

Vargo-Cangemi v Merle Builders, Inc.

2007 NY Slip Op 31204(U)

May 8, 2007

Supreme Court, Onondaga County

Docket Number: 0001140/2006

Judge: Donald A. Greenwood

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At a Motion Term of the Supreme Court of the State of New York, held in and for the County of Onondaga on May 8, 2007.

PRESENT: HON. DONALD A. GREENWOOD
Supreme Court Justice

STATE OF NEW YORK
SUPREME COURT COUNTY OF ONONDAGA

THERESA VARGO-CANGEMI,

Plaintiff,

v.

MERLE BUILDERS, INC.

Defendant,

DECISION AND ORDER
ON MOTION

Index No.: 2006-1140
RJI No.: 33-06-4966

APPEARANCES: THOMAS P. GIVAS, ESQ.
For Plaintiff

DAVID W. PELLAND, ESQ.
For Defendant

The defendant moves for summary judgment dismissing the complaint in this action, which seeks \$22,000.00 in damages for a breach of contract. The complaint alleges that the defendant provided defective and improper construction services, failed to properly inspect the premises and oversee the building of an addition onto plaintiff's home and failed to substantially complete the work required under the contract. The plaintiff contends that as a result of the breach the addition was constructed on an insufficient foundation which caused settling that damaged both the interior and exterior of the house.

The defendant first moves for summary judgment dismissing the complaint against it on the ground that the matter is barred by a six year statute of limitations for a breach of contract, pursuant to CPLR §213. In opposition to the motion, the plaintiff has offered documentary evidence showing that work on the project continued through August of 2000. Inasmuch as the summons was filed in February of 2006, it is within the six year statute of limitations and as such, the motion is denied on that ground. The defendant's motion is also denied based upon the execution of a general release by the plaintiff's ex-husband, David Cangemi, who was also a party to the contract. The plaintiff in opposing the motion has alleged, and it has not been disputed, that she was the sole owner of the property and that David Cangemi had no authority to execute a release on plaintiff's behalf. There has been no documentary evidence offered that the plaintiff executed a release, relieving the defendant of all liability. As such, the motion is denied on this ground.

Finally, the defendant has moved to dismiss on the ground that the defendant bore no responsibility for the foundation issue. The plaintiff, in opposition, has sufficiently established an issue of fact through the tender of admissible evidence. *See, Hunt v. Kosterelis*, 27 AD3d 1178 (4th Dept. 2006). The plans provided with respect to this project required that the R-10 foundation insulation to be installed to 24 inches below the exterior grade. The architect on the project, although indicating that the problems were not related to the foundation, also indicated that the foundation extended only 18 inches below the exterior grade. The motion is likewise denied on this ground.

NOW, therefore, for the foregoing reasons, it is

ORDERED, that the defendant's motion for summary judgment dismissing the complaint against it is denied.

ENTER

Dated: May 15, 2007
Syracuse, New York

DONALD A. GREENWOOD
Supreme Court Justice