

Crosby St. Ventures, LLC v New Jersey Interiors, Inc.
2007 NY Slip Op 31584(U)
June 4, 2007
Supreme Court, New York County
Docket Number: 0603495/2006
Judge: Louis B. York
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY
PRESENT: Hon. LOUIS B. YORK PART 2
Justice

-----X
CROSBY STREET VENTURES, LLC,
Plaintiff,
-against-

Index No. 603495/06
Motion Date 02/13/07
Motion Seq. No. 001
Motion Cal. No. 37

NEW JERSEY INTERIORS, INC.,
Defendant.
-----X

The following papers, numbered 1 to _____ were read on this motion for Default Jgmt.

| PAPERS

NUMBERED

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: [] Yes [X] No

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Plaintiff alleges that in September 2005, it paid defendant a down payment of \$120,000 for renovation work at plaintiff's building, located at 93 Crosby Street in Manhattan. However, defendant started work late and performed it negligently, rupturing a water pipe and causing property damage. Plaintiff demanded a return of the down payment and received \$52,930, leaving a balance due to plaintiff of \$67,070. Plaintiff seeks to recover this sum. Plaintiff does not indicate when it made this demand, but, the Complaint is dated October 6, 2006.

In addition, plaintiff asserts that the project's projected completion date of January 15, 2006, and that there was a handwritten addendum to the contract providing for liquidated

damages of \$500 per week if the project was not completed or the work was unsatisfactory. Plaintiff does not attach the contract and addendum to this motion, and also does not elaborate as to the duration of the provision. Plaintiff states that it hired a new contractor and the work is not finished - or was not finished by October 6, 2006, the date on the Complaint. Plaintiff seeks to enforce this provision.

Plaintiff also sues to recover damages sustained due to the burst pipe. Finally, without asserting a basis for the claim, plaintiff seeks attorney's fees and all litigation expenses. The court notes there must be a clear basis for attorney's fees, which normally are not awarded in New York

Now, plaintiff moves for default judgment, requesting (1) on the first two causes of action \$67,070, plus consequential damages, plus attorney's fees and all related litigation costs plus liquidation damages of \$500 per day from January 15, 2006 until whatever date plaintiff's construction project is completed; and (2) on the third cause of action, a trial on damages sustained due to the burst water pipe.

Plaintiff has established a prima facie case as to defendant's failure to return \$67,070. Plaintiff did not set forth a date from which interest should run or provide supporting information regarding interest. The Court sets the date of June 1, 2006, or midpoint between the original projected end date for the work and the date of the Complaint.

The matter of consequential damages is sent ~~to~~^{to} a Referee for a hearing and determination. The Referee can award the cost of repairs due to the burst water pipe. Plaintiff's claim of lost sales is, as articulated, too speculative to support an award of additional consequential damages. However, if plaintiff can establish additional actual consequential damages flowing from defendant's negligence and breach, the Referee can award these as well.

Next, plaintiff seeks liquidated damages. However, plaintiff has not submitted the contract or the pertinent addendum, both of which are necessary. Therefore, the Court denies judgment as to liquidated damages at this time. The Court must evaluate the liquidated damages clause to make sure there is evidentiary support for this demand and to make sure the clause is sufficiently clear, concrete and finite to be enforceable.

The Court grants judgment as to liability on the third cause of action and directs an inquest. However, it denies the request for attorney's fees in the first and second causes of action. As stated, these are not awardable under New York law in most circumstances, and plaintiff has not shown a legal or contractual basis here:

Therefore, it is.

ORDERED that the plaintiff's motion for summary judgment is granted on default on the first and second causes of action to the extent that they seek the return of the outstanding down payment, and the Clerk of the Court is directed to enter judgment in favor

of plaintiff and against defendant in the sum of \$67,070, with interest at the statutory rate from the date of June 1, 2006, until the date of entry of judgment, as calculated by the Clerk, and thereafter at the statutory rate, together with costs and disbursements as taxed by the Clerk, and it is further

ORDERED that this matter is referred to the Referee's Clerk, who is directed upon filing of a copy of this order to place this action on the appropriate referee's calendar. The Referee shall hear and decide the amount due to plaintiff to compensate it for property damage caused by the burst pipe and any other actual consequential damages and enter a Judgment thereon; and it is further

ORDERED that the portions of the first and second causes of action seeking attorney's fees are severed and dismissed; and it is further

ORDERED that the remainder of action shall continue.

Dated: 6/4/07

Enter:

[Signature]

Louis B. York, J.S.C.

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Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE