

Wonder Works Constr. Corp. v 421 Kent Dev., LLC

2018 NY Slip Op 32189(U)

September 5, 2018

Supreme Court, New York County

Docket Number: 650382/2017

Judge: Barry Ostrager

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART IAS MOTION

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WONDER WORKS CONSTRUCTION CORP.,
Plaintiff,

- v -

421 KENT DEVELOPMENT, LLC, XIN DEVELOPMENT GROUP INTERNATIONAL, INC., XIN DEVELOPMENT MANAGEMENT EAST, LLC D/B/A XIN DEVELOPMENT MANAGEMENT, LLC, 421 KENT DEVELOPMENT HOLDCO, LLC, XINYUAN REAL ESTATE, LTD., FORTRESS CREDIT CO., LLC, KENT EB-5 LLC, KENT EB-5 MANAGEMENT, LLC, XIN NY HOLDING, LLC, ANTHONY'S CUSTOM CLOSETS, INC., LITTLE FERRY CLOSETS LLC, RESPLANDECER, INC. D/B/A R 24/7 MANPOWER, TOP SHELF ELECTRIC CORPORATION, COOPER ELECTRIC SUPPLY CO., CARDINAL SHOWER ENCLOSURES, INC., METROPOLIS HVAC CONTRACTORS, INC., CRESCENT WALL SYSTEMS, INC., JMP INSTALLATIONS, INC., EVEREST SCAFFOLDING INC., UNIVERSAL SERVICES GROUP, LTD., DENTON STONeworld, INC., CELTIC BUILDING SUPPLIES, INC., ROSEMOUNT INTERIORS, INC., DRAWBRIDGE SPECIAL OPPORTUNITIES FUND, LP, EMIGRANT REALTY FINANCE, LLC, NEW YORK CITY DEPARTMENT OF TRANSPORTATION, U.S. SPECIALTY INSURANCE COMPANY, JOHN DOE 1 THROUGH JOHN DOE 10 AND JANE DOE 1 THROUGH JANE DOE 10

Defendant.

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INDEX NO. 650382/2017
MOTION DATE N/A
MOTION SEQ. NO. 002

DECISION AND ORDER

HON. BARRY R. OSTRAGER:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 90, 91, 92, 93, 94, 95, 96, 105, 111, 112, 113, 114, 115, 137, 139, 141 were read on this motion to/for DISMISS

Defendants 421 Kent Development, LLC ("421 Kent"), XIN Development Group International, Inc., XIN Development Management East, LLC, 421 Kent Development Holdco, LLC, and XIN NY Holding, LLC (the "Moving Defendants") move to dismiss the fifth, sixth, seventh, and eighth causes of action in Plaintiff Wonder Works Construction Corp.'s ("Wonder

Works”) second amended complaint pursuant to CPLR 3211(a)(7). The motion to dismiss is granted for the reasons stated herein.

The present dispute arises from a large real estate development project. In 2012, Defendant Xinyuan Real Estate, Ltd. (“Xinyuan”) purportedly purchased a lot in the Williamsburg area of Brooklyn for \$54,346,800 to build luxury residential condominiums (the “Project”). Xinyuan allegedly created multiple corporate entities to oversee the Project. One such entity, 421 Kent, hired Wonder Works as construction manager to build the Project. Wonder Works alleges that it successfully managed the Project before being terminated on the verge of completion on January 3, 2017. Wonder Works further alleges that it earned a total of \$161,115,689.66 under its contract with 421 Kent but received only partial payment of \$139,154,018.56, leaving \$21,961,671.27 still due and owing at the time Wonder Works commenced this litigation.

The Moving Defendants move to dismiss certain of Plaintiff’s causes of action, sounding in conversion, account stated, quantum meruit, and unjust enrichment, as duplicative of Plaintiff’s cause of action for breach of contract. Plaintiff argues, in opposition, that it performed extra work outside the scope of the contract and that the scope of the contract is in dispute. Thus, Plaintiff asserts that it may plead quasi-contract causes of action in the alternative.

In deciding a motion to dismiss pursuant to CPLR 3211(a)(7), a court must determine whether the allegations in the complaint “fit within any discernible legal theory.” *Sheila C. v. Povich*, 11 A.D.3d 120, 122 (1st Dep’t 2004). However, “conclusory allegations—claims consisting of bare legal conclusions with no factual specificity—are insufficient to survive a motion to dismiss.” *Godfrey v. Spano*, 13 N.Y.3d 358, 373 (2009). Further, New York courts have routinely recognized that claims may be dismissed as duplicative where such claims are

indistinct from a breach of contract claim. *See Hagman v. Swenson*, 149 A.D.3d 1, 7 (1st Dep't 2017) (account stated claim dismissed as duplicative of breach of contract claim); *Sebastian Holdings, Inc. v. Deutsche Bank, AG.*, 108 A.D.3d 433, 433 (1st Dep't 2013) (conversion claim dismissed as duplicative of breach of contract claim); *Andrews v. Cerberus Partners*, 271 A.D.2d 348, 348 (1st Dep't 2000) (unjust enrichment claim dismissed as duplicative of breach of contract claim); *Tierney v. Capricorn Inv'rs, L.P.*, 189 A.D.2d 629, 632 (1st Dep't 1993) (quantum meruit claim dismissed as duplicative of breach of contract claim).

Here, Plaintiff's bare, conclusory allegation that it performed "extra work" outside the scope of the original construction contract is insufficient to support its quasi-contract claims alongside a properly pleaded breach of contract claim. Plaintiff does not allege what the "extra work" was that it performed, and Plaintiff does not seek distinct relief for such "extra work"—Plaintiff seeks an identical dollar figure for each claim at issue here.

The existence of a valid and enforceable contract governing the relevant subject matter "preclude[s] recovery in quasi-contract for events arising out of the same subject matter." *Lantau Holdings Ltd. v. General Pacific Group Ltd.*, 163 A.D.3d 407, 407 (1st Dep't 2018). Plaintiff does not dispute the existence of an enforceable contract governing the Project, but rather argues that the scope of said contract is disputed as to certain change orders. For this reason, the motion to dismiss the unjust enrichment and quantum meruit claims is granted without prejudice to Plaintiff reinstating such claims following discovery and/or particularization of the "extra work" outside the breach of contract claim.

Plaintiff's claims sounding in conversion and account stated are dismissed with prejudice. The claim for conversion fails because it is entirely duplicative of the claim for breach of contract. *Cece & Co. Ltd. v. U.S. Bank Nat. Ass'n*, 153 A.D.3d 275, 282 (1st Dep't 2017). The

account stated claim is also dismissed with prejudice “as simply another means to attempt to collect under a disputed contract.” *Hagman v. Swenson*, 149 A.D.3d 1, 7 (1st Dep’t 2017) (internal quotations omitted).

Accordingly, it is hereby

ORDERED that the motion to dismiss is granted. The Clerk is directed to sever Defendants 421 Kent Development, LLC, XIN Development Group International, Inc., XIN Development Management East, LLC, 421 Kent Development Holdco, LLC, and XIN NY Holding, LLC from the fifth, sixth, seventh, and eighth causes of action.

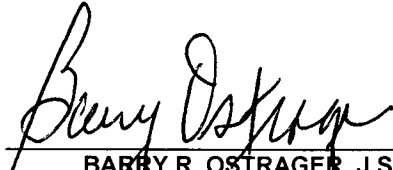
9/5/2018
DATE

CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION

APPLICATION: GRANTED DENIED GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER

INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE


BARRY R. OSTRAGER, J.S.C.