

**Montfort Bros., Inc. v Northeast Landscape &  
Masonry Assoc., Inc.**

2018 NY Slip Op 33739(U)

November 29, 2018

Supreme Court, Dutchess County

Docket Number: Index No. 2017-50481

Judge: Christi J. Acker

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

To commence the 30-day statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

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

-----X  
MONTFORT BROTHERS, INC.,

Plaintiff,

-against-

NORTHEAST LANDSCAPE & MASONRY  
ASSOCIATES, INC., HOLLISTER  
CONSTRUCTION SERVICES, LLC, GRAND  
MAUJER DEVELOPMENT, LLC, and ARCH  
INSURANCE COMPANY,

Defendants.  
-----X

**DECISION AND ORDER**

Index No.: 2017-50481

The following papers, numbered 1 to 28, were read on Plaintiff Montfort Brothers, Inc.'s ("Plaintiff") motion for an Order pursuant to CPLR §3025(b) granting leave to amend the Verified Complaint in this matter:

Notice of Motion-Affirmation of Darren H. Fairlie, Esq.-Exhibits A-D..... 1-6  
Affirmation in Opposition of Sarah R. Gitomer, Esq.-Exhibits A-I..... 7-17  
Affirmation in Reply of Darren H. Fairlie, Esq.-Exhibits A-J..... 18-28

Plaintiff commenced the instant action through the filing of a summons and complaint on or about February 28, 2017. The Complaint seeks, *inter alia*, damages in the amount of \$108,871.74, plus interest, for materials that were supplied to and used in connection with a project at 774 Grand Street, Brooklyn, New York. The Complaint contains three causes of action. The First Cause of Action is against all Defendants and seeks a declaration that Plaintiff's mechanics

lien filed against Defendant Grand Maujer Development, LLC, as owner of the property, be declared valid and that the surety (Defendant Arch Insurance Company) on the bond given to discharge the lien be adjudged liable to Plaintiff for the amount of such lien. The Second and Third Causes of Action are asserted only against Defendant Northeast.<sup>1</sup>

Plaintiff now moves to amend the Complaint to add a Fourth Cause of Action against Defendant Hollister sounding in promissory estoppel. Plaintiff asserts that this proposed claim arises from a joint payment/joint check agreement (“JPA”) that was identified in the original Complaint at paragraph 8. As such, Plaintiff argues that the proposed amendment merely presents an additional theory of recovery against Defendant Hollister based upon a foundational fact that was alleged and disputed in the original pleadings and which has been explored through the depositions in this matter.

“Leave to amend the pleadings ‘shall be freely given,’ provided the amendment is not palpably insufficient, does not prejudice or surprise the opposing party, and is not patently devoid of merit [citations omitted].” *Garafola v. Wing Inc.*, 139 AD3d 793, 793–94 [2d Dept. 2016]. “A determination whether to grant such leave is within the Supreme Court’s broad discretion, and the exercise of that discretion will not be lightly disturbed.” *Gitlin v. Chirinkin*, 60 AD3d 901, 902 [2d Dept. 2009].

Defendants Hollister Construction Services, LLC (“Hollister”), Grand Maujer Development, LLC (“Grand Maujer”) and Arch Insurance Company (“Arch”) (hereinafter collectively referred to as “Hollister Defendants”) oppose Plaintiff’s motion on various grounds.

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<sup>1</sup> Default Judgment was granted against Defendant Northeast by Decision and Order dated October 6, 2017.

It is uncontested that in its Answer, the Hollister Defendants denied the allegations regarding the JPA and asserted an affirmative defense that there was no agreement between Plaintiff and Defendant Hollister for payment on the Project. Accordingly, the Hollister Defendants cannot now rely upon the Joint Payment Agreement to argue that the proposed promissory estoppel claim is palpably insufficient and/or patently devoid of merit. Moreover, although the Hollister Defendants argue that their legal fees will be significantly increased because additional discovery will be required if the amendment is allowed, Defendants fail to identify the nature and extent of discovery that will allegedly be required. Plaintiff has demonstrated that the issues underlying the promissory estoppel claim have been explored extensively at numerous depositions and the Hollister Defendants have not demonstrated otherwise.

As such, the Court finds that amendment of Plaintiff's complaint will not result in any prejudice or surprise to the Hollister Defendants. Moreover, the Court has reviewed the Amended Complaint and determines that it is not palpably insufficient or patently devoid of merit.

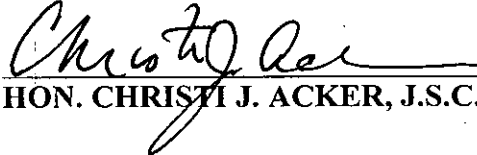
The Court has considered the additional contentions of the parties not specifically addressed herein and finds them unavailing. To the extent any relief requested by either party was not addressed by the Court, it is hereby denied. Accordingly, it is hereby

ORDERED that Plaintiff's motion to amend the Complaint is granted; it is further

ORDERED that Plaintiff shall serve a copy of the Amended Complaint in the form annexed to its motion as Exhibit A within 10 days from the date of this Order, and Defendants shall answer in accordance with the CPLR.

The foregoing constitutes the Decision and Order of the Court.

Dated: Poughkeepsie, New York  
November 29, 2018

  
HON. CHRISTI J. ACKER, J.S.C.

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