Willoughby Operating Co., LLC v New York City Economic Dev. Corp.

2023 NY Slip Op 33234(U)

September 18, 2023

Supreme Court, New York County

Docket Number: Index No. 654677/2021

Judge: Andrew Borrok

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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WILLOUGHBY OPERATING COMPANY, LLC,

Plaintiff,

- v -

NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION, CITY OF NEW YORK

Defendant.

INDEX NO. 654677/2021

MOTION DATE N/A

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48

were read on this motion to/for DISMISSAL.

Upon the foregoing documents and as discussed on the record (9.18.23), the motion to dismiss is granted. The case seeks to recoup certain development costs that the parties expressly agreed would be allocated to the plaintiff in the absence of a definitive lease agreement between the parties should the plaintiff elect to incur them and per express language of the Governing Documents (hereinafter defined) without expectation of reimbursement from the EDC (hereinafter defined). It is undisputed that a definitive lease agreement was never consummated and the failure to continue to negotiate a definitive lease agreement has already been vetted by the plaintiff in a previous Article 78 proceeding which the Appellate Division held was not arbitrary and capricious (*Matter of Willoughby Operating Co., LLC v New York City Economic Dev. Corp.*, 189 AD3d 655 [1st Dept 2020]).

To be clear, it simply is irrelevant that the EDC eventually took the position when it decided not to further negotiate when the conditions to closing in January, 2019 had not occurred that the

Governing Documents had previously expired because as set forth in the Governing Documents, any costs the plaintiff incurred it elected to do so and without any expectation of reimbursement. Having voluntarily elected to do this and without another writing indicating otherwise, there simply could be no reasonable expectation of reimbursement based on the documentary evidence and the case must be dismissed.

More specifically, this case involves a pre-lease agreement between the New York City Economic Development Corp (the **EDC**) and the plaintiff which contemplated the plaintiff's construction of an underground facility at Willoughby Square, in Brooklyn. Previously, the plaintiff brought an Article 78 proceeding arguing that the EDC had acted arbitrary and capricious in discontinuing its discussions with the plaintiff to obtain a long term lease. The Appellate Division disagreed holding that the plaintiff had failed to satisfy certain express conditions precedent to closing including (i) failing to reach a timely agreement with the Downtown Brooklyn Partnership, (ii) failing to secure a binding financial commitment and (iii) failing to satisfy the bond-posting requirements of Lien Law § 5.

Subsequently, the plaintiff brought this lawsuit alleging causes of action sounding in Quantum Meruit and Unjust Enrichment. To wit, the complaint (NYSCEF Doc. No. 1) alleges that the EDC accepted the plaintiff's services (including the preparation and commissioning of plans and drawings, managing demolition of the Project Site and engaging in site preservation) knowing that the plaintiff expected to be compensated and the defendants were enriched at the plaintiff's expense because of the same. The complaint fails as a matter of law because the documentary evidence (CPLR 3211[a][1] evidence) directly contradicts these assertions.

The relationship between the parties was governed by three agreements – the Prelease Agreement, the Joint Development Agreement and the License Agreement (collectively, the **Governing Agreements**). Pursuant to these Governing Agreements, the parties expressly agreed that pre-development costs were to be borne by the plaintiff (NYSCEF Doc. No. 10, § 7[1]; NYSCEF Doc. No. 11, §5.2; NYSCEF Doc. No. 13, § 7[a]).

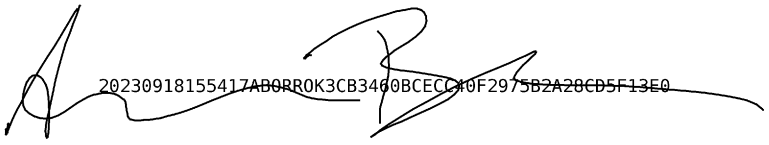
Quantum meruit requires (1) the performance of services in good faith, (2) the acceptance of the services by the person to whom they are rendered, (3) an expectation of compensation therefor and (4) the reasonable value of the services (*Martin H. Bauman Assocs., Inc. v H & M Int'l Transp., Inc.*, 171 AD2d 479, 484 [1st Dept 1991]). Given the fact that the Governing Agreements allocated these costs to the plaintiff and provided that the plaintiff would not be reimbursed, and that the decision not to continue to negotiate to enter into a definitive agreement was not arbitrary and capricious, there simply could be no reasonable expectation for compensation. Thus, the quantum meruit claim must be dismissed.

A claim sounding in unjust enrichment requires a showing (1) the other party was enriched (2) at the plaintiff's expense and (3) that it is against equity and good conscience to permit the other party to retain what is sought to be recovered (*Mandarin Trading Ltd. v Wildenstein*, 16 NY3d 173, 182 [2011], quoting *Citibank, N.A. v Walker*, 12 AD3d 380, 481 [2d Dept 2004]). It is not against good conscience to permit the EDC to retain whatever benefits that the plaintiff alleges were conferred on the EDC because it was the plaintiff who failed to satisfy conditions precedent to entering into the definitive agreement and these pre-definitive agreement costs were expressly

allocated to the plaintiff and where the Governing Documents provide that these expenses would not be reimbursed. As such the claim sounding in unjust enrichment is dismissed.

The Court notes that the documentary evidence conclusively establishes that the demolition work was paid (NYSCEF Doc. Nos. 22-25) and has otherwise considered the plaintiff's remaining arguments and finds them unavailing.

It is hereby ORDERED that the motion to dismiss is granted.



9/18/2023
DATE

ANDREW BORROK, J.S.C.

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