

**Mace Contr. Corp. v New York City  
Dept. of Env'tl. Protection**

2024 NY Slip Op 34029(U)

November 14, 2024

Supreme Court, New York County

Docket Number: Index No. 451595/2020

Judge: Debra A. James

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.

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

**PRESENT: HON. DEBRA A. JAMES**

**PART 59**

*Justice*

-----X

**INDEX NO. 451595/2020**

MACE CONTRACTING CORP.,

**MOTION DATE 05/31/2023<sup>1</sup>**

Plaintiff,

**MOTION SEQ. NO. 001**

- v -

NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL  
PROTECTION, AND CITY OF NEW YORK

**DECISION + ORDER ON  
MOTION**

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77

were read on this motion to/for DISMISS.

ORDER

Upon the foregoing documents, it is

ORDERED that the motion pursuant to CPLR 3211(a)(1), (5), and (7) of the defendants New York City Department of Environmental Protection and City of New York to dismiss certain causes of action of the complaint against them is granted, and the second, third, and fourth causes of action of the complaint are dismissed; and it is further

ORDERED that defendants shall serve an answer to the complaint within thirty (30) days of service of a copy of this order with notice of entry; and it is further

<sup>1</sup>Date that transcript of oral argument of motion was submitted to the court.

ORDERED that counsel are directed to post on NYSCEF a proposed preliminary discovery conference order or competing proposed discovery conference order(s) at least two days before January 21, 2025, on which date counsel shall appear via Microsoft Teams, unless such appearance be waived by the court.

DECISION

Plaintiff Mace Contracting Corp. ("Mace") commenced this action seeking damages for breach of a municipal contract (Standard Construction Contract, NYSCEF Doc. No. 1, "SCC"), quantum meruit, accounts stated, and delay damages against defendants New York City Department of Environmental Protection and the City of New York (collectively "DEP") with respect to for the construction work on the project known as "East Branch, Aeration, Borough of Queens".

DEP moves to dismiss on the basis that: (1) the second cause of action for quantum meruit and the third cause of action for accounts stated are duplicative of Mace's first cause of action for breach of contract; and (2) the fourth cause of action for delay damages is time-barred.

This court agrees with DEP.

The causes of action for quantum meruit and accounts stated both arise out of the same facts and seek identical damages (\$1,652,135.15) as Mace's first cause of action for breach of contract. It is well established that "[t]he 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", such as quantum meruit and accounts stated", Clark-Fitzpatrick, Inc. v Long Is. R. Co., 70 NY2d 382, 388 (1987). In addition, "an account stated (cannot be] utilized simply as another means of collection under (a contract)", Vanpoy Corp., S.R.L. v Soleil Chartered Bank, 204 AD3d 486, 487-88 (1st Dept 2022).

On such basis, the second cause of action for quantum meruit and the third cause of action for account stated must be dismissed.

As for the fourth cause of action for delay damages of the complaint, such must be dismissed as time-barred. The SCC provides, in pertinent part:

56.1 Any claim, that is not subject to dispute resolution under the PPB Rules or this Contract, against the City for damages for breach of Contract shall not be made or asserted in any action, unless the Contractor shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims, all as herein before provided.

56.2 Nor shall any action be instituted or maintained on any such claims unless such lawsuit is commenced within six (6) months after Substantial Completion . . .

NYSCEF Doc. No. 9, p. 71.

The SCC provides that the project is substantially completed upon the satisfaction of two conditions: (1) a written

determination by the engineer that the work is substantially complete, and (2) Mace's acceptance of the Final Punch List, which "shall be the date of Substantial Completion." id. ¶¶ 14.2 and 14.3, p 26. There is no dispute that the inspection was held on June 7, 2018, and that Mace approved the Final Punch List on June 15, 2018, the date of substantial completion. See NYSCEF Doc. No. 14 (DEP Substantial Completion Acceptance, and Final Punch List approved by Mace).

Mace argues that the historical intent of the SCC results in an interpretation that would have the limitations period run from an alternative date. Mace's interpretation ignores the plain language of the SCC. Mace's contention also fails as the verified statement of claim demonstrates that there were numerous delays that occurred prior to the date of substantial completion, which were clearly ascertainable within the six-month limitations period. See NYSCEF Doc. No. 36.

Mace fails to cite any authority for this court to deviate from well-established precedent upholding similar strict limitations periods. See Hudson Ins. Co., Inc. v City of New York, 170 AD3d 622, 623 (1st Dept 2019) and First Star Contracting Companies, Inc. v Fashion Institute of Technology, 194 AD3d 405, 405-406 (1st Dept 2021). As the Appellate Division, First Department, stated in Picone/WDF, JV v City of New York, 193 AD3d 433 [1st Dept 2021), "contract interpretation remains a question

of law for the court. . . and defendant demonstrated as a matter of law that the contractual limitations period had expired before the action was commenced". So too here, defendants have demonstrated that the contractual limitations period expired before plaintiff commenced this action.

*Debra A. James*  
20241114140104DJAMES3D3230924E8D4AD19E4876DD93843A32

<u>11/14/2024</u>			<u>DEBRA A. JAMES, J.S.C.</u>
<b>DATE</b>			
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>
			DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>
			<input checked="" type="checkbox"/>
			NON-FINAL DISPOSITION
			<input type="checkbox"/>
			GRANTED IN PART
			<input type="checkbox"/>
			OTHER
			<input type="checkbox"/>
			SUBMIT ORDER
			<input type="checkbox"/>
			FIDUCIARY APPOINTMENT
			<input type="checkbox"/>
			REFERENCE