

Bindela Constr. LLC v Campo
2013 NY Slip Op 31823(U)
August 2, 2013
Sup Ct, New York County
Docket Number: 158141/12
Judge: Saliann Scarpulla
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. SALIANN SCARPULLA
Justice

PART 19

Index Number : 158141/2012
BINDELA CONSTRUCTION LLC
vs.
CAMPO, DARREN T
SEQUENCE NUMBER : 001
DISMISS ACTION

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

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

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

Upon the foregoing papers, it is ordered that this motion is

decided per the memorandum decision dated 8/2/13
which disposes of motion sequence(s) no. 001

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

Dated: 8/2/13

Saliann Scarpulla, J.S.C.
SALIANN SCARPULLA

- 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: CIVIL TERM: PART 19

----- X
BINDELA CONSTRUCTION LLC,

Index Number: 158141/12
Submission Date: 3/20/13

Plaintiff,

- against -

DECISION and ORDER

DARREN THOMAS CAMPO,

Defendant.

----- X

For Plaintiff:

Sabaj Law, P.C.
26 Court Street, Suite 2003
Brooklyn, NY 11242

For Defendant:

Law Offices of C. Jaye Berger
110 East 59th Street, 22nd Floor
New York, NY 10022

Papers considered in review of defendant’s motion to dismiss (motion seq. no. 001):

Notice of Motion/Affirm. of Counsel/Memo of Law/Exhibits.....	1
Affirm. of Counsel in Opp. to Motion/Exhibits.....	2
Reply Affirm. in Supp/Exhibits.....	3

HON SALIANN SCARPULLA, J.:

Plaintiff Bindela Construction LLC (“Plaintiff”) commenced this action to recover sums for home improvement work that it performed at defendant Darren Thomas Campo’s (“Campo”) apartment located at 135 West 70th Street, Apt. 9G, New York, NY (“the property”). Campo moves to dismiss the complaint pursuant to CPLR §§ 3211(a)(1) and (a)(7) and to vacate Plaintiff’s mechanic’s lien against the property pursuant to Lien Law § 19.

In the complaint, Plaintiff alleges that it performed home improvement work at Campo's apartment, pursuant to a contract that Plaintiff and Campo allegedly entered into on or about September 2011. Plaintiff claims that Campo agreed to pay \$416,135.38 for the home improvement work.

Plaintiff alleges that Campo refused to pay the remaining balance due on the contract, \$126,135.38. On April 23, 2012, Plaintiff filed a mechanic's lien against the property in the amount of \$126,135.38.

In this action, Plaintiff asserts three causes of action against Campo for account stated, breach of contract, and unjust enrichment. Plaintiff seeks to recover \$126,135.38, plus interest from April 15, 2012.

In the current motion, Campo argues that the complaint should be dismissed because: (1) Plaintiff failed to allege that it is a licensed home improvement contractor as required by CPLR § 3015(e); (2) no contract exists between Plaintiff and Campo to support the mechanic's lien; and (3) Plaintiff never properly served the mechanic's lien.

In his affidavit, Campo states that he never hired Plaintiff – Bindela Construction LLC – to perform home improvement work. Campo states that, in or around March 2011, he hired another entity named “Bindela Construction” to perform renovation work. Campo states that the invoices he received were from Bindela Construction and that he paid a total of \$290,000 to Bindela Construction.¹

¹ Campo states that he paid five checks to “Bindela Construction” and one check to “John Bindela Construction” at John Bindela's request.

In opposition, Plaintiff argues that its complaint should not be dismissed because:

(1) Plaintiff is a licensed contractor; (2) a contract exists between Plaintiff and Campo; and (3) Plaintiff properly served the mechanic's lien.

Plaintiff asserts that it is duly licensed as a general contractor by the NYC Department of Buildings, and that its principal Iancu Bindela ("Mr. Bindela") is a licensed home improvement salesperson with the NYC Department of Consumer Affairs.

Plaintiff submits several documents including: (1) a copy of a NYC Department of Buildings web page, which shows that "Bindela Construction LLC" is an active general contractor, with an expiration date of May 16, 2013; and (2) a copy of a New York City Department of Consumer Affairs "home improvement salesperson" license issued to Mr. Bindela from September 13, 2011 to October 31, 2013.

Plaintiff also submits an affidavit from Mr. Bindela. In his affidavit, Mr. Bindela states "I have been doing business as Bindela Corporation since 2001, and in March 2009 I have opened a limited liability company called Bindela Construction [Plaintiff], that took over duties and responsibilities of Bindela Corp."

Plaintiff argues that its principal Mr. Bindela is authorized to perform home improvement contractor services as his trade on the basis that: (a) Plaintiff assumed Bindela Corp.'s obligations, duties, and privileges on May 21, 2012; and (b) Bindela Corp.'s license remains in Mr. Bindela's name. Plaintiff submits a copy of a NYC Department of Consumer Affairs web page, which lists "Bindela Corp." as a home improvement contractor.

Discussion

CPLR § 3015(e) provides that where a “plaintiff’s cause of action against a consumer arises from the plaintiff’s conduct of a business which is required by state or local law to be licensed by the department of consumer affairs . . . the complaint shall allege, as part of the cause of action, that plaintiff was duly licensed at the time of services rendered and shall contain the name and number, if any, of such license and the governmental agency which issued such license.”

New York City Administrative Code § 20-387 provides that “[n]o person shall solicit, canvass, sell, perform or obtain a home improvement contract as a contractor or salesperson from an owner without a license therefor.”

A home improvement contractor who is unlicensed at the time that it performs work forfeits the right to recover damages based on breach of contract or quantum meruit, as well as the right to foreclose on a mechanic’s lien. *Kamco Supply Corp. v. JMT Brothers Realty, LLC*, 98 A.D.3d 891, 891 (1st Dep’t 2012); *Flax v. Hommel*, 40 A.D.3d 809, 810 (2d Dep’t 2007).

I find here that Campo is entitled to dismissal of the complaint. Plaintiff failed to allege that it was a duly licensed home improvement contractor when it rendered services to Campo from September 2011 to April 2012. A plaintiff’s failure to allege that it was licensed under the New York City Administrative Code requires dismissal of the complaint. *See Cappadona v. Salman*, 228 A.D.2d 632, 633 (2d Dep’t 1996).

Moreover, Plaintiff's documents fail to demonstrate that it was a licensed home improvement contractor during the relevant time period. Plaintiff submitted evidence that it currently holds a general contractor's license from NYC Department of Buildings, but this evidence fails to demonstrate that Plaintiff was a home improvement contractor licensed by NYC Department of Consumer Affairs from September 2011 to April 2012.

Further, Plaintiff does not offer any support for its claim that it possessed a valid license based on Mr. Bindela's home improvement salesperson license, or that it was authorized to use the license of another entity, Bindela Corp. A plaintiff licensed under one corporate name violates licensing law when it performs home improvement work under a different legally assumed name. *J.G. Cerasuolo Const., Inc. v. Tyler*, 35 A.D.3d 376, 377-78 (2d Dep't 2006).

Based on Plaintiff's failure to allege that it was a licensed home improvement contractor at the time that it rendered services to Campo, I grant Campo's motion to dismiss the complaint.

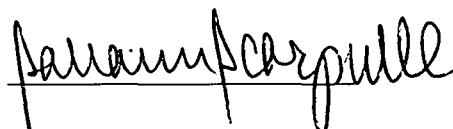
In accordance with the foregoing, it is

ORDERED that defendant Darren Thomas Campo's motion to dismiss is granted, and the complaint is dismissed, and plaintiff Bindela Construction LLC's mechanic's lien against the property is ordered to be discharged.

This constitutes the decision and order of this Court.

Dated: New York, New York
August 2, 2013

ENTER:

A handwritten signature in cursive script, appearing to read "Saliann Scarpulla", written over a horizontal line.

Saliann Scarpulla, J.S.C.