| **Jerath v Bolland** |
| --- |
| 2018 NY Slip Op 31196(U) |
| June 12, 2018 |
| Supreme Court, New York County |
| Docket Number: 650174/2017 |
| Judge: Robert R. Reed |
|  |
|  |

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 43

----------X

MEENA JERATH,

Plaintiff,

-against-

Index No. 650174/2017
**DECISION/ORDER**

STEVE BOLLAND AND DALE MYER,

Defendants.

----------X

**ROBERT R. REED, J.**

Plaintiff brings this action against defendants, seeking to recover no less than $42,700.00 in damages for defendants' alleged failure to pay plaintiff for work plaintiff performed for defendants' four companies. The complaint asserts claims for (1) breach of contract and (2) reasonable value of the work, labor and services rendered by plaintiff.

In their answer, defendants assert the following affirmative defenses: (1) failure to state a cause of action; (2) statute of limitations; (3) laches, estoppel, ratification and /or waiver; and (4) lack of privity. In addition, defendants assert the following counterclaims: (1) breach of contract and (2) conversion.

Plaintiff now moves to dismiss defendants' second and third affirmative defenses, pursuant to CPLR 3211 (b), and seeks an award of attorney fees and costs. Plaintiff moves in the alternative, for an order, directing defendants to serve a supplemental bill of particulars.

Plaintiff contends that the defenses are without merit in law. Defendants counter that plaintiff's motion is premature as discovery has not taken place.

On a CPLR 3211 (b) motion to dismiss affirmative defenses, "the defendant is entitled to the benefit of every reasonable intendment of the pleading, which is to be liberally construed" (*534 E. 11th St. Hous. Dev. Fund Corp. v Hendrick,* 90 AD3d 541, 541-542 [1st Dept 2011] [internal citations omitted]). Further, "the plaintiff bears the burden of demonstrating that the defenses are without merit as a matter of law" (*id.*). Thus, "[a] defense should not be stricken where there are questions of fact requiring trial") (*id.*). Finally, in assessing any pleading, courts take note of the requirement in CPLR 3013 that "[s]tatements in a pleading . . . be sufficiently particular to give the court and parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved and the material elements of each cause of action or defense."

The second affirmative defense of statute of limitations is meritless as a matter of law. Under the applicable statute of limitations, plaintiffs were required to bring their breach of contract and unjust enrichment causes of action within six years of their accrual (*see Maya NY, LLC v Hagler*, 106 AD3d 583, 585 [1st Dept 2013]; CPLR 213 [2]). The verified complaint alleges that the occurrence giving rise to plaintiff's claim took place on November 19, 2014 (*see* complaint, ¶¶ 7, 10; *see also* CPLR 105 (u) ("[a] 'verified pleading' may be utilized as an affidavit whenever the latter is required"). Defendants do not offer a contrary timeframe. The only reference they make to any dates is in their attorney's affirmation in opposition to the instant motion, which alleges that plaintiff produced a contract dated July 9, 2009 (see Szendel, ¶¶ 26). Such reference, of course, does not address the issue of accrual. As there appears to be no genuine dispute about the date on which the breach of contract and unjust enrichment causes of action accrued, that is, November 19, 2014, there can be no genuine question about the

timeliness of those causes of action. The instant action, commenced in January 6, 2017, was brought well within the applicable six-year limitations period. Accordingly, the second affirmative defense is dismissed.

The third affirmative defense alleges, in its entirety, that "[t]he Complaint is barred, in whole or in part, by the doctrines of laches, estoppel, ratification and/or waiver" (Answer, ¶ 13). As such, this affirmative defense must be dismissed because it pleads "only a bare legal conclusion without supporting facts" (*see Commissioners of Slate Ins. Fund v Ramos.* 63 AD3d 453, 453 [1st Dept 2009]; *accord Robbins v Growney*, 229 AD2d 356, 358 [1st Dept 1996] [finding that the affirmative defenses of laches and bad faith, "set forth [with] no factual basis," should have been dismissed]).

Plaintiff also seeks to recover costs and reasonable attorney's fees incurred in connection with the instant motion, arguing that defendants' assertion of factually and legally baseless claims is frivolous. Title 22 NYCRR § 130-1.1 (a) authorizes the court, in its discretion, to award costs or sanctions "upon any party or attorney in a civil action or proceeding who engages in frivolous conduct." Here, plaintiff has not shown conduct that "is completely without merit in law" or "undertaken primarily to delay or prolong the resolution of the litigation" (22 NYCRR § 130-1.1 [c]). Therefore, plaintiff's request for reasonable costs and attorney fees is denied.

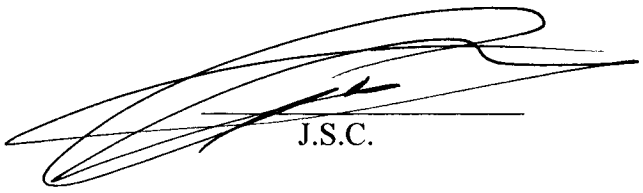
Accordingly, it is hereby

ORDERED that plaintiff's motion is granted to the extent of dismissing the second and third affirmative defenses, and the motion is otherwise denied; and it is further

ORDERED that counsel are directed to appear for a preliminary conference in Part 43, Room 581, at 111 Centre Street, on July 19, 2018, at 9:30 a.m.

Dated: June 12, 2018

ENTER:



J.S.C.