

Nationwide Maintenance, LLC v Balkin

2024 NY Slip Op 34217(U)

November 22, 2024

Supreme Court, New York County

Docket Number: Index No. 655261/2018

Judge: Debra A. James

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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. DEBRA A. JAMES

PART 59

Justice

-----X

NATIONWIDE MAINTENANCE, LLC,

Plaintiff,

INDEX NO. 655261/2018

MOTION DATE 11/12/2024

MOTION SEQ. NO. 002 003

- v -

DANIEL PAUL BALKIN, as Administrator of the Estate of
Mary Max, deceased, PETER MAX, and GREGORY ALLEN,

Defendants.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 59, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 113, 114, 115

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER) .

The following e-filed documents, listed by NYSCEF document number (Motion 003) 51, 52, 53, 54, 55, 56, 57, 58, 60, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 112, 116

were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER) .

ORDER

Upon the foregoing documents, it is

ORDERED, to the extent that it seeks summary judgment dismissing the complaint in its entirety as against defendant Peter Max and the cross-claims of defendant Gregory Allen against co-defendant Peter Max, the motion of defendant Peter Max for summary judgment (motion sequence number 002) is granted, and the complaint in its entirety as against defendant Peter Max and the cross claims of defendant Gregory Allen against defendant Peter Max are dismissed; and it is further

ORDERED that to the extent that it seeks summary judgment dismissing the first (foreclosure of a mechanic's lien), third (quantum meruit), fourth (unjust enrichment), fifth (account stated) and sixth (breach of covenant of fair dealing and good faith) causes of action and the cross claims of Lawrence L. Flynn, as Guardian of defendant Peter Max, as against defendant Gregory Allen, the cross motion of defendant Gregory Allen for summary judgment (mot seq nos 002 and 003) is granted; and it is further

ORDERED that to the extent that it seeks summary judgment dismissing the cross claims of Lawrence L. Flynn, as Guardian of defendant Peter Max against defendant Gregory Allen, the cross motion of defendant Gregory Allen for summary judgment (mot seq nos 002 and 003) is granted; and it is further

ORDERED that to the extent that it seeks summary judgment dismissing the second (breach of contract) cause of action and the cross claims of Daniel Paul Balkin, as Administrator of the Estate of Mary Max against defendant Gregory Allen, the cross motion for summary judgment of defendant Gregory Allen (mot seq no 002 and 003) is denied; and it is further

ORDERED that to the extent that it seeks summary judgment dismissing the sixth (breach of covenant of good faith and fair dealing) cause of action, the motion of defendant Daniel Paul Balkin, as Administrator of the Estate of Mary Max, decedent,

for summary judgment dismissing the complaint against him (motion sequence number 003) is granted, and the sixth cause of action against defendant Daniel Paul Balkin, as Administrator of the Estate of Mary Max, is dismissed; and it is further

ORDERED that to the extent that it seeks summary judgment dismissing the first (foreclosure of a mechanic's lien), second (breach of contract), third (quantum meruit), fourth (unjust enrichment), and fifth (account stated) causes of action, the motion of defendant Daniel Paul Balkin, as Administrator of the Estate of Mary Max, decedent, for summary judgment dismissing the complaint against him (motion sequence number 003) is denied; and it is further

ORDERED, as the Note of Issue was filed on February 26, 2024, counsel shall confer with the Clerk of Trial Assignment Part (TAP) 40 for a mediation and/or trial date.

DECISION

The complaint as against defendant Peter Max must be dismissed in its entirety, as there is no dispute that such defendant had been adjudicated incompetent prior to the signing of the subject contract. See McCarthy v Bowling Green Storage & Van, 182 AD18 (1st Dept 1918) ("Where person is adjudged insane, and committee appointed, every contract thereafter made with him is void.")

Given the dismissal of the complaint as against defendant Peter Max for the reasons described above, the cross claims of such defendant against defendant Gregory Allen fall, as a matter of law. See Casey v New York Elevator & Elec Corp, 107 AD3d 597, 599 (1st Dept 2013).

Plaintiff does not assert that defendant Gregory Allen had any interest in 118 Riverside Drive, Unit 14D and 15D, and therefore, no claim for foreclosure of a mechanic's lien upon such real property lies against him. See Church E. Gates & Co v Empire City Racing Assn, 225 NY 142156 (1919).

In contrast, defendant Allen does not summarily refute the cause of action for breach of contract, as there is no dispute that he signed the contract.

However, the claims for quantum meruit and unjust enrichment against defendant Allen are duplicative of the breach of contract cause of action against such defendant and shall be dismissed. See Wald v Graev, 137 AD3d 573 (1st Dept 2016). The cause of action for breach of covenant and fair dealing against defendant Allen also fails, as plaintiff alleges the same facts and seeks the same damages in breach of contract against such defendant. See Mill Financial, LLC v Gillett, 122 AD3d 98, 104-105 (1st Dept 2014). Defendant Allen has also demonstrated entitlement to summary judgment dismissal of the account stated cause of action as none of the invoices are addressed to such

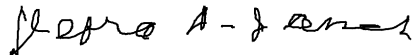
defendant. See Morrison Cohen Singer & Weinstein, LLP v Brophy, 19 AD3d 161 (1st Dept 2005).

With respect to the cross claims of defendant Daniel Paul Balkin, as Administrator of the Estate of Mary Max against defendant Gregory Allen, the record is rife with issues of fact including whether defendant Allen, in signing the contract in his own name and not as "agent of Mary Max", intended to substitute or superadd his personal liability for that of Mary Max, as his principal. See Bank of America, NA v ASD Gem Realty LLC, 205 AD3d 1, 7-10 (1st Dept 2022).

As for the first cause of action for foreclosure upon a mechanic's lien against defendant, the personal representative of the estate of Mary Max, such administrator has not prima facie established that Mary Max did not ever hold an ownership interest in 118 Riverside Drive, Units 14D and 15D, New York, New York. See Zuch v Zuch, 117 AD2d 397, 401 (1st Dept 1986). Therefore, as to such cause of action, there are issues of fact that must be resolved by a factfinder at trial.

With respect to the claim of breach of contract against such defendant/personal representative, there are issues of fact whether defendant Mary Max was the undisclosed principal of defendant Allen, the signatory to the contract. Nor is such defendant entitled to summary dismissal of the claims for account stated. See Bank of America, NA v ASD Gem Realty LLC,

supra. Likewise, as for the third cause of action for quantum meruit, there are issues of fact as to compensation for the effect upon Mary Max of the "actual work performed and actual labor and materials furnished with her knowledge". See Walter v Horwitz, 60 NYS2d 327, *330 (Sup Ct, Westchester Co, Hinkley, JSC), aff'd 271 AD 802, *802 (2d Dept 1946). Similarly, there are issues of fact as to whether defendant Mary Max was unjustly enriched by the work plaintiff performed. See Sonenshine Partners, LLC v Duravant LLC, 191 AD3d 567, 568-569 (1st Dept 2021).



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11/22/2024

DATE

DEBRA A. JAMES, 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