

**Trinity Associates, Inc. v Telesector Resources
Group, Inc.**

2006 NY Slip Op 30488(U)

January 4, 2006

Supreme Court, New York County

Docket Number: 601250/03

Judge: Richard B. Lowe

Republished from New York State Unified Court
System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for
any additional information on this case.

This opinion is uncorrected and not selected for official
publication.

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

0601250/2003 HON. RICHARD B. LOWE, III

PART 54

TRINITY ASSOCIATES
VS
TELESECTOR RESOURCES GROUPO

INDEX NO. _____
MOTION DATE 6/3/05
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

SEQ 1
PARTIAL SUMMARY JUDGMENT

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

MOTION IS DECIDED IN ACCORDANCE
WITH ACCOMPANYING MEMORANDUM DECISION

FILED
JAN 10 2006
COUNTY CLERKS OFFICE
NEW YORK

Dated: 1/4/05

HON. RICHARD B. LOWE, III

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 56

-----X
TRINITY ASSOCIATES, INC.,

Plaintiff,

Index No. 601250/03

-against-

TELESECTOR RESOURCES GROUP, INC. d/b/a
VERIZON SERVICES GROUP, INC.,

Defendant.

-----X
Richard B. Lowe, III:

Defendant Telesector Resources Group, Inc. d/b/a Verizon Services Group, Inc. (Verizon) moves for partial summary judgment limiting damages recoverable under plaintiff Trinity Associates, Inc.'s (Trinity) first cause of action, and dismissing Trinity's second, third, fifth, sixth, and seventh causes of action.¹ Trinity cross-moves for partial summary judgment on its first cause of action for breach of contract.

Background

Trinity is in the business of providing electrical power testing and troubleshooting services, as well as performing studies involving electrical power engineering and infrared surveys. Since the 1980s, Trinity provided these services to Verizon's predecessors, Bell Telephone Company of Pennsylvania and Bell Atlantic, as well as Diamond State Telephone

¹ The fifth through seventh causes of action of Trinity's complaint are misnumbered. The complaint does not list a fourth cause of action.

Company.²

In 1999, Verizon changed the bidding process for switchgear maintenance work, because it wanted to broaden the scope of the work that had previous been performed, in order to provide service over a larger region. Trinity bid on this opportunity, and was awarded the contract for switchgear maintenance work in Pennsylvania, Delaware, Maryland, northern Virginia, and Washington, D.C. The contract, Contract No. BA17474 (the Contract), was initially effective from June 1, 1999 to May 31, 2004, but was extended, pursuant to an amendment signed in April 2000, to May 31, 2005.

Section 1.1 of the Contract provided that it was an “as ordered agreement,” meaning that the agreement covered services as they were ordered. This section also explicitly stated that “[Verizon] is not promising to purchase any quantity of Services from [Trinity].” The prices for the services were set forth in an Exhibit, labeled B, which was attached to the Contract. The Contract also stated that the prices were firm, and, unless otherwise stated, the prices were the total price inclusive of all incidental costs, including transportation, entertainment, and the use of all necessary tools, products, and equipment. The Contract further stated that Trinity was responsible for its own overhead, equipment, tools, telephone calls, transportation, materials, and any costs of any nature unless the Contract specifically provided otherwise. Exhibit B listed the cost per building for maintenance work, as well as hourly rates.

Section 1.2 of the Contract gave Verizon the right to modify the scope of the work under the Contract, upon ten days prior written notice. This section provided that, upon such

²For purposes of this motion, the court shall refer to Bell Atlantic and any other Verizon predecessors as “Verizon.”

notification, Trinity had five days to respond to the modification, or it must perform the services under the new scope of work at the same price or a price no greater than originally agreed to. If Trinity required a different price for the new scope of work, it was to submit its required price to Verizon, and Verizon could accept the new price, retract the new scope of work, or terminate the Contract on ten days notice. Verizon also had the right to terminate the Contract at any time upon ten days notice.

Pursuant to the Contract, Trinity was to perform services at locations specified in the work maintenance schedule document, attached to the to the Contract, or in Purchase Orders. Although the Contract provided that Verizon may order services by issuing Purchase Orders, both parties acknowledge that Purchase Orders were not used in regard to maintenance and testing work. Pursuant to the maintenance schedule, Trinity was required to provide maintenance services at numerous Verizon locations during November 2000 through July 2001. Trinity began to provide those services in November 2000.

On January 22, 2001, Alvaro Mora, a representative of Verizon, sent a letter to Alan Loch, President of Trinity, which stated,

“All services which have been authorized to be performed under this Agreement are hereby suspended indefinitely, as a result of budget restrictions at Verizon. Resumption of contract activities shall occur upon notification from Verizon but is not expected before December 31, 2001. Verizon may continue to request repair services on an “as needed” basis. Additionally, Verizon would like to retain the emergency repair service and response time as per the specifications. If there is a cost associated with retaining this service please let us know. All contract service prices are to remain unchanged. All other Terms and Conditions of the Agreement are reaffirmed and remain in effect to

the extent that they do not conflict with the notification herein.”

In response to the January 2001 letter, Loch wrote to Verizon “protesting” Verizon’s action. He also addressed the cost of emergency service, stating,

“You asked me to think about the cost of providing emergency service (since your rates are \$100/hr for some of your company employees and while ours are \$60/hr [seven companies bid against us for this contract and even electricians are known to have higher rates]). Thus, \$60/hr X 8 hrs a day X 7 days a week X 52 weeks is \$174,720 for the Pittsburgh, Pa. area since it is impossible to get a man out there in 3.5 hours. Verizon would also have to pay 2/3 (note we can’t stop another job to rush out to yours, because we would lose the original customer - IBM, Boeing, IRS, Social Security) of \$174,720 = \$117,062 for mileage, meals, etc. for the eastern part of this area (Washington, DC, Baltimore, and Philadelphia) is an acceptable figure. Thus, the total price for emergency response is \$291,782 plus job expense per year. This includes two trucks we’ve outfitted for the task as well as some storage of spare breaker inventory.”

Mora admitted receiving Loch’s letter, but Verizon never responded. Deposition of Alvaro Mora, p. 18 lines 1; 24-25. After receiving the February 2001 letter, Verizon offered Trinity emergency service work, some of which Trinity accepted and performed. Trinity alleges it was never compensated for such work, while Verizon asserts that it paid Trinity approximately \$18,000 in 2003, \$17,000 in 2004, and \$5,000 in 2005. The court notes that, in April 2002, Verizon and Trinity entered into an agreement to increase the unit rates for on call work from \$60 per hour to \$90 per hour, and established overtime at one and a half times the regular rate, and holidays at two times the regular rate.

Trinity brings this action for breach of contract, unjust enrichment, quantum meruit, promissory estoppel and detrimental reliance, fraudulent misrepresentation and inducement, and waiver.

Analysis

In order to grant summary judgment, the court must determine whether a material and triable issue of fact exists. *See Brown v LaFontaine-Rish Med. Assocs.*, 295 AD2d 167 (1st Dept 2002). Here, material and triable issues of fact exist as to Trinity's first cause of action for breach of contract, and thus, Verizon's motion for summary judgment seeking to limit this cause of action is denied.

The first issue of fact exists as to whether Verizon was within its rights, under the Contract, to suspend Trinity's maintenance and testing services. The Contract clearly allowed Verizon to modify the scope of the work (Section 1.2), cancel purchase orders (Section 3.2), or terminate the Contract (Section 21.1). However, as the January 2001 letter evidences, Verizon suspended the Contract, with a possibility of reinstatement. Trinity asserts that suspension of services was an action not permitted under the Contract. The court finds that it is not clear. It seems that Verizon may have been trying to receive the best of both worlds, in that Verizon intended to hold Trinity to the Contract, while relieving its own obligations. Whether or not this suspension was a modification, cancellation, termination, or any other action permitted under the Contract is an issue of fact.

Furthermore, a second issue of fact exists as to whether Trinity was acting under the terms of the Contract or a new agreement when it performed emergency services work for Verizon after the suspension of the Contract. Trinity argues that, in the January 2001 letter,

Verizon stated that it would like to retain the emergency repair service, and that if there was a cost associated with retaining this service to let Verizon know. In the February 2001 letter, Trinity informed Verizon of a cost of \$291,782 plus job expenses per year. Trinity argues that Verizon accepted this price, because after receiving Trinity's letter, Verizon never contested the price, and offered Trinity emergency service work. On the other hand, Verizon asserts that Trinity accepted payment for performance of the emergency service work in accordance to an hourly rate. However, Trinity disputes that it was ever paid such money. Further, Verizon produces evidence of an April 2002 Agreement changing Trinity's hourly rates from \$60 to \$90 for on call work. However, it is not clear which agreement, if any, this new 2002 agreement for "on call work" replaced. Thus, it is not clear whether Trinity was operating under a new agreement apart from the Contract, or what agreement, if any, applied to the emergency services work and compensation for such.

Verizon argues that Trinity's complaint is devoid of any allegations concerning the emergency repair services, and that such amended allegations are improper. Verizon asserts that this court should not permit such an amendment of the complaint because Trinity has not sought leave to amend, and it was aware of these "new" facts at the time the action was commenced. However, Verizon has not shown that it would be significantly prejudiced by such an amendment. *See Abdelnabi v New York City Transit Auth.*, 273 AD2d 114 (1st Dept 2000) (an amendment will be permitted in the absence of significant prejudice to the opposing party). In fact, as stated previously, Verizon admitted it was aware of the February 2001 letter, and furthermore, this letter was a subject of the depositions conducted during discovery. Thus,

without significant prejudice to the defendant, the court grants Trinity leave to amend the complaint to include allegations of the emergency service work allegedly provided without adequate compensation.

In light of the foregoing analysis, Trinity's cross motion for summary judgment on its breach of contract claim is also denied.

Verizon also moves for summary judgment on Trinity's remaining causes of action for unjust enrichment, quantum meruit, promissory estoppel and detrimental reliance, fraudulent misrepresentation and inducement, and waiver. As the court addressed above, an issue of fact exists as to what governed Trinity's performance of emergency services, and compensation for such. Thus, Trinity's causes of action for unjust enrichment, quantum meruit, promissory estoppel and detrimental reliance, fraudulent misrepresentation and inducement, and waiver cannot be dismissed at this time.

Accordingly, it is

ORDERED that defendant Verizon's motion for partial summary judgment limiting damages recoverable under plaintiff Trinity's first cause of action, and dismissing Trinity's remaining causes of action, is denied; and it is further


ORDERED that plaintiff Trinity's cross motion for partial summary judgment is denied; and it is further

ORDERED that plaintiff Trinity is granted leave to serve and file an amended complaint to include allegations of the emergency service work allegedly provided without adequate compensation within 20 days from service of a copy of this order with notice of entry; and it is further

ORDERED that the defendant Verizon shall serve an answer to the amended complaint within 20 days of said service.

Dated: January 4, 2006

ENTER:



J.S.C.
HON. RICHARD B. LOWE, III

FILED
JAN 10 2006
COUNTY CLERK'S OFFICE
NEW YORK