

Robert Aycock (8878)
Chrystal Mancuso-Smith (11153)
Tanner Reber (19056)
KIMBALL ANDERSON
649 E South Temple St. 2nd Floor
Salt Lake City, UT 84102
Telephone: (801) 350-9000
Robert@kimballanderson.com
Chrystal@kimballanderson.com
Tanner@kimballanderson.com

Attorneys for Plaintiff Kyco Services, LLC

**IN THE THIRD JUDICIAL DISTRICT COURT
OF SALT LAKE COUNTY, STATE OF UTAH**

KYCO SERVICES, LLC,

Plaintiff,

vs.

WASATCH RESIDENTIAL BUILDERS,
LLC d/b/a WASATCH DC BUILDERS;
SOUTH POINT TOWNS, LLC d/b/a
AUSTIN TOWNHOMES, THE; and JOHN
DOES 1 - 10,

Defendants.

COMPLAINT

Tier 3

Civil No.

Judge:

Plaintiff Kyco Services, LLC (“***Plaintiff***” or “***Kyco***”), by and through its counsel, hereby complains against Defendants Wasatch Residential Builders, LLC (“***Wasatch***”) and South Point Towns, LLC (“***South Point***”) (collectively “***Defendants***”) and alleges as follows:

IDENTITY OF PARTIES

1. Plaintiff Kyco Services, LLC is a Utah limited liability company having a principal place of business at 2090 W. 500 N. Unit 6, Springville, Utah 84663.

2. Defendant Wasatch Residential Builders, LLC, is a Utah limited liability company doing business as Wasatch DC Builders and having its principal place of business at 620 S. State Street, Salt Lake City, Utah 84111, and Jeff Nielson as its registered agent.

3. Defendant South Point Towns, LLC, is the owner of real property in Salt Lake County, Utah, and is a Utah limited liability, doing business as The Austin Townhomes, with its principal place of business at 620 S. State Street, Salt Lake City, Utah 84111, and Jeff Nielson as its registered agent.

4. Kyco sues other lienholders or persons with interests in the subject real property by the fictitious names of Defendants John Does 1 – 10 until such time as Kyco becomes aware of such persons' true identities through discovery in this action.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this action pursuant to Utah Code Ann. § 78A-5-102.

6. This Court has personal jurisdiction over Defendants in that each is a resident of the State of Utah, owns real property in the State of Utah, or transacts business in the State of Utah.

7. Venue is proper in this judicial district pursuant to Utah Code Ann. § 78B-3-301, 78B-3-304, and 78B-3-307, because where the subject real property is located and where a substantial part of Defendants' acts giving rise to Plaintiff's claims occurred in this District.

8. This case falls within Discovery Tier 3 of Rule 26(c)(3) of the Utah Rules of Civil Procedure as the damages exceed \$300,000.

FACTS

9. Kyco is now, and was at all times relevant hereto, a duly organized and licensed Utah limited liability company providing drywall construction labor and materials (the “*Labor and Materials*”).

10. On or about December 2, 2021, Kyco entered into an agreement with Wasatch Residential Builders (the “*Agreement*”) for Kyco to furnish drywall construction Labor and Materials to a certain parcel of real property situated in Utah County, State of Utah (the “*Project*”), in exchange for Wasatch’s promise to pay for the Labor and Materials.

11. The Agreement is provided herewith as **Exhibit A**.

12. In the event of a dispute the Agreement provides the prevailing party with all reasonable attorney’s fees, expert fees, and costs and expenses incurred, including statutory interest. *See* Ex. A, Agreement Section 15 ¶ 2.

13. On or about February 28, 2022, Kyco properly and timely filed its first preliminary notice with the State Construction Registry (“*Preliminary Notice*”) for the Labor and Materials it intended to provide to the Project on the property known as The Austin Townhomes, located at 604 W. Park Presidio Way, Draper, Utah 84020 (the “*Property*”), a copy of which is attached as **Exhibit B**.

14. Kyco recorded a Notice of Mechanic’s Lien (the “*Mechanic’s Lien*”) for the unpaid Labor and Materials Kyco provided to the Project on the Property with the Office of the Salt Lake County Recorder on August 24, 2023, as Entry No. 10507743.

15. The Mechanic’s Lien is provided herewith as **Exhibit C**.

16. Upon information and belief, Defendant South Point is the owner of the Property.

17. As the Property's owner, South Point benefited from Kyco's Labor and Materials as those Labor and Materials improved and added value to South Point's Property.

18. Kyco properly and timely recorded its Mechanic's Lien against the Property.

19. Kyco's Labor and Materials were first furnished to the Property, at the request of Wasatch, on or about February 3, 2022, and Kyco properly and timely filed its preliminary notices with the State Construction Registry.

20. Kyco fully and satisfactorily furnished drywall construction Labor and Materials to the Property from February 3, 2022, until its work was completed on or about May 26, 2023, and it strictly adhered to the direction and authorization provided by Wasatch and its authorized agents and representatives.

21. Wasatch owes Kyco the principal amount of at least \$294,304.01 for the Labor and Materials Kyco provided to the Property, together with attorney's fees, expert fees, and costs and expenses incurred, including statutory interest. See Ex. A, The Agreement Section 15 ¶ 2.

22. Despite Kyco's demands, Wasatch has failed and refused to pay Kyco the amounts due.

23. The purpose of this action commenced by Kyco is to assert its claims against Wasatch and South Point and to foreclose its Mechanic's Lien against the Property.

FIRST CAUSE OF ACTION

(Claim for Foreclosure of Mechanic's Lien Against Defendants)

24. Kyco hereby incorporates by reference the allegations set forth above as if fully set forth herein.

25. Kyco provided the Labor and Materials in connection with the Property as specified in the Mechanic's Lien, which was timely and properly recorded pursuant to Utah Code Ann. § 38-1a-101 *et seq.*

26. Defendants were properly and timely afforded notice and copies of the Mechanic's Lien pursuant to Utah Code Ann. § 38-1a-502.

27. Kyco is entitled to foreclose its Mechanic's Lien against the Property pursuant to Utah Code Ann. § 38-1a-101 *et seq.*, and it is entitled to attorney's fees, expert fees, and costs and expenses incurred, including statutory interest pursuant to Utah Code Ann. § 38-1a-707 and the Agreement Section 15 ¶ 2.

28. Kyco is therefore entitled to judgment as set forth below in paragraph 1 of the Prayer for Relief.

SECOND CAUSE OF ACTION

(Breach of Contract Claim Against Wasatch)

29. Kyco hereby incorporates by reference the allegations set forth above as if fully set forth herein.

30. The Agreement constitutes a valid and enforceable contract whereby Kyco agreed to provide Labor and Materials to the Property in exchange for Wasatch's promise to pay Kyco all amounts owed under the Agreement.

31. Kyco has satisfied its obligations under the Agreement.

32. Wasatch, on the other hand, has materially breached the Agreement by, among other things, failing to pay Kyco all amounts owed under the Agreement.

33. Due to Wasatch's failure to pay for the Labor and Materials provided to the Project, Kyco has incurred, and continues to incur, significant damages of not less than \$294,304.01.

34. Kyco is entitled attorney's fees, expert fees, and costs and expenses incurred, including statutory interest pursuant to Utah Code Ann. § 38-1a-707 and the Agreement Section 15 ¶ 2.

35. Kyco is therefore entitled to judgment as set forth below in paragraph 2 of the Prayer for Relief.

THIRD CAUSE OF ACTION

(Quasi Contract, Unjust Enrichment and/or Quantum Meruit Against Defendants)

36. Kyco hereby incorporates by reference the allegations set forth above as if fully set forth herein.

37. If for any reason the trier-of-fact in this case fails to identify the existence of an enforceable and binding contract as alleged herein, Kyco asserts an alternative claim for Quasi Contract, Unjust Enrichment and/or Quantum Meruit.

38. Kyco provided Labor and Materials for Defendants benefit, and Kyco has thereby conferred a benefit upon Defendants with a reasonable expectation of being compensated in an amount equal to the value of the Labor and Materials it provided.

39. Among other things, Kyco, in justifiable and reasonable reliance on Defendants promises to pay, provided the Labor and Materials to the Project which improved and added value to the Property.

40. To permit Defendants to retain the benefit received without fully compensating Kyco would result in an unconscionable and unjust enrichment of Defendants at Kyco's expense.

41. Defendants were fully aware of the benefit conferred upon them by Kyco.

42. Kyco did not act as a volunteer or intermeddler in connection with the Labor and Materials it provided.

43. Kyco is therefore entitled to judgment as set forth below in paragraph 3 of the Prayer for Relief.

FOURTH CAUSE OF ACTION

(Breach of the Implied Covenant of Good Faith and Fair Dealing Against Wasatch)

44. Kyco hereby incorporates by reference the allegations set forth above as if fully set forth herein.

45. As a matter of law, an implied covenant of good faith and fair dealing is contained in the Agreement requiring Wasatch to not act in a way that denies Kyco the benefit of its bargain.

46. Wasatch breached the implied covenant of good faith and fair dealing by failing and refusing to pay for the Labor and Materials provided by Kyco.

47. As a direct and proximate result of Wasatch's breach of the implied covenant of good faith and fair dealing, Kyco has incurred, and continues to incur, damages of not less than \$294,304.01, the exact amount to be proven at the trial of this matter, together with interest, attorneys' fees, and costs. Exhibit A, the Agreement Section 15 ¶ 2.

48. Kyco is therefore entitled to judgment as set forth below in paragraph 4 of the Prayer for Relief.

FIFTH CAUSE OF ACTION

(Declaratory Judgment Against Defendants)

49. Kyco hereby incorporates by reference the allegations set forth above as if fully set forth herein.

50. Upon information and belief, Defendants are a lien holder or other person or entity that may claim an interest in the Property through documents recorded with the Salt Lake County Recorder or otherwise.

51. Kyco first furnished Labor and Materials to the Property on or about February 3, 2022.

52. Kyco recorded its Mechanic's Lien with the Office of the Salt Lake County Recorder on August 24, 2023, as Entry No. 10507743. *See Ex. C.*

53. Kyco timely filed its Preliminary Notices with the State Construction Registry. *See Ex. B.*

54. Pursuant to Utah Code Ann. § 38-1a-503, Kyco's Mechanic's Lien relates back and takes effect as of the time of filing of the first preliminary notice filing and has priority over any lien, mortgage, or other encumbrance that attaches after first preliminary notice filing.

55. Defendants are an adverse party.

56. Kyco's interest in the Property constitutes a legally protected interest.

57. The conflict between Kyco and Defendants is ripe for a judicial resolution.

58. Pursuant to Utah Code Ann. § 78B-6-401, Kyco is entitled to a declaratory judgment declaring that:

a. Pursuant to Utah Code Ann. § 38-1a-503, Kyco's Mechanic's Lien is prior to and superior both in time and as of rights, titles, claims, and interests to the claims and interests of Defendants and all other persons or entities claiming an interest in and to the Property; and

b. Kyco is entitled to foreclose its Mechanic's Lien against the Property pursuant to Utah Code Ann. § 38-1a-1 *et seq.*

59. Kyco is therefore entitled to judgment against Defendants as set forth in paragraph 5 of the Prayer for Relief.

SIXTH CAUSE OF ACTION

(Violation of Utah Code Ann. § 58-55-603 Against Wasatch)

60. Kyco hereby incorporates by reference the allegations set forth above as if fully set forth herein.

61. Upon information and belief, Wasatch, and its principals and/or employees received construction funds from the owners of the Project for all or part of the Labor and Materials provided by Kyco.

62. Any principal or employee of Wasatch who received construction funds from the owner of the Project had an individual duty to pass those construction funds on to Kyco in proportion to the percentage of the work Kyco performed and for which it billed.

63. Until Defendants' breach, Kyco performed and billed all the work it was required to perform on the Project pursuant to the Agreement.

64. More than thirty (30) consecutive days have passed since Wasatch received construction funds from the owners of the Project for work performed and billed by Kyco.

65. The deadline for payment under the terms of Kyco's billing has expired.

66. Despite receiving all or part of the construction funds from the owner of the Project to pay for Kyco's Labor and Materials, Wasatch, and their principals and/or employees have failed to distribute such funds to Kyco as required by Utah Code Ann. § 58-55-603(2).

67. In accordance with Utah Code Ann. § 58-55-603, Kyco is entitled to payment for the amounts owed under the Agreement, an award of its attorneys' fees and costs, and interest at the rate provided in Utah Code Ann. § 58-55-603(2).

68. Kyco is therefore entitled to judgment against Wasatch as set forth below in paragraph 6 of the Prayer for Relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Kyco prays for judgment against Defendants Wasatch and South Point as follows:

1. On Kyco's First Cause of Action, asserting the foreclosure of its Mechanic's Lien against Defendants, for a judgment and decree adjudging that Kyco's Mechanic's Lien against the Property secures payment of the sums due to Kyco, and that the Court enter an Order releasing the Property to Plaintiff or permitting the Property described herein to be sold by the Sheriff of Utah County, State of Utah, according to Utah State law, and that the proceeds of such sale be paid to Kyco as set forth herein.

2. On Kyco's Second Cause of Action, asserting a breach of contract claim against Wasatch, for Kyco's general, compensatory, and consequential damages, in an amount not less than \$294,304.01, together with pre- and post-judgment interest, attorneys' fees and costs.

3. On Kyco's Third Cause of Action, asserting a quasi-contract, unjust enrichment and/or quantum meruit claim against Wasatch, for Kyco's general and compensatory damages resulting from Wasatch's unjust enrichment, together with pre- and post-judgment interest as provided for under Utah law, the exact amount to be established at the trial of this matter.

4. On Kyco's Fourth Cause of Action, asserting a breach of the implied covenant of good faith and fair dealing claim against Wasatch, for Kyco's general and compensatory damages in an amount not less than \$294,304.01, together with pre- and post-judgment interest, attorneys' fees, and costs.

5. On Kyco's Fifth Cause of Action, for a declaratory judgment declaring that:

- a. Pursuant to Utah Code Ann. § 38-1a-503, Kyco's Mechanic's Lien is prior to
and superior both in time and as of rights, titles, claims, and interests to the claims

and interests of Defendants, and all other persons or entities claiming an interest in and to the Property; and

b. Kyco is entitled to foreclose its Mechanic's Lien against the Property pursuant to Utah Code Ann. § 38-1a-1 *et seq.*

6. On Kyco's Sixth Cause of Action, for violation of Utah Code Ann. § 58-55-603, for damages in an amount not less than the principal amount of \$294,304.01, plus attorney's fees, expert fees, costs and expenses incurred, including statutory interest.

7. For Kyco's reasonable attorneys' fees and costs incurred in bringing its claims, as provided for under the Agreement and Utah law.

8. For such other and further relief as the Court deems just and equitable under the circumstances.

DATED this 20th day of February 2024.

/s/ Robert E. Aycock
Robert E. Aycock
Chrystal Mancuso-Smith
Tanner Reber
Attorneys for Plaintiff Kyco Services, LLC