

Onekey, LLC v Byron Place Assoc., LLC
2017 NY Slip Op 33460(U)
December 13, 2017
Supreme Court, Westchester County
Docket Number: Index No. 52144/15
Judge: Lewis J. Lubell
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SCP 1/23/18 @ 9:15 a.m.

To commence the 30 day statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties

SUPREME COURT OF THE STATE of NEW YORK
COUNTY OF WESTCHESTER

-----X
ONEKEY, LLC,

Plaintiff,

-against-

BYRON PLACE ASSOCIATES, LLC,

Defendants.
-----X

LUBELL, J.

DECISION & ORDER

Index No. 52144/15

Sequence No. 6&7

The following papers were considered in connection with **Motion Sequence #6** by defendant Byron Place Associates, LLC for an Order granting summary judgment pursuant to CPLR 3212, declaring that plaintiff breached its contract, dismissing the complaint and setting the matter down for an inquest on damages; and **Motion Sequence #7** by plaintiff for an Order directing the entry of partial summary judgment in favor of plaintiff and against defendant Byron Place Associates, LLC for the relief demanded in the verified complaint as to liability, upon the ground that Byron breached the construction contract:

PAPERS	NYSCEF
NOTICE OF MOTION/AFFIDAVIT/EXHIBITS A-O/ AFFIRMATION/EXHIBITS A-D	116-137
STIPULATION OF DISCONTINUANCE (FIRST NIAGARA AND TITAN)	138,139
MEMORANDUM OF LAW IN OPPOSITION/AFFIDAVIT IN SUPPORT/AFFIRMATION IN OPPOSITION/ EXHIBITS 1-5	140-151
REPLY AFFIDAVIT/MEMORANDUM OF LAW	152,153
NOTICE OF MOTION/AFFIRMATION/AFFIDAVIT/ MEMORANDUM OF LAW/AFFIRMATION/ EXHIBITS	154-171
AFFIDAVIT IN OPPOSITION/EXHIBITS A-D	174-183
MEMORANDUM OF LAW IN REPLY/AFFIRMATION IN REPLY/EXHIBITS	184-196

Plaintiff, OneKey, LLC, ("OneKey") a construction manager, brings this breach of contract action against property owner/developer, defendant Byron Place Associates, LLC, ("BPA"), in connection with a dispute arising out of a written contract, as amended, for the construction of a 149 residential condominium development and parking facility at 10 Byron Place, Larchmont, New York. In turn, BPA counterclaims for breach of contract.

In short, OneKey claims that BPA breached the contract, as amended, upon terminating the contract "for cause" when, in fact, OneKey was no longer obligated to perform that aspect of the contract it allegedly breached. BPA, on the other hand, claims that OneKey was still so obligated and, as such, is liable to it for breach of contract.

"The construction and interpretation of an unambiguous written contract is an issue of law within the province of the court, as is the inquiry of whether the writing is ambiguous in the first instance. If the language is free from ambiguity, its meaning may be determined as a matter of law on the basis of the writing alone without resort to extrinsic evidence" (Palombo Group v. Poughkeepsie City Sch. Dist., 125 A.D.3d 620, 621, 3 N.Y.S.3d 390, quoting Law Offs. of J. Stewart Moore, P.C. v. Trent, 124 A.D.3d 603, 603, 2 N.Y.S.3d 148). "Where a contract is ambiguous, extrinsic evidence may be considered to determine the parties' intent" (Fattorusso v. RJR Mech., Inc., 131 A.D.3d 1098, 1100, 16 N.Y.S.3d 844; see Schron v. Troutman Sanders LLP, 20 N.Y.3d 430, 436, 963 N.Y.S.2d 613, 986 N.E.2d 430). "When interpreting a contract, the construction arrived at should give fair meaning to all of the language employed by the parties, to reach a practical interpretation of the parties' expressions so that their reasonable expectations will be realized" (Palombo 762 Group v. Poughkeepsie City Sch. Dist., 125 A.D.3d at 621, 3 N.Y.S.3d 390, quoting Fernandez v. Price, 63 A.D.3d 672, 675, 880 N.Y.S.2d 169).

(Yarom v. Poliform S.P.A., 153 AD3d 760, 761-62 [2d Dept 2017], lv to appeal denied, 2017 NY Slip Op 92900 [Ct App Nov. 21, 2017]).

Upon consideration of the parties' respective motions, submissions and positions and upon examination of the underlying written contract, as amended on March 19, 2013, the Court finds that there are ambiguities requiring the consideration of extrinsic evidence to determine the parties' intent and, as to same, there are material questions of fact.

Not by way of limitation, the Court finds that the following contract clause, found in the March 19, 2013 contract amendment, creates a material ambiguity as to the obligations of the parties:

[OneKey] shall complete Substructure Works being Site Excavation and the Construction of the three level parking structure . . . for an all-Sub-Structure Guaranteed Price ("GMP") as set out below. During construction of the Sub-Structure Project, [OneKey] shall be available to [BPA] to finalize the Design and Pricing [for mechanical, electrical and plumbing work] as laid out in Exhibit A (as amended) as well as being available as per the Contract terms with the intention being that the Superstructure work shall commence prior to completion of the Sub-Structure Project. The Owner will also have the discretion to nominate sub-contractors [with respect to mechanical, electrical and plumbing work].

Among other things, OneKey's obligation to be "available" as therein specified does not, as a matter of law, excuse OneKey from any still extant obligation to otherwise perform under the contract, including any obligation under the terms of the original contract with respect to mechanical, electrical and plumbing work and/or subcontractors. Just as ambiguous is what is meant by allowing BPA "the discretion to nominate" mechanical, electrical and plumbing subcontractors. An ambiguity is also created by the retention of line items for mechanical, electrical and plumbing subcontractors in Exhibit "A" (to the amendment), while providing for cost estimates for same of "-" .

These ambiguities, among others, underlie the material and divergent positions taken by the parties. Among the material issue raised is whether the removal of mechanical, electrical and plumbing pricing in the March amendment was intended to excuse OneKey from its obligations with respect to same, as OneKey argues, or whether the removal of such pricing was simply meant as a temporary deletion pending the preparation of more detailed engineering plans, as BPA argues.

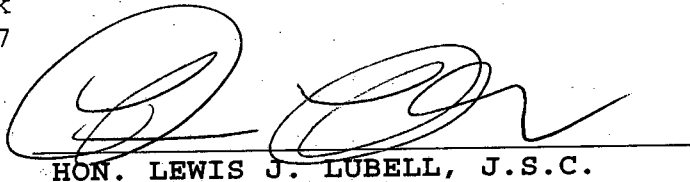
Since none of these issues can be resolved upon the papers before the Court, it is hereby

ORDERED, that the respective motions for summary judgment are denied; and, it is further

ORDERED, that the parties are directed to appear on Tuesday, January 23, 2018 at 9:15 a.m. in the Settlement Conference Part, Courtroom 1600, Westchester County Supreme Court, 111 Dr. Martin Luther King, Jr. Boulevard, White Plains, New York, prepared to conduct a settlement conference.

The foregoing constitutes the Opinion, Decision, and Order of the Court.

Dated: White Plains, New York
December 13th, 2017



HON. LEWIS J. LUBELL, J.S.C.

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