

Anaxos, LLC v Right Temp Mech. Inc.

2021 NY Slip Op 33106(U)

November 9, 2021

Supreme Court, Queens County

Docket Number: Index No. 708489/2021

Judge: Denis J. Butler

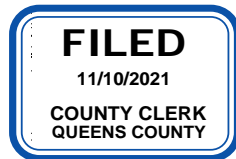
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE DENIS J. BUTLER IAS Part 12
Justice



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ANAXOS, LLC,

Plaintiff(s),

-against-

RIGHT TEMP MECHANICAL INC.,

Defendant(s).

Index
Number: 708489/2021

Motion Date:
October 19, 2021

Motion Seq. No.: 001

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The following papers read on this motion by defendant for an order pursuant to CPLR 3211(a)(3), CPLR 3211(a)(1), and CPLR 3211(a)(7), dismissing plaintiff's complaint, and upon plaintiff's cross-motion seeking to consolidate the action bearing Index No. 708489/2021, with the action bearing Index No. 703172/2021, in Supreme Court, Queens County, under Index No. 703172/2021, for all purposes.

Table with 2 columns: Document Name, Papers Numbered. Includes Notice of Motion, Exhibits, Cross-Motion, Affirmation, Reply to Cross-Motion, and Reply Affirmation.

Upon the foregoing papers, it is ordered that this motion and cross-motion are determined as follows:

Plaintiff brings this action for breach of contract as an alleged third party beneficiary of a contract between defendant Anaxos, LLC, and non-party, JLS Designs.

Defendant brings this motion to dismiss plaintiff's complaint pursuant to CPLR 3211(a)(3), CPLR 3211(a)(1), and CPLR 3211(a)(7).

The first branch of defendant's motion seeks to dismiss plaintiff's complaint alleging plaintiff lacks legal capacity to sue pursuant to CPLR 3211(a)(3).

A third party's right to enforce a contract is permitted, "when the third party is the only one who could recover for the breach of contract

or when it is otherwise clear from the language of the contract that there was an intent to permit enforcement by the third party. (Dormitory Auth. Of the State of N.Y. v. Samson Constr. Co., 30 N.Y. 3d 704 (2018)) "An intent to benefit the third party must be shown, and, absent such intent, the third party is merely an incidental beneficiary with no right to enforce the particular contracts." (Dormitory Auth. Of the State of N.Y. v. Samson Constr. Co., 30 N.Y. 3d 704 (2018))

"With respect to construction contracts, we have generally required express contractual language stating that the contracting parties intended to benefit a third party by permitting that third party "to enforce [a promisee's] contract with another." (Port Chester Elec. Constr. Corp. V. Atlas, 40 NY2d 652 (1976)). "In the absence of express language, "[s]uch third parties are generally considered mere incidental beneficiaries." (Dormitory Auth. Of the State of N.Y. v. Samson Constr. Co., 30 N.Y. 3d 704 (2018)).

Defendant contends plaintiff lacks legal capacity to bring this action, as plaintiff is not the sole intended third party beneficiary of a contract between defendant Right Temp Mechanical Inc., and non-party JLS Designs. In support, defendant submits the contract between defendant Right Temp. Mechanical Inc., and non-party JLS Designs, wherein plaintiff is not mentioned as an intended third party beneficiary, and the contract language does not contain an enforcement mechanism for plaintiff to sue as a third party beneficiary. (See NYSCEF Doc. 8)

Plaintiff, Anaxos LLC, in opposition, contends it has legal capacity to bring this action, as Anaxos LLC was the intended third-party beneficiary of the contract between defendant Right Temp Mechanical Inc., and non-party JLS Designs.

Plaintiff failed to demonstrate that it was the sole third-party beneficiary who could recover for a breach of contract, or, that the contract between defendant Right Temp Mechanical Inc., and non-party JLS Designs demonstrates an intent to permit enforcement by plaintiff. (Dormitory Auth. Of the State of N.Y. v. Samson Constr. Co., 30 N.Y. 3d 704 (2018)). "In the absence of express language, "[s]uch third parties are generally considered mere incidental beneficiaries." (Dormitory Auth. Of the State of N.Y. v. Samson Constr. Co., 30 N.Y. 3d 704 (2018)).

As such, the first branch of defendant's motion seeking to dismiss plaintiff's complaint pursuant to CPLR 3211(a)(3) is granted.

A motion to dismiss pursuant to CPLR 3211(a)(1) will be granted only if the "documentary evidence resolves all factual issues as a matter of law, and conclusively disposes of the plaintiff's claim." Contracts qualify as documentary evidence. (Fontanetta v. Doe, 73 A.D. 3d 78 (2d. Dept. 2010)).

Defendant contends plaintiff is not in privity of contract with defendant. In support, defendant submits a contract solely between

defendant and non-party JLS Designs which demonstrates plaintiff is not mentioned as the intended third party beneficiary to the contract.

In opposition, plaintiff contends it was the intended beneficiary of the contract between defendant, and non-party JLS Designs.

As plaintiff failed to demonstrate either, that it was the sole third-party beneficiary who could recover for a breach of contract, or, that the contract language demonstrates "an intent to permit enforcement by the third party," the contractual evidence submitted by defendant fails to resolve all factual issues as a matter of law. (Dormitory Auth. Of the State of N.Y. v. Samson Constr. Co., 30 N.Y. 3d 704 (2018)).

As such, the second branch of defendant's motion seeking to dismiss plaintiff's complaint pursuant to CPLR 3211(a)(1) is granted.

The third branch of defendant's motion seeks to dismiss plaintiff's complaint pursuant to CPLR 3211(a)(7).

In determining a motion brought pursuant to CPLR 3211 (a) (7), "the court must afford the pleading a liberal construction, accept all facts as alleged in the pleading to be true, accord the plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory." (Antoine v Kalandrishvili, 150 AD3d 941, 941 [2d Dept 2017]).

"Dismissal of the complaint is warranted if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery." (Connaughton v Chipotle Mexican Grill, Inc., 29 NY3d 137, 142 [2017]). "Where, as here, evidentiary material is submitted and considered on a motion to dismiss a complaint pursuant to CPLR 3211 (a) (7), and the motion is not converted into one for summary judgment, the question becomes whether the plaintiff has a cause of action, not whether the plaintiff has stated one." (Hallwood v Incorporated Vil. of Old Westbury, 130 AD3d 571, 572 [2d Dept 2015]; Agai v Liberty Mut. Agency Corp., 118 AD3d 830 [2d Dept 2014]).

Plaintiff failed to demonstrate either, that it was the sole third-party beneficiary who could recover for a breach of contract, or, that the contract language demonstrates "an intent to permit enforcement by the third party." (Dormitory Auth. Of the State of N.Y. v. Samson Constr. Co., 30 N.Y. 3d 704 (2018)). As such, plaintiff failed to state a cause of action pursuant to CPLR 3211(a)(7).

As such, the third branch of plaintiff's motion seeking to dismiss plaintiff's complaint pursuant to CPLR 3211(a)(7) is granted.

As the first, second, and third branches of defendant's motion to dismiss this action pursuant to CPLR 3211(a)(3), CPLR 3211(a)(1), and CPLR 3211(a)(7), are granted, plaintiff's cross-motion seeking to consolidate this action bearing Index No. 708489/2021, with the action

bearing Index No. 703172/2021, in Supreme Court, Queens County, is denied as moot.

Accordingly, the first branch of defendant's motion is granted, the second branch of defendant's motion is granted, the third branch of defendant's motion is granted, and plaintiff's cross-motion is denied.

Defendant shall serve a copy of this Decision and Order upon defendants and upon the clerk of Queens County, within fifteen (15) days of entry of this Decision and Order.

This constitutes the Decision and Order of the court.

Dated: November 9, 2021



Denis J. Butler, J.S.C.

