

**Basilico v ADB LLC**

2007 NY Slip Op 30463(U)

March 22, 2007

Supreme Court, New York County

Docket Number: 0108773/2006

Judge: Barbara R. Kapnick

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

PRESENT: Hon. **BARBARA R. KAPNICK**  
Justice

PART 12

BASILICO, Stefano

INDEX NO.

108773/06

v.

ADB LLC

MOTION DATE

MOTION SEQ. NO.

001

MOTION CAL. NO.

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

*and cross motion are decided  
in accordance with the  
accompanying memorandum  
decision*

MOTION/CASE IS RESPECTFULLY REFERRED TO  
JUSTICE  
DATED: \_\_\_\_\_  
J.S.C.

**FILED**  
APR 02 2007  
NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 3/22/07

*[Signature]*  
**BARBARA R. KAPNICK** s.c.  
~~NON-FINAL DISPOSITION~~

Check one:  FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 12

-----X  
STEFANO BASILICO and JANET KRAYNAK,

Plaintiffs,

-against-

ADB LLC, DESIGN BUILD LLC and  
THOMAS MACGREGOR, individually,

Defendants.  
-----X

DECISION/ORDER

Index No. 108773/06

Motion Seq. No. 001

**FILED**

APR 02 2007

BARBARA R. KAPNICK, J.:

NEW YORK  
COUNTY CLERK'S OFFICE

In this action, plaintiffs Stefano Basilico and Janet Kraynak seek to recover damages allegedly stemming from contracts they entered into with defendants ADB, LLC, as designer, and Design Build, LLC, as builder (collectively, the "LLC defendants") for renovations to their cooperative apartment in the building located at 127 Willoughby Avenue in Brooklyn. The individual defendant, Thomas MacGregor, was the sole member of each of the LLC defendants, both of which were dissolved on June 22, 2006.

Defendant MacGregor now moves for an order pursuant to CPLR § 3211(a)(1) and (7) dismissing the Complaint against him on the grounds that: (a) he was not a party to either of the agreements upon which this action is based; and (b) the agreements expressly provide that any disputes arising therefrom must be submitted to arbitration and/or mediation.

Plaintiffs oppose the motion and cross-move for an order pursuant to CPLR § 3215(a) directing that a default judgment be entered against the LLC defendants on the grounds that they have failed to timely serve Answers and/or appear in this action, or, in the alternative, setting this matter down for an inquest and assessment of damages against said defendants.

There is no dispute that defendant MacGregor was not a party to the subject agreements.

Plaintiffs argue that defendant MacGregor may, nonetheless, be held individually liable on a theory of successor liability and/or alter ego liability based on the alleged stripping of the corporate assets. Alternatively, plaintiffs argue that defendant MacGregor may be held liable because he allegedly made certain fraudulent misrepresentations in connection with the pricing of the project and the labor and materials furnished.

However, this Court finds that the instant Complaint does not set forth these claims of fraud with the requisite particularity.<sup>1</sup> See, CPLR § 3016(b).

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<sup>1</sup> It is noted that plaintiffs first learned about the dissolution of the LLC defendants after the filing of the Complaint and service of the instant motion.

Accordingly, based on the papers submitted and the oral argument held on the record on January 31, 2007, the motion is granted to the extent of dismissing the Complaint against defendant MacGregor with leave to replead within 30 days of entry of this order.<sup>2</sup>

Defendant MacGregor shall have 20 days to serve an Answer, or otherwise move with respect to the Amended Complaint.

The cross-motion for a default judgment against the LLC defendants is granted on default. Damages shall be assessed at the time of trial of plaintiffs' claims against defendant MacGregor.

A preliminary conference shall be held in 1A Part 12, 60 Centre Street, Room 341 on June 20, 2007 at 9:30 a.m.

This constitutes the decision and order of this Court.

Dated: March 22, 2007

  
\_\_\_\_\_  
Barbara R. Kapnick  
J.S.C.

**FILED**  
APR 02 2007  
NEW YORK  
COUNTY CLERK'S OFFICE

**BARBARA R. KAPNICK**  
**J.S.C.**

<sup>2</sup> Since the individual defendant was not a signatory to either contract, he is not entitled to enforce the mediation/arbitration requirement contained therein.