32 Middle Lane LLC v Charles & Co Design, LLC
2022 NY Slip Op 32887(U)
August 22, 2022
Supreme Court, New York County
Docket Number: Index No. 654999/2019
Judge: Dakota D. Ramseur

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 34M

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32 MIDDLE LANE LLC, ANDREA OLSHAN

Plaintiffs,

- v -

CHARLES AND CO DESIGN, LLC, VICKY CHARLES,

Defendants.

INDEX NO. 654999/2019

MOTION DATE N/A

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

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HON. DAKOTA D. RAMSEUR:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38

were read on this motion to/for JUDGMENT - SUMMARY

Plaintiffs, 32 Middle Lane LLC and Andrea Olshan (Olshan) (collectively, plaintiffs), commenced this action seeking damages for breach of contract, unjust enrichment, and breach of the covenant of good faith and fair dealing stemming from an agreement for interior design services between plaintiffs and defendant, Charles and Co. Design, LLC (defendant). Defendant now moves pursuant to CPLR 3212 for summary dismissal of the complaint. Plaintiffs oppose the motion. For the following reasons, defendant's motion is granted in part.

FACTUAL BACKGROUND

Plaintiff 32 Middle Lane LLC was the owner of property located at 32 Middle Lane, East Hampton, New York (premises). Plaintiff Andrea Olshan was the sole member of plaintiff. Defendant Charles & Co. is an interior design firm. Vicky Charles (Charles) is the founder and chief operating officer of Charles & Co. This action was discontinued against Charles pursuant to the October 8, 2019 stipulation of discontinuance.

In September 2018, the parties entered into an agreement for interior design services at the premises (agreement). The agreement called for a payment of $500,000 for interior design services, which was front loaded. According to the agreement, plaintiffs were to pay a $75,000 engagement fee and a $25,000 initial Phase I fee in September 2018. Plaintiffs were also required to pay monthly Phase I fees of $15,000 for 10 months. The parties anticipated that the interior design project would take at least thirty months to complete. The agreement also contained a termination provision that allowed for voluntary termination by either party, without cause, at any time.

The agreement separated the work into three phases. Phase I, the project phase relevant herein, concerned "DESIGN CONCEPT & DEVELOPMENT: Services/Defining Interior Identity" (NYSCEF doc. no. 29 at 1). The work defendant agreed to provide pursuant to Phase I was defined as follows:

> "On the basis of architectural plans to be provided to us by your architect, we will act as the interior designer for this project, providing the following services:
> 1. Create overall concepts and presentations in the form of mood boards and furniture layouts in CAD.
> 2. Prepare samples of materials for presentations to compliment mood boards, showing color, finish, and to act as control samples.
> 3. Review your architect's plans for aesthetic purposes. Giving input on general layouts, which will include furniture, reflected ceiling plans, electrical, kitchen equipment, sanitary ware, finishes, millwork, moldings, paneling, and doors
> 4. Review all elevation drawings prepared by your architects and review shop drawings for recommended cabinetwork, decorative built-ins, and decorative details.
> 5. Review and provide a budget for finishes, sanitary ware, furniture, lighting and other accessories and start the specification process working within this. Review the necessary schedules prepared by your architect.
> 6. Third-party renderings, if requested will be considered additional services and billed separately at $500 per initial rendering and $250 for each revision."

(*id.*).

In June 2019, the parties amended the agreement by adding additional work focused on the renovation and remodeling of two additional properties. The agreement was amended to include this additional work, extending the projected timeframe for Phase I by six months and adding an additional $45,000 to the total design fees, bringing the total Phase I payments to $295,000 and the total services fee to be paid to defendant to $545,000.

Olshan testified that defendant failed to live up to the end of the bargain by fulfilling its Phase I obligations. Specifically, Olshan indicates that defendant did not provide mood boards and furniture layouts in CAD as required pursuant to the agreement. Instead, Olshan states that defendant produced a single inspiration deck and single furniture layout. Olshan further states that while the parties met to discuss the project wherein defendant provided a presentation akin to a PowerPoint with images, defendant failed to follow through on its promise to provide a mood board. Olshan further states that plaintiffs never received a full design or any color schemes, fabric swatches, tile samples, or finish selections. Olshan further states that defendant failed to review any elevation drawings and shop drawings. Additionally, Olshan testified that defendant failed to "[r]eview and provide a budget for finishes, sanitary ware, furniture, lighting and other accessories, start the specification process, and review architect schedules." Olshan further states that any architectural days should not have prevented defendant from working on and providing Phase I deliverables.

According to Olshan, defendant also failed to perform its obligations under the amended agreement. Olshan testified that defendant was supposed to provide image boards and furniture options for Olshan's residential renovation but did little more than repackage photos that Olshan originally sent defendant for inspiration. According to Olshan, failed to provide an original design scheme for the renovation project at her residence. Olshan further states that defendant was "[a]lso supposed to procure products, supervise and insure proper and complete installations, and send proposals with things such as pricing per yard of materials being discussed" (NYSCEF doc. no. 33 at ¶36). Olshan further states that defendant failed to follow through with design schemes Olshan requested for the Manhattan apartment living room, aside from emailing a handful of photos of carpets. Olshan states that the extent of the work performed by defendant on the remodeling project at her Hamptons residence consisted of recommending certain furniture for Olshan to purchase, which, according to Olshan, was the identical furniture she initially suggested to defendant.

In mid-July 2019, Olshan and Charles met in-person to discuss the progress of the project. According to Olshan, Charles acknowledged that progress on the project was not moving forward, and essentially conceded responsibility for the lack of progress. On July 23, 2019, following the in-person meeting about the projects, defendant terminated the agreement. The parties agree that defendant's resignation occurred while the project was still in Phase I. Plaintiffs requested a refund from defendant, which defendant refused.

DISCUSSION

On a motion for summary judgment, the movant carries the initial burden of tendering admissible evidence sufficient to demonstrate the absence of a material issue of fact as a matter of law (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Once the movant meets its initial burden, the burden shifts to the opposing party to "show facts sufficient to require a trial of any issue of fact" (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). When deciding the motion, the Court's views the evidence in the light most favorable to the nonmoving party, and gives the nonmoving party the benefit of all reasonable inferences that can be drawn from the evidence (*see Negri v. Stop & Shop, Inc.*, 65 NY2d 625, 626 [1985]). Summary judgment may be granted upon a prima facie showing of entitlement to judgment as a matter of law, through admissible evidence sufficient to eliminate material issues of fact (CPLR 3212 [b]; *Alvarez*, 68 NY2d at 324; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]).

To establish a prima facie right to summary judgment on a claim for breach of contract, a plaintiff must show: (1) the existence of a contract; (2) the plaintiff's performance under the contract; (3) the defendant's breach of the contract; and (4) damages as a result of the breach (*see Noise in Attic Prod, Inc. v London Records*, 10 AD3d 303, 306-307 [1st Dept 2004]).

In support of its motion, defendant argues that plaintiffs' claims for unjust enrichment and breach of the covenant of good faith and fair dealing should be dismissed because they are duplicative of plaintiff's claim for breach of contract. Defendant further argues that plaintiff's breach of contract claim should be dismissed because defendant justifiably terminated the agreement pursuant to the terms of the agreement. Defendant further contends that defendant performed in accordance with the agreement, in that the agreement provided no benchmarks or

deadlines for performance and allowed unilateral termination without cause at any time. Defendant further contends that plaintiff failed to allege a provision of the agreement that defendant breached.

In opposition, plaintiff first argues that defendant's motion is procedurally deficient because defendant's fail to submit an affidavit from any one with personal knowledge of the facts, including concerning the architectural plans, delays, or regarding what work was delivered to plaintiff by defendant during Phase I. Plaintiff further argues that issues of fact preclude defendant's motion. Specifically, plaintiffs contend that defendant failed to comply with almost all of Phase I of the agreement. Plaintiffs also argue that issues of fact exist as to whether defendant acted in "good faith" in performance of the agreement.

Here, defendant failed to establish its prima facie right to summary dismissal of plaintiff's cause of action for breach of contract. The parties agree on the existence of the contract and that plaintiff performed under the contract by paying the agreed upon sums of money due under Phase I. However, defendant fails to establish that it performed under the agreement. Indeed, defendant does not come forward with any proof that it completed the requirements under Phase I. Even if defendant presented proof that it performed under the agreement, Olshan's testimony raises an issue of fact as to whether defendant provided any deliverable under Phase I of the agreement.

Without citing to any authority, defendant also argues that the permitted unilateral termination without any requirement that defendant refund fees already paid. The fact that the agreement contained a provision permitting unilateral termination does not preclude plaintiffs from asserting a claim for breach of contract or from obtaining damages pursuant to a breach of the agreement. Similarly, defendant's contention, without any supporting authority, that defendant did not beach the agreement because the work to be completed under Phase I of the agreement was not tethered to benchmarks or deadlines is also without merit.[1]

However, the Court finds that plaintiff's causes of action for unjust enrichment and breach of the covenant of covenant of good faith and fair dealing must be dismissed on the ground that plaintiff's cause of action for unjust enrichment is duplicative of its cause of action for breach of contract. "The existence of a valid and enforceable written contract governing a particular subject matter ordinarily precludes recovery in quasi contract for events arising out of the same subject matter" (*Clark-Fitzpatrick, Inc. v Long Is. R.R. Co.*, 70 NY2d 382, 388 [1987]). A cause of action or breach of the covenant of good faith and fair dealing is properly dismissed as duplicative of the breach-of-contract claim where both claims arise from the same facts (*Amcan Holdings, Inc. v Canadian Imperial Bank of Com.*, 70 AD3d 423, 426 [1st Dept 2010]). Here, plaintiff's causes of action for unjust enrichment and breach of the covenant of covenant of good faith and fair dealing are duplicative of its cause of action for breach of contract as plaintiff's claims are based upon defendant's failure to perform the design requirements as required by the Phase I of the agreement.

[1] The court does not consider defendant's novel argument that it is entitled to reformation, raised for the first time at oral argument. Even if the court did consider defendant's argument, "[a] claim for reformation of a written agreement must be grounded upon either mutual mistake or fraudulently induced unilateral mistake" (*see 313-315 W. 125th St. L.L.C. v. Arch Specialty Ins. Co.*, 138 AD3d 601, 602 [1st Dept 2016]), which is not the case here.

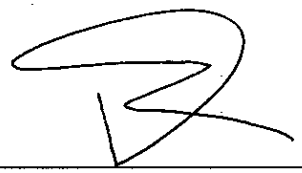
Accordingly, it is hereby

ORDERED that defendant's motion pursuant to CPLR 3212 for summary dismissal of the complaint granted to the extent that plaintiff's causes of action for unjust enrichment and breach of the implied covenant of good faith and fair dealing are dismissed; and it is further

ORDERED that the parties shall appear for a conference on November 1, 2022 at 3:30 p.m.; and it is further

ORDERED that defendant shall serve a copy of this decision and order upon plaintiffs, with notice of entry, within ten (10) days of entry.

This constitutes the decision and order of the Court.



8/22/2022
DATE

DAKOTA D. RAMSEUR, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED		DENIED	X	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE