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| 211 W. 18th Realty, LLC v Cetra/Ruddy Inc. |
| 2016 NY Slip Op 31754(U) |
| September 19, 2016 |
| Supreme Court, New York County |
| Docket Number: 651034/10 |
| Judge: Jennifer G. Schechter |
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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: PART 57

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 211 WEST 18TH REALTY, LLC,

Plaintiff,

DECISION AND ORDER

-against-

Index No. 651034/10

CETRA/RUDDY INCORPORATED, JOHN CETRA, RA
 and NANCY RUDDY, RA,

Defendants.

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 JENNIFER G. SCHECTER, J.:

Plaintiff 211 West 18th Street, LLC (211) developed property located at 211 West 18th Street in Manhattan. It commenced this action against defendants seeking recovery for breach of contract, architectural malpractice and negligent misrepresentation. Defendant Cetra Ruddy Incorporated (CRI), which contracted for architectural services for the project, asserted counterclaims for remaining unpaid fees based on breach of contract, unjust enrichment and an account stated.

After a several-week-long trial, the jury found in favor of defendants on all of plaintiff's claims. Specifically, the jury found that CRI did not breach its contract with plaintiff, that neither CRI nor John Cetra committed malpractice and that none of the defendants made negligent misrepresentations to plaintiff. The jury further found in favor of CRI on its counterclaims, concluding that 211 breached the parties' agreement, was unjustly enriched as a result of services rendered by CRI and that CRI was entitled to recover based on an account stated. The jury awarded CRI \$146,790.64.

211 now moves to set aside the verdict. Its motion is denied.

Counterclaims

211 urges that CRI cannot recover because it "was unlawfully practicing architecture as a domestic business corporation and unlawfully splitting fees with an unlicensed person, Nancy Ruddy" (Memorandum of Law in Support [Supp] at 6). Significantly, 211 does not cite a single case where recovery was not permitted when the architectural work was performed by licensed architects.

This case is not materially distinguishable from *SKR Design Group, Inc. v Yonehama, Inc.*, 230 AD2d 533, 535 (1st Dept 1997). There, plaintiff, which sought to recover unpaid fees, was "not a professional corporation, but rather a regular business corporation, and thus was prohibited from entering into a contract for architectural services" (*id.*). Because it submitted proof that "all of the architectural work was done by a licensed architect" and all formal plans used for the project were signed, sealed and stamped by a registered architect, the court concluded that the parties' contract was enforceable and was not void as against public policy (*id.*).

211 overstates the significance of the contractual provision in *SKR Design Group, Inc.*, which set forth that

architectural work would be performed by a licensed architect. "Since the purpose of the licensing requirements is to ensure that the regulated work is performed by those with necessary skills and training," the contract need not specifically designate that the practice of architecture will be performed by licensed architects as a prerequisite for recovery (*id.* at 537). It goes without saying that in order for one to recover for architectural services those services must be provided by a licensed professional.

"Where [licensed architects] performed all of the services despite not being named in the contract, as here, the effectiveness of the regulatory scheme is not weakened. This is true because the licensed [professionals] selected [remain] 'inescapably subject to the educational, regulatory and punishment mechanisms of the licensing entity.' Ultimately, it is a specific license, not a specific name [or a contractual provision], which the law requires. In [*Charlebois v J.M. Weller Assocs.*, 72 NY2d 587 (1988) and *SKR Design Group, Inc.*], as here, all the [architectural] work was performed by [licensed people], and was substantially completed at significant cost. It would be improper for the Education Law to be used 'as a sword for personal gain rather than a shield for the public good'" (*id.* at 537-538).

Because the evidence established that the architectural services were rendered by licensed architects--John Cetra and

Jeff Rosenberg--and because CRI will not be awarded duplicative damages despite a finding that it is entitled to recovery for unpaid fees under several theories, plaintiff's motion to set aside the verdict on defendant's counterclaim is denied.

New Trial on Plaintiff's Claims

211 has not established a basis for setting aside the verdict or ordering a new trial on its claims.

211 argues that it was reversible error to admit evidence derived from Gary Brown's Connecticut matrimonial proceeding. Part of the damages that plaintiff sought included interest expenses on borrowed money and loan extension fees that were alleged to have been necessary to keep the project going. At trial, Gary Brown testified that he used all of his money--"every dollar"--on the project and about his financial situation, including "\$300,000 in credit cards outstanding" (Affirmation in Opposition, Ex G at 2369). He explained that any cash that he had was put in the project to keep it going (*id.* at 2370). Mr. Brown put his financial status at issue and, in response, defendants used court findings to question the circumstances that Mr. Brown conveyed. The fact that a Connecticut court concluded that Mr. Brown lived on between \$600,000 and \$1 million of tax free income during the relevant time and that he was providing his wife \$40,000 monthly and

living a "glorious life style" bears on the credibility of Mr. Brown's testimony and on mitigation of damages. Because the questioning based on the Connecticut determinations focused on findings related to Mr. Brown's financial status during the relevant time period, it was relevant and was not, as 211 now contends, unduly prejudicial.

The court decisions themselves, moreover, were only admitted into evidence subject to redaction of irrelevant material. Because the jury was not given all of the exhibits and never requested to see the Connecticut determinations, nothing "palpably irrelevant . . . improperly tainted the jury deliberations" (Supp at 10).*

Finally, a new trial is not warranted based on the court's refusal to send all of the evidence, which included hundreds of documents, into the jury room at plaintiff's request during deliberations. The jury was advised that it could examine any evidence that it requested. Nothing was improper.

Accordingly, it is ORDERED that plaintiff's motion is denied. This constitutes the Decision and Order of the Court.

Dated: September 19, 2016



HON. JENNIFER G. SCHECTER

* At oral argument, plaintiff withdrew its argument that admission of "amount evidence" as to Linmar Construction Corp. and Dubinsky Consulting Engineers P.C. mandates a new trial (Supp at 13-14).