

**Rombouts Ave, LLC v Blue Sea Constr. Co. LLC**

2017 NY Slip Op 30221(U)

February 1, 2017

Supreme Court, New York County

Docket Number: 157586/2015

Judge: Jeffrey K. Oing

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL PART 48

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ROMBOUTS AVE, LLC,

Plaintiff,

-against-

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**Mtn Seq. No. 003**

**DECISION AND ORDER**

BLUE SEA CONSTRUCTION CO. LLC,  
OCEANHILL LLC, THE NEW YORK CITY  
HOUSING AUTHORITY and "John Doe #1" to  
"John Doe # 10", Both Inclusive,  
the Names of the Last 10 Defendants,  
Being Fictitious, Said Defendants'  
True Names Being Thereby Intended to  
Designate Parties Whom Have or Claim  
to Have Some Lien or Interest In or  
Upon the Funds Due or to Become Due  
Under the Public Improvement Contract  
That is the Subject of This Action,  
BLUE SEA DEVELOPMENT CORPORATION, LLC,  
ROSENBERG HOUSING GROUP INC.,  
DUVERNAY + BROOKS LLC and PENNROSE  
PROPERTIES LLC, LES BLUESTONE and  
AVERY SEAVEY,

Defendants.

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**JEFFREY K. OING, J.:**

**Reliefs Sought**

Defendants, Blue Sea Construction Co. LLC ("Blue Sea"),  
Oceanhill LLC ("Oceanhill"), Blue Sea Development Corporation,  
LLC ("Blue Sea Development"), Rosenberg Housing Group Inc.  
("RHG"), Duvernay + Brooks, LLC ("D+B"), Pennrose Properties LLC  
("Pennrose"), Les Bluestone, and Avery Seavey (collectively,  
"moving defendants"), move for the following reliefs: (a)  
pursuant to CPLR 7503, staying this action and compelling

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plaintiff, Rombouts Ave, LLC, to arbitrate its fee dispute with defendant Blue Sea; and (b) pursuant to CPLR 2004 and 3012(d), extending moving defendants time to respond to plaintiff's amended complaint until after a determination of this motion.

#### **Facts**

Plaintiff claims that on or about July 30, 2014 it entered into a subcontract agreement (the "subcontract") with Blue Sea, as general contractor, to provide labor and materials for excavation and construction on a project known as Brooklyn's Prospect Plaza (the "project"), located in Brooklyn at 1765 Prospect Place (the "property"). The New York City Housing Authority ("NYCHA") is the owner of the property. NYCHA entered into a ground lease with Oceanhill as lessee, wherein Oceanhill agreed to construct public rental housing units. NYCHA also entered into a development agreement with Blue Sea Development, RHG, D+B, and Pennrose (collectively, the "defendant developers") in which they agreed to work on behalf of Oceanhill to develop the property under the plans specified for the project (Amended Compl. ¶ 15). The defendant developers also entered into a contract with Blue Sea pursuant to which Blue Sea would act as general contractor for the construction services required by the project (Amended Compl. ¶ 16).

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Plaintiff commenced this action against Blue Sea for breach of contract (first cause of action) to recover \$848,795.38 for labor, services, and materials it expended under the subcontract. In addition, plaintiff asserts claims against Blue Sea as well as Oceanhill and the defendant developers for unjust enrichment (second cause of action), quantum meruit (third cause of action), and against all named defendants for violation of the New York State Lien Law, Article 3-A (fourth cause of action).

#### **Parties' Contentions**

Moving defendants argue that this action should be stayed because Blue Sea has elected to exercise its right to arbitrate disputes arising out of its subcontract with plaintiff. The arbitration clause in the subcontract provides the following:

At the sole and exclusive option of the Contractor, any and all disputes arising out of the Subcontract Documents or the breach thereof shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association (AAA) and shall be conducted in New York, New York. At the Contractors election, any such proceeding may be self-administered without the involvement of the AAA. The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. The Subcontractor shall have no right to demand arbitration of any dispute with the Contractor without the Contractors written consent.

(Bluestone Aff., Ex. A, § 11.4). Blue Sea filed a Demand for Arbitration with the American Arbitration Association ("AAA")

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(the "Arbitration Demand") in July 2016 (Bluestone Aff., Ex. B). In the Arbitration Demand, Blue Sea seeks \$2,817,119.55 in damages from plaintiff.

In opposition, plaintiff argues that the arbitration provision in the subcontract does not cover plaintiff's claims against seven of the eight defendants because they are not signatories to the subcontract. Plaintiffs also argue that Blue Sea waived its right to arbitration by waiting almost two years after this dispute arose to seek arbitration, and that the arbitration should be stayed in favor of this action which was filed first. Lastly, plaintiff claims that its fourth cause of action for violation of Article 3-A Trust Fund is not subject to arbitration.

#### Discussion

The amended complaint in this action clearly shows that plaintiff's claims against moving defendants arise out of the subcontract, with plaintiff seeking damages in the amount of \$848,795.38 under the subcontract in each cause of action. As such, plaintiff's claims against the moving defendants may be resolved in the arbitration between plaintiff and Blue Sea. Further, although the Article 3-A Trust Fund violation claim (fourth cause of action) is not subject to arbitration,

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prosecution of this claim should be stayed pending final resolution of the arbitration proceeding.

Plaintiff's claim that Blue Sea waived its right to arbitration is unavailing. The record demonstrates that Blue Sea filed motions in response to plaintiff's complaint and amended complaint seeking a stay of this action pending mediation before the AAA as required under the subcontract (Bluestone Aff., Ex. A, § 11.1). The mediation was unsuccessful and Blue Sea filed the Arbitration Demand with the AAA shortly thereafter (Bluestone Aff., ¶¶ 17-18). Therefore, under these circumstances, there was no waiver by Blue Sea of its right to arbitration under the subcontract given that it was following the protocol set forth in the parties' subcontract. In addition, plaintiff's argument that the arbitration should be stayed because this action was filed before Blue Sea filed the Arbitration Demand is unavailing. The principle is well settled that when parties expressly agree to arbitrate their disputes any issue that arises and falls within the purview of the arbitration agreement "must go to arbitration" (In the Matter of the Arbitration between Exercycle Corporation v Maratta, 9 NY2d 329 [1961]).

Accordingly, it is hereby

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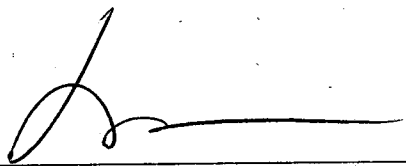
ORDERED that the motion, pursuant to CPLR 7503, to stay this action is granted, and this action is hereby stayed; and it is further

ORDERED that either party may move to vacate or modify this stay upon the final determination of the arbitration proceeding pending before the AAA; and it is further

ORDERED that moving defendants are directed to serve a copy of this order with notice of entry on the Trial Support Office (Room 158).

This memorandum opinion constitutes the decision and order of the Court.

Dated: 2/1/17

  
HON. JEFFREY K. OING, J.S.C.  
JEFFREY K. OING  
J.S.C.