

C & L Manhattan, Ltd. v Liu

2007 NY Slip Op 32219(U)

July 12, 2007

Supreme Court, New York County

Docket Number: 0110892/2006

Judge: Barbara Kapnick

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

PRESENT: **BARBARA R. KAPNICK**

PART 12

Index Number : 110892/2006

C & L MANHATTAN, LTD.

vs
LIU, BRANDON C.

Sequence Number : 001

DISMISS ACTION

INDEX NO. 110892/06

MOTION DATE _____

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

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

PAPERS NUMBERED

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

Answering Affidavits -- Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

**MOTION IS DECIDED IN ACCORDANCE WITH
ACCOMPANYING MEMORANDUM DECISION**

FILED

JUL 18 2007

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 7/12/07

BARBARA R. KAPNICK

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

FOR THE FOLLOWING REASON(S):

THIS MOTION IS RESPECTFULLY REFERRED TO JUSTICE

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

-----X
C & L MANHATTAN, LTD. d/b/a CAJUN
CAFÉ & GRILL and DENNIS CHEUNG,

DECISION/ORDER
Index No. 110892/06
Motion Seq. No. 001

-against-

BRANDON C. LIU, GRACELAND DESIGN
ASSOCIATES, JLS INDUSTRIES, INC.,
CORPORATIONS XYZ NOS. 1-10 and
JOHN DOES NOS. 1-10,

Defendants.

-----X
BARBARA R. KAPNICK, J.:

In this action, plaintiffs C&L Manhattan, Ltd. d/b/a Cajun
Café & Grill ("Cajun Café") and Dennis Cheung seek to recover
damages arising out of the design and construction of a fast food
restaurant in the food court at the Manhattan Mall.

The Complaint alleges that plaintiff hired defendant Brandon
C. Liu as a professional construction and design consultant from on
or about April 23, 2002 through on or about January of 2003.

According to the Complaint, defendant Liu was to provide
engineering plans, mechanical plans, lighting plans, seating plans
and design plans for the project. Defendant Liu was also hired to
"communicate and coordinate the various desires and requirements
regarding the construction project" between plaintiffs and
plaintiffs' landlord, contractors, sub-contractors, architects and
designers, between plaintiffs' architect and all governmental
departments or bureaus having jurisdiction over the construction

throughout the project, and between plaintiffs' landlord and the above-referenced individuals and entities.

According to the Complaint, defendant JLS Industries, Inc. served as the general contractor for the project from approximately November 2002 through January 2003, and defendant Graceland Design Associates served as the architect from approximately August 2002 through January 2006.

The Complaint alleges that the original plans for the project contained oversized exhaust ducts that would have exhausted less air than the amount specified by the Manhattan Mall to all of its commercial food shop tenants. According to the Complaint, the exhaust ducts that were actually installed by defendants did not conform to those (incorrect) plans, but rather were undersized exhaust ducts that exhausted more air than the amount specified by the Manhattan Mall.

Plaintiffs claim that they were accordingly forced to close their business for a substantial period of time and to hire, at their own cost, new designers, architects and builders to remove the incorrectly sized ductwork and to rebuild a portion of the kitchen to incorporate the correct sized ducts.

On or about August 3, 2006, plaintiffs commenced this action for alleged negligence and breach of contract.

Defendant Liu now moves for an order dismissing the Complaint on the ground that plaintiffs' claims are barred by the applicable three-year statute of limitations, since the Complaint itself alleges that defendant Liu's services were completed by January 2003, more than three years prior to the commencement of this action. See, CPLR § 214 which provides that the following actions must be commenced within three years:

4. an action to recover damages for an injury to property except as provided in section 214-c;

* * *

6. an action to recover damages for malpractice, other than medical, dental or podiatric malpractice, regardless of whether the underlying theory is based in contract or tort; ...

In opposition to the motion, plaintiff Cheung contends that Mr. Liu was not hired as the architect for the project,¹ but "to act as the construction manager and overseer of this project as per the terms of the proposal prepared by Mr. Liu that we each signed." Even though the Complaint alleges that Mr. Liu completed his work in 2003, Mr. Cheung now claims that "Mr. Liu finished his construction managing duties per our contract on or about April 15, 2006 (emphasis supplied), when he supervised the installation of

¹ In fact, plaintiffs argue that defendant has failed to establish, or even to allege, that he held a valid license under the laws of the State of New York to practice as a registered architect.

the serving area counter tops and associated construction currently in use at the Cajun Café."

Defendant Liu, however, has submitted a reply affidavit in which he disputes plaintiff Cheung's statement that services under the Contract continued until April 15, 2006.

Defendant Liu claims that the services which he provided to plaintiffs relating to the design and construction of the restaurant, under a Proposal dated April 23, 2002, were completed by the end of May 2003, more than three years prior to the commencement of this action. He further claims that "[u]nder a separate agreement, my company, H2L Millwork & Construction Corp., milled and installed service counters for Plaintiffs at Cajun Café. This work was completed in March 2003 (emphasis supplied), and an invoice for these services was prepared and sent to Plaintiff Dennis Cheung."

Based on the oral argument held on the record on April 25, 2007, and the conflicting claims contained in the papers submitted as to the precise nature and scope of defendant's work on the project and as to when the work was actually completed, this Court must deny defendant Liu's motion to dismiss plaintiffs' Complaint on statute of limitations grounds as premature.

Defendant Liu shall serve an answer within 20 days of service of a copy of this order with notice of entry.

A preliminary conference shall be held in IA Part 12, 60 Centre Street, Room 341 on September 25, 2007 at 9:30 a.m. Plaintiffs' counsel shall notify all parties of the conference date.

This constitutes the decision and order of this Court.

Date: July 12, 2007


Barbara R. Kapnick
J.S.C.

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

FILED
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NEW YORK
COUNTY CLERK'S OFFICE