Circuit Court for Montgomery County
Case No. 401974

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 850

September Term, 2016

ODELLUS CORPORATION

v.

CNI PROFESSIONAL SERVICES, LLC

Eyler, Deborah S.,
Nazarian,
Friedman,

JJ.

Opinion by Nazarian, J.

Filed: August 24, 2017

Odellus Corporation ("Odellus"), a subcontractor, appeals summary judgment in favor of CNI Professional Services, LLC ("CNIPS"), the prime contractor on a federal procurement with the Internal Revenue Service ("IRS"). Odellus alleged that CNIPS breached their contract (and was liable under three quasi-contract theories) because CNIPS did not allow Odellus to perform "as close to 50 percent as practical" of the cost of the contract's performance, as billed to the IRS by CNIPS. Odellus characterizes the dispute as raising genuine issues of material fact, but we agree with CNIPS that it's a matter of contract interpretation, and we affirm the judgment of the Circuit Court for Montgomery County.

I. BACKGROUND

On August 29, 2012, the IRS awarded a contract (the "Prime Contract") to CNIPS to provide "technology support services" for between one and five years. The Prime Contract is a contract reserved for small businesses, and CNIPS, an entity affiliated with the Chickasaw Nation Indian Tribe, qualifies as a "designated contractor" under Section 8(a) of the Small Business Act. *See* 15 U.S.C. § 637(a). For its part, Odellus is certified as an Economically Disadvantaged Minority Women-Owned Small Business by the Small Business Administration, and in the past served as a prime contractor for the IRS for similar kinds of work.

The terms of the Prime Contract permitted CNIPS to engage subcontractors so long as CNIPS performed at least 50% of the cost of contract performance. This provision is meant to ensure that eligible contractors actually perform the contract, and don't divert

opportunities that have been set aside for eligible businesses. A Federal Acquisition Regulation ("FAR"), 48 C.F.R. § 52.219-14, codifies this limitation:

> (b) *Applicability*. This clause applies only to--
>
> (1) Contracts that have been set aside or reserved for small business concerns or 8(a) participants;
>
> . . . .
>
> (c) By submission of an offer and execution of a contract, the [general contractor, here CNIPS] agrees that in performance of the contract in the case of a contract for--
>
> (1) *Services (except construction)*. At least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the [8(a)-eligible small business].

On October 2, 2012, CNIPS entered into a subcontract with Odellus. The subcontract explicitly imports the 50% restriction from the Prime Contract and the FAR:

> Work awarded to [Odellus] by [CNIPS] pursuant to this Agreement will be performed on a Labor-Hour basis at the rates agreed upon by both Parties for each issued Task Order by the Government. . . . This Subcontract shall be subject to a total Not-To-Exceed (NTE) value for all Task Orders issued by the Government of 50% of the total value of each Task Order issued by the Government. For the purpose of Work performed under the terms and conditions of this Subcontract, [Odellus] shall be reimbursed at an all inclusive fixed labor rate (such rate shall accommodate all wages, allowable indirect rates, including overhead, G&A, as well as profit) to be provided in each Task Order. The period of performance will be stipulated in each Task Order. The rates are agreed upon by both Parties for each Task Order issued by the Government.

The subcontract references the 50% limitation again in the following "description/specification/work statement" clause (the "Work Statement Clause"):

> Subject to compliance with [48 C.F.R. §] 52.219-14 Limitations on Subcontracting, [CNIPS] shall perform 50

> percent of the cost of contract performance and [Odellus] shall perform 50 percent or as close to 50 percent as practical of the cost of contract performance of the prime contract and for all Task orders issued by the Government on the Prime Contract.

The subcontract also has a complete integration clause:

> This Agreement constitutes the complete agreement between the Parties. No agent or employee of either Party possesses the authority to make, and the Parties shall not be bound by nor liable for any statement, representation, promise or agreement not set forth herein. No change order, amendment or modification of the terms hereof shall be valid unless reduced to writing and signed by authorized representatives of both [CNIPS] and [Odellus].

CNIPS and Odellus agreed on a simple invoice payment procedure: Odellus submitted monthly invoices to CNIPS based on the type and amount of labor Odellus performed; CNIPS submitted an invoice to the IRS on behalf of both; and CNIPS paid Odellus within three days of receiving payment from the IRS. CNIPS claimed in deposition, and Odellus does not dispute, that "CNIPS paid all invoices Odellus submitted in full at the Labor Rates Odellus negotiated, and uniformly made such payments to Odellus within 3 days of CNIPS having received receipt of payment from the IRS."

On March 10, 2015, Odellus filed suit against CNIPS alleging breach of contract, unjust enrichment, and detrimental reliance, and asked for an accounting or an "equitable accounting." As best we understand it, the thrust of Odellus's argument was that because CNIPS did not disclose information from the Prime Contract to Odellus sufficient to show that Odellus received exactly or nearly 50% of the cost paid by the IRS on the contract, CNIPS *may* have breached the Work Statement Clause of its subcontract with Odellus.

And because Odellus had no way of knowing whether it was receiving 50% of the cost of contract performance without seeing documents that CNIPS withheld as confidential (prior to discovery), Odellus believed that it was entitled to documentation proving that CNIPS either did or did not breach the contract, including information from the Prime Contract and communications between CNIPS and the IRS. During the contract period and throughout this litigation, CNIPS has guarded information relating to the Prime Contract and its communications with the IRS as proprietary and confidential.

After surviving a motion to dismiss, Odellus initiated discovery. CNIPS countered with a motion for summary judgment and, in light of its confidentiality concerns, filed a simultaneous motion to stay discovery pending a ruling on summary judgment. The parties argued the motions in a hearing conducted on November 23, 2015. The circuit court entered an order on December 10, 2015 that contained three important rulings: the court granted summary judgment in favor of CNIPS on all claims except breach of contract; the court ordered CNIPS to "produce to Odellus a limited and redacted set of documents that establish the Total Labor Costs associated with performance of the Prime Contract incurred for personnel that CNIPS billed to, and was paid by the Government [covering the contract period between October 2012 and August 2015];" and the court authorized Odellus to take the deposition of a CNIPS corporate designee.

CNIPS produced Sheila Hamlin, C.P.A., for deposition on April 13, 2016. CNIPS also produced several documents. It produced copies of eighty-eight invoices billed to the IRS on the Prime Contract during the period specified in the Order. It produced records of

the IRS's account receivable for the specified contract period that show total labor costs paid by the federal government on the Prime Contract (the "IRS Accounts Receivable Report"). And it produced a two-line chart that summarized the "cost[s] of contract performance" attributable to CNIPS and Odellus for labor, labor overhead, and general and administrative ("G&A") costs for the relevant period (the "Split Chart"). After this discovery was completed, the court accepted and reviewed one more round of filings, determined that there was no genuine dispute of material fact, and on June 1, 2016, entered an order granting summary judgment to CNIPS on the breach of contract claim. Odellus filed this timely appeal.

II. DISCUSSION

Odellus advances six arguments (plus sub-parts) in support of its request that we reverse the circuit court's decision to grant summary judgment for CNIPS, but we can distill them to three.[1] Odellus argues *first* that CNIPS misattributed its G&A costs, and

[1] Odellus phrases the Questions Presented in its brief as follows:

> 1. *Did the trial court err in granting Defendant CNI's motion for summary judgment on all counts of Plaintiff's Complaint?*
> 2. *Did the trial court err in denying an opportunity for discovery prior to ruling on the motion for summary judgment?*
> 3. *Did the trial court fail to give appropriate deference to the right of Maryland litigants to plead in the alternative?*
> 4. *Should the court have compelled Defendant to produce a competent witness?*
> 5. *Should the Court have stricken Exhibit 1 as violative of Rule 2-501*
> 6. *Should the Court have compelled Defendant to produce:*

that the proper attribution would reveal a breach of the Work Statement Clause. *Second*, Odellus contends that the IRS invoices produced in discovery by CNIPS don't prove conclusively the total labor costs that the IRS paid to CNIPS, and genuine disputes of material fact remain about CNIPS's calculations. And *third*, Odellus argues that its quasi-contract claims were dismissed prematurely, and that it should have been permitted to try its quasi-contract claims in the alternative.

When reviewing a grant of summary judgment, we review the grant "only upon the grounds relied upon by the trial court." *Hamilton v. Kirson*, 439 Md. 501, 523 (2014) (citation omitted). We "review independently the record to determine whether the parties generated a dispute of material fact and, if not, whether the moving party was entitled to judgment as a matter of law." *Tyler v. City of Coll. Park*, 415 Md. 475, 498 (2010) (citation omitted). When "no material facts are in dispute, we review the order granting summary judgment for legal correctness without 'according any special deference to the circuit court's conclusions.'" *Brethren Mut. Ins. Co. v. Buckley*, 437 Md. 332, 340 (2014) (quoting *Mathews v. Cassidy Turley Md., Inc.*, 435 Md. 584, 598 (2013)).

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a. The prime contract
b. The task orders
c. The labor rates
d. The labor categories
e. The basis for calculating "labor cost"
f. The basis for calculating "labor overhead"
g. The basis for calculating G&A
h. All its invoices, without redaction

A. CNIPS Did Not Misallocate G&A Costs.

Odellus argues *first* that CNIPS's method of attributing costs to each party was inconsistent with the FAR, and that the correct attribution of costs would demonstrate a breach of the Work Statement Clause. We disagree.

In broad strokes, the subcontract involved two forms of work for which CNIPS was paid by the IRS. The primary form of work was the substantive technical work, which both entities performed and for which Odellus was paid on an hourly basis at an agreed rate. The secondary form of work was the G&A, the administrative work, that the IRS required CNIPS to perform in its role as the prime contractor, and for which CNIPS was paid an additional percentage of the hourly technical labor cost. Odellus takes issue with the way CNIPS attributed to the two entities the G&A costs it billed the IRS, specifically with the fact that CNIPS included in Odellus's proportion of the "cost of contract performance" the G&A billings (that CNIPS received) from Odellus's labor hours.

The calculation is captured on the Split Chart, which broke out the costs billed to the IRS that CNIPS attributed to itself and Odellus, including G&A costs. On the CNIPS line of the Split Chart, CNIPS attributed $230,421.85 in G&A to its own "perform[ance] . . . of the cost of contract performance." Odellus contends that this charge is a "spurious add on charge" for which CNIPS "has produced no authority." On the Odellus line of the Split Chart, CNIPS attributed $220,044.46 that CNIPS collected from the IRS for G&A attributed to Odellus's work hours. Odellus repeats its refrain that CNIPS has no authority to attribute G&A costs this way, and claims that without these attributions, Odellus's share

of the cost of contract performance would not be "as close to 50 percent as practical," and thus would breach the subcontract. Odellus also uses the imbalance it sees in the cost of contract performance split as a basis to demand much broader discovery relating to the formation and performance of the Prime Contract.

Odellus characterizes this dispute as factual, *i.e.*, that CNIPS did the math incorrectly on the figures it used, and that Odellus is entitled to undertake primary source discovery on the inputs to CNIPS's calculations. We agree with CNIPS, though, that this is really a dispute about the meaning of the language in the subcontract. "Maryland courts apply an objective interpretation of contracts." *Young Elec. Contractors, Inc. v. Dustin Const., Inc.*, 231 Md. App. 353, 361 (2016) (citation omitted) *cert. granted*, 452 Md. 523 (2017). We "give 'the words of the contract their ordinary and accepted meaning, looking to the intention of the parties from the instrument as a whole.'" *Zurich Am. Ins. Co. v. Uninsured Emp'rs' Fund*, 197 Md. App. 290, 301 (2011) (quoting *Finci v. Am. Cas. Co.*, 323 Md. 358, 369–70 (1991)). In a subcontract in which the sub is only paid according to negotiated, fixed hourly rates for its labor rates and the prime contractor, which is required to do half of the work, also incurs costs in administering the contract, it would be nearly impossible to split the cost of contract performance perfectly between the prime and the sub. For that reason, it makes sense that the contract would require the split of the cost of contract performance to be only "as close to 50 percent as practical." The real issue is whether Odellus's share of the cost of contract performance should include the G&A attributable to Odellus's work hours, and that's an interpretive question.

We agree with the circuit court that CNIPS's interpretation of the Work Statement Clause was objectively correct. Aside from the technical services the IRS procured, an overarching objective of this contract was to provide business opportunities for Section 8(a) certified entities like CNIPs. To that end, the FAR required CNIPS actually to perform at least half the work in addition to its administrative responsibilities as the prime contractor. As a matter of structure, a prime contractor that performs half the labor *and* the G&A necessarily will earn more than any subcontractor. Or, inversely, a subcontractor that doesn't perform G&A, or whose share calculation doesn't include G&A, would need to perform more than half of the contract's work hours to approach a fifty-fifty split of the total cost. We agree with the circuit court's interpretation of the Work Statement Clause, and move next to Odellus's speculation that CNIPS is hiding information and data relevant to the calculation.

B. There Were No Genuine Disputes Of Material Fact.

Odellus contends *second* that it was denied discovery relating to the formation and performance of the Prime Contract, and that with more information, there might well be factual disputes regarding CNIPS's performance of the subcontract. "A genuine dispute of material fact exists when there is evidence 'upon which the jury could reasonably find for the plaintiff.'" *Windesheim v. Larocca*, 443 Md. 312, 326 (2015) (quoting *Beatty v. Trailmaster Prods., Inc.*, 330 Md. 726, 739 (1993)). In a breach of contract claim, then, a material fact is one that bears on the question of whether a breach occurred. *See id*.

Odellus hasn't actually identified any disputes of material fact, though. Instead, Odellus complains that the circuit court unfairly restricted its ability to conduct discovery, and that the discovery it sought might uncover factual disputes. Most notably, Odellus points to invoices listed in the "IRS Accounts Receivable Report" (that CNIPS was not required to produce) that CNIPS voided and never billed the IRS. Odellus posits that CNIPS may have collected payment from the IRS on those invoices, and then later made them appear to be voided in order to avoid producing the invoices in discovery and reporting the sum of the voided invoices, $308,002.71, as money CNIPS collected. CNIPS countered, both in deposition and in its brief, that it had simply never sent those invoices to the IRS, which is why they showed up in the IRS Accounts Receivable Report as voided but were not produced individually or accounted for in the Split Chart. In deposition, Ms. Hamlin testified with "100 percent certainty" that all invoices sent to the IRS in the timeframe defined in the December 10, 2015 Order were produced. She also explained that CNIPS's accounting system has several internal controls in place that prevent the sort of fraud Odellus suggests.

We agree with the circuit court that Odellus cannot manufacture a genuine dispute of fact simply by challenging the integrity of the materials produced in discovery, and it points to nothing that substantiates its theories that CNIPS committed fraud. CNIPS never hid the fact that it voided invoices—it produced the IRS Accounts Receivable Report that revealed them, then described why the invoices showed up as voided on the Accounts Receivable Report and why they were not produced or accounted for elsewhere. The

court's December 10, 2015 order directed CNIPS to "produce to Odellus a limited and redacted set of documents that establish the Total Labor Costs associated with performance of the Prime Contract incurred for personnel that CNIPS billed to, and was paid by the Government," and CNIPS complied. The circuit court's discretionary decision to order limited discovery in the midst of summary judgment worked to Odellus's benefit, and we see no error in its rulings that CNIPS complied with its discovery obligations and that the record supported summary judgment in CNIPS's favor.

C. The Existence Of An Integrated Contract Acknowledged By Both Sides Precluded Odellus From Pursuing Equitable Claims.

Third, Odellus contends that the circuit court unfairly foreclosed its quasi-contract claims by granting summary judgment in favor of CNIPS prematurely. We disagree. We acknowledge, of course, that parties can plead claims in the alternative, as Odellus did in its complaint. But pleading claims doesn't guarantee that they survive to trial, and in this case, Odellus's quasi-contractual claims fail in light of the contract it seeks to enforce.

If there were some threshold question about whether a contract had been formed, Odellus would be entitled to proceed on alternative theories of the agreement. But there is no such doubt here: both sides have acknowledged the existence of the contract and the fact that it controls their business relationship. In other words, a contract between Odellus and CNIPS exists "concerning the same subject matter on which the quasi-contractual claim rests," *Cty. Comm'rs of Caroline Cty. v. J. Roland Dashiell & Sons, Inc.*, 358 Md. 83, 96 (2000) (quoting *Mass Transit Admin. v. Granite Constr. Co.*, 57 Md. App. 766, 776 (1984)), and the contract contains an integration clause, *see Hovnanian Land Inv. Grp.,*

LLC v. Annapolis Town Ctr. at Parole, LLC, 421 Md. 94, 126 (2011); *Kasten Constr. Co. v. Rod Enters., Inc.*, 268 Md. 318, 301 (1973). Because there is no dispute about whether the parties are bound by a validly formed contract, the court correctly dismissed Odellus's quasi-contract counts. *J. Roland Dashiell*, 358 Md. at 96 ("The general rule is that no quasi-contractual claim can arise when a contract exists between the parties concerning the same subject matter on which the quasi-contractual claim rests." (quoting *Mass Transit Admin.*, 57 Md. App. at 776)).

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. APPELLANT TO PAY COSTS.