SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----------X

JEAN- LOUIS DENIOT, INC. and JEAN LOUIS DENIOT, SAS,

Plaintiffs,

--against--

DAVID MITCHELL and JAMIE MITCHELL,

Defendants.

----------X

Index Number: 650613/2018

Sequence Number 001

DECISION AND ORDER

Arthur F. Engoron, J.S.C.

In compliance with CPLR 2219(a), this Court states that the following papers, numbered 1 to 3, were used on plaintiff's motion, and defendant's cross-motion, for summary judgement:

Papers Numbered:

Notice of Motion – Affirmation – Exhibits – Memo of Law.....1
Reply Affidavit (Plaintiff) – Memo of Law.....2
Reply Affirmation (Defendant).....3

Plaintiffs Jean-Louis Deniot Inc. ("JLD Inc") and Jean Louis Deniot SAS ("JLD SAS") bring this action for breach of contract, account stated, and, in the alternative, for unjust enrichment against defendants David and Jamie Mitchell. The defendants responded with a motion to dismiss the complaints. The motion is granted in part and dismissed in part.

Background

JLD Inc is a New York Corporation located in New York, New York and is in the business of providing interior designing and related services. JLD SAS is in the same business but is located in Paris, France. Defendants are a married couple, residing in New York, NY. In early 2016, plaintiffs and defendants contracted for plaintiffs to provide interior designing and decoration services to defendants' new home. Two separate contracts were formed, one between JLD Inc and defendants, and one between

JLD SAS and defendants. As stated in the contract with JLD Inc, defendants agreed to pay $160,000, with an initial deposit of $64,000 due upon execution of the contracts, a second payment of $48,000 upon the delivery of design plans, etc., and three successive payments. As stated in the contract with JLD SAS, defendants agreed to pay $160,000 for JLD SAS's decoration design services with an initial payment of $64,000 due before the start of the project, a second payment of $16,000 due prior to the issuance of any orders for the project, and three successive payments. In both contracts defendants agreed to reimburse plaintiffs for any additional expenses incurred in carrying out the project. Plaintiffs performed the work that was to be done on the project, which consisted of providing detailed designs, plans and advice to defendants. Defendants responded to plaintiffs' invoices by paying only $50,000 and leaving over $75,000 unpaid. Defendants also terminated the contracts, stating that they were operating on an accelerated schedule, and plaintiffs were not working quickly enough to suit their needs. JLD Inc and JLD SAS both assert that they are owed the unpaid balance as damages.

Discussion

JLD Inc and JLD SAS each bring a cause of action for breach of contract. They allege that defendants did not perform their part of the contract. See VisionChina Media Inc. v Shareholder Representative Servs., LLC, 109 AD3d 49, 58 (1st Dept 2013) ("To state a claim for breach of contract, a plaintiff must allege: (1) the parties entered into a valid agreement; (2) plaintiff performed; (3) defendant failed to perform; and (4) damages"). Plaintiffs state that although they performed under the contract, they never received full payment for their work, and they seek the unpaid balance as damages. Defendants now move to dismiss this cause of action on the ground that plaintiffs were engaging in the unauthorized practice of architecture.

Under New York law, if plaintiffs performed architectural services for defendants, and were not licensed to do so, then they would not be entitled to compensation. See Dr. Alex Greenberg, DDS, PC v SNA Consultants, Inc., 55 AD3d 418, 418 (1st Dept 2008). New York Education Law § 7301 defines

architecture "as rendering or offering to render services which require the application of the art, science, and aesthetics of design and construction of buildings, groups of buildings, including their components and appurtenances and the spaces around them". Plaintiffs state that their duties were limited to interior designing, for which they were hired. It is true that the phrase "interior architecture" appears in the JLD Inc contract; however, this is due to it being a literal translation of the French phrase "architecture d'intérieur" which actually means "interior design." Therefore, due to this mistranslation, every time the phrase "interior architecture" appears, it actually means interior design. Additionally, this contract limited the plaintiffs' duties to interior designing. The contract states that if the defendants wanted architectural work performed, then, "The Client [defendants] agrees to be solely responsible for retaining a suitable person (architect, project manager, works coordinator or otherwise)." In the JLD SAS contract, it is explicitly stated that JLD SAS was hired "for the decoration of the spaces" and there is no mention that JLD SAS is to do any interior architectural work. Therefore, according to the contracts, the plaintiffs were not responsible for any of the interior architectural work.

Plaintiffs also each plead a cause of action for account stated. "An account stated is an agreement between the parties to an account based upon prior transactions between them with respect to the correctness of the separate items composing the account and the balance due, if any, in favor of one party or the other." Shea & Gould v Burr, 194 AD2d 369, 370 (1st Dept 1993). The complaint alleges that JLD Inc issued invoices to defendants in the amount of $48,363, and defendants did not object to their accuracy. However, defendants failed to pay that amount. JLD SAS gave defendants an invoice for 26,429.45 euros, and defendants again did not pay. Defendants move to dismiss this cause of action on the ground that it is duplicative of the cause of action for breach of contract. However, these two causes of action are quite different, as they have different elements (see above). Therefore, they do not duplicate one another.

Defendants also move to dismiss both plaintiffs' individual causes of action for unjust enrichment. Plaintiffs argue that defendants retaining the benefits of plaintiffs' work was an unjust enrichment. See Schroeder v Pinterest, Inc., 133 AD3d 12, 26 (1st Dept 2015) ("[The elements of unjust

enrichment are] (1) the [defendant] was enriched, (2) at [plaintiff's] expense, and (3) that it is against equity and good conscience to permit the [defendant] to retain what is sought to be recovered"). However, defendants move to dismiss this cause of action because they argue that the facts and damages for this cause of action are duplicate to those of the breach of contract cause of action. Courts routinely dismiss unjust enrichment causes of action if there is a contract governing the subject matter. Pappas v Tzolis, 20 NY3d 228, 234 (2012). In the case at hand, there are contracts that govern the subject matter, and both plaintiffs have stated causes of action for breach of contract. It is undisputed that the contracts govern the subject matter at hand. Therefore, since they are duplicate causes of action, the causes of action for unjust enrichment plead by JLD Inc and JLD SAS should be dismissed.

Defendants allege that JLD SAS does not have the legal capacity to sue and therefore JLD SAS's complaint should be dismissed. Defendants cite Business Corporation Law § 1312(a), which states, "a foreign corporation doing business in New York without authority may not maintain an action in New York until it has been authorized to do business and paid the necessary fees." However, the mere fact that JLD SAS provided decoration services to defendants in New York does not mean that JLD SAS is doing business within the means of the statute, and so JLD SAS is not required to obtain authorization to do business in New York. Here, defendants have shown nothing more than that JLD SAS contracted with them to recommend, sell, and ship various furniture and decorative items to them in New York, as incidental services to the interior design services being provided by JLD Inc, which is a New York corporation. A foreign corporation's activities "limited to solicitation of business and facilitating the sale and delivery of its merchandise incidental to its business in interstate and international commerce ... do not constitute 'doing business in this state' within the contemplation of section 1312 of the Business Corporation Law." Uribe v Merchants Bank of New York, 266 AD2d 21, 22 (1st Dep't 1999). Thus, JLD SAS is indeed legally able to sue defendants.

Defendants state that if the action is not dismissed, then JLD SAS should be required to post security for costs pursuant to CPLR 8501(a) and CPLR 8503 which, according to defendants, state that nonresident plaintiffs maintaining lawsuits in New York courts must post security for the costs for which

they would be liable if their lawsuits were unsuccessful. However, CPLR 8501(a) states, "Except where the plaintiff has been granted permission to proceed as a poor person or is the petitioner in a habeas corpus proceeding, upon motion by the defendant without notice, the court or a judge thereof shall order security for costs to be given by the plaintiffs where none of them is a domestic corporation, a foreign corporation licensed to do business in the state or a resident of the state when the motion is made." In the case at hand, JLD Inc is a domestic corporation based in New York. Therefore, JLD SAS would not be required to post security.

Conclusion

Defendants' motion to dismiss is granted to the extent that the third and sixth causes of action for unjust enrichment are dismissed. THIS MATTER IS SCHEDULED FOR A Preliminary Conference on 9/18/2018 at 10:00 am, Before PART 37, 60 Centre St., Room 418.

Dated: July 20, 2018

Arthur Engoron, J.S.C.