

**IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA**  
**MOUNTAIN STATE PIPELINE & EXCAVATING, LLC**  
**Plaintiff/Counterclaim Defendant,**

**FILED**  
**APR 21 AM 8:40**  
**CATHY S. GATSON, CLERK**  
**KANAWHA COUNTY CIRCUIT COURT**

**vs.**

**CIVIL ACTION NO. 20-C-350**  
**PRESIDING JUDGE: JAMES H. YOUNG, JR.**  
**RESOLUTION JUDGE: PAUL T. FARRELL**

**SMITH/PACKETT MED-COM, LLC,**  
**a Virginia Limited Liability Company, and**  
**Sole Manager-Member of Defendant SP WV, LLC,**  
**Defendant;**

**And**

**SP WV, LLC, a Virginia Manager-Managed Limited**  
**Liability Company and "Pass Through Entity" acting**  
**as the Solen Member of Defendant W-IL-AL Investors, LLC,**  
**Defendant;**

**And**

**WV IL-AL INVESTORS, LLC,**  
**a Virginia Member-Managed Limited Liability Company,**  
**Defendant;**

**And**

**JARRETT CONSTRUCTION SERVICES, INC.,**  
**a West Virginia Limited Liability Company,**  
**as Construction Manager at Risk;**  
**Defendant;**

**And**

**CARTER BANK & TRUST,**  
**Defendant;**

**And**

**JARRETT CONTRUCTION SERVICES, INC.,**  
**Counterclaimant/Third Party Plaintiff,**

**vs.**

460-  
462

**ECS MID-ATLANTIC, LLC,  
Third Party Defendant.**

**ORDER DENYING PLAINTIFF'S MOTION TO DISMISS JCSI'S COUNTERCLAIM  
AND IN THE ALTERNATIVE PLAINTIFF'S MOTION FOR MORE DEFINITE  
STATEMENT OR MOTION TO STRIKE**

On April 5, 2021, this matter came on to be heard pursuant to Plaintiff's, Mountain State Pipeline & Excavating, LLC, Motion to Dismiss and alternatively Plaintiff's Motion for More definite Statement or Motion to Strike. The Plaintiff, Mountain State Pipeline & Excavating, LLC, appeared by its counsel, Carl J. Roncaglione, Jr., Esq.; and the Defendant, Jarrett Construction Services, Inc., appeared by its counsel, Robert H. Sweeney, Jr., Esq.

After reviewing the pleadings herein and hearing arguments of counsel, the Court denies Plaintiff's Motion to Dismiss, Motion for More Definite Statement and Motion to Strike.

The Plaintiff filed this matter seeking damages for site preparation work performed on a building site known as The Crossings. Defendant Jarrett Construction Services, Inc. (hereinafter referred to as JCSI) is the contractor and/or construction manager on The Crossings and Plaintiff brings causes of action against JCSI in its Complaint. JCSI has filed an Answer and Counterclaim herein. Plaintiff now brings its Motion to Dismiss pursuant to West Virginia Rules of Civil Procedure 12(b)1 and 12(b)6 and its Motion for More Definite Statement and Motion to Strike pursuant to West Virginia Rules of Civil Procedure, 12(e) and 12(f).

Plaintiff's Motion to Dismiss cites West Virginia Rules of Civil Procedure 12(b)1, however, the Court finds no clear argument on authority in support. The Court finds the allegations in the Complaint and Answer of Defendant JCSI creates jurisdiction upon the Court, therefore, the Court finds it has jurisdiction in this proceeding.

Plaintiff asserts that Defendant's counterclaim fails to state a claim upon which relief may be granted and the Court finds the allegations contained in Defendant's counterclaim assert causes of action that survive a Motion to Dismiss.

Additionally, Plaintiff's Motion to Strike and Motion for More Definite Statement fail to state any specific lack of detail or establish any sufficient "redundant, immaterial, impertinent or scandalous matter".

Additionally, Plaintiff's attempts to convert its Motion to Dismiss to a Rule 56 of the West Virginia Rules of Civil Procedure. However, the Court finds theories of liabilities asserted by Defendant JCSI state causes of action upon which relief may be granted. Therefore, the Court denies Plaintiff's Motion upon said grounds.

All, accordingly, which is **ORDERED** and **DECREED**.

Enter this 14 day of April, 2021.

ORDER  
ENTER:

James H. Young, Jr.  
Honorable James H. Young, Jr.

4/22/2021  
Date: 4/22/2021  
Certified copies sent to:  
☒ court of record  
☐ parties  
☒ other (please indicate)  
By: ☒ certified/first class mail  
☐ fax  
☐ hand delivery  
☐ inter-departmental  
Other methods accomplished:  
Faller  
Deputy Circuit Clerk

Buss Co  
C. Kinney  
R. Sweeney  
R. Jackhart  
J. Dilanagan  
C. Roncaglione