Urban Works LLC v 1 Seal USA LLC
2024 NY Slip Op 34179(U)
November 15, 2024
Supreme Court, Kings County
Docket Number: Index No. 507701/2022
Judge: Ingrid Joseph

At an IAS Part 83 of the Supreme Court of the State of New York held in and for the County of Kings at 360 Adams Street, Brooklyn, New York, on the 15th day of November 2024.

PRESENT: HON. INGRID JOSEPH, J.S.C.
SUPREME COURT OF THE STATE OF
NEW YORK COUNTY OF KINGS

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URBAN WORKS LLC,

Plaintiff(s)

-against-

1 SEAL USA LLC

Defendant(s)

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1 SEAL USA LLC,

Defendants and Cross-Claimants(s)

-against-

CHAIM GRUNWALD

Additional Defendant on the Crossclaims.

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Index No: 507701/2022
Motion Seq. 3

ORDER

The following e-filed papers read herein:	NYSCEF Nos.:
Notice of Motion/Affidavits Annexed Exhibits Annexed.....	27-35
Affirmation in Opposition/Affidavits Annexed/Exhibits Annexed.....	38-50

In this matter, 1 Seal USA LLC ("1 Seal") moves (Motion Seq. 3) for summary judgment dismissing Urban Works LLC ("Urban Works") complaint and granting its counter claims for breach of contract, unjust enrichment, and promissory estoppel. Urban Works has opposed the motion.

This action arises from an alleged contractual dispute wherein Urban Works asserts that 1 Seal failed to perform work pursuant to the agreement between the parties. In its complaint, Urban Works states that it entered into a contract with 1 Seal for grinding and polishing the 2nd, 3rd, and 4th floors of the building located at 4502 13th Avenue Brooklyn, New York 11219. Urban Works states that 1 Seal breached the contract by failing to complete the job "in a first-class workmanlike fashion." Urban Works states that to date, it has incurred over $25,000.00 in damages resulting from the 1 Seal's breach including the correction of the defective work.

In support of its motion, 1 Seal argues that it is entitled to summary judgment because Urban Works has failed to establish that it did not fulfill its contractual obligations. 1 Seal argues that the contract detailed the full scope of the work to be performed and that it was mutually understood, pursuant to paragraph 2 on the second page of the contract, that repairing floor cracks fell outside the scope of its work. Additionally, 1 Seal contends that it explicitly informed Urban Works that its equipment does not repair corners, thus it disclaims responsibility for any work concerning corners. 1 Seal maintains that the agreement stipulated that there would be no interruptions, allowing 1 Seal to work continuously, but that Urban Works instructed

1 Seal to halt the work for almost a year which led to 1 Seal incurring additional expenses. 1 Seal contends that once it was permitted to resume work, it was limited to working unconventional hours, including nights and weekends, which was contrary to the agreement that specified that overtime payment would be required for such hours. However, Urban Works has failed to compensate them for the difference. 1 Seal states that as a courtesy, it attempted to find a company that could assist with repairing cracks after Urban Works complained, but that it was unable to do so. 1 Seal has asserted counterclaims for unjust enrichment and promissory estoppel. In support of its motion, 1 Seal submits an affidavit of Sam Grunblatt ("Grunblatt"), the managing member of 1 Seal who gives a similar recounting of events as the attorney's affirmation in support and a cost breakdown of its expenses.

In opposition, Urban Works argues that 1 Seal has not established entitlement to summary judgment since there are triable issues of fact present and outstanding discovery at this time. Urban Works asserts that despite being paid in full, 1 Seal failed to complete its job in a proper manner because there were many patches and cracks left after the completion of its work. Urban Works states that it demanded that 1 Seal cure any and all defects but that 1 Seal denied any responsibility for them. Urban Works contends that in November of 2021, the parties agreed to meet to resolve the dispute and that 1 Seal agreed to search for a narrower grinding and polishing machine to attempt to fix the defects, but to date has not done so. Urban Works contends that on September 8, 2023, a Preliminary Conference was held, and an order was signed by Hon. Leon Ruchelsman ordering that depositions of the parties were to be completed on or before November 3, 2023, and that summary judgment motions made before the filing of the Note of Issue were not to stay discovery. Urban Works contends that 1 Seal did not appear for its deposition on or before November 3, 2023, because 1 Seal conditioned its appearance on Urban Works first settling the counterclaims by paying 1 Seal $30,000.00. Urban works states that on December 6, 2023, 1 Seal agreed to appear at a deposition on or before March 30, 2024. Urban Works claims that 1 Seal's motion for summary judgment is premature because Urban Works has not had an opportunity to conduct depositions. Urban Works also argues that 1 Seal is not entitled to summary judgment on its unjust enrichment and promissory estoppel counterclaims because they are duplicative of its breach of contract claim since there is a written contract that governs the parties' duties and obligations. In support of its opposition to 1 Seal's motion, Urban Works submits an affidavit of Moshe Piller ("Piller"), the principal of Urban Works, who gives a similar recounting of events as the attorney's affirmation in opposition, and photographs of the floors after the work was completed.

It is well established that "the proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact" (*Ayotte v. Gervasio,* 81 NY2d 1062, 1063 [1993], *citing Alvarez v. Prospect Hospital,* 68 NY2d 320, 324 [1986]; *Zapata v. Buitriago*, 107 AD3d 977 [2d Dept 2013]). Once

a prima facie demonstration has been made, the burden shifts to the party opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial of the action. (*Zuckerman v. City of New York,* 49 NY2d 557 [1980]).

Summary judgment is a drastic remedy which should not be granted where there is any doubt as to the existence of a triable issue or where the issue is even arguable (*Elzer v. Nassau County*, 111 A.D.2d 212, [2d Dept. 1985]; *Steven v. Parker*, 99 AD2d 649, [2d Dept. 1984]; *Galeta v. New York News, Inc.*, 95 AD2d 325, [1st Dept. 1983]). When deciding a summary judgment motion, the Court must construe facts in the light most favorable to the non-moving party (*Marine Midland Bank N.A. v. Dino & Artie's Automatic Transmission Co.,* 168 AD2d 610 [2d Dept. 1990]; *Rebecchi v. Whitemore,* 172 AD2d 600 [2d Dept. 1991]).

"The elements of a cause of action to recover damages for breach of contract are the existence of a contract, the performance under the contract of the party seeking relief, the other party's breach, and resulting damages" (*McMahan v McMahan*, 164 AD3d 1486, 1487 [2d Dept 2018]; *see also Fernandez v Abatayo*, 172 AD3d 821, 822 [2d Dept 2019]). A movant's allegations must identify the provisions of the contract that were breached (*34-06 73, LLC v Seneca Insurance Company,* 39 NY3d 44 [2022]). In instances where there is no written contract between the parties, a contract may be implied-in-fact or implied in law. (see *Matter of Kummer*, 93 AD2d 135 [2d Dept. 1983]; *Deerkoski v E. 49th St. Dev. II, LLC*, 120 AD3d 1387, 1389 [2d Dept 2014]; see *Amcat Glob., Inc. v Greater Binghamton Dev., LLC*, 140 AD3d 1370, 1371 [3d Dept 2016]).

Here, the court finds that 1 Seal has failed to demonstrate its prima facie entitlement to summary judgment with respect to its breach of contract counterclaim. Pursuant to paragraph 2 on the first page of the agreement, the scope of the concrete polishing work to be performed included:

- Grind with a 30- or 40-grit metal-bonded diamond.
- Grind with an 80-grit metal-bonded diamond.
- Grind with a 150-grit metal-bonded diamond (or finer, if desired).
- Apply a chemical hardener to densify the concrete.
- Polish with a 100- or 200-grit resin-bond diamond. or a combination of the two.
- Polish with a 400-grit resin-bond diamond.
- Polish with an 800-grit resin-bond diamond.
- Finish with a 1500- or 3000-grit resin-bond diamond (depending on the desired
- sheen level).

With respect to crack filling, paragraph 2 on the second page of the agreement states "NOT INCLUDED: crack filling, sealing cracks and joints with an epoxy, cement based, or other semi-rigid filler." Thus, 1 Seal has established that it was not obligated to fill any cracks in the floors pursuant to the agreement. However, with respect to its argument that Urban Works breached the contract by halting work for almost a year, 1 Seal failed to specify dates for the alleged pause or submit admissible evidence such as invoices for the additional expenses or overtime work performed and Grunblatt's affidavit only lists in a conclusory manner

the alleged additional expenses that were incurred. Furthermore, 1 Seal has not provided any additional contracts between parties regarding the overtime or nightly work performed pursuant to page one of the contract which states "uninterrupted continuous days are needed to complete the work. No other trades will have access to the installation area during this time. Price is subject to change for night, weekend, and overtime hours unless previously specified and agreed to in writing."

Accordingly, that branch of Defendant's motion for summary judgment on its breach of contract counterclaim is denied.

To establish a cause of action for unjust enrichment, a plaintiff must demonstrate that (1) the defendant was enriched, (2) at the plaintiff's expense, and (3) that it is against equity and good conscience to permit the defendant to retain what is sought to be recovered (*Mobarak v Mowad,* 117 A.D.3d 998 [2d Dept. 2014]; *Mandarin Trading Ltd. v Wildenstein,* 16 N.Y.3d 173 [2011]). 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 [2012]; *Bedford-Carp Construction, Inc. v Brooklyn Union Gas Company*, 219 AD3d 1293 [2d Dept. 2023]). To establish a viable cause of action sounding in promissory estoppel, a movant must allege (1) a clear and unambiguous promise, (2) reasonable and foreseeable reliance by the party to whom the promise is made, and (3) an injury sustained in reliance on the promise (*Rogers v Town of Islip*, 230 AD2d 727 [2d Dept. 1996]; *Castellotti v Free*, 138 AD3d 198 [1st Dept. 2016]). The existence of a valid contract governing the subject matter generally precludes recovery in quasi contract for events arising out of the same subject matter, although a claim for quasi contract is not duplicative of a breach of contract claim in instances where it does not depend on the existence of a valid and enforceable written contracts between the parties but, rather, arises from facts wholly independent of any of the parties' contracts (see *Corsello v Verizon New York, Inc.*, 18 NY3d 1177 [2012]; *Avery v WJM Development Corp.*, 216 AD3d 887 [2d Dept. 2023]; *Pierce Coach Line, Inc. v Port Washington Union Free School Dist.*, 213 AD3d 959, 961 [2d Dept 2023]; *Bent v St. John's University, New York,* 189 AD3d 973 [2d Dept. 2020]; *Bennett v State Farm Fire & Cas. Co.,* 181 AD3d 777 [2d Dept. 2020]; see also *Sebastial Holdings, Inc. v Deutches Bank*, 78 AD3d 446 [1st Dept. 2010]).

Here, the court finds that 1 Seal has failed to demonstrate entitlement to summary judgment with respect to its unjust enrichment and promissory estoppel counterclaims. 1 Seal's counterclaims for unjust enrichment and promissory estoppel are duplicative of its breach of contract counter claim because its allegations arise out of the same subject matter as its breach of contract claim. Additionally, there is a written contract that governs the duties and obligations between the parties herein precluding recovery under a theory of quasi contract. 1 Seal alleges that Urban Works caused its performance to be halted resulting in additional materials and labor cost, yet like its breach of contract claim, has failed to specify

dates for the alleged pause or submit admissible evidence such as invoices for the additional expenses or overtime work performed, nor has 1 Seal provided any additional contracts between parties regarding the overtime or nightly work performed pursuant to page one of the contract. Consequently, 1 Seal has failed to sufficiently assert allegations for unjust enrichment and promissory estoppel counterclaims that arise from facts wholly independent of the parties' contract. Since 1 Seal has failed to meet its prima facia burden, the court does not need to consider the sufficiency of Urban Work's opposition papers.

Accordingly, it is hereby,

ORDERED, that 1 Seal's motion for summary judgment (Motion Seq. 3) is denied.

Matters not considered herein are without merit or moot.

This constitutes the decision and order of the court.

Hon. Ingrid Joseph J.S.C.

Hon. Ingrid Joseph
Supreme Court Justice