

Ametek, Inc. v Goldfarb

2025 NY Slip Op 30219(U)

January 15, 2025

Supreme Court, New York County

Docket Number: Index No. 656948/2021

Judge: Andrew Borrok

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

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AMETEK, INC.,HCC INDUSTRIES, INC.,	INDEX NO.	<u>656948/2021</u>
Plaintiff,	MOTION DATE	<u>12/26/2024</u>
- v -	MOTION SEQ. NO.	<u>011</u>
ANDREW GOLDFARB, DENISE GOLDFARB, STEVEN GOLDFARB	DECISION + ORDER ON MOTION	
Defendant.		

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 011) 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 407, 408

were read on this motion to/for PRECLUDE.

Upon the foregoing documents, the defendants' motion (Mtn. Seq. No. 011) for an order deeming the plaintiffs' motion for summary judgment abandoned in accordance with 22 NYCRR 202.48 (a) and opposing the execution of a judgment (the **Proposed Judgment**; NYSCEF Doc. No. 381) filed on December 3, 2024 by the plaintiffs is DENIED.

The Relevant Facts and Circumstances

Reference is made to two Interim Orders, dated May 29, 2024 (NYSCEF Doc. Nos. 299 and 300) and June 8, 2024 (NYSCEF Doc. Nos. 301 and 302) and a Decision and Order (the **Prior Decision**; NYSCEF Doc. Nos. 359 and 360) of the Court, dated September 5, 2024 (collectively, the **Summary Judgment Orders**), pursuant to which the Court granted the plaintiffs' motion for summary judgment for breach of contract and attorneys' fees, and provided "that Ametek *may* submit judgment on notice" (NYSCEF Doc. Nos. 359 and 360 at 10 [emphasis added]). As

discussed below, the Court's use of the word "may" (*i.e.*, as opposed to the word "shall" or other words of requirement) appears to have caused substantial confusion explaining why the plaintiffs did not submit the Proposed Judgment within 60 days and demonstrating good cause for the Court to accept and execute the Proposed Judgment in this lawsuit which they have never abandoned (*Platt v Parklex Assoc.*, 234 AD2d 115 [1st Dept 1996]). This misunderstanding is excusable and makes sense given that the plaintiffs explained at the time that they were continuing to accrue damages.

As relevant to the instant motion, 89 days after the Summary Judgement Orders were issued, the plaintiffs filed the Proposed Judgment on December 3, 2024. They did this then, they indicate, because they did not understand or take to mean that the use of the word "may" in the Prior Decision was an order directing them to file a judgment pursuant to 22 NYCRR 202.48 (a). On the record before the Court, they never abandoned their intention to prosecute their claims in this action and in fact sought additional damages which continued to accrue. To wit, they filed an amended complaint (the **Amended Complaint**; NYSCEF Doc. No. 373) on November 27, 2024 (i) increasing the damages in their breach of contract claim to \$14,886,195 to reflect damages sustained as of September 2024 for additional alleged breaches of contract and (ii) adding a new declaratory judgment claim for a declaration that the defendants would be liable for all future reimbursable remediation costs under the indemnity (NYSCEF Doc. No. 373 at 9-10).

The defendants now move for an order deeming the plaintiffs' motion for summary judgment abandoned in accordance with 22 NYCRR 202.48 (a) and opposing the execution of the Proposed Judgment. In support of their motion, the defendants argue that the Proposed

Judgment should not be entered because the Proposed Judgment is untimely and because the Amended Complaint seeks to add additional claims for damages not resolved by the Summary Judgment Orders.

In their opposition papers, the plaintiffs argue, *inter alia*, that (i) the Amended Complaint does not alter any of the allegations or causes of action relevant to the Summary Judgment Orders and entering partial summary judgment is appropriate because the Court may sever the remaining claims in the Amended Complaint for further proceedings pursuant to CPLR § 3212 (e) and CPLR § 5012, and (ii) the Proposed Judgment should be accepted by the Court because they did not understand the permissive language used by the Court in Summary Judgment Orders to mean that they needed to file a judgment within the 60-day deadline under 22 NYCRR 202.48. The plaintiffs also assert that they have incurred more than \$7 million in additional remediation costs since filing their motion for summary judgment and that the remaining claims for additional damages should be severed for further proceedings.

DISCUSSION

I. The Remaining Claims are Severed

It is impermissible to have two judgments in one civil action where there has been no severance of the claims (*Shah v 20 E. 64th St., LLC*, 198 AD3d 23, 35 [1st Dept 2021]; *Bennett v Long Is. Light. Co.*, 262 AD2d 437, 438 [2d Dept 1999] [“without a severance there can be only one judgment entered in a civil action”]).

CPLR § 3212 (e) provides:

(e) Partial summary judgment; severance. In a matrimonial action summary judgment may not be granted in favor of the non-moving party. In any other action summary judgment may be granted as to one or more causes of action, or part thereof, in favor of any one or more parties, to the extent warranted, on such terms as may be just. The court may also direct:

1. that the cause of action as to which summary judgment is granted shall be severed from any remaining cause of action; or
2. that the entry of the summary judgment shall be held in abeyance pending the determination of any remaining cause of action

(CPLR § 3212 [e]).

CPLR § 5012 states that “[t]he court, having ordered a severance, may direct judgment upon a part of a cause of action or upon one or more causes of action as to one or more parties” (CPLR § 5012). CPLR § 603 states that “[i]n furtherance of convenience or to avoid prejudice the court may order a severance of claims” (CPLR § 603).

Pursuant to CPLR §§ 603, 5012, and 3212 (e), the portion of the causes of action as to which summary judgment was not granted and the additional claims not previously adjudicated shall be severed for further proceedings.

II. *Entry of Judgment is Appropriate*

22 NYCRR 202.48 (a) and (b) provide:

- (a) Proposed orders or judgments, with proof of service on all parties where the order is directed to be settled or submitted on notice, must be submitted for signature, unless otherwise directed by the court, within 60 days after the signing and filing of the decision directing that the order be settled or submitted
- (b) Failure to submit the order or judgment timely shall be deemed an abandonment of the motion or action, unless for good cause shown

(22 NYCRR 202.48 [a-b]).

“It is within the sound discretion of the court to accept a belated order or judgment for settlement” (*Russo v Russo*, 289 AD2d 467, 468 [2d Dept 2001]; *see also Platt v Parklex Assoc.*, 234 AD2d 115 [1st Dept 1996] [holding that motion for leave to file late notice of settlement should have been granted where defendants made the requisite showing of good cause for delay and where there was clearly no intention to abandon the action]). Good cause for delay in submitting a judgment may be demonstrated by evidence of law office failure (*Signal Perfection, Ltd. v Litespeed Elec., Inc.*, 150 AD3d 548 [1st Dept 2017] [finding that respondent demonstrated good cause for its delay in submitting judgment by providing affidavits detailing its diligence in following up with its prior counsel, who misled it concerning the status of the case and the need to enter judgment]).

As discussed above, there appears to have been a misunderstanding given the Court’s choice of permissive language— *i.e.*, the use of the word “may” as opposed to more clear words of direction or requirement. As discussed above, this reading is entirely understandable given that the plaintiffs had indicated their intention to seek additional damages. At worst, it is law office failure. Either way, good cause is shown warranting acceptance of the judgment given that there was no intention to abandon this action. As such, the motion is denied.

The Court has considered the parties’ remaining arguments and finds them unavailing.

Accordingly, it is hereby ORDERED that the defendants’ motion is denied; and it is further

ORDERED that the portion of the causes of action as to which summary judgment was not granted and the additional claims not previously adjudicated shall be severed for further proceedings; and it is further

ORDERED that the Proposed Judgment is accepted and shall be executed by the Court simultaneously herewith.


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1/15/2025
DATE

ANDREW BORROK, 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