

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

**INTERNATIONAL FIDELITY  
INSURANCE COMPANY**

**Plaintiff**

**v.**

**CIVIL NO. JKB-11-1708**

**MAHOGANY, INC., *et al.***

**Defendants**

\* \* \* \* \*

**MEMORANDUM and ORDER**

International Fidelity Insurance Company (“Plaintiff”) brought this suit against Mahogany, Inc., Mahogany Interiors, Inc., THR, LLC, Jeffrey Hargrave, and Beneak Hargrave (“Defendants”), seeking injunctive relief and specific performance of alleged contractual obligations. Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendants now move to dismiss Plaintiff’s complaint for failure to state a claim. The issues have been briefed and no oral argument is required. Local Rule 105.6. For the reasons set out below, Defendant’s Motion to Dismiss (ECF No. 8) is DENIED.

**I. BACKGROUND**

Plaintiff is a commercial surety that issues payment and performance bonds on behalf of construction contractors. Defendants Mahogany and Mahogany Interiors are construction contracting companies, owned by individual Defendants Jeffrey and Beneak Hargrave.

On or about April 11, 2007, Plaintiff and Defendants entered into an Agreement of Indemnity (“Agreement”) in which Plaintiff agreed to issue payment and performance bonds on

behalf of Defendants in exchange for indemnification against claims on those bonds, plus payment of premiums. Among other things, the Agreement allegedly obligated Defendants, upon Plaintiff's request, to: (1) either procure Plaintiff's release from any bonds it had issued or post collateral sufficient to cover Plaintiff's liability; and (2) open a trust account to hold monies received in connection with bonded projects. Between December of 2007 and March of 2010, Plaintiff issued payment and performance bonds on five of Defendants' construction projects, with a total penal sum of \$12,225,474.00.

In early 2011, after reviewing Defendants' books and records, Plaintiff determined that Defendants were in poor financial condition and became concerned about their ability to complete the bonded projects. Plaintiff initially requested that Defendants enter into an escrow agreement with regard to funds on those projects. When Defendants refused, Plaintiff requested that Defendants arrange for it to be released from the bonds and to deposit the revenue from the bonded projects into a trust account. After some negotiation, Defendants refused to agree to Plaintiff's demands, and Plaintiff filed this suit seeking injunctive relief and specific performance of the Agreement of Indemnity. Defendants now move to dismiss the complaint for failure to state a claim.

## **II. STANDARD OF REVIEW**

A motion to dismiss under Rule 12(b)(6) is a test of the legal sufficiency of a complaint. *Edwards v. City of Goldsboro*, 178 F.3d 231, 243 (4th Cir. 1999). In evaluating the complaint's sufficiency, the court must view all well-pled factual allegations as true and construe them in the light most favorable to the Plaintiff. *Ibarra v. United States*, 120 F.3d 472, 474 (4th Cir. 1997). To survive the motion, the complaint need only present enough factual content to render the claim "plausible on its face" by enabling the court to "draw the reasonable inference that the

defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009). The plaintiff may not, however, rely on naked assertions, speculation, or legal conclusions. *Bell Atlantic v. Twombly*, 550 U.S. 544, 556-57 (2007). If after taking all factual allegations as true the court determines that it cannot infer more than “the mere possibility of misconduct,” the motion should be granted and the complaint dismissed. *Iqbal*, 129 S.Ct. at 1950.

### III. ANALYSIS

Plaintiff’s sole cause of action in this case is breach of contract. Although the complaint contains additional counts for injunctive relief and specific performance, these are remedies and not independent causes of action. To survive this motion to dismiss, therefore, the complaint need only make out a plausible claim for breach of contract.<sup>1</sup> The Court finds that it does.

Under Maryland law, a plaintiff suing for breach of contract must show simply “that the defendant had a contractual obligation and that the obligation was breached.” *Mathis v. Hargrove*, 888 A.2d 377, 396 (Md. Ct. Spec. App. 2005). “It is not necessary that the plaintiff prove damages resulting from the breach, for it is well settled that where a breach of contract occurs, he may recover nominal damages even though he has failed to prove actual damages.” *Taylor v. NationsBank, N.A.*, 776 A.2d 645, 651 (Md. 2001).

Plaintiff’s complaint alleges that, upon Plaintiff’s demand, Defendants had contractual obligations to: (1) procure its release from any bonds it had issued, or, in the alternative, post collateral sufficient to cover any liability under those bonds; and (2) open a trust account and deposit in it all revenue on bonded projects. It further alleges that Defendants refused to honor these obligations when Plaintiff demanded they do so. The Court finds that these factual

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<sup>1</sup> The sufficiency of a complaint is determined by the plaintiff’s statement of his claim for relief, of which the demand for judgment forms no part. CHARLES ALAN WRIGHT, ET AL., FED. PRAC. & PROC. CIV. § 1255 (3<sup>rd</sup> ed. 1993). A court therefore should not dismiss a complaint so long as it sets out facts sufficient to support a reasonable inference that the plaintiff is entitled to any relief the court can grant, even if that relief is not specifically requested. *See Bontkowski v. Smith*, 305 F.3d 757, 762 (7th Cir. 2002).

allegations are plausible, and that the complaint therefore states a claim for breach of contract under Maryland law.

In their motion to dismiss, Defendants argue that the Agreement of Indemnity does not obligate them to do what Plaintiff in fact demanded, and that Plaintiff itself breached the Agreement. These arguments go to the merits of Plaintiff's claim, however, and have no bearing on the sufficiency of the complaint.

**IV. ORDER**

Accordingly, it is ordered that Defendant's Motion to Dismiss (ECF No. 8) is DENIED.

Dated this 25<sup>th</sup> day of June, 2011

BY THE COURT:

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/s/  
James K. Bredar  
United States District Judge