

STATE OF NORTH CAROLINA
CABARRUS COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
24 CVS 526

CHINA CONSTRUCTION
AMERICA OF SOUTH CAROLINA,
INC.,

Plaintiff,

v.

SYCAMORE AT CHRISTENBURY,
LLC and U.S. SPECIALTY
INSURANCE COMPANY,

Defendants.

**ORDER AND OPINION
ON DEFENDANT U.S.
SPECIALTY INSURANCE
COMPANY'S MOTION TO DISMISS**

*Parker Poe Adams & Bernstein LLP, by R. Jason Herndon, Brian D. Darer, Daniel J. Knight, and Ethan A. Johnson; and Bruner, Powell, Wall & Mullins, LLC, by Henry P. Wall and Benjamin C. Bruner, for Plaintiff China Construction America of South Carolina, LLC.**

Anderson Jones, PLLC, by J. Anthony Penry and Felicia M. Haigh, and Smith Currie Oles LLP, by Eugene F. Rash, for Defendants Sycamore at Christenbury, LLC and U.S. Specialty Insurance Company.

Conrad, Judge.

1. This action arises from the construction of an apartment complex in Concord, North Carolina. China Construction America of South Carolina, Inc. (the general contractor) alleges that it completed the project last year but that Sycamore at Christenbury, LLC (the property owner) has not paid all that is due under their contracts. The complaint includes claims against Sycamore for breach of contract, quantum meruit, and negligent misrepresentation. It also includes a claim either to

* Clifton W. Homesley, Consuela Simmons, and Cameron Bray of Homesley & Wingo Law Group, PLLC represented the plaintiff at the time the motion to dismiss was filed but have since been granted leave to withdraw.

enforce a mechanic's lien against Sycamore's property or to compel payment on a bond provided by U.S. Specialty Insurance Company to discharge the lien. (*See* Compl. ¶¶ 9, 31, 40, 44, 47, 68, ECF No. 3.)

2. U.S. Specialty has moved to dismiss the only claim against it. (*See* ECF No. 16.) Because China Construction has not filed an opposition brief, "the motion will be considered and decided as an uncontested motion." BCR 7.6. The Court elects to rule without a hearing. *See* BCR 7.4.

3. The issue is this: is China Construction's claim demanding payment on the lien discharge bond ripe? U.S. Specialty argues that it isn't ripe, and the Court agrees. A lien discharge bond under N.C.G.S. § 44A-16(6) "simply takes the place of the land." *George v. Hartford Accident & Indem. Co.*, 330 N.C. 755, 761 (1992). "Because the bond acts as a substitute for the land, logic dictates that the lien claimant's right to make demand upon the bond accrues at the same time that he would have been able to enforce the lien against the land: at final judgment in his favor." *Id.* China Construction hasn't obtained a final judgment against Sycamore; thus, its right to demand payment on the bond hasn't accrued yet. (*See* Compl. ¶ 42 (alleging that U.S. Specialty is a party only "for the purpose of insuring that any ultimate judgment resulting from this action will mandate" payment on the bond if China Construction "is not satisfied directly by . . . Sycamore").)

4. Accordingly, the Court **GRANTS** U.S. Specialty's motion and **DISMISSES** China Construction's claim for payment on the lien discharge bond without prejudice.

SO ORDERED, this the 10th day of June, 2024.

/s/ Adam M. Conrad
Adam M. Conrad
Special Superior Court Judge
for Complex Business Cases