**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**WASHINGTON, SC.** **SUPERIOR COURT**

**(FILED: August 28, 2014)**

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| **LAKESIDE ELECTRIC, INC.** | : | |
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| **V.** | : | **C.A. No. WM-2013-0635** |
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| **ULBE, LLC and RAYMOND ELECTRIC CORPORATION** | : | |
| | : | |

## DECISION

**K. RODGERS, J.** This matter arises from an oral agreement to furnish labor and materials for a renovation project in the Town of New Shoreham (Block Island) in Rhode Island. Before this Court is Plaintiff Lakeside Electric, Inc.'s (Plaintiff or Lakeside Electric) Motion for Summary Judgment pursuant to Super. R. Civ. P. 56. Plaintiff asserts it is entitled to judgment as a matter of law on Counts I through IV of its Complaint seeking enforcement of a mechanic's lien, damages for breach of contract and unjust enrichment, and attorneys' fees relative to electrical work Lakeside Electric performed on a time and materials basis at the Surf Hotel on Block Island. After a hearing thereon and upon consideration of the parties' memoranda, this Court will now render a Decision.

## I

## Facts and Travel

Defendant ULBE, LLC (ULBE), owner of the Surf Hotel, hired Co-Defendant Raymond Electric Corporation (Raymond Electric) to perform renovations at the Surf Hotel located at 32 Dodge Street on Block Island. Compl. at ¶ 4. Raymond Electric, in turn, hired Lakeside Electric as a subcontractor to perform electrical work on a time and material basis pursuant to a verbal agreement between Lakeside Electric's president, Donald R. Antaya (Antaya), and Raymond Electric's president, Raymond G. Pellegrino (Pellegrino). Id. at ¶ 5. The agreed-upon hourly rate for Lakeside Electric's work was $70.00 for up to fifty hours a week, and $105.00 for any hours worked over fifty. Pl.'s Ex. A at ¶ 4 (Antaya Aff.). The parties also agreed to a material markup of 30%. Id. As is customary for work on Block Island, transportation costs, lodging and meals were included as part of the subcontract. Id.

Lakeside Electric commenced its work in April 2013, see Antaya Aff., Ex. 1, at 1, and last performed services at the Surf Hotel on June 26, 2013. Id., Ex. 1, at 6. As attested to by Block Island's building official, Marc A. Tillson (Tillson), Raymond Electric secured the necessary electric permit from Block Island on May 16, 2013. Pl.'s Ex. B at ¶ 4 (Tillson Aff.) and attached unnumbered exhibit, at 1. All the electrical work performed by Lakeside Electric was inspected by Tillson and was deemed to be in compliance with both the electric permit issued and the Rhode Island State Electrical Code. Tillson Aff. at ¶ 4.

Lakeside Electric was eventually paid for invoices submitted in April and May of 2013, up through Invoice No. 822 dated May 7, 2013. See Antaya Aff., Ex. 1, at 1.

However, outstanding balances on Invoice Nos. 831, 833 and 834 dated May 26, 2013, June 12, 2013 and July 1, 2013, respectively, have remained unpaid. Id. at ¶ 6 and Ex. 1, at 1. The outstanding balance owed to Lakeside Electric for time and materials furnished to the Surf Hotel is $33,887.23. Id.

On November 12, 2013, Lakeside Electric filed and recorded its Notice of Intention to Do Work Or Furnish Materials Or Both (Notice of Intention) in the Land Evidence Records of Block Island, indicating therein that within 200 days of the filing of this Notice of Intention it had performed services at the Surf Hotel as reflected in unpaid Invoice Nos. 831, 833 and 834 dated May 26, 2013, June 12, 2013 and July 1, 2013, respectively, and that said invoices reflect the fair and reasonable value of the electrical work performed at the Surf Hotel in May and June 2013. See Pl.'s Ex. C. Lakeside Electric then filed a Notice of Lis Pendens in the Land Evidence Records on December 6, 2013, indicating therein that it has filed or would file a complaint to enforce its mechanic's lien within seven days. Id. On December 9, 2013, Lakeside Electric filed the instant Complaint against ULBE and Raymond Electric. Count I seeks enforcement of a mechanic's lien against ULBE, as the owner of the Surf Hotel, in the amount of $30,538.83, plus costs and attorneys' fees. Compl., ¶¶ 10-17; see also Pl.'s Mem. in Supp. of Mot. for Summ. J. at 2.[1] Count II of the Complaint is directed against Raymond Electric and seeks damages for breach of the oral contract to pay Lakeside Electric for the electrical work performed on a time and material basis. In the alternative, Count III seeks recovery against Raymond Electric under the quasi-contractual theory of unjust

[1] With regard to Count I only, Lakeside Electric has deducted the transportation, lodging and food costs from the outstanding invoices totaling $3,348.00. Accordingly, it seeks enforcement of a mechanic's lien in the amount of $30,538.83, plus interest, costs and attorneys' fees as allowed under G.L. 1956 § 34-28-19.

enrichment. Finally, Count IV against Raymond Electric seeks attorneys' fees pursuant to G.L. 1956 § 9-1-45, as Lakeside Electric contends there is no justiciable issue in law or fact regarding the monies owed.

On June 16, 2014, Lakeside Electric filed the instant Motion for Summary Judgment on all counts, designating August 18, 2014, as the hearing date. On August 15, 2014, ULBE filed its untimely objection.[2] Raymond Electric did not object to Plaintiff's Motion for Summary Judgment, but its counsel appeared before the Court on August 18, 2014, for the purpose of objecting to the extent Plaintiff sought final judgment in accordance with Super. R. Civ. P. 54(b).

[2] This Court issued an Administrative Order dated May 15, 2013, which is available in hard-copy in the Washington County Clerk's Office and on the Rhode Island Judiciary website, which governs dispositive and non-dispositive motions and hearings in order to ensure that the Court has adequate time to prepare for the Civil Motion Calendar conducted only once a month in Washington County. The Administrative Order provides, in pertinent part:

> **"FILING AND HEARING DATES**: . . . Unless otherwise ordered by the Court, hearings for dispositive motions shall be scheduled **NOT LESS THAN THIRTY (30) DAYS** from the date of filing. Responsive memoranda, supporting documents, affidavits and any cross motion shall be **filed in duplicate NOT LESS THAN FOURTEEN (14) DAYS** prior to hearing, and shall include copies of principal cases relied upon. The Court reserves the right to shorten these filing deadlines to resolve issues which are less complex or for cases reached for trial.
> . . . .
>
> **"FAILURE TO COMPLY:** Dispositive motions not filed in accordance with this Administrative Order will not be heard by the Court. Responses that are not filed in accordance with this Administrative Order will not be considered by the Court at the time of the hearing."

This Court heard oral argument on August 18, 2014, but reserved judgment in order to review ULBE's objection.[3] Having reviewed Plaintiff and ULBE's submissions, this Court now renders its Decision.

## II

## Standard of Review

In reviewing a motion for summary judgment, the preliminary question before this Court is whether there is a genuine issue as to any material fact which must be resolved. R.I. Hosp. Trust Nat'l Bank v. Boiteau, 119 R.I. 64, 376 A.2d 323 (1977); O'Connor v. McKanna, 116 R.I. 627, 359 A.2d 350 (1976). If an examination of the pleadings, affidavits, admissions, answers to interrogatories, and other similar matters reveals no such issue and the moving party is entitled to judgment as a matter of law, then the suit is ripe for summary judgment. Super. R. Civ. P. 56(c); see also Neri v. Ross-Simons, Inc., 897 A.2d 42, 47 (R.I. 2006); Casey v. Town of Portsmouth, 861 A.2d 1032, 1036 (R.I. 2004). In ruling upon a motion for summary judgment, this Court must review such evidence in the light most favorable to the nonmoving party. Casey, 861 A.2d at 1036 (citing Duffy v. Dwyer, 847 A.2d 266, 268-69 (R.I. 2004)).

Once the moving party has shown that there is no genuine issue of material fact, the burden shifts and the party who opposes the motion now "carries the burden of proving by competent evidence the existence of a disputed material issue of fact and cannot rest on allegations or denials in the pleadings or on conclusions or legal opinions."

[3] Although ULBE's objection could have been wholly disregarded in accordance with this Court's Administrative Order and Nichola v. John Hancock Mut. Life Ins. Co., 471 A.2d 945, 947 (R.I. 1984), this Court, over Plaintiff's objection, elected to consider ULBE's submission but also to sanction this inexcusable, untimely filing by ordering that ULBE pay Plaintiff's attorneys' fees for the time spent reviewing ULBE's objection and preparing for hearing thereon.

Accent Store Design, Inc. v. Marathon House, Inc., 674 A.2d 1223, 1225 (R.I. 1996); see also McAdam v. Grzelczyk, 911 A.2d 255, 259 (R.I. 2006). It is not sufficient "simply [to] show that there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). Indeed, the adverse party must set forth specific facts, via sworn affidavit or otherwise, showing that there is a genuine issue for trial. Super. R. Civ. P. 56(e). Although inferences may be drawn from underlying facts contained in material before the trial court, neither conclusory statements nor assertions of inferences not based on underlying facts will suffice. See Minuto v. Metro. Life Ins. Co., 55 R.I. 201, 179 A. 713, 715 (1935) ("[g]eneral denials or expressions of the defendant's belief, or conclusions and inferences of law, and the like" are not sufficient to withstand summary judgment).

Importantly, Rule 56(f) of the Rhode Island Rules of Civil Procedure (Rule 56(f)) takes into consideration that affidavits in opposition to a summary judgment motion may be unavailable. That provision states:

> "Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just." Super. R. Civ. P. 56(f).

It is well-settled that a decision to grant or deny a continuance in accordance with Rule 56(f) is within the discretion of the motion justice. See, e.g., Berard v. HCP, Inc., 64 A.3d 1215, 1219-20 (R.I. 2013); Martel Inv. Grp., LLC v. Town of Richmond, 982 A.2d 595, 601 (R.I. 2009); Holley v. Argonaut Holdings, Inc., 968 A.2d 271, 275-76 (R.I. 2009); Chevy Chase, F.S.B. v. Faria, 733 A.2d 725, 727 (R.I. 1999); Greenwald v. Selya

& Iannuccillo, Inc., 491 A.2d 988, 989 (R.I 1985). Additionally, the Rhode Island Supreme Court has reiterated that Rule 56(f) "'clearly mandates that the party opposing the motion for summary judgment file affidavits stating why he or she cannot present facts in opposition to the motion.'" Holley, 968 A.2d at 276 (quoting R.I. Depositors' Econ. Prot. Corp. v. Ins. Premium Fin., Inc., 705 A.2d 990, 990 (R.I. 1997) (mem.)); see also Berard, 64 A.3d at 1220. Failure to file an affidavit in opposition to a motion for summary judgment or an affidavit to substantiate the need for a continuance and/or discovery has proven fatal to the nonmoving party. See, e.g., Berard, 64 A.3d at 1220; Martel Inv. Grp., 982 A.2d at 601-02; Holley, 968 A.2d at 276; Mitchell v. Burrillville Racing Ass'n, 673 A.2d 446, 448 (R.I. 1996); Chevy Chase, F.S.B., 733 A.2d at 727.

**III**

**Analysis**

**A**

**Lakeside Electric's Mechanic's Lien Claim**

Lakeside Electric first seeks judgment against ULBE on Count I under the Mechanic's Lien Statute, codified at §§ 34-28-1, et seq.

The purpose of the mechanic's lien law is to provide "'a liberal remedy to all who have contributed labor or material towards adding to the value of the property to which the lien attaches.'" Roofing Concepts, Inc. v. Barry, 559 A.2d 1059, 1061 (R.I. 1989) (quoting Field & Slocomb v. Consol. Mineral Water Co., 25 R.I. 319, 320, 55 A. 757, 758 (1903)); see also Kelly v. Dunne, 112 R.I. 775, 778, 316 A.2d 341, 343 (1974); Art Metal Constr. Co. v. Knight, 56 R.I. 228, 247, 185 A. 136, 145 (1936). There are numerous statutory requirements in order for a mechanic's lien to be enforceable. First,

the person or entity claiming the lien must mail, by prepaid registered or certified mail, a notice of intention together with a statement that the person so mailing may, within 200 days after the doing of the work or furnishing the materials, file a copy of the notice in the land evidence records of the city or town in which the land is located to the address of the land described in the notice. Sec. 34-28-4. Next, within forty days of the filing of the notice of intention, the claimant must file a notice of lis pendens, which complies with the requirements of § 34-28-11 and notifies the landowner that the person filing the notice has filed, or will file, within seven days, a complaint to enforce the mechanic's lien in the superior court for the county in which the land is situated. Sec. 34-28-10. Finally, within seven days of the filing of the notice of lis pendens, the claimant must file a complaint to enforce the lien in the superior court for the county in which the subject land is located. Sec. 34-28-10.

Here, the undisputed records before this Court demonstrate that Lakeside Electric performed labor on and supplied materials to the Surf Hotel from April 2013 to June 26, 2013. See Antaya Aff., at ¶ 6 and Ex. 1, at 2, 6. The Notice of Intention was filed in the Land Evidence Records of Block Island on November 12, 2013, and specified that Lakeside Electric had performed labor on and supplied materials to the Surf Hotel in May and June 2013, as reflected in unpaid Invoice Nos. 831, 833 and 834, dated May 26, 2013, June 12, 2013 and July 1, 2013, respectively. Pl.'s Ex. C. The Notice of Intention was filed 189 days after May 7, 2013, the earliest date reflected in the unpaid invoices identified in the Notice of Intention, see Antaya Aff., Ex. 1, at 2, and within the 200-day period required by § 34-28-4. Lakeside Electric then filed the Notice of Lis Pendens in the Land Evidence Records on December 6, 2013, within the forty-day period required

by § 34-28-10 and in the manner described in § 34-28-11. Pl.'s Ex. C. Just three days later, on December 9, 2013, Lakeside Electric filed this Complaint seeking enforcement of its mechanic's lien, in compliance with § 34-28-10. Accordingly, Lakeside Electric has met all the requirements for enforcement of its mechanic's lien.

In its objection, ULBE makes numerous bald assertions that there are issues of material fact that should prevent this Court from granting judgment in favor of Lakeside Electric on Count I. None of these arguments are supported by any competent evidence, by affidavit or otherwise. First, ULBE argues that the discrepancy between the money already paid to Raymond Electric—$80,000—and the money Plaintiff seeks—an additional $30,538.83, excluding travel and lodging costs—should be the subject of fact-finding. ULBE further asserts that the discrepancy between the work-estimate provided by Raymond Electric—$48,000—and the monies paid by ULBE—approximately $80,000—should also be the subject of factual discovery, and that there is an issue of fact with respect to whether the work was ever performed by Lakeside Electric in the first instance because ULBE was forced to engage another electrical contractor, Andy's Electric, to complete the project. ULBE, however, has failed to introduce any evidence that undermines the incontrovertible evidence that Lakeside Electric has submitted in support of its Motion for Summary Judgment, namely Invoice Nos. 831, 833 and 834. See Pl.'s Ex. A. These arguments are simply bald assertions, unsupported by any evidence, and raises nothing more than a metaphysical doubt as to the material facts.

Other arguments advanced by ULBE are similarly flawed. For example, ULBE's argument that Antaya may be an employee of Pellegrino, and would therefore not be entitled to a mechanic's lien, and that there are genuine issues of material fact regarding

the terms of the oral contract between Lakeside Electric and Raymond Electric, are nothing more than last minute "Hail Mary" passes lobbed across the Court via an untimely objection.

ULBE's next argument, that there is a genuine issue of material fact as to whether any of the monies owed to the Plaintiff are the responsibility of Raymond Electric and not ULBE, aside from suffering from the same flaws as ULBE's previous arguments, is immaterial to the enforcement of a mechanic's lien. Lakeside Electric is not required to show that ULBE is responsible for payment to Lakeside Electric. Indeed, our Supreme Court has recognized that § 34-28-1 "'attempts to deal with the familiar dilemma of placing the burden of expense upon one of two individuals who are generally blameless.'" Pezzuco Constr., Inc. v. Melrose Assocs., L.P., 764 A.2d 174, 177 (R.I. 2001) (quoting Faraone v. Faraone, 413 A.2d 90, 92 (R.I. 1980)). The undisputed fact is that Lakeside Electric has furnished materials and labor to add value to ULBE's property. Section 34-28-1, et seq. seeks to protect contractors and subcontractors against unjust enrichment, not to determine who had the responsibility for payment. In that sense, whether or not ULBE had the responsibility to pay Lakeside Electric is irrelevant and, most importantly, for purposes of summary judgment, immaterial.

In reviewing ULBE's objection, it is important to reiterate that "[g]eneral denials or expressions of the defendant's belief, or conclusions and inferences of law, and the like" are not sufficient to withstand summary judgment. Minuto, 55 R.I. 201, 179 A. at 715. At this stage, the burden rests with ULBE to prove by competent evidence the existence of a disputed issue of material fact. This burden could have been carried by producing a sworn affidavit pursuant to Rule 56(e) of the Rhode Island Rules of Civil

Procedure (Rule 56(e)), however, none was produced. Nor was an affidavit presented in accordance with Rule 56(f) for this Court to consider the need for certain discovery to be had before rendering a decision on the pending Motion for Summary Judgment. Not only is a continuance in accordance with Rule 56(f) within this Court's discretion, but it is also relevant for the Court to consider the time and manner in which these bald assertions were presented, namely, just one business day before the scheduled hearing. See Berard, 64 A.3d at 1220 (upholding granting of summary judgment where no affidavit in opposition to motion or affidavit pursuant to Rule 56(f) was presented and memorandum in support of objection to summary judgment motion was filed on day of hearing). Moreover, our Supreme Court has upheld the denial of continuances under Rule 56(f) and granted motions for summary judgment in the absence of affidavits. See id.; Holley, 968 A.2d at 273, 276 (plaintiff's new theory of liability raised in opposition to motion for summary judgment but continuance for further discovery pursuant to Rule 56(f) was denied where parties had ample time from filing complaint to engage in discovery and no affidavit was filed); Mitchell, 673 A.2d at 448 (no continuance for discovery under Rule 56(f) permitted when not accompanied by affidavit demonstrating good cause).

In the absence of any affidavit, ULBE's arguments in opposition to Lakeside Electric's Motion for Summary Judgment are simply bald assertions in an attempt to raise some doubt as to the material facts. ULBE's arguments are not only untimely, but also fall woefully short of the competent evidence required to demonstrate the existence of any genuine issues of material fact. ULBE has had ample time to engage in discovery and file appropriate affidavits pursuant to Rule 56(e) and Rule 56(f) but has failed to do so. Accordingly, this Court concludes that there are no genuine issues of material fact

that have been presented by ULBE through competent evidence and that ULBE is not entitled to a continuance to conduct unspecified discovery. Lakeside Electric has fully complied with the requirements of the Mechanic's Lien Statute and is entitled to judgment as a matter of law against ULBE in the reduced amount sought of $30,538.83. Plaintiff's Motion for Summary Judgment on Count I is granted.

Lakeside Electric also seeks costs and attorneys' fees pursuant to § 34-28-19. That section reads, in relevant part:

> "The costs of the proceedings shall in every instance be within the discretion of the court as between any of the parties. Costs shall include legal interest, costs of advertising, and all other reasonable expenses of proceeding with the enforcement of the action. The court, in its discretion, may also allow for the award of attorneys' fees to the prevailing party." Sec. 34-28-19.

Exercising this Court's discretion, this Court grants Plaintiff's request for costs and reasonable attorneys' fees,[4] the amounts of which are to be determined at a later hearing upon motion by Lakeside Electric with supporting documents.

**B**

**Lakeside Electric's Breach of Contract and Quantum Meruit Claims**

In Count II of its Complaint against Raymond Electric, Lakeside Electric seeks damages for breach of the oral contract to pay Lakeside Electric for the electrical work performed on a time and material basis at the Surf Hotel. In the alternative, Count III seeks damages against Raymond Electric pursuant to a theory of quantum meruit.

[4] To the extent that Plaintiff seeks enforcement of this Court's sanction imposed on August 18, 2014, for ULBE's untimely filing, such attorneys' fees shall not be included in any further award of attorneys' fees so as to avoid any double recovery of attorneys' fees.

**1**

**Breach of Contract**

In Rhode Island, a valid and enforceable oral agreement can be formed notwithstanding the absence of a signed written contract. See Smith v. Boyd, 553 A.2d 131, 133 (R.I. 1989). To be enforceable, the parties must manifest their mutual assent to be bound by the agreement as evidenced by an external interpretation of the parties' intent to be bound. See McGrath v. R.I. Ret. Bd., 906 F. Supp. 749 (D.R.I. 1995); Boyd, 553 A.2d at 133. Such intent to be bound "is found in the conduct of the parties, and the subjective intent of either party is largely irrelevant." Steven G.M. Stein, Construction Law § 3.10[1][a] (2003). Additionally, to be enforceable, an oral agreement must be "sufficiently certain so that what was promised can be ascertained." DeSimone v. CMG, Inc., No. PM-01-6077, 2004 WL 422908, *10 (R.I. Super. Feb. 9, 2004). In a services contract, the scope of the work to be performed and the amount of compensation constitute two essential terms. Stein, supra, at § 3.10[1][b]. Additionally, the same rules of consideration apply to oral contracts as are applicable to written contracts, i.e., an exchange of promises fulfills the consideration requirement. Filippi v. Filippi, 818 A.2d 608, 624 (R.I. 2003). Whether there was an objective intent to be bound by an oral agreement is determined on a case-by-case basis. See Boyd, 553 A.2d at 131.

Based upon these contract principles—long relied upon by courts in this jurisdiction—it is evident that there was a valid time and materials contract between Lakeside Electric and Raymond Electric. In his uncontradicted affidavit, Antaya avers that he had an oral agreement to perform work as a subcontractor to Raymond Electric on a time and material basis relative to renovations at the Surf Hotel. Antaya Aff. at ¶ 3.

According to Antaya, Lakeside Electric would be paid an hourly rate of $70.00 for up to fifty hours a week and $105.00 for any work performed over fifty hours a week. Id. at ¶ 4. The agreement provided for a markup of 30% for materials and expenses associated with transportation, costs, lodging and meals while on Block Island. Id. Aside from Antaya's uncontradicted affidavit, the parties' course of conduct also demonstrates that both Lakeside Electric and Raymond Electric objectively intended to be bound to the oral agreement. Lakeside Electric performed work at the Surf Hotel and Raymond Electric paid the initial invoices pursuant to the fee schedule in Antaya's Affidavit.

In sum, Plaintiff has presented sufficient evidence to show the existence of an enforceable oral agreement, that Plaintiff furnished labor and materials pursuant to the oral agreement, and that Raymond Electric breached the agreement by failing to pay Invoice Nos. 831, 833 and 834, totaling $33,887.23, as they came due. Raymond Electric neither objected to this evidence nor attempted to present evidence that demonstrates the existence of any genuine issue of material fact. Accordingly, Plaintiff is entitled to judgment as a matter of law and its Motion for Summary Judgment on Count II against Raymond Electric is granted.

**2**

**Attorneys' Fees Pursuant to § 9-1-45**

Lakeside Electric also seeks attorneys' fees pursuant to § 9-1-45. That section reads, in relevant part:

> "The court may award a reasonable attorney's fee to the prevailing party in any civil action arising from a breach of contract in which the court: (1) [f]inds that there was a complete absence of a justiciable issue of either law or fact raised by the losing party; or (2) [r]enders a default judgment against the losing party." Sec. 9-1-45.

Here, Lakeside Electric established that there was a valid and enforceable oral contract and that, by failing to pay pursuant to the terms of the contract, Raymond Electric breached said contract. Raymond Electric's refusal to object, or offer any evidence to the contrary, effectively ends the inquiry into whether there existed a justiciable issue. Accordingly, this Court will grant Lakeside Electric's request for attorneys' fees pursuant to § 9-1-45, the amount of which shall be determined at a later hearing upon motion by Lakeside Electric with supporting documents.

**3**

**Quantum Meruit**

Having determined there was an enforceable oral agreement which Raymond Electric breached, Lakeside Electric's claim for quantum meruit must fail. It is entirely appropriate for a party to plead and proceed to trial on the alternate theories of breach of contract and unjust enrichment. See Richmond Square Capital Corp. v. Ins. House, 744 A.2d 401, 401 (R.I. 1999). However, where the relief a party seeks is governed by the terms of an express contract, relief under the doctrine of unjust enrichment is inappropriate. See Mehan v. Gershkoff, 102 R.I. 404, 409, 230 A.2d 867, 870 (1967).

Accordingly, Lakeside Electric is not entitled to judgment as a matter of law on Count III as it is already entitled to judgment against Raymond Electric for breach of the oral contract. Therefore, Plaintiff's Motion for Summary Judgment on Count III is denied.

## IV

## Conclusion

Finding that there are no genuine issues of material fact and that Plaintiff is entitled to judgment as a matter of law, Plaintiff's Motion for Summary Judgment on Count I against ULBE is granted in the amount of $30,538.83. Additionally, there are no genuine issues of material fact and Plaintiff is entitled to judgment as a matter of law on Count II against Raymond Electric in the amount of $33,887.23, and is entitled to judgment as a matter of law on Count IV, in an amount to be determined upon further motion and hearing before the Court. As to Defendant Raymond Electric, Plaintiff's Motion for Summary Judgment is granted on Counts II and IV and denied on Count III.

Counsel for Plaintiff shall prepare an order and judgment consistent with this Decision.

**RHODE ISLAND SUPERIOR COURT**
***Decision Cover Sheet***

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| **TITLE OF CASE:** | Lakeside Electric, Inc. v. ULBE, LLC, et al. |
| **CASE NO:** | C.A. No. WM-2013-0635 |
| **COURT:** | Washington County Superior Court |
| **DATE DECISION FILED:** | August 28, 2014 |
| **JUSTICE/MAGISTRATE:** | Kristin E. Rodgers |
| **ATTORNEYS:** | |
| For Plaintiff: | Jessica L. Papazian-Ross, Esq. |
| For Defendant: | Sean T. O'Leary, Esq.<br>Angelo R. Simone, Esq. |