

New York Design Architects, L.L.P. v Giuffre Realty, L.L.C.
2017 NY Slip Op 31410(U)
June 22, 2017
Supreme Court, New York County
Docket Number: 653748/2015
Judge: David B. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DAVID B. COHEN
Justice

PART 58

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NEW YORK DESIGN ARCHITECTS, L.L.P.,
Plaintiff,

INDEX NO. 653748/2015

MOTION DATE 1/22/2017

- v -

MOTION SEQ. NO. 001

GIUFFRE REALTY, L.L.C., GIUFFRE HYUNDAI LTD.,
CHRISTOPHER ERATO
Defendant.

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23

were read on this application to/for Judgment - Summary

Upon the foregoing documents, it is

Plaintiff New York Design Architects LLP (“NYDA”) entered into an agreement to provide architectural, engineering and expediting services to Guiffre Hyundai LTD for a premise located at 8904 – 8907 5th Avenue, Brooklyn NY. The premise was owned by Guiffre Realty LLC (together with Guiffre Hyundai LTD, the “Corporate Defendants”). The agreement was negotiated by Christopher Erato, the son-in-law of John Guiffre, the alleged owner of the Corporate Defendants.

NYDA alleges to have performed the services under the contract and not been paid in full. Specifically, plaintiff alleges that it performed \$64,593.10 of services, that it billed defendants for such services, and that plaintiff has only been paid \$14,254.35 leaving a balance

of \$50,338.75. Plaintiff last performed work for defendant on June 6, 2014. On June 19, 2014, defendant Guiffre Realty LLC sold the premises and conveyed a deed for the premise by Bargain and Sale Deed with Covenant, pursuant to Section 13 of the Lien Law. The Bargain and Sale Deed contained language stating “Grantor, in compliance with Section 13 of the Lien Law covenants that Grantor will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other payments.” In September 2014, plaintiff filed a lien on the property, which they subsequently withdrew as the lien was filed subsequent to the sale with the above covenant. Plaintiff commenced the instant action seeking the balance and alleging numerous causes of action against all defendants. Defendants answered and counterclaimed alleging that this action was harassment. In the instant motion, plaintiff seeks summary judgment on its (1) breach of contract; (2) promissory estoppel; (3) *quantum meruit*; (4) account stated; (5) unjust enrichment; (6) breach of bargain sale deed with covenant; and (7) breach of constructive trust causes of action. Plaintiff also seeks dismissal of defendants’ cause of action for dismissal. In support of the motion, plaintiff submitted the affidavit of Joseph Smerina, a partner at NYDA, an unsigned agreement between NYDA and Guiffre Hyundai LTD with Erato as the contact person, invoices to Guiffre Hyundai LTD and a copy of correspondence regarding the Bargain and Sale Deed with Covenant, including the deed.

In opposition, defendants submitted the affidavit of Christopher Erato. Erato stated that his father-in-law was the sole owner of the Corporate Defendants, that he never personally signed any documents or agreed to assume any personal liability, that he was not a shareholder, officer, director or manager of the Corporate Defendants. Erato also makes several other

statements with respect to the work performed by plaintiff such as that the project was never completed and that plaintiff never informed defendants of the ballooning costs or defendants would have objected. However, Erato does not state what his relationship is with the Corporate Defendants, how he knows anything about the work after negotiating the contract and what his authority is to speak on behalf of the Corporate Defendants.

Summary judgment is a drastic remedy that should not be granted where there exists a triable issue of fact (*Intergrated Logistics Consultants v. Fidata Corp.*, 131 AD2d 338 [1st Dept 1987]; *Ratner v. Elovitz*, 198 AD2d 184 [1st Dept 1993]). On a summary judgment motion, the court must view all evidence in a light most favorable to the non-moving party (*Rodriguez v. Parkchester South Condominium Inc.*, 178 AD2d 231 [1st Dept 1991]). The moving party must show that as a matter of law it is entitled to judgment [*Alvarez v. Prospect Hosp.*, 68 NY2d 320 324 [1986]]. The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]). After the moving party has demonstrated its *prima facie* entitlement to summary judgment, the party opposing the motion must demonstrate by admissible evidence the existence of a factual issue requiring a trial (*Zuckerman v. City of New York*, 49 NY2d 557 [1980]).

As a threshold matter, defendant Christopher Erato is granted summary judgment and the complaint is dismissed against him personally. His affidavit establishes that Erato is not an owner, shareholder, officer, director or manager of the Corporate Defendants. It also established that he did not sign any documents in his personal capacity, that he never assumed any personal liability and that he never acted in any personal capacity. Although plaintiff raises that it is

unclear as to his exact relationship with the Corporate Defendants, plaintiff does not dispute any of the statements made by Erato and liability cannot attach to Erato personally.

Plaintiff's motion as to the Corporate Defendants is granted in part and denied in part.

Under New York law, "[t]he elements of a cause of action for breach of contract are (1) formation of a contract between plaintiff and defendant, (2) performance by plaintiff, (3) defendant's failure to perform, (4) resulting damage" (*Morris v 702 E. Fifth St. HDFC*, 46 AD3d 478 [1st Dept 2007]). Here, plaintiff has submitted an unsigned copy of the agreement between the parties and at this pre-discovery juncture, the Court cannot determine what the final terms of the agreement were, whether plaintiff's performance met or substantially met the final terms, and whether there were any subsequent adjustments in the ensuing two and half years between the first payment and final bill. In addition, the unsigned agreement was for \$25,000, far less than the amount billed, and there were specific exclusions, the agreement also stated that "additional work, unless otherwise agreed, will **when authorized** be billed at the following rates" (emphasis added). Similarly, several of the exclusions from the price, specifically state "if required." As the Court is unable to determine all the above, plaintiff has not met its *prima facie* burden of breach of contract and that portion of plaintiff's summary judgment motion is denied.

A plaintiff's *prima facie* burden on a claim for promissory estoppel, must establish: (1) a promise that is sufficiently clear and unambiguous; (2) reasonable reliance on the promise by a party; and (3) injury caused by the reliance (*MatlinPatterson ATA Holdings LLC v Fed. Express Corp.*, 87 AD3d 836 [1st Dept 2011]; *New York City Health and Hosps. Corp. v St. Barnabas Hosp.*, 10 AD3d 489 [1st Dept 2004]). Here, the affidavit of Smerina does not state with clarity that a promise to pay was made and does not state that the terms of such promise were clear and unambiguous. To the contrary, the Court, as raised above with respect to the breach of contract

cause of action, is unable to determine a whole host of questions with respect to any alleged promise to pay. Therefore, summary judgment on this cause of action is denied.

To succeed on a claim for *quantum meruit* plaintiff must establish (1) the performance of services in good faith, (2) the acceptance of the services by the person to whom they are rendered, (3) an expectation of compensation therefor, and (4) the reasonable value of the services (*Fulbright & Jaworski, LLP v Carucci*, 63 AD3d 487 [1st Dept 2009]). The affidavit of Smerina established plaintiff's *prima facie* burden that plaintiff performed the work on the premises; that both Guiffre Hyundai LTD and Guiffre Realty LLC knew and accepted the work; that plaintiff expected to be paid and that the reasonable value of such services was \$64,593.10 as evidence by the undisputed bills. For the reasons stated above, the Court does not deem Erato's affidavit on behalf of the Corporate Defendants competent evidence, the Corporate Defendants have not rebutted plaintiff's *prima facie* case and therefore, summary judgment is granted in favor of plaintiff against the Corporate Defendants.

Plaintiff is also granted summary judgment on its account stated cause of action against Guiffre Hyundai LTD. To grant summary judgment based on accounts stated, plaintiff's *prima facie* burden is to prove that it sent defendant invoices, and that defendant failed to object to them within a reasonable time (*Interman Indus. Products, Ltd. v. R.S.M. Electron Power, Inc.*, 37 NY2d 151 [1975]; *Rockefeller Group, Inc. v. Edwards & Hjorth*, 164 AD2d 830 [1st Dept 1990]). Even if defendant did not expressly assent, it would be bound by them as accounts stated unless fraud, mistake or other equitable considerations were shown (*Rosenman Colin Freund Lewis & Cohen v. Neuman*, 93 AD2d 745 [1st Dept 1983]). Joseph Smerina affidavit established plaintiff's *prima facie* burden by stating that plaintiff sent the invoices to defendants, by submitting the invoices addressed to Errato at "Guiffre Hyundai" and by stating that defendants

never objected to the invoices. Defendants did not dispute that Guiffre Hyundai LTD was sent invoices or that they did not object to the invoices. However, the invoices were not sent to Guiffre Realty LLC and therefore summary judgment is denied as to said defendant on this cause of action.

Similarly, for unjust enrichment, the plaintiff must prove “that (1) the defendant was enriched, (2) at plaintiff’s expense, and (3) that it is against equity and good conscience to permit the other party to retain what is sought to be recovered” (*Georgia Malone & Co., Inc. v Rieder*, 19 NY3d 511, 516 [2012]). The affidavit of Smerina established plaintiff’s *prima facie* burden that defendant was enriched by the plaintiff’s performance of the work on the premises, at plaintiff’s expense and that it would be against equity and good conscience to permit the other party to retain what is sought to be recovered. As the Court does not deem Erato’s affidavit on behalf of the Corporate Defendants competent evidence, the Corporate Defendants have not rebutted plaintiff’s *prima facie* case and therefore, summary judgment is granted in favor of plaintiff against the Corporate Defendants.

The sixth and seventh causes of action are symbiotic of each other. The Deed with Covenant required Guiffre Realty LLC to hold “the right to receive such consideration as a trust fund to be applied first for the purpose of paying cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other payments.” A party claiming entitlement to a constructive trust must establish: “(1) a confidential or fiduciary relation, (2) a promise, express or implied, (3) a transfer made in reliance on that promise, and (4) unjust enrichment” (*Wachovia Sec., LLC v Joseph*, 56 AD3d 269, 271 [1st Dept 2008] citing *Bankers Sec. Life Ins. Socy. v. Shakerdge*, 49 NY2d 939 [1980]). Here, pursuant to the Deed with Covenant, Guiffre Realty LLC promised to hold in

trust the funds and apply the same first to the payment of the cost of the improvement establishing a fiduciary relationship with a party entitled to the trust funds. The buyer of the premises transferred money in reliance of the promise and Guiffre Realty LLC failed to pay plaintiff. Therefore, summary judgment is granted against Guiffre Realty LLC. However, as Guiffre Hyundai LTD did not enter into the Deed with Covenant, made no promise to hold funds in trust and there is no evidence that it received any transfer of funds in consideration of the conveyance of property, summary judgment is denied as to Guiffre Hyundai LTD on this cause of action.

Finally, plaintiff's motion for summary judgment on defendants' counterclaims is granted as that part of the motion was unopposed by defendants. In any event, as demonstrated above, plaintiff's action had merit and was not frivolous.

Accordingly, it is therefore

ORDERED, that plaintiff's motion for summary judgment on the first cause of action for breach of contract is denied; and it is further

ORDERED, that plaintiff's motion for summary judgment on the second cause of action for promissory estoppel is denied; and it is further

ORDERED, that plaintiff's motion for summary judgment on the third cause of action for *quantum meruit* is granted against the Corporate Defendants in the amount of \$50,338.75, with interest from June 6, 2014, plus costs and disbursements; and it is further

ORDERED, that plaintiff's motion for summary judgment on the fourth cause of action for account stated is granted against Guiffre Hyundai LTD in the amount of \$50,338.75, with interest from June 6, 2014, plus costs and disbursements; and it is further

ORDERED, that plaintiff's motion for summary judgment on the fifth cause of action for unjust enrichment is granted against the Corporate Defendants in the amount of \$50,338.75, with interest from June 6, 2014, plus costs and disbursements; and it is further

ORDERED, that plaintiff's motion for summary judgment on the sixth and seventh causes of actions is granted against Guiffre Realty LLC in the amount of \$50,338.75, with interest from June 6, 2014, plus costs and disbursements; and it is further

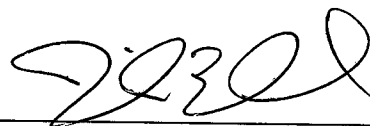
ORDERED, that plaintiff's motion for summary judgment on defendants' counterclaim is granted; and it is further

ORDERED, that defendant Erato's motion for summary judgment dismissing the action against him personally is granted.

This constitutes the decision and order of the Court.

6/22/2017

DATE



DAVID B. COHEN, J.S.C.

CHECK ONE:

- CASE DISPOSED
- GRANTED
- SETTLE ORDER
- DO NOT POST

DENIED

- NON-FINAL DISPOSITION
- GRANTED IN PART
- SUBMIT ORDER
- FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: