Prime Rebar, LLC v Foundations Group, Inc.
2018 NY Slip Op 30245(U)
February 9, 2018
Supreme Court, New York County
Docket Number: 158454/2016
Judge: Arlene P. Bluth
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 32
--X
PRIME REBAR, LLC,

Plaintiff,

-against-

FOUNDATIONS GROUP, INC., WESTCHESTER FIRE INSURANCE COMPANY, PROFESSIONAL GRADE CONSTRUCTION GROUP, INC., MR BUILDERS GROUP, INC. MICHAEL RUBENSTEIN, 204 FORSYTH STREET LLC and CHARLES SAULSON,

Defendants.

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Index No. 158454/2016
Motion Seq: 001

DECISION & ORDER
ARLENE P. BLUTH, JSC

The motion to stay and dismiss the fourth cause of action (for quantum meruit) by defendants Foundations Group, Inc., Westchester Fire Insurance Company, 204 Forsyth Street LLC and Charles Saulson (collectively, "moving defendants") is granted.

Background

This action arises out of a mechanic's lien filed by plaintiff on March 14, 2016. The lien related to a condominium construction project at 204 Forsyth Street in Manhattan. Defendant 204 Forsyth LLC ("204 Forsyth") was the owner of the property. Defendant Foundations Group, Inc. ("FGI") acted as general contractor and entered into a sub-contract in August 2015 with defendants MR Builders and Rubenstein (the "Superstructure Contract").

Plaintiff entered into a sub-contract with defendants Professional Grade Construction Group, Inc. ("PGC"), MR Builders and Rubenstein in October 2015 to supply labor and materials for rebar and steel in connection with the Superstructure Contract. Plaintiff alleges that

defendants 204 Forsyth and FGI allowed plaintiff to enter into a contract despite the fact that they planned to terminate the Superstructure Contract. Plaintiff claims it was never paid even though it provided the requested materials and labor between October 13, 2015 and December 3, 2015.

Plaintiff contends that 204 Forsyth and FGI accepted the materials knowing that plaintiff would not be paid because they were no longer doing business with MR Builders, the entity with which plaintiff had its contract. Plaintiff bases that contention on the fact that the last check issued to MR Builders was September 18, 2015 and that the replacement contractor for the superstructure work was hired by December 3, 2015 (and plaintiff's materials were provided between October 13 and December 3).

The moving defendants move to stay plaintiff's claim to foreclose a mechanic's lien until a related arbitration is completed. Plaintiff does not oppose this branch of the motion.

Discussion

"On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction. We accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (*Leon v Martinez*, 84 NY2d 83, 87-88, 614 NYS2d 972 [1994] [citations omitted]).

The moving defendants seek dismissal of plaintiff's quantum meruit cause of action (alleged against 204 Forsyth and FGI) on the grounds that it is duplicative of the breach of contract claim and that it fails to state a cause of action. The moving defendants argue that plaintiff cannot seek to recover damages from both its contract with PGC, MR Builders and Rubenstein and from a quantum meruit claim against 204 Forsyth and FGI. The moving

defendants also argue that plaintiff failed to allege any expectation of compensation from 204 Forsyth and FGI, a required element of a quantum meruit claim.

In opposition, plaintiff insists that it can plead both a breach of contract claim as well as a quasi-contract cause of action. Plaintiff also argues that it has pled a cause of action sounding in quasi- contract.

As an initial matter, the quantum meruit claim is not duplicative because plaintiff did not allege that there was a valid contract between it and 204 Forsyth and FGI. The case law relied upon by the moving defendants (*see e.g., Sebastian Holdings, Inc. v Deutsche Bank, AG.*, 108 AD3d 433, 696 NYS2d 46 [1st Dept 2013]) suggests that a quasi-contract claim is duplicative of a breach of contract cause of action where an express contract among the parties covers the same subject matter. Here, plaintiff claims that 204 Forsyth and FGI benefitted from the materials and labor supplied by plaintiff even though these entities had already decided (at the time plaintiff entered into the contract in October 2015) that they were going to terminate the Superstructure Contract with MR Builders and Rubenstein. Because there is no written contract that governs the relationship between plaintiff, 204 Forsyth and FGI, a quantum meruit claim is not duplicative of a breach of contract claim alleged against other defendants.

To state a cause of action for quantum meruit, "plaintiff must allege (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" (*Soumayah v Minnelli*, 41 AD3d 390, 391, 839 NYS2d 79 [1st Dept 2007]).

Clearly, because plaintiff fails to allege that it expected compensation from 204 Forsyth and FGI, the pleading does not state a cause of action for quantum meruit. However, in

opposition, plaintiff suggests that it should have labeled its quasi-contract cause of action as one for unjust enrichment (*see* NYSCEF Doc. No. 35, ¶ 28). Therefore, the first question for this Court is whether plaintiff is bound by the label it applies to a cause of action or whether the Court can consider whether the allegations state another cognizable cause of action.

"Plaintiffs need not label the cause of action; in fact, even if the cause of action is labeled incorrectly, it will not be dismissed if the facts alleged constitute a cognizable cause of action" (*Cole v O'Tooles of Utica, Inc.*, 222 AD2d 88, 90, 643 NYS2d 283 [4th Dept 1996]; *see also Klein v Martin,* 221 AD2d 261, 261, 634 NYS2d 74 [1st Dept 1995]). And so the next question the Court must consider is whether plaintiff has stated a cause of action for unjust enrichment.

"Unjust enrichment is a quasi-contract theory of recovery, and is an obligation imposed by equity to prevent injustice, in the absence of an actual agreement between the parties concerned. The plaintiff must show that the other party was enriched, at plaintiff's expense, and that it is against equity and good conscience to permit the other party to retain what is sought to be recovered. Further, although privity is not required for an unjust enrichment claim, a claim will not be supported unless there is a connection or relationship between the parties that could have caused reliance or inducement on the plaintiff's part" (*Georgia Malone & Co., Inc. v Ralph Rieder*, 86 AD3d 406, 408, 926 NYS2d 494 [1st Dept 2011] [internal quotations and citations omitted]).

The Court finds that plaintiff fails to state a cause of action for unjust enrichment because plaintiff did not allege that 204 Forsyth or FGI did anything to *induce* plaintiff to deliver the materials. Plaintiff's claim is, in essence, that 204 Forsyth and FGI were aware that plaintiff had

a contract with sub-contractors who were going to be replaced and that they should have taken some sort of action rather than accept the materials.

But, as the First Department stressed in *Georgia Malone*, "A mere awareness standard would result in liability for anyone who simply knew of the plaintiff's existence. Similarly, the dissent also incorrectly contends that an unjust enrichment claim can exist solely because defendants may have profited, in one form or another, from plaintiff's work. Such a broad reading improperly expands the claim of unjust enrichment, absent any contention that defendants induced plaintiff to do the work" (*id.* at 409).

Simply because 204 Forsyth and FGI knew that they were going to hire someone else for the superstructure job does not properly allege the reliance or the inducement necessary to state a claim for unjust enrichment. Therefore, fourth cause of action is hereby severed and dismissed.

Accordingly, it is hereby

ORDERED that the branch of the motion by defendants Foundations Group, Inc., Westchester Fire Insurance Company, 204 Forsyth Street LLC and Charles Saulson to stay the second cause of action for foreclosure of a mechanic's lien until a related arbitration is concluded is granted; and it is further

ORDERED that the branch of the motion to dismiss the fourth cause of action is granted and that claim is severed and dismissed.

The parties shall appear for the already-scheduled compliance conference on June 5, 2018 at 2:15 p.m.

Dated: February 9, 2018
New York, New York

ARLENE P. BLUTH, JSC.
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