriate where an "attorney or party" has "brought or defended a civil action, either in whole or in part, the court determines lacked substantial justification." An action lacks substantial justification if it is substantially frivolous, substantially groundless, or substantially vexatious. *City of Aurora ex rel. Utility Enterprise v. Colorado State Engineer*, 105 P.3d 595, 618 (Colo. 2005). "The statute is not

designed to discourage counsel from zealously representing a client, but rather to balance that duty against the important policy of discouraging unnecessary litigation." *W. United Realty, Inc. v. Isaacs*, 679 P.2d 1063, 1069 (Colo. 1984).

ARGUMENT

Given the lack of focus of the Motion, Plaintiff intends to respond under both the Rule 12 motion to dismiss and Rule 56 summary judgment standards. Plaintiff will also address Defendant's request for sanctions.

I. RULE 12 ANALYSIS

a. The Complaint States a Plausible Breach-of-Contract Claim

In order to prevail on a claim for breach of contract, the proponent must show (1) the existence of a contract; (2) performance by the plaintiff or some justification for nonperformance; (3) failure to perform the contract by the defendant; and (4) resulting damages to the plaintiff. *Western Distributing Co. v. Diodosio*, 841 P.2d 1053, 1058 (Colo. 1992) (internal citations omitted).

Plaintiff alleges that Defendant entered into a written roofing contract with AC INC on December 2, 2024, for \$19,400.00. Compl. ¶ 6. The contract identifies Peter Pfeiffer as the property owner, lists 30545 Roan Drive, Evergreen, Colorado 80439 as the project address, and states the scope of work as: "Remove and replace the roof, gutters, and downspouts. Install new gutter guards." Compl. Ex. 1, at 1. The contract bears Peter C. Pfeiffer's electronic signature dated December 2, 2024, and the audit trail states that the agreement was completed that same date. *Id.*, at 3.

The Complaint further alleges that AC INC substantially performed by providing labor and materials for the project. Compl. ¶ 13. The invoice attached to the Complaint reflects a \$19,400.00 total, a \$9,700.00 payment, and a \$9,700.00 balance due. Compl. Ex 2.

Finally, the complaint alleges that Defendant's failure to pay the balance due has caused damages to Plaintiff. Compl. ¶ 15.

Those allegations plausibly support a breach-of-contract claim. Defendant's arguments about defective work, incomplete performance, offsets, or dissatisfaction are not properly before the court in assessing the plausibility of Plaintiff's allegations.

b. The Complaint States a Plausible Mechanic's Lien Foreclosure Claim

The Complaint also states a plausible mechanic's lien foreclosure claim. C.R.S. § 38-22-109(3) requires a "notice of intent to file a lien statement" be served upon the owner "at least ten days before the time of filing the lien statement." Plaintiff provided Defendant with the statutory notice of intent to lien on January 23, 2025. Compl. ¶ 17; Compl. Ex. 3.

C.R.S. § 38-22-109(5) provides that covered lien statements must be filed before expiration of four months after the last labor is performed or the last laborers or materials are furnished. After the lien balance remained unpaid for ten days, Plaintiff recorded a mechanic's lien against the property on February 24, 2025, less than four months after the contract was signed (prior to work even beginning) on December 2, 2024. Compl. ¶¶ 18-19; *Motion*, Ex. J; Compl. Ex. 1. Plaintiff thereafter instituted this mechanic's lien foreclosure action on July 1, 2025, within six-months of the date Plaintiff last provided labor or materials.

Accepting the foregoing allegations in the complaint as true, Plaintiff has stated a plausible claim for foreclosure of its mechanic's lien.

II. Rule 56 Analysis

Defendant argues that Plaintiff's claims should be dismissed due to various factors that, if true, may constitute genuine issues of material fact. Although Defendant asserts various defenses, allegations, and misrepresentations in the *Motion*, the facts still must be viewed in the light most favorable to Plaintiff. Although viewed in the light most favorable to Plaintiff, Plaintiff disagrees that the assertions Defendant made in the *Motion* have a

sufficient factual basis and/or evidentiary support. Assuming, arguendo, that the assertions have sufficient factual and evidentiary support, the *Motion* still fails.

Defendant argues that Plaintiff “abandoned the project,” caused damage to his property, and made “material misrepresentations to administrative and judicial bodies during the permitting process and subsequent litigation.” *Motion* §I. In support of these assertions, Defendant provides various arguments and exhibits (not previously disclosed) that purportedly support his arguments that “directly refutes Plaintiffs position.” *Id.* This admission in itself is enough to defeat summary judgment given that Defendant is conceding there is a genuine dispute of material facts.

Defendant contends that Plaintiff did not substantially perform its work, Plaintiff contends it did. Defendant contends that Plaintiff abandoned the project, Plaintiff contends that it completed the project, consistent with the final inspection. Defendant claims Plaintiff made “material misrepresentations to administrative” bodies during the permitting process, Plaintiff denies it made misrepresentations to any individual, body, or tribunal during the permitting process or otherwise.

Additionally, Defendant makes several statements concerning the actions of Plaintiff and Plaintiff’s counsel that are factually incorrect.

- Defendant claims that “[c]ertified-mail service failed completely” and that “counsel was notified of the void service in writing.” *Motion*, at §I(2). Defendant provides three exhibits in support of these statements, including the certified mail envelopes that purportedly completely failed to reach him. Plaintiff can only assume, because they were produced by Defendant, that the envelopes were in Defendant’s possession prior to use as *Motion* Exhibit J. Furthermore, Plaintiff’s counsel had no communication with Defendant prior to filing this action and could not have been notified prior to filing.
- Defendant claims that Plaintiff’s counsel “used a narrative of obstruction” to set aside the earlier dismissal. Defendant claims that the affidavit of nonservice, in which the process server testified that “[t]he environment was unsafe due to loose animals on the premises” and “[d]ebris, nails and other objects” blocking the driveway, is fraudulent or otherwise disputes the conditions documented. Defendant also takes issue with the fact that the

process server only attempted service once. Defendant would do well to read further into Plaintiff's Motion to Set Aside Default. As noted in the motion to set aside, upon finding out about the hazardous conditions, Plaintiff sent the service package to the Jefferson County Sheriff's Office, who ultimately completed service.

- Defendant also suggests that counsel's medical leave was fabricated. Plaintiff's counsel provided a sworn affidavit documenting his medical condition, timeframe, and subsequent return to the office. It is not counsel's obligation to provide whatever documentation Defendant would consider "verified" in order to show counsel was not making misrepresentations to the court. If necessary, Plaintiff's counsel would be happy to have the court review additional medical records in-camera, but counsel has no interest or obligation to share any additional protected health information with Defendant.

III. Sanctions are Unwarranted under both C.R.S. §13-17-102 and C.R.C.P. 11

Defendant requests an award of his "reasonable and documented out-of-pocket litigation expenses incurred in defending this groundless and vexatious action" and to hold "Plaintiff and Plaintiff's counsel jointly and severally liable for the award of costs and expenses." *Motion*, at §V(B)-(C). Defendant's request for sanctions should be denied because Plaintiff's claims are supported by a rational factual and legal basis.

a. C.R.S. § 13-17-102

"A court shall award attorney fees if an attorney or a party brings or defends an action that lacks substantial justification, and a claim lacks substantial justification if it is substantially frivolous or groundless." *Pat's Const. Service, Inc. v. Insurance Co. of the West*, 141 P.3d 885, 889 (Colo. App. 2005). An action lacks substantial justification if it is substantially frivolous, substantially groundless, or substantially vexatious, which occurs if the proponent can present no rational argument based on evidence or law to support the claim or defense. *City of Aurora ex rel. Utility Enterprise v. Colorado State Engineer*, 105 P.3d 595, 620 (Colo. 2005).

In 1984 the Colorado Supreme Court relied upon a Pennsylvania Supreme Court decision, which was later adopted by the US Supreme Court in *Christinasburg Garment Co.*

v. Equal Employment Opportunity Commission, 434 U.S. 412, to conclude that “[w]here there is no evidence (1) that a party seeks to harass, embarrass, or abuse another party or the court or (2) that the action is unfounded, meritless, frivolous, or vexatiously brought, attorney fees should be denied.” *Western United Realty, Inc. v. Isaacs*, 679 P.2d 1063, 1068 (Colo. 1984).

Here, Defendant has provided no evidence of harassment, embarrassment, abuse, or that the action is unfounded, meritless, frivolous, or vexatiously brought. Refusing to dismiss claims based solely on the adverse party stating a defense to the allegations in the complaint cannot be interpreted as maintaining a frivolous, groundless, or vexations action. Simply invoking the statute does not turn maintaining properly alleged claims into sanctionable conduct. A party is not subject to sanctions merely because the opposing party disputes the merits or because the claim may ultimately fail. Informatively, the *Isaacs* court noted that the test for frivolity “does not apply to meritorious actions that prove unsuccessful.” *Id.* at 1069.

b. C.R.C.P. 11

Defendant contends that Plaintiff’s counsel should be subject to sanctions under Rule 11 because by “signing the complaint and subsequent Motion to Set Aside, Plaintiff’s counsel certified pursuant to C.R.C.P. 11 that the factual contentions had evidentiary support.” This is an accurate statement, and counsel maintains the factual contentions in the complaint and motion to set aside continue to maintain evidentiary support. Defendant has provided no evidence to the contrary, including in the *Motion*. Defendant’s list of previously undisclosed, as well as some items that remain undisclosed, exhibits does not save the request for sanctions.

Defendant seems to require counsel to discount and investigate a process server’s sworn testimony, discount counsel’s client’s testimony, evidence, and governmental corroboration in favor of his statements to the contrary. Undersigned counsel takes his

ethical responsibility to the court, client, and opposing counsel seriously and maintains actions within the bounds of these responsibilities and the Colorado Rules of Professional Conduct. If counsel were to proceed consistent with Defendant's requirements, counsel would be in violation of his ethical obligations to his client. Plaintiff's claims have a valid basis in the contract, invoice, payment history, and recorded lien, all of which have been properly disclosed.

For the foregoing reasons, the Court should deny Defendant's request for sanctions under both C.R.S. § 13-17-102 and C.R.C.P. 11.

CONCLUSION

Defendant's Motion is deficient in both name and substance. It is stylized as a motion to dismiss but incorporates not only evidence outside the pleadings, but also previously undisclosed evidence. It is built on disputed facts and collateral accusations, not on any defect in the Complaint, rendering it not only inappropriate for dismissal under Rule 12, but inappropriate for dismissal under Rule 56 as well.

For the foregoing reasons, Plaintiff respectfully requests that the Court deny Defendant's Motion to Dismiss Plaintiff's Complaint With Prejudice and for Sanctions, deny Defendant's request for costs, expenses, and joint and several liability, and grant such other relief as the Court deems just and proper.

Respectfully submitted on this 5th day of August 2026.

OGBORN MIHM, LLP

/s/ Edison P. McDaniels III
Michael J. Ogborn, Reg. No. 20932
David M. Roth, Reg. No. 44800
Edison P. McDaniels III, Reg. No. 50797
Attorneys for Plaintiff