

Lakhani v Alloy Mix Inc.

2024 NY Slip Op 34054(U)

November 15, 2024

Supreme Court, New York County

Docket Number: Index No. 652108/2023

Judge: Louis L. Nock

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. LOUIS L. NOCK PART 38M

Justice

-----X

JITEN LAKHANI, DEEPA LAKHANI

Plaintiff,

- v -

ALLOY MIX INC., HENRY LAM,

Defendant.

-----X

INDEX NO. 652108/2023

MOTION DATE 07/11/2024

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 17, 18, 19, 20, 21, 22, 23, 24, 25, 26

were read on this motion to/for DISMISSAL.

LOUIS L. NOCK, J.S.C.

Upon the foregoing documents, defendants’ motion to dismiss the second cause of action for violation of General Business Law § 349 against defendant Alloy Mix Inc., and to dismiss the complaint in its entirety against defendant Henry Lam, is granted for the reasons set forth in the moving and reply papers (NYSCEF Doc. No. 18, 19, 24) and the exhibits attached thereto, in which the court concurs, as summarized herein.

This action arises out of a home renovation contract between plaintiffs and defendant Alloy Mix Inc. (“Alloy Mix”). Defendant Lam is Alloy Mix’s principal, but his name does not appear anywhere on the contract (NYSCEF Doc. No. 21). Lam is therefore not bound by its terms or liable for its breach (*Highland Crusader Offshore Partners, L.P. v Targeted Delivery Tech. Holdings, Ltd.*, 184 AD3d 116, 121 [1st Dept 2020] [“It is a general principle that only the parties to a contract are bound by its terms”]). Lam’s status as Alloy Mix’s principal is of no moment, as there is no indication in the agreement that he intended to bind himself personally (*Georgia Malone & Co., Inc. v Ralph Rieder*, 86 AD3d 406, 408 [1st Dept 2011], *affd sub nom.*

Georgia Malone & Co., Inc. v Rieder, 19 NY3d 511 [2012] [“It is well established that officers or agents of a company are not personally liable on a contract if they do not purport to bind themselves individually”]).

Similarly, because Lam was not a party to the contract, the third cause of action for violation of General Business Law §§ 771-775 must also be dismissed against him, as the cited statutes concern the provisions of home improvement contracts, and the contract here was with Alloy Mix rather than Lam. Violations of said provisions are assessed against the contractor (General Business Law § 773), defined as “a person, firm or corporation which owns or operates a home improvement business or who undertakes, offers to undertake or agrees to perform any home improvement for a fee” (General Business Law § 770 [5]). The “person, firm or corporation” here is undisputedly Alloy Mix. Plaintiff does not successfully allege that the court should pierce the corporate veil to hold Lam liable for Alloy Mix’s wrongdoing (*e.g. ABN AMRO Bank, N.V. v MBIA Inc.*, 17 NY3d 208, 229 [2011]).

The second cause of action for violation of General Business Law § 349 must be dismissed against both defendants. The statute provides that prohibits “[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state” (General Business Law § 349 [a]). “To successfully assert a claim under General Business Law § 349 or § 350, a party must allege that its adversary has engaged in consumer-oriented conduct that is materially misleading, and that the party suffered injury as a result of the allegedly deceptive act or practice” (*Yellow Book Sales and Distrib. Co., Inc. v Hillside Van Lines, Inc.*, 98 AD3d 663, 664-65 [2d Dept 2012]). Private contractual disputes do not fall within the ambit of the statute (*New York Univ. v Continental Ins. Co.*, 87 NY2d 308, 320 [1995]).

[internal quotation marks and citations omitted]). Here, plaintiff does not allege sufficient “consumer-oriented conduct” to state a cause of action under the statute.

Finally, plaintiff’s argument that this motion is procedurally untimely is unavailing. Defendant moves pursuant to CPLR 3211 (a) (1) and (7). A motion under CPLR 3211 (a) (7) may be made at any time (CPLR 3211 [e]). A motion pursuant to CPLR 3211 (a) (1) made be made either prior to the answer or when the defense is raised in the answer (*id.*). Here, defendants raised the issue of the contract barring the claims in their affirmative defenses (verified answer, NYSCEF Doc. No. 25, ¶ 22). That is sufficient to invoke section 3211 (a) (1) on the motion. Plaintiff’s additional argument that defendants motion must be made as a summary judgment motion is also incorrect, as the claims to be dismissed are facially insufficient.

Accordingly, it is hereby

ORDERED the motion is granted; and it is further

ORDERED that the action against defendant Henry Lam is severed and dismissed; and it is further

ORDERED that the second cause of action against defendant Alloy Mix Inc. is severed and dismissed; and it is further

ORDERED that defendant Alloy Mix Inc. shall file an answer to the complaint within 20 days of service of a copy of this order with notice of entry; and it is further

ORDERED that counsel shall appear for a preliminary conference in Room 1166, 111 Centre Street on January 8, 2025 at 2:15 PM. Prior to the conference, the parties shall meet and confer regarding discovery and, in lieu of appearing at the conference, may submit a proposed preliminary conference order, in a form that substantially conforms to the court’s form

Commercial Division Preliminary Conference Order located at

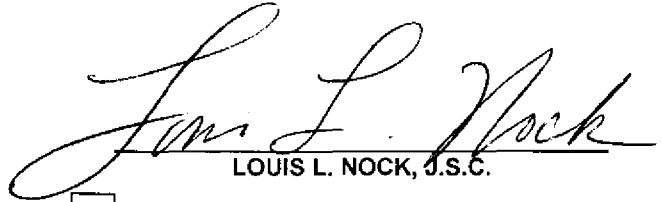
https://ww2.nycourts.gov/courts/1jd/supctmanh/preliminary_conf_forms.shtml, to the Principal

Court Attorney of this Part (Part 38) at ssyaggy@nycourts.gov.

This constitutes the decision and order of the court.

11/15/2024

DATE


LOUIS L. NOCK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE