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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1636**

J.C. Allen Co., Inc.,
Appellant,

vs.

Wisconsin Central Ltd.,
an Illinois company,
Respondent.

**Filed June 11, 2018
Affirmed in part, reversed in part, and remanded
Johnson, Judge**

St. Louis County District Court
File No. 69DU-CV-14-217

Eric J. Magnuson, Kelvin D. Collado, Robins Kaplan LLP, Minneapolis, Minnesota; and

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(for appellant)

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Considered and decided by Worke, Presiding Judge; Johnson, Judge; and Klaphake,
Judge.*

*Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant
to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

JOHNSON, Judge

When taconite is shipped by rail from production facilities on the Iron Range to ports on Lake Superior, it tends to spill onto the railroad tracks. In this case, a railroad retained a company to pick up, clean, and sell the taconite pellets that had accumulated on its tracks. After disagreements arose, the railroad terminated the contract. The contractor sued the railroad, alleging various contract-based claims. The district court entered judgment for the railroad. We affirm in substantial part but reverse and remand on one of the contractor's claims.

FACTS

Wisconsin Central Ltd. (WCL), a subsidiary of the Canadian National Railway, operates railroad lines in, among other places, northeastern Minnesota. The J.C. Allen Company (JCA) provides services to railroads, including the service of reclaiming taconite pellets lying on the ground along railroad tracks.

In May 2012, WCL and JCA began discussions concerning the reclamation of taconite pellets along approximately 75 miles of WCL's tracks connecting Hibbing and the port at Two Harbors. Over several months, the two companies discussed the scope and nature of the work to be performed and the estimated amount of taconite along WCL's tracks. WCL and JCA eventually entered into a written agreement that is dated August 24, 2012.

In the written agreement, the parties agreed that JCA's work would occur in two phases. First, JCA agreed to "pick up, clean, load into cars, and stockpile" taconite pellets

lying between the rails of WCL's tracks and within one foot of the outside of the rails. Second, JCA agreed to remove and reclaim taconite pellets lying more than one foot outside the rails of WCL's tracks and to reclaim piles of taconite pellets that had spilled during derailments. The parties agreed that JCA would "furnish all the material, supervision, labor, equipment, tools, supplies, incidentals and transportation, except as otherwise agreed to by the Parties, and execute, construct and finish, in an expeditious, substantial and workmanlike manner, satisfactory to [WCL], projects or other work as are agreed to by the Parties." The parties agreed that WCL would pay JCA \$30 per ton of taconite pellets during the first phase and \$40 per ton during the second phase. The agreement states that WCL "shall have the right at any time to terminate this Agreement by giving written or verbal notice to" JCA.

JCA began work in November 2012. JCA suspended its work for the winter in mid-December 2012. JCA reported to WCL that it had reclaimed a total of 15,600 tons of taconite pellets in 2012. WCL paid JCA \$421,200 for the services it performed during that period.

JCA resumed its work in April 2013. Soon thereafter, WCL's track supervisor, Travis Nichols, received a report from WCL's track inspector that JCA was removing too much of the non-taconite rock from the railroad bed. The track inspector was concerned that JCA's excessive removal of non-taconite rock was causing deterioration of the railroad bed and was causing WCL to overpay for JCA's services. The track inspector also expressed concern about the amount of debris that JCA was leaving behind in the ditches along the tracks.

In May 2013, Nichols told JCA to stop work until further notice. That same month, a WCL field engineer conducted an engineering survey of the materials that JCA had removed and stockpiled. It was determined that the stockpiles contained less than half the tonnage of taconite that JCA had reported. In July 2013, a JCA employee sent an e-mail message to Michael Suter, WCL's director of dock operations, inquiring when JCA could expect a decision from WCL. In response, Suter wrote that, "unless and until [Chad Anderson, WCL's Regional Chief Engineer,] says differently, the work you performed was terminated" and that, "if he said you're no longer allowed to perform work, then that's the answer." WCL did not pay JCA for the services it performed in 2013.

In March 2014, JCA commenced this action against WCL. JCA alleged five causes of action: (1) breach of written contract, (2) breach of the covenant of good faith and fair dealing, (3) a claim seeking a declaration that JCA has a valid mechanic's lien; (4) breach of oral contract; and (5) promissory estoppel.

In November 2015, WCL moved for summary judgment on all of JCA's claims. The district court granted the motion in part and denied it in part. After the district court's ruling, two claims remained. At a subsequent pre-trial conference, JCA informed the district court that it had no evidence of damages on one of its remaining claims, a claim alleging that WCL failed to give "clear notice" of its termination of the contract. Accordingly, the district court dismissed that claim with prejudice. The parties later settled the sole remaining claim, a claim that WCL breached the written contract by not paying JCA for the services it performed in April and May 2013, and the parties stipulated to the

dismissal of that claim. Accordingly, the district court dismissed the sole remaining claim with prejudice. The district court administrator then entered final judgment. JCA appeals.

D E C I S I O N

JCA argues that the district court erred by granting WCL's motion for summary judgment in part. A district court must grant a motion for summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03. A genuine issue of material fact exists if a rational trier of fact, considering the record as a whole, could find for the nonmoving party. *Frieler v. Carlson Mktg. Grp.*, 751 N.W.2d 558, 564 (Minn. 2008). This court applies a *de novo* standard of review to the district court's legal conclusions on summary judgment and views "the evidence in the light most favorable to the party against whom summary judgment was granted." *Commerce Bank v. West Bend Mut. Ins. Co.*, 870 N.W.2d 770, 773 (Minn. 2015).

I. Claim of Breach of Written Contract

JCA argues that the district court erred by granting WCL's summary-judgment motion with respect to count 1, JCA's claim of breach of written contract. To establish a breach-of-contract claim, a plaintiff must prove three elements: "(1) formation of a contract, (2) performance by plaintiff of any conditions precedent to his right to demand performance by the defendant, and (3) breach of the contract by defendant." *Park Nicollet Clinic v. Hamann*, 808 N.W.2d 828, 833 (Minn. 2011).

JCA claims that WCL breached the written contract in four ways. Accordingly, JCA is pursuing four separate breach-of-contract claims, which may be summarized as follows: (1) WCL breached the written contract by terminating the contractual relationship before paying JCA for the services it had performed, (2) WCL breached the written contract by suspending JCA's work in May 2013, (3) WCL breached the written contract by not providing railcars to JCA, and (4) WCL breached the written contract by not facilitating the scheduling of JCA's work on WCL's tracks.

A. Termination of Contract

JCA argues that WCL breached the written contract by terminating the contract before paying JCA for the services it had performed. The issue is governed by paragraph 12 of the agreement, which provides as follows:

[WCL] shall have the right at any time to terminate this Agreement by giving written or verbal notice to [JCA]. Upon receiving such notice, [JCA] shall promptly stop all Work. [WCL] shall pay [JCA] for all Work completed and accepted before [WCL] terminates the Work. [JCA] shall not suspend Work under this Agreement without the approval of [WCL].

JCA contends that the contract required WCL to pay JCA before WCL terminated the contract. Specifically, JCA asserts, “*Before* WCL could terminate the contract, it was required to pay J.C. Allen for all work that J.C. Allen had completed and that WCL had accepted.”

JCA's contention requires us to interpret paragraph 12 of the agreement. “The primary goal of contract interpretation is to ascertain and enforce the intent of the parties.” *Valspar Refinish, Inc. v. Gaylord's, Inc.*, 764 N.W.2d 359, 364 (Minn. 2009); *see also*

Travertine Corp. v. Lexington–Silverwood, 683 N.W.2d 267, 271 (Minn. 2004). The corollary to this principle is that “the intent of the parties is determined from the plain language of the instrument itself,” so long as the agreement is unambiguous. *Travertine Corp.*, 683 N.W.2d at 271. “When the language is clear and unambiguous, we enforce the agreement of the parties as expressed in the language of the contract.” *Dykes v. Sukup Mfg. Co.*, 781 N.W.2d 578, 582 (Minn. 2010). A contract is ambiguous “if, judged by its language alone and without resort to parol evidence, it is reasonably susceptible of more than one meaning.” *Metro Office Parks Co. v. Control Data Co.*, 295 Minn. 348, 351, 205 N.W.2d 121, 123 (1973). “We construe a contract as a whole and attempt to harmonize all of its clauses.” *Storms, Inc. v. Mathy Constr. Co.*, 883 N.W.2d 772, 776 (Minn. 2016). This court applies a *de novo* standard of review to the question whether a contract is ambiguous. *Carlson v. Allstate Ins. Co.*, 749 N.W.2d 41, 45 (Minn. 2008).

Paragraph 12 is not reasonably susceptible to more than one meaning and, thus, is not ambiguous. See *Metro Office Parks Co.*, 295 Minn. at 351, 205 N.W.2d at 123. The first sentence states, without qualification, that WCL may terminate the agreement “at any time.” In the third sentence, the prepositional phrase “before [WCL] terminates the Work” modifies the noun phrase that immediately precedes it, “all Work completed and accepted.” Accordingly, the third sentence provides that the work for which WCL must pay is the work that JCA completed before its work was terminated. The prepositional phrase “before [WCL] terminates the Work” does not impose a condition precedent on the main clause, “[WCL] shall pay [JCA]” Accordingly, the third sentence does not provide that WCL must pay JCA before WCL terminates JCA’s work. Furthermore, another paragraph of the

agreement provides that the amount due to JCA must be determined by “an engineering survey of pile volumes,” which, as a practical matter, cannot occur unless and until JCA has stopped work. Considering paragraph 12 as a whole and in the context of the entire agreement, WCL was not required to make full payment to JCA before WCL terminated the contract.

Thus, the district court did not err by granting WCL’s summary-judgment motion on JCA’s claim that WCL breached the written contract by terminating the contract before paying JCA for the services it had performed.

B. Suspension of Work

JCA argues that WCL breached the written contract in May 2013 by suspending JCA’s work, thereby “hinder[ing] or render[ing] impossible” JCA’s performance under the contract.

JCA contends that WCL committed a breach because the agreement “does not contain any provisions allowing WCL to suspend work under the contract.” Indeed, the agreement does not contain a provision that either allows WCL to suspend JCA’s work or prohibits WCL from suspending JCA’s work. In the absence of a contractual provision concerning the suspension of JCA’s work by WCL, JCA cannot establish that WCL breached the contract. Other provisions indicate that WCL is not prohibited from suspending JCA’s work. For example, the agreement expressly states that WCL “shall have the right at any time to terminate this Agreement,” which implies that WCL has the right to the less-extreme step of suspending work. The agreement expressly states that JCA “shall not suspend Work under this Agreement without the approval of” WCL, which

suggests by omission that WCL is not restricted from suspending JCA's work and that WCL retains control over whether and when JCA may perform work under the contract. In short, the contract does not prohibit WCL from suspending JCA's work.

Thus, the district court did not err by granting WCL's summary-judgment motion on JCA's claim that WCL breached the written contract by suspending JCA's work.

C. Provision of Railcars

JCA argues that WCL breached the written contract by not providing railcars to JCA for JCA's use during its performance under the contract.

Paragraph 1 of the agreement provides, "[JCA] shall furnish all the material, supervision, labor, equipment, tools, supplies, incidentals and transportation, *except as otherwise agreed by the Parties*" (Emphasis added.) JCA contends that the parties "otherwise agreed" that WCL would provide railcars to JCA. JCA's contention is based primarily on one e-mail string in which a JCA employee asked for two side-dump cars and eight to ten ore cars and a WCL employee responded by writing, "I don't think the two side dumps will be an issue." JCA also relies on a brief statement in the deposition testimony of JCA's principal, Allen Stutelberg: "We didn't get one car, [and] we were promised 25." In response, WCL argues that it never entered into a general agreement to provide JCA with railcars, which is consistent with the deposition testimony of three WCL employees.

JCA's evidence that WCL entered into a separate agreement to provide railcars to JCA is lacking in specifics. JCA did not introduce any evidence concerning which employee of WCL entered into a separate agreement to provide railcars, when the separate

agreement was made, what form it took, and what terms it included. Stutelberg stated in an affidavit merely that he “anticipated using rail cars furnished by WCL,” but he did not explain the basis of that expectation. Stutelberg testified in his deposition that “we were promised 25” railcars, but he did not explain, in the deposition or elsewhere, who made the alleged promise, when and where it was made, and the context of the discussion. It is unclear even whether the “promise” or any other alleged separate agreement was made before or after the written agreement was signed by the parties.

JCA’s evidence is simply too general, vague, and conclusory. On a motion for summary judgment, the non-moving party may not rest on “mere averments” but, rather, “must present specific facts showing that there is a genuine issue for trial.” Minn. R. Civ. P. 56.05. In other words, the non-moving party “may not establish genuine issues of material fact by relying upon . . . conclusory allegations.” *Dyrdal v. Golden Nuggets, Inc.*, 689 N.W.2d 779, 783 (Minn. 2004). Furthermore, the non-moving party must introduce evidence that is more than “merely colorable” and more than a “scintilla”; the evidence must be “significantly probative.” *DLH, Inc. v. Russ*, 566 N.W.2d 60, 70-71 (Minn. 1997) (quotation omitted). Moreover, “when determining whether a genuine issue of material fact for trial exists, the court is not required to ignore its conclusion that a particular piece of evidence may have no probative value, such that reasonable persons could not draw different conclusions from the evidence presented.” *Id.* at 70. These principles are implicated here. JCA has not presented specific facts or submitted evidence that is significantly probative of a separate agreement for the provision of railcars. Rather, JCA has made only broad, general, and vague statements about a promise. JCA’s evidence of

a separate agreement concerning the provision of railcars does not create a genuine issue of material fact.

Thus, the district court did not err by granting WCL's summary-judgment motion on JCA's claim that WCL breached the written contract by not providing railcars to JCA for its use during its performance under the contract.

D. Scheduling of Track Time

JCA argues that WCL breached the written contract by not scheduling sufficient time when JCA could perform its work on WCL's tracks.

Paragraph E of Exhibit A to the contract provides as follows: "[JCA] and [WCL] acknowledge that when removing product from between and near the track that scheduling the work between the parties will be necessary. The Parties agree to work to schedule the work to accommodate both parties in completing their tasks efficiently as much as possible." In a related provision, paragraph 9 of the contract states that JCA "shall not . . . interfere with the movement of trains or other operations of" WCL. JCA contends that WCL did not fulfill its obligation under paragraph E and that, as a result, JCA was unable to work as efficiently as possible, which resulted in diminished income during the period before the termination of the contract.

The relevant evidence in the summary-judgment record does not clearly indicate whether WCL complied with or breached paragraph E. During contract negotiations, Stutelberg informed WCL that JCA would need six hours of track time in a ten-hour day. It is unclear whether WCL agreed to such an amount; some evidence may indicate that WCL was willing to allow only two or three hours of track time per day. Stutelberg

testified generally in his deposition that JCA “didn’t get track time” and that, as a result, one of its machines sat idle. Another JCA employee testified in his deposition that daily track time varied considerably, from 45 minutes to six hours. WCL’s evidence is not significantly different from JCA’s evidence. One WCL employee testified that there were “lots of conversations” between the two companies, as often as once or twice each day, “about trying to get them on the railroad.” The WCL employee further testified that the dispatcher sometimes “wasn’t working with” others on the issue and that “it was a day-to-day fight to try to get J.C. Allen out on the railroad to perform their jobs.” In light of this evidence, as well as the imprecise nature of the language of paragraph E, we cannot conclude, as a matter of law, that WCL did not commit a breach.

WCL contends in the alternative that JCA cannot maintain this claim because its damages are speculative. “A plaintiff has the burden of proving the existence of lost profits ‘to a reasonable certainty’ and the amount of those damages ‘to a reasonable probability.’” *Poppler v. Wright Hennepin Co-op Elec. Ass’n*, 834 N.W.2d 527, 546 (Minn. App. 2013) (quoting *Hydra-Mac, Inc. v. Onan Corp.*, 450 N.W.2d 913, 920 (Minn. 1990)), *aff’d*, 845 N.W.2d 168 (Minn. 2014). “A plaintiff may not recover damages that are ‘speculative, remote, or conjectural.’” *Id.* (quoting *Cardinal Consulting Co. v. Circo Resorts, Inc.*, 297 N.W.2d 260, 267 (Minn. 1980)). Nonetheless, “The law does not require mathematical precision in proving lost profits.” *Hydra-Mac, Inc.*, 450 N.W.2d at 921. “Once the fact of loss has been shown, the difficulty of proving its amount will not preclude recovery so long as there is proof of a reasonable basis upon which to approximate the amount.” *Leoni v. Bemis Co.*, 255 N.W.2d 824, 826 (Minn. 1977).

In this case, given the nature of the work to be performed, if a factfinder were to conclude that WCL breached the contract by not scheduling sufficient track time for JCA, the factfinder would be permitted to draw an inference that the lack of track time resulted in less work and, thus, diminished payments on the contract. The parties dispute the amount by which payments on the contract were diminished, which is necessary for a calculation of lost profits. But at the summary-judgment stage, it is unnecessary to consider the evidentiary basis of any particular amount of damages. It is sufficient to conclude that there is a genuine issue of material fact as to the existence and amount of lost profits.¹

Thus, the district court erred by granting WCL's summary-judgment motion on JCA's claim that WCL breached the written contract by not scheduling sufficient time when JCA could perform its work on WCL's tracks.

II. Claim of Breach of Implied Covenant of Good Faith and Fair Dealing

JCA argues that the district court erred by granting WCL's summary-judgment motion with respect to count 2, JCA's claim of breach of the implied covenant of good faith and fair dealing.

In Minnesota, "every contract includes an implied covenant of good faith and fair dealing." *In re Hennepin County 1986 Recycling Bond Litigation*, 540 N.W.2d 494, 502 (Minn. 1995). The implied covenant forbids a party from "'unjustifiably hinder[ing]' the other party's performance of the contract" and from "tak[ing] advantage of the failure of a

¹We acknowledge JCA's argument that the district court erred by concluding that JCA's evidence of damages on its so-called "clear notice" claim is too speculative. But the district court later dismissed the clear-notice claim with prejudice. Thus, JCA's argument concerning damages on the clear-notice claim is moot.

condition precedent when the party itself has frustrated performance of that condition.” *Id.* To prevail on this claim, a plaintiff must prove that a defendant acted in bad faith and with an ulterior motive. *Minnwest Bank Central v. Flagship Props. LLC*, 689 N.W.2d 295, 303 (Minn. App. 2004). A party does not act in bad faith merely by asserting its rights under a contract. *Sterling Capital Advisors, Inc. v. Herzog*, 575 N.W.2d 121, 125 (Minn. App. 1998).

JCA does not have evidence sufficient to create a genuine issue of material fact as to whether WCL breached an implied covenant of good faith and fair dealing with respect to its termination of the contract, its suspension of JCA’s work under the contract, or the provision of railcars. JCA has offered no evidence that WCL’s actions were taken in bad faith or with an ulterior motive. The evidence indicates that WCL suspended JCA’s work and ultimately terminated the contract because it was genuinely concerned that JCA’s work adversely affected the railroad bed and that JCA’s work was too costly. Similarly, there is no evidence of bad faith or an ulterior motive with respect to WCL’s decision to not provide JCA with railcars. JCA contends that genuine issues of material fact exist, but it does not point to any particular evidence of bad faith or ulterior motive, and we do not perceive any such evidence in the record.

Thus, the district court did not err by granting WCL’s summary-judgment motion on count 2.

III. Claim of Breach of Oral Contract

JCA argues that the district court erred by granting WCL’s summary-judgment motion with respect to count 3, JCA’s claim of breach of oral contract. JCA claims that

WCL agreed to pay JCA for brokering a sale of taconite pellets that WCL had stockpiled on the docks at the ports of Two Harbors and Duluth. JCA contends that WCL agreed to allow JCA to clean and sell the taconite pellets to a third party at a price of \$115 per ton and agreed that JCA would be paid \$40 per ton for cleaning the taconite pellets and \$20 per ton for brokering the sale. JCA did not actually clean or sell the taconite pellets because WCL refused to allow JCA to perform the cleaning on the docks.

As stated above, to establish a breach-of-contract claim, a plaintiff must prove three elements: “(1) formation of a contract, (2) performance by plaintiff of any conditions precedent to his right to demand performance by the defendant, and (3) breach of the contract by defendant.” *Park Nicollet Clinic*, 808 N.W.2d at 833. To establish that the parties formed a contract, a plaintiff must prove that one party made an offer and that the other party accepted the offer. *Commercial Assocs., Inc. v. Work Connection, Inc.*, 712 N.W.2d 772, 782 (Minn. App. 2006). In addition, a plaintiff must prove the specific terms of the contract. *See Park Nicollet Clinic*, 808 N.W.2d at 833. “If an alleged contract is so uncertain as to any of its essential terms that it cannot be carried into effect without new and additional stipulations between the parties, it is not a valid agreement.” *Druar v. Ellerbe & Co.*, 222 Minn. 383, 395, 24 N.W.2d 820, 826 (1946) (quotation omitted).

The specific issue on appeal is whether there is a genuine issue of material fact as to whether WCL entered into an oral agreement that includes a term that WCL breached. JCA relies on the deposition testimony of Stutelberg, who testified that he and Suter entered into an oral agreement concerning the taconite pellets that were stockpiled on the docks at Two Harbors and Duluth. But Stutelberg admitted that he and Suter did not agree that JCA

could bring its equipment on the docks and perform the necessary cleaning there. In fact, Stutelberg admitted that he and Suter never discussed that issue. Because JCA seeks to prove that WCL breached the alleged oral contract by refusing to allow JCA to clean the taconite pellets on the docks, JCA must prove that the oral contract included such a term. *See Park Nicollet Clinic*, 808 N.W.2d at 833. But JCA does not have any evidence that WCL orally agreed to allow JCA to clean the taconite pellets on the docks at Two Harbors and Duluth. Without such evidence, JCA cannot prove its claim of breach of an oral contract.

Thus, the district court did not err by granting WCL's summary-judgment motion on count 3.

IV. Claim Concerning Mechanic's Lien

JCA argues that the district court erred by granting WCL's summary-judgment motion with respect to count 4, JCA's claim for a mechanic's lien with respect to the work it performed on WCL's tracks.

We begin by considering WCL's contention that this claim is moot. After the district court filed its summary-judgment order, the parties settled JCA's claim for payment for the services it performed in 2013. Because JCA has been paid for all the services it performed, a mechanic's lien is unnecessary. *See Rochester's Suburban Lumber Co. v. Slocumb*, 282 Minn. 124, 134, 163 N.W.2d 303, 310 (1968) (stating that purpose of mechanic's lien is to ensure payment for improvements to property). JCA does not contend otherwise. Rather, JCA contends that the claim is not moot because it seeks attorney fees. By statute, "a prevailing lienor is entitled to 'costs and disbursements.'" *Stiglich Constr.*,

Inc. v. Larson, 621 N.W.2d 801, 803 (Minn. App. 2001) (quoting Minn. Stat. § 514.14 (2016)), *review denied* (Minn. Mar. 27, 2001). But JCA cannot be a prevailing lienor if there is no lien. *See Rochester’s Suburban Lumber Co.*, 282 Minn. at 134, 163 N.W.2d at 310. Thus, we agree with WCL that JCA’s claim for a mechanic’s lien is moot.

Even if the claim was not moot, we nonetheless would conclude that JCA is not entitled to a mechanic’s lien. If a company “contributes to the improvement of real estate by performing labor, or furnishing skill, material or machinery for any of the purposes” provided for by statute,² the company “shall have a lien upon the improvement, and upon the land on which it is situated or to which it may be removed.” Minn. Stat. § 514.01 (2016). If the company contributes to the improvement of a railway line, the company “shall have” a lien not just on the improvement and the property on which it is situated but also a lien “upon all the rights, franchises, and privileges of the owner appertaining thereto.” Minn. Stat. § 514.04 (2016); *see also Armco Steel Corp., Metal Prods. Div. v. Chicago N.W. Ry. Co.*, 276 Minn. 133, 134-35, 149 N.W.2d 23, 24 (1967).

In its ruling on WCL’s summary-judgment motion, the district court reasoned that JCA did not contribute to an “improvement” of WCL’s property because the services it

²Specifically, those purposes are: “the erection, alteration, repair, or removal of any building, fixture, bridge, wharf, fence, or other structure thereon, or for grading, filling in, or excavating the same, or for clearing, grubbing, or first breaking, or for furnishing and placing soil or sod, or for furnishing and planting of trees, shrubs, or plant materials, or for labor performed in placing soil or sod, or for labor performed in planting trees, shrubs, or plant materials, or for digging or repairing any ditch, drain, well, fountain, cistern, reservoir, or vault thereon, or for laying, altering or repairing any sidewalk, curb, gutter, paving, sewer, pipe, or conduit in or upon the same, or in or upon the adjoining half of any highway, street, or alley upon which the same abuts.” Minn. Stat. § 514.01.

performed—picking up accumulated taconite pellets—is not among the purposes specified in the statute. See Minn. Stat. § 514.01. The district court’s reasoning is consistent with *M & G Services, Inc. v. Buffalo Lake Advanced Biofuels, LLC*, 895 N.W.2d 277 (Minn. App. 2017), *review denied* (Minn. June 28, 2017), in which this court concluded that the removal of “excess thin stillage” from an ethanol plant was not a lienable improvement to the property. *Id.* at 282-83. Accordingly, we agree with the district court that picking up taconite pellets from railroad tracks is not among the purposes described in the statute. Thus, if the claim for a mechanic’s lien were not moot, we would conclude that the district court did not err by granting WCL’s summary-judgment motion on count 4.

In sum, the district court did not err by granting WCL’s motion for summary judgment, except with respect to JCA’s claim that WCL breached the written contract by not scheduling times when JCA could perform its work on WCL’s railroad tracks. See *supra* part I.D. The case is remanded to the district court for further proceedings on that claim.

Affirmed in part, reversed in part, and remanded.