SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MARCY S. FRIEDMAN *Justice* PART 60

AMC UNITED, INC.

-against-

NEW YORK CITY HOUSING AUTHORITY

INDEX NO. 117069/2008

MOTION DATE

MOTION SEQ. NO. 001

The following papers, numbered 1 to _____ were read on this motion to/for Summary Judgment

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ... No (s). _____

Answering Affidavits — Exhibits _____ No (s). _____

Replying Affidavits _____ No (s). _____

Cross-Motion: ☐ Yes ☐ No

Upon the foregoing papers, it is ordered that this motion

Defendant's motion for summary judgment dismissing the complaint is granted to the extent set forth in the accompanying decision/order dated July 15, 2013.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 7-15-13

MARCY S. FRIEDMAN, J.S.C.

1. Check one: ..... ☐ CASE DISPOSED ☒ NON-FINAL DISPOSITION

2. Check as appropriate:.....Motion is: ☐ GRANTED ☐ DENIED ☒ GRANTED IN PART ☐ OTHER

3. Check if appropriate:..... ☐ SETTLE ORDER ☐ SUBMIT ORDER

☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK – PART 60

PRESENT: Hon. Marcy S. Friedman, J.S.C.

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AMC UNITED, INC.,

Plaintiff,

Decision and Order

-against-

Index No. 117069/08

NEW YORK CITY HOUSING AUTHORITY,

Defendant.

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In this action arising out of a construction contract, plaintiff AMC United, Inc. (AMC) pleads causes of action for breach of contract and quantum meruit against defendant New York City Housing Authority (NYCHA). NYCHA moves, pursuant to CPLR 3212, for summary judgment dismissing the complaint.

In December 2002, AMC entered into a contract with NYCHA (the Contract) for the repair of exterior brickwork at Glenwood Houses, a 20 building, City-owned housing complex. The Contract's scope of work included, among other things, replacement of brickwork, repointing mortar joints, caulking and recaulking in various areas, repairing window lintels and parapets, and replacing concrete coping stones including end pieces. (Affidavit of Douglas McNevin [McNevin Aff.], Ex. 4 [Contract, Division I Specifications § II [E]].) AMC was required to complete the specified work on all 20 buildings within 540 days of March 18, 2003, the date AMC received its "Notice to Proceed" from NYCHA. (McNevin Aff., Ex. 5 [Letter from NYCHA dated March 5, 2003].)

AMC began work in March 2003, but NYCHA granted AMC numerous extensions of time to complete its work, the last of which extended to July 31, 2008. (See McNevin Aff., Ex.

18 [Letter from NYCHA dated February 15, 2008].) In April 2008, more than 1,500 days later, when AMC finally ceased work at the project, the project had not been completed. The complaint alleges that delays were caused by NYCHA's failure to provide sufficient inspection and design information. (McNevin Aff., Ex. 1 [Complaint [Compl.], ¶ 18].) AMC also alleges that the project was delayed because the unit prices that AMC bid on were for a different design, and not the project that was actually constructed by AMC. Moreover, AMC alleges that actual designs were for significantly smaller areas. (Id., ¶ 19.) In response, NYCHA claims that the delays were caused by AMC's inability to perform its work properly and efficiently and its inability to retain subcontractors. (McNevin Aff., ¶¶ 30-34.)

According to the complaint, on November 12, 2008, AMC submitted a Notice of Claim to NYCHA (McNevin Aff., Ex. 2 [November 18, 2008 Notice of Claim or Notice of Claim]), seeking payment in the amount of $2,311,598 for extra work and delay damages allegedly caused by NYCHA, and NYCHA has not settled the claim. (Compl., ¶¶ 23-24.) The Notice of Claim lists the following items of "extra work": facade cleaning, coping stone end pieces, caulking abatement, spray mortar, window caulking and overhead and profit, totaling $1,049,403. It lists the following items of "time related extra work": personnel costs, and costs for scaffolding, sidewalk shed and equipment rentals, and overhead and profit, totaling $1,262,195. (Notice of Claim, ¶ 17.)

In support of its motion for summary judgment, NYCHA argues that AMC's November 12, 2008 Notice of Claim was untimely, and that pursuant to section 23 of the Contract, AMC was required, but failed, to serve a written notice of claim on NYCHA within 20 days of the time the claim arose. NYCHA contends, in the alternative, that AMC's claim for delay damages is

barred by section 14 of the Contract which expressly bars damages for delay, even if the delay is caused by NYCHA, provided that, as here, AMC is given an extension of time to complete performance. NYCHA also claims that AMC is not entitled to compensation for extra work because the "extra work" that it is claiming consists of items within the original scope of the project.

In opposition to the motion for summary judgment, AMC takes the position that the November 12, 2008 Notice of Claim was the statutory notice, but that a letter it sent to NYCHA, dated February 24, 2007, constituted the notice of claim required by section 23 of the Contract.[1] AMC also contends that its claim for delay damages satisfies exceptions to the section 14 no-damages-for-delay clause. AMC further argues that the parties' correspondence shows that NYCHA was aware of the extra work claims and waived the contractual notice requirements. In addition, AMC asserts that its extra work claims are meritorious and are supported by the documentary evidence.

The standards for summary judgment are well settled. The movant must tender evidence, by proof in admissible form, to establish the cause of action "sufficiently to warrant the court as a matter of law in directing judgment." (CPLR 3212 [b]; Zuckerman v City of New York, 49 NY2d 557, 562 [1980].) "Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers." (Winegrad v New York Univ. Med. Ctr., 64 NY2d 851, 853 [1985].) Once such proof has been offered, to defeat summary judgment "the opposing party must 'show facts sufficient to require a trial of any issue of fact.'" (Zuckerman, 49 NY2d

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[1] AMC asserts that NYCHA did not challenge the extra work claims on the ground of untimeliness. (P.'s Memo in Opp at 11.) This assertion is inaccurate. (See D.'s Memo. of Law in Support at 7.)

at 562 [citing CPLR 3212[b]].)

Section 23 of the Contract states, in pertinent part:

> "(a) If the Contractor claims that any instructions of the Authority, by drawings or otherwise, involve Extra Work entailing extra cost, or claims compensation for any damages sustained by reason of any act or omission of the Authority, or of any other persons, or for any other reason whatsoever, the Contractor shall, within twenty (20) days after such claim shall have arisen, file with the Authority written notice of intention to make a claim for such extra cost or damages, stating in such notice the nature and amount of the extra cost or damages sustained and the basis of the Claim against the Authority. . . .
>
> (b) [t]he filing by the Contractor of a notice of claim . . . within the time limited herein, shall be a condition precedent to the settlement of any claim or to the Contractor's right to resort to any proceeding or action to recover thereon, and failure to do so shall be deemed to be a conclusive and binding determination on the Contractor's part that he/she has no claim against the Authority for compensation for Extra Work or for compensation for damages, as the cause [sic] may be, and shall be deemed a waiver by the Contractor of all claims for additional compensation or for damages."

(Contract, General Conditions, § 23.)

It is well established that contractual notice provisions like Section 23 are conditions precedent to suit or recovery, and failure to comply with the notice provisions warrants dismissal of the action. (A.H.A. Gen. Constr. v New York City Hous. Auth., 92 NY2d 20, 30-31 [1998], rearg denied 92 NY2d 920 [1998].) Section 23, and similar provisions, have been strictly enforced by the courts. (See S.J. Fuel Co., Inc. v New York City Hous. Auth., 73 AD3d 413, 413-414 [1st Dept 2010] [neither prior dealings among the parties nor actual knowledge of plaintiff's claim relieved plaintiff of duty to file a timely and sufficiently detailed notice of claim

under section 23]; Promo-Pro Ltd. v Lehrer McGovern Bovis, Inc., 306 AD2d 221, 222 [1st Dept 2003], lv denied 100 NY2d 628 [2003] [finding that "[c]ompliance with the notice of claim provision was an express condition precedent to the contractor's right to bring an action for recovery of change order payments"]; Master Painting & Roofing Corp. v New York City Hous. Auth., 258 AD2d 275, 275 [1st Dept 1999] [affirming dismissal because of plaintiff's failure to give defendant timely written notice of claim for extra work as required by section 23 of the contract].)

As a timely notice of claim is a condition precedent to maintaining an action against NYCHA, AMC has the obligation to prove that its notice of claim was served within 20 days after accrual of its claim or that an exception to the 20-day requirement applies. As the Court of Appeals has explained:

> "It is well settled that a contractor's claim accrues when its damages are ascertainable. Although the determination of the date on which damages are ascertainable may vary based on the facts and circumstances of each particular case, it has generally been recognized that damages are ascertainable once the work is substantially completed or a detailed invoice of the work performed is submitted."

(C.S.A. Contr. Corp. v New York City Sch. Constr. Auth., 5 NY3d 189, 192 [2005] [internal quotation marks and citations omitted] [interpreting statutory notice of claim similar to contractual notice of claim at issue].)

Notices of claim provide public agencies "with timely notice of deviations from budgeted expenditures or of any supposed malfeasance, and allow them to take early steps to avoid extra or unnecessary expense, make any necessary adjustments, mitigate damages and avoid the waste of public funds." (A.H.A. Gen. Constr., 92 NY2d at 34.) In contract actions, "the monetary demand

and some suggestion at least on how the sum is arrived at or the damages incurred" are critical elements. (P.J.Panzeca, Inc. v Board of Educ., Union Free Sch. Dist. No. 6, Towns of Islip and Smithtown, 29 NY2d 508, 509-510 [1971].)

As noted above, AMC argues on this motion that the November 12, 2008 Notice of Claim was the statutory notice, and its letter to NYCHA, dated February 24, 2007, was the section 23 notice. AMC further claims that the letter satisfies the section 23 requirements because it sets forth the nature of and amounts claimed for extra work and delay damages by incorporating prior letters.

The February 24, 2007 letter states that it is requesting hard expenses and money for pending change orders. The letter explains that if NYCHA is unwilling to settle the dispute, "AMC will be forced to place project on HOLD and take legal action against NYC HA [sic] for the Amount of $2,126,497.00 and addition [sic] expenses for lawyer's fees and court costs." (Dimeski Aff., Ex. H [Letter from AMC dated February 24, 2007].) The letter also attaches prior correspondence between the parties, including the following: 1) A November 13, 2006 letter which seeks "Hard Expenses created by the facade conditions," resulting in a "total of 33 months of extra time" through May 2007, in the amount of approximately $985,000. (Dimeski Aff., Ex. H, Ex. A.) The hard expenses that are identified are scaffolding rentals, specified personnel costs, sidewalk shed costs, and specified equipment rentals. The letter itself does not expressly state that these hard expenses are for delay damages. However, the November 12, 2008 Notice of Claim characterizes the same categories of items (e.g., for personnel costs and equipment rentals) as "Time Related Extra Work," and distinguishes such items from "Extra Work." The complaint pleads that this Notice of Claim seeks extra work and delay damages. (Compl., ¶ 23);

2) A February 22, 2007 letter which seeks "Hard Expenses 2005 and 2006" of $980,000, an amount that roughly corresponds to the amount set forth for delay damages in the November 13, 2006 letter. (Dimeski Aff., Ex. H, Ex. B.) It also seeks damages for "Uncollected Pending Change Orders" in the amount of $42,000, and specified damages for Loss due to Labor, General Conditions, Interest, and Overhead & Profit. The total amount of damages in the February 22, 2007 is approximately $2.1 million; 3) A November 8, 2006 letter which seeks Losses for specified loans for the period from 2004 through 2006 in the amount of $1,745,000. (Dimeski Aff., Ex. H, Ex C.)

A. Delay Damages Claims

Sufficiency of Notice

With respect to the delay damage claims, the court holds that the February 24, 2007 letter contains sufficient information to comply with the section 23 notice of claim requirements. NYCHA argues that even if the letter contains sufficient itemizations of the damages, the claims for delay damages in the letters were ascertainable and thus accrued well before the dates of the incorporated letters. For example, it argues that the delay damages in the November 13, 2006 letter were ascertainable no later than November 13, 2006, and that the contractual notice of claim should have been sent within 20 days of that date, not three months later by means of the February 24, 2007 letter. (D.'s Memo. of Law at 8-9.) In addition, NYCHA argues that plaintiff's claim for delay damages "accrued each time the Housing Authority granted an extension because at that time Plaintiff necessarily knew it would need to extend the rentals and services for the extended work period." (D.'s Reply Memo. at 9-10.) AMC argues that its February 24, 2007 letter was timely because sent before the substantial completion of the project.

(See P's Memo. in Opp. at 6.)

The court rejects NYCHA's position that the letter and incorporated letters were untimely with respect to delay damages. NYCHA does not submit, and the court's own research has not located, any authority that supports NYCHA's contention that the court should deviate from the general rule that delay damages are ascertainable upon substantial completion of the work (or, although not relevant here, submission of the invoice). (See C.S.A., 5 NY3d at 192.) On the contrary, if the parties had wished to require notice of each incident of delay, they could have contractually provided for the notice period to begin "to run with upon [sic] the occurrence of each delay-causing event." (Rubin, 33 NY Prac., New York Construction Law Manual § 7:18 [2d ed]; see generally Putrelo Constr. Co. v Town of Marcy, 105 AD3d 1406 [4th Dept 2013][enforcing contractual provision that provided for different date of accrual than statute].)

No-Damages-For-Delay Clause

The court nevertheless concludes that the delay damages claim is barred by the parties' contract. Section 14 provides, in pertinent part:

> "In the event completion of the work is necessarily delayed beyond the time for completion of the Work . . . on account of unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to acts or omissions of the Authority, its officers, agents, or employees, . . . the time for completion shall be extended by a period of time corresponding to the delay, provided that within twenty (20) days from the beginning of such delay the Contractor notifies the Authority of the causes of the delay.
>
> . . . Except as otherwise provided in this Contract, the Contractor expressly agrees to make no claim or maintain any action against the Authority for damages for suspension of or delay in the performance of this Contract occasioned by delays to

> or interruptions of the work, and agrees that any such claim shall be fully compensated for by an extension of time to complete performance."

(Contract, General Conditions, § 14.) NYCHA argues that this provision is valid and enforceable.

In response, AMC argues that it meets the exceptions to enforcement of this no-damages-for-delay clause. As held by the Court of Appeals, a clause which exculpates a contractee from liability is generally valid and enforceable. (See Corinno Civetta Constr. Corp. v City of New York, 67 NY2d 297, 309 [1986] [citing Kalisch-Jarcho, Inc. v City of New York, 58 NY2d 377, 384 [1983].) However, "even with such a clause, damages may be recovered for: (1) delays caused by the contractee's bad faith or its willful, malicious, or grossly negligent conduct, (2) uncontemplated delays, (3) delays so unreasonable that they constitute an intentional abandonment of the contract by the contractee, and (4) delays resulting from the contractee's breach of a fundamental obligation of the contract." (Corinno Civetta Constr. Corp., 67 NY2d at 309.) In arguing for the application of one of these four exceptions, the party seeking to circumvent the no-damage-for-delay clause bears a heavy burden of proof. (See Bovis Lend Lease (LMB), Inc. v Lower Manhattan Dev. Corp., 2013 NY Slip Op 3804, *22 [1st Dept 2013]; LoDuca Assoc., Inc. v PMS Constr. Mgt. Corp., 91 AD3d 485, 485 [1st Dept. 2012][citing Dart Mech. Corp. v City of New York, 68 AD3d 664, 664 [1st Dept 2009].)

AMC argues that two of the exceptions to the no-damages-for-delay clause are applicable, claiming that the 4-year delay was an "uncontemplated delay," and that NYCHA abandoned the balance of the Contract when it "released" AMC from completing the work on the last two buildings. (See P.'s Memo. in Opp. at 7.)

The court rejects AMC's claim that the "uncontemplated delay" exception applies. It is well settled that "exculpatory clauses will not bar claims resulting from delays caused by the contractee if the delays or their causes were not within the contemplation of the parties at the time they entered into the contract." (Corinno Civetta Constr. Corp., 67 NY2d at 309-310.) However, "the 'uncontemplated delays' exception only applies if the claimant can demonstrate that 'the delays were wholly unanticipated.'" (Premier-New York, Inc. v Travelers Prop. Cas. Corp., 20 Misc3d 1115(A), *20 [Sup Ct, New York County 2008]; see Blue Water Envtl., Inc. v Incorporated Vil. of Bayville, N.Y., 44 AD3d 807, 810 [2nd Dept 2007]; North Star Contracting Corp. v City of New York, 203 AD2d 214, 215 [1st Dept 1994].) Furthermore, "delays are not considered uncontemplated when they are 'reasonably foreseeable, arise from the contractor's work during performance, or . . . are mentioned in the contract.'" (Bovis Lend Lease (LMB), Inc., 2013 NY Slip Op at *21-22; see Corinno Civetta Constr. Corp., 67 NY2d at 310.) In addition, New York courts have found that there is no exception for delays resulting from "inept administration." (See LoDuca Assoc., Inc., 91 AD3d at 486; Blue Water Envtl., Inc., 44 AD3d at 810.)

In this case, AMC alleges that certain repairs caused uncontemplated delays because the original design was abandoned "in favor of the resident engineer's ad hoc and wholesale smaller repairs." (P.'s Memo. in Opp. at 8.) However, the Contract unambiguously provides, under the Scope of Work section, that AMC shall "[r]eplace damaged brickwork on the building facades generally at the locations shown on the drawings and as directed by the inspector." (See Contract, Division I Specifications, § II(E), Item 2.) The Contract further states that "[a]ll quantities set forth in the Form of Proposal upon which unit prices were based are estimates only.

The contractor is bound to unit price up to 150% of any item, then the unit price for that item renegotiate for the quantity needed in excess of 150%." (Id., REP-Form of Proposal, § I(B)(2).) As the Contract contemplated that additional work might be required "as directed by the inspector," AMC cannot satisfy its heavy burden of showing that a triable issue of fact exists with respect to an uncontemplated delay.

AMC also suggests that the length of the delay (four years) is sufficient to satisfy the "uncontemplated delay" exception. However, it is well settled that "the length of the delay does not transform a delay caused by an event specifically contemplated by the 'no damages for delay' clause into something uncontemplated." (LoDuca Assoc., Inc., 91 AD3d at 486.)

The court further holds that AMC fails to raise a triable issue of fact with respect to its claim that the delays were so unreasonable as to establish NYCHA's intentional abandonment of the Contract. "[T]o avoid the risk of the exculpatory clause and recover on the ground of abandonment, a contractor must establish that the contractee is responsible for delays which are so unreasonable that they connote a relinquishment of the contract by the contractee with the intention of never resuming it." (Corinno Civetta Constr. Corp., 67 NY2d at 312-13.) Here, however, as held above, the delays were contemplated as the contract provided for changes to the work. In addition, there is extensive evidence that AMC itself was also responsible for delays. (See McNevin Aff., Exs. 10 [Letter from NYCHA granting AMC's request for a "winter shutdown" until March 31, 2004], 13 [Letter from NYCHA granting AMC's request for a time extension of 151 days "due to winter shutdown, rain and subcontractor approval process" and a new completion date of February 7, 2005], 15 [Letter from NYCHA granting AMC's request for a time extension of 327 days and a new completion date of December 31, 2005], 16 [Letter from

NYCHA granting AMC's request for a time extension of 225 days "due to asbestos delays and winter shut-down" and a new completion date of August 13, 2006], 17 [Letter from AMC requesting a time extension of 181 days due to "(the work conditions) of the buildings require multi locations of masonry work, also the [sic] are holidays, winter cold temperature" and a new completion date of June 30, 2007], 18 [Letter from NYCHA granting AMC's request for a time extension of 243 days and a new completion date of July 31, 2008].) Finally, AMC appears to claim that NYCHA abandoned the contract by terminating it and releasing AMC from completing work. (See D.'s Memo. of Law in Support at 7.) However, this claim is based on AMC's principal's wholly conclusory assertions (see Dimeski Aff., ¶¶ 14, 20), and is unsupported by any evidentiary detail as to the circumstances of the alleged termination.

As AMC fails to demonstrate that an exclusion to the no-damages-for-delay clause applies, or to raise a triable issue of fact in this regard, the court will grant the branch of NYCHA's motion for summary judgment for dismissal of the delay damages claim.

B. Extra Work Claims

Sufficiency of Notice

With respect to the extra work claims, the court finds that the February 24, 2007 letter does not contain sufficient information to comply with the section 23 notice of claim requirements. Although the letter purports to have placed NYCHA on notice of the extra work claims, it does not provide sufficient specificity as it fails to state the "nature and amount" of the claims. (See Contract, General Conditions, § 23.) The letter makes reference to "Pending Change Orders for the approximate Amount of $107,072.00" and "already approved Change Orders 1 & 2," but does not attach or otherwise identify the subject matter of the "Pending

Change Orders." In addition, even if this Court were to add the $107,072.00 expressly requested to the amounts specified in Change Orders 1 ($57,000) (see Dimeski Aff., Ex. O) and 2 ($30,000) (id.), the total amount claimed in the February 24, 2007 letter ($194,072.00) would be far less than AMC is seeking in this litigation for extra work ($1,049,403.00).

Waiver of Notice

AMC argues, however, that the correspondence between the parties evidences NYCHA's waiver of the section 23 notice requirements for AMC's extra work claims, and that the parties "practice was to address extra work claims after the work was completed." (See P.'s Memo. in Opp. at 12.) In support of these contentions, AMC cites Huff Enters., Inc. v Triborough Bridge & Tunnel Auth. (191 AD2d 314 [1st Dept 1993], lv denied 82 NY2d 655 [1993]) for the proposition that the contractual notice requirement may be waived where there is "an extensive record of timely written correspondence between the contractor and agency addressing the disputed subject matter."

Here, AMC submits a letter from NYCHA, dated April 6, 2010, in which NYCHA sought to negotiate a resolution of a change order dispute totaling approximately $198,000 (for an item identified as "Change Order No. 6" or "Proceed Order No. 1"), and stated that if AMC agreed to the resolution, it would not affect AMC's pending claims regarding two other specified change orders (Nos. 4 and 5).[2]

The court holds that this letter, with its affirmative acknowledgment of AMC's claim,

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[2] The letter stated: "[a]lthough, on an e-mail dated February 10, 2010, you clearly stated that you will not sign "anything" until NYCHA resolves a pending claim involving Change Orders Nos. 04 and 05, we again request your signature on this Change Order as the intent is to closeout Proceed Order No. 1, which does not require any subsequent payment and will not affect your claim." (Dimeski Aff., Ex. O.)

provides a clear example of correspondence that is sufficient to raise a triable issue of fact as to whether NYCHA waived the section 23 notice requirement with respect to the extra work claims for the three change orders identified in the April 6, 2010 letter. In so holding, the court notes that NYCHA inexplicably fails to address AMC's waiver argument. The motion to dismiss will accordingly be denied as to the three specified change orders, to the extent that they involve extra work that is the subject of the November 12, 2008 Notice of Claim.

The court reaches a different result as to the other change orders or requests for change orders that are included in Exhibit O to the Dimeski affidavit and on which AMC also seeks to base its claim for extra work. The course of conduct of the parties, if evidenced by sufficient correspondence, may excuse compliance with a contractual notice of claim requirement. (See Huff Enters., Inc., 191 AD2d at 314; Penava Mech. Corp. v Afgo Mech. Servs, Inc., 71 AD3d 493, 494 [1st Dept 2010]; Barsotti's, Inc. v Consol. Edison Co. of New York, Inc., 254 AD2d 211, 212 [1st Dept 1998].) However, in light of the substantial body of law requiring strict compliance with contractual notice of claim requirements (see supra at 4-5), the court does not find that the mere request for a change order or even the contractee's acceptance of the change order waives compliance with such requirements where the change order request is not resolved or paid. (See also Prote Contr. Co., Inc. v Bd. of Educ. of the City of New York, 171 AD2d 621, 622 [1st Dept 1991], appeal dismissed 78 NY2d 1007 [1991], rearg denied 78 NY2d 1125 [1991] [finding that the untimely "filing of a notice of claim for unpaid extra work performed under a change order approved by defendant" was a "fatal defect"].)

C. Quantum Meruit

The cause of action for quantum meruit must be dismissed because plaintiff's claim is

precluded by the existence of the parties' contract which governs the subject matter of the lawsuit. (See Clark-Fitzpatrick, Inc. v Long Is. R.R. Co., 70 NY2d 382, 388 [1987]; TADCO Constr. Corp. v Dormitory Auth. of State of N.Y., 93 AD3d 619, 620 [1st Dept 2012].)

Accordingly, it is ORDERED that defendant New York City Housing Authority's motion for summary judgment dismissing the complaint is granted to the extent that the delay damages claims, any extra work claims except those covered by change order Nos. 004, 005, and 006, and the quantum meruit claim are dismissed; and it is further

ORDERED that the defendant New York City Housing Authority's motion is otherwise denied.

This constitutes the decision and order of the court.

Dated: New York, New York
July 15, 2013

MARCY S. FRIEDMAN, J.S.C.