SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. DAVID B. COHEN** **PART 58**

Justice

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CATHERINE MONTGOMERY,

Plaintiff,

- v -

215 CHRYSTIE LLC and THE CONDOMINIUM BOARD OF MANAGERS OF 215 CHRYSTIE CONDOMINIUM,

Defendants.

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INDEX NO. 158146/2020

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 123, 124, 125, 135

were read on this motion to/for PREL INJUNCTION/TEMP REST ORDR.

This action arises from noise complaints made by plaintiff Catherine Montgomery against defendants 215 Chrystie LLC and the Condominium Board of Managers of 215 Chrystie Condominium, which owned and/or controlled the building in which her condominium apartment was located.

FACTUAL AND PROCEDURAL BACKGROUND

On December 7, 2021, plaintiff moved, under motion sequence 003, for a preliminary injunction enjoining defendants from, inter alia, violating the New York City noise code. Doc. 91. On January 17, 2022, defendants cross-moved to dismiss the fourth cause of action in plaintiff's amended complaint, sounding in quantum meruit. Docs. 90, 106. On April 11, 2022, the undersigned denied plaintiff's motion for injunctive relief on the record. Doc. 124. This Court now addresses defendants' cross motion.

In support of their cross motion, defendants argue that plaintiff fails to state a claim for quantum meruit since, among other things, they never sought, or agreed to accept, the work by the individuals hired by plaintiff. Doc. 113.

In opposition, plaintiff's counsel argues that plaintiff has adequately pleaded the elements of a quantum meruit claim. Doc. 120. Counsel asserts that, in October 2019, plaintiff, believing that defendants' wished to remediate the noise in her apartment, and in order to avoid litigation, hired Alan Chasan, an architect and real estate development advisor, to assist defendants in remediating the noise. Chasan, in turn, hired acoustical engineer Robert A. Hansen Associates, Inc., mechanical engineer Guth DeConzo Consulting Engineers, P.C., zoning and code consultant Brookbridge Consulting Services, Inc., and structural engineer Gasbarro Structural Engineering, PLLC (collectively "the Chasan Team") to assist defendants in eliminating the noise in plaintiff's apartment. Docs. 90, 120. Plaintiff's counsel maintains that defendants accepted the work the Chasan Team performed, as evidenced by numerous emails between the Chasan Team and defendants' representatives; that plaintiff paid the reasonable value of the services provided by the Chasan Team, which totaled more than $100,000; and that plaintiff had the reasonable expectation that defendants would compensate her for those fees since they were all working towards the same goal, i.e., eliminating the noise in plaintiff's apartment. Doc. 120.

In an affidavit in opposition to defendants' motion, plaintiff submits an affidavit in which she attests that, when she realized defendants needed help finding a solution, she hired Chasan, who assembled an experienced team to work together with defendants' professionals to jointly find the source of noise in her apartment and implement a solution. Doc. 114. She asserts that defendants accepted the services of the Chasan Team and that she paid the fees charged by the Chasan Team, which totaled more than $100,000, with the expectation that defendants would

compensate her for those fees since they were all working towards the same goal of eliminating the noise in her apartment. Doc. 114.

In reply, defendants reiterate their contention that plaintiff has failed to state a quantum meruit claim. Doc. 121. Specifically, they maintain that plaintiff acknowledges that she unilaterally decided to hire Chasan based on her "realization" that defendants needed help in solving her alleged noise problem. Doc. 121.

LEGAL CONCLUSIONS

To establish a claim for quantum meruit, the plaintiff must demonstrate: "(1) the performance of services in good faith, (2) the acceptance of the services by the person to whom they are rendered, (3) an expectation of compensation therefor, and (4) the reasonable value of the services" (*Kramer v Greene*, 142 AD3d 438, 442 [1st Dept 2016] citing *Caribbean Direct, Inc. v Dubset LLC*, 100 AD3d 510, 511 [1st Dept 2012] [internal quotation marks omitted]).

In her amended complaint, plaintiff alleged that she provided the services of the Chasan Team to defendants; defendants consented to the Chasan Team's performance of the services rendered; defendants accepted the benefits of the said services; she incurred and paid the fees charged by the Chasan Team for providing services to defendants; she provided the services of the Chasan Team to defendants in good faith and with the reasonable expectation of receiving compensation therefor; and that the fees she paid totaled more than $100,000. Doc. 90.

This Court finds that these allegations are insufficient to sustain a claim in quantum meruit. Initially, plaintiff does not allege that the services provided were performed on defendants' behalf (See *Georgia Malone & Co., Inc. v Rieder*, 86 AD3d 406, 410 [1st Dept 2011], affd 19 NY3d 511 [2012]). Rather, she claims that she hired Chasan "when [she] realized that [d]efendants needed help in finding a solution" to the noise problem *in her apartment*. Doc. 114 at par. 37. Thus, it is

evident that plaintiff retained Chasan strictly for her own benefit (*See Local 798 Realty Corp. v 152 W. Condominium*, 55 AD3d 414, 415 [1st Dept 2008]) citing *Soumayah v Minnelli*, 41 AD3d 390, 391 [2007]).

Even accepting as true plaintiff's contention that emails between the Chasan Team and defendants' representative establish the defendants accepted the services rendered, her conclusory allegation that she had a reasonable expectation that she would be paid by defendants for these services is insufficient insofar as this ostensible expectation cannot be reasonably inferred from the facts (*See Fulbright & Jaworski, LLP v Carucci*, 63 AD3d 487, 489 [1st Dept 2009]). Similarly, plaintiff's conclusory claim that the Chasan's Team's fees of over $100,000 were reasonable is unsupported by any factual basis (*See Fulbright & Jaworski*, 63 AD3d at 489).

The quantum meruit claim must also be dismissed as a matter of equity. "It is well-settled that the 'theory of unjust enrichment lies as a quasi-contract claim,' and contemplates 'an obligation imposed by equity to prevent injustice, in the absence of an actual agreement between the parties' (*Georgia Malone & Co., Inc. v Rieder*, 19 NY3d 511, 516 [2012])" (*J.T. Magen & Co., Inc. v Nissan N. Am., Inc.*, 178 AD3d 466, 467 [1st Dept 2019]). This Court finds that it would be inequitable for plaintiff to be reimbursed for the consequences of her unilateral decision to hire a team of extremely expensive experts to rectify a problem in her own apartment, without obtaining the express consent of defendants.

The parties' remaining contentions are either without merit or need not be addressed in light of the findings above.

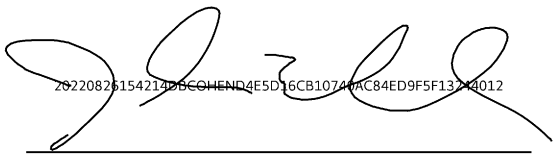
Accordingly, it is hereby:

ORDERED that the cross motion by defendants 215 Chrystie LLC and the Condominium Board of Managers of 215 Chrystie Condominium seeking to dismiss the plaintiff's quantum meruit claim (fourth cause of action in plaintiff's amended complaint) is granted, and the fourth cause of action in plaintiff's amended complaint is severed and dismissed; and it is further

ORDERED that, within 7 days from entry of this order, plaintiff shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that defendants shall serve an answer to the amended complaint within 30 days after service of this order with notice of entry.



8/26/2022
DATE

DAVID B. COHEN, J.S.C.

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