

Cardona v Maramont Corp.

2008 NY Slip Op 30728(U)

March 12, 2008

Supreme Court, New York County

Docket Number: 0602877/2007

Judge: Carol R. Edmead

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PRESENT: HON. CAROL EDMEAD
Justice

PART 35

Index Number : 602877/2007
CARDONA, WILTON
vs.
MARAMONT CORPORATION
SEQUENCE NUMBER : 001
DISMISS ACTION

INDEX NO. _____
MOTION DATE 12/28/07
MOTION SEQ. NO. 001
MOTION CAL. NO. _____

his 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

FILED
MAR 13 2008
NEW YORK
COUNTY CLERK'S OFFICE


In accordance with the accompanying Memorandum Decision, it is hereby

ORDERED that the motion by defendants to dismiss the complaint is granted solely to the extent that the claims for reformation in plaintiffs' first and second causes of action are dismissed, plaintiffs' third, fourth, and fifth causes of action are dismissed; and plaintiffs' sixth, seventh, and eighth causes of action are dismissed without prejudice; and it is further

ORDERED that defendants serve a copy of this order with notice of entry upon all parties within 20 days of entry.

This constitutes the decision and order of the Court.

Dated: 3/12/08


HON. CAROL EDMEAD J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate DO NOT POST REFERENCE

FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 35

-----X
WUILTON CARDONA and NOEL B. ORTIZ, individually and on behalf of all other persons similarly situated who were employed by THE MARAMONT CORPORATION, and/or other entities affiliated with, controlling, or controlled by THE MARAMONT CORPORATION, with respect to certain Public Contracts awarded by THE CITY OF NEW YORK, THE NEW YORK CITY DEPARTMENT OF HOMELESS SERVICES, THE NEW YORK CITY DIVISION OF MUNICIPAL SUPPLY SERVICES, and/or other municipalities, public authorities or government entities,

Plaintiffs,

-against-

MARAMONT CORPORATION, and any related corporate entities, and HARRY REICHMAN, JOSEPH BISTRITZKY, and DAVID GOLDFARB, individually,

Defendants.

-----X
HON. CAROL ROBINSON EDMEAD, J.S.C.

Index No. 602877-2007
DECISION/ORDER

FILED
MAR 13 2008
NEW YORK
COUNTY CLERK'S OFFICE

MEMORANDUM DECISION

In this action to recover prevailing wages and supplemental benefits and/or living wages and benefits, defendant Maramont Corporation ("Maramont") and Harry Reichman, Joseph Bistritzky, and David Goldfarb (the "Individual Defendants") (collectively, "defendants"), move to dismiss the complaint of the plaintiffs, Wuilton Cardona and Noel Ortiz ("plaintiffs") for lack of jurisdiction and failure to state a cause of action.

Factual Background

Maramont operates a manufacturing plant in Brooklyn, New York, which obtains pre-prepared food products in bulk, and repackages them for delivery to the New York City

Department of Homeland Services (“DHS”). Maramont employs assembly line workers who are responsible for the re-packaging.

Maramont provides its services to DHS pursuant to certain contracts (“City Contracts”). In accordance with the New York City Administrative Code § 6-109, the City Contracts contained provisions mandating the payment of certain wages and supplemental benefits, and schedules of those wages and benefits established by the New York City Comptroller.

On February 8, 2006, Maramont and the New York Joint Board UNITE-HERE (the “Union”) entered into a collective bargaining agreement (the “Bargaining Agreement”), wherein the Union was designated as the exclusive bargaining representative for its members concerning rates of pay, wages, hours and other conditions of employment. The Bargaining Agreement also includes procedures for resolving disputes between Union members and Maramont.

Plaintiffs, former employees of Maramont, were members of the Union at all times during their employment with Maramont. Plaintiffs allege that Maramont failed to pay the prevailing wage and supplemental benefit rates, despite mandates contained in the City Contracts.

Motion

Defendants argue that plaintiffs’ claims are barred because they failed to exhaust their administrative remedies. Administrative Code § 6-109 of the New York City Code, which is similar to and intertwined with New York State’s Labor Law § 220, requires that plaintiffs bring any prevailing wage complaints to the New York City Comptroller. The Comptroller is required to issue civil service determinations in cases where there is a prevailing wage dispute. Thus, assuming that the City Contracts fall under the Administrative Code, plaintiffs failed to comply with the obligation to bring any prevailing wage complaints to the City Comptroller, warranting

dismissal of their prevailing and living wage claims. Likewise, the claim for attorneys' fees incurred in connection with such claims must fail.

Plaintiffs' claims are barred also because they failed to exhaust their administrative and contractual remedies, set forth under the Bargaining Agreement, prior to suit. Pursuant to Article 22, ¶¶5, 6, an employee may not institute an action against Maramont in a court of law other than effecting an arbitration, preserving the *status quo* pending the arbitration or pending the confirmation of an award, or enforcing an arbitrator's award rendered under the Bargaining Agreement's procedures. The Bargaining Agreement also states that in the event of such a suit, Maramont may invoke Article 22 as a bona fide defense to such an action.

Further, plaintiffs cannot state a cause of action for unjust enrichment or *quantum meruit*. The existence of a valid and enforceable contract, such as the Bargaining Agreement, covering the dispute at issue, precludes recovery for such *quasi*-contract claims.

Additionally, plaintiffs' claims against the Individual Defendants pursuant to Business Corporation Law § 630 also fail, since there is no unsatisfied judgment against Maramont for which such shareholders can be personally liable. Plaintiffs have not even alleged that a judgment has been entered against Maramont, much less that execution on a judgement against Maramont was returned unsatisfied. Nor is there any reason to believe that Maramont has any liability towards plaintiffs, or that it could not satisfy any judgment entered by this Court.

Plaintiffs' fifth cause of action, which seeks wages due under a collective bargaining agreement are pre-empted by federal Labor-Management law.

Moreover, plaintiffs' claim for statutory costs and fees must be dismissed. Since such claims are predicated on the successful prosecution of the wage claims, and the wage claims are subject to dismissal, the claim for costs and fees are impermissible standing alone.

In opposition, plaintiffs argue that caselaw recognizes a worker's right as a third-party beneficiary to maintain a common law breach of contract action for unpaid prevailing wages and benefits under a publicly financed contract. Plaintiffs agree that the law governing Labor Law § 220 claims informs the discussion of claims related to Administrative Code § 6-109. However, there is a clear distinction between direct statutory actions and breach of contract actions brought by workers as third party beneficiaries of wage provisions in publicly financed contracts. Here, plaintiffs specify that their first and second causes of action are common law claims for breach of contract and not direct statutory claims. There is no claim in this case "under Administrative Code §6-109," and plaintiffs may sue for contractually mandated but unpaid prevailing wages and supplemental benefits, separate from any statutory cause of action or administrative remedies they may have for the same violation. Thus, the exhaustion of remedies doctrine is inapplicable. Further, no court in New York State has ever required workers to exhaust administrative remedies before bringing a third party beneficiary action for breach of contract to recover unpaid prevailing wages and benefits. And, the Administrative Code expressly states that no exhaustion of remedies is required to bring an action to recover unpaid wages.

Additionally, the Bargaining Agreement is irrelevant to plaintiffs' claims, and plaintiffs are not required to follow the grievance procedures thereunder. Although Maramont claims that the Bargaining Agreement was entered into on February 8, 2006, the claims of plaintiffs and other members of the putative class date back prior to that date. Plaintiffs admit, for purposes of

the motion only, that they have not submitted their claims to any procedures called for the Bargaining Agreement. However, even assuming that there was an agreement in place for the period of time at issue, and that plaintiffs and other members of the putative class were covered by it, “the rights Plaintiffs are seeking to enforce in this suit are not related to the Collective Bargaining Agreement in any way, but arise instead out of the New York City Administrative Code and New York State common law.” (Aff. in Opp., page 13). In this regard, plaintiffs are asserting that Maramont breached contracts it entered into with DHS, which mandated certain wages and benefits in accordance with the Administrative Code; there is no claim that there was any breach of the Bargaining Agreement or that they are owed wages under the Bargaining Agreement. And, defendants are foreclosed from raising any new arguments in reply to further support plaintiffs’ flawed contention.

Plaintiffs also note that Administrative Code § 6-109 specifically anticipates a situation as one presented herein, where the wages called for under the Administrative Code might be higher than those called for under a collective bargaining agreement. The Administrative Code specifically states that nothing therein shall prohibit or conflict with any collective bargaining agreement. Even if the Administrative Code did not specifically abrogate the wage and benefit provisions of the Bargaining Agreement, it cannot be inferred that the members intended to waive their statutory rights. And, even if the Bargaining Agreement contained such a waiver, it would be ineffectual, as the rights conferred to third party beneficiaries of public contracts under prevailing wage provisions are nonnegotiable and cannot be abrogated by a bargaining agreement.

Further, to the extent this Court finds that Maramont entered into valid and enforceable contracts which called for payments to plaintiffs of wages and supplemental benefits at rates pursuant to the Administrative Code, of which plaintiffs are third party beneficiaries, plaintiffs would have no claim for unjust enrichment or *quantum meruit*. However, Maramont has denied that any of the City Contracts fall under the ambit of the Administrative Code. In anticipation of such a defense, plaintiffs have permissibly stated equitable claims in the alternative. In the event this Court finds that there are no enforceable contracts obligating Maramont to pay plaintiffs the wages they are owed according to the Administrative Code, defendants will have been unjustly enriched by the failure of such contracts to contain required provisions.

Plaintiffs however, withdraw, without prejudice, their sixth, seventh, and eighth causes of action which failed to specify that such claims were contingent upon plaintiffs obtaining a judgment against Maramont which would go unsatisfied.

In reply, Maramont argues that plaintiffs' express statement that the first two causes of action are based on contract theories is fatal to their third, fourth, and fifth causes of action for unjust enrichment, *quantum meruit*, and attorneys' fees. Nor may the Court permit plaintiffs' *quasi-contract* claims to stand for the time being so that they may rely on section 6-109, since plaintiffs cannot rely on *quasi-contract* theories to vary the terms of a written contract. Further, the Court should dismiss the fifth cause of action, as the Labor Law does not authorize statutory costs and attorneys' fees when a plaintiff-employee seeks to recover for breach of contract. Further, defendants' argument that the fifth cause of action was fatally flawed was argued in its original motion, and defendants are permitted to address arguments in opposition.

Analysis

In determining a motion to dismiss, the Court's role is ordinarily limited to determining whether the complaint states a cause of action (*Frank v DaimlerChrysler Corp.*, 292 AD2d 118, 741 NYS2d 9 [1st Dept 2002]). The standard on a motion to dismiss a pleading for failure to state a cause of action is not whether the party has artfully drafted the pleading, but whether deeming the pleading to allege whatever can be reasonably implied from its statements, a cause of action can be sustained (*see Stendig, Inc. v Thom Rock Realty Co.*, 163 AD2d 46 [1st Dept 1990]; *Leviton Manufacturing Co., Inc. v Blumberg*, 242 AD2d 205, 660 NYS2d 726 [1st Dept 1997] [on a motion for dismissal for failure to state a cause of action, the court must accept factual allegations as true]). When considering a motion to dismiss for failure to state a cause of action, the pleadings must be liberally construed (*see*, CPLR §3026), and the court must "accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (*see Arnav Indus., Inc. Retirement Trust v Brown, Raysman, Millstein, Felder & Steiner*, 96 NY2d 300, 303 [2001]; *Leon v Martinez*, 84 NY2d 83, 87-88 [1994]).

First and Second Causes of Action for Reformation and Breach of Contract

In their first and second cause of action for reformation and breach of contract, plaintiffs allege that the schedules of prevailing wages and supplemental benefits, and living wages and health benefits, respectively, contained in the City Contracts were for the benefit of plaintiffs and the other members of the putative class. Maramont allegedly breached the City Contracts with DHS by failing to pay plaintiffs and other members of the putative class the prevailing rates of wages and supplemental benefits for all labor performed. In addition, New York City

Administrative Code § 6-109 requires that language mandating compliance with its provisions be included with and form a part of the City Contracts. To the extent that the City Contracts failed to provide language mandating the payment of prevailing wages and supplements, and living wages and health benefits supplements to other employees, pursuant to Administrative Code § 6-109, reformation of the City Contracts to include such language is equitable and proper. By reason of Maramont's breach, plaintiffs are entitled to reformation of the City Contracts to include damages.

With respect to the branch of plaintiffs' claim for breach of contract, the complaint adequately states a cause of action to recover prevailing and/or living wages as damages for breach of contract to which plaintiffs' were intended beneficiaries (*Melissakis v Proto Constr. & Dev. Corp.*, 294 AD2d 342, 741 NYS2d 731 [2d Dept 2002], citing *Wright v Wright Stucco*, 50 NY2d 837; *Fata v Healy Co.*, 289 NY 401; *Samborski v Linear Abatement Corp.*, 1998 WL 474069 [SDNY, Chin, J., 96 Civ 1405]; *Pesantez v Boyle Env'tl. Servs.*, 251 AD2d 11 [1st Dept 1998]).

It bears noting that with respect to wages, New York Labor Law § 220 (3) provides: "The wages to be paid for a legal day's work, as hereinbefore defined, to laborers, workmen or mechanics upon such public works, shall be not less than the prevailing rate of wages as hereinafter defined

However, the Labor Law is not the exclusive remedy to recover prevailing wages (*De La Cruz v Caddell Dry Dock & Repair Co., Inc.*, 22 AD3d 404 [1st Dept 2005]). It has been held that workers protected by Labor Law § 220 are third-party beneficiaries of the contract between their employer and the municipality, and they possess a cause of action against their employer to recover damages for breach of contract when the contract between the employer and the

municipality expressly provides for the wages to be paid to such workers (*Jara v Strong Steel Doors, Inc.*, 16 Misc 3d 1139, 851 NYS2d 58 [Supreme Court New York County 2007]). Thus, workers on public projects are entitled to be paid according to the prevailing rate of wage in the locality and the establishment of a statutory remedy in Labor Law § 220 does not supersede or extinguish private employees' common-law contractual causes of action (*Wright v Wright Stucco*, 50 NY2d 837, 430 NYS2d 52 [1980] [reversing Appellate Division's holding that plaintiffs had no common-law cause of action against the defendants; plaintiffs of subcontractor thereby permitted to assert third-party beneficiary rights under contract between general contractor and project owner, which required general contractor to pay "prevailing wages" and to impose same obligation on its subcontractor]). Thus, although "a private right of action for underpayment of wages does not exist under Labor Law § 220 until there has been an administrative determination pursuant to subdivision (8) that either has gone unreviewed or been affirmed in the claimants-employees' favor" plaintiffs herein can, and have, asserted third-party beneficiary status so as to proceed on a common-law breach of contract claim for underpayment of wages and benefits (*see Gawez v Inter-Connection Elec., Inc.*, 9 Misc 3d 1107, 806 NYS2d 444 [Supreme Court New York County 2005] *citing Fata v S.A. Healy Co.*, 289 NY 401 [1943]).

Here, plaintiffs' complaint to recover prevailing and/or living wages and supplemental benefits is not based on a statutory provision, but on the City Contracts (*cf. Jara v Strong*, 16 Misc 3d 1139 [Supreme Court New York County 2007]). Thus, exhaustion of administrative remedies is unnecessary (*Wysocki v Kel-Tech Construction, Inc.*, Sup. Ct, N.Y. Co., April 8, 2005, Solomon, J., Index No. 603591/03, *aff'd on other grounds*, 33 AD3d 375 [1st Dept 2006]).

Defendants' claim alleging that the collective bargaining agreements provide for the exhaustion of remedies, prohibition against such suits in court, and arbitration of all grievances arising out of the employment of the plaintiff by the defendants, and that the defendants invoke the right to have this controversy settled and determined in accordance with such provisions, lacks merit. Generally, when "an employer and a union enter into a collective bargaining agreement that creates a grievance procedure, an employee subject to the agreement may not sue the employer directly for breach of that agreement but must proceed, through the union, in accordance with the contract" (*Matter of Moses v Rensselaer County*, 262 AD2d 697, 690 NYS2d 769 [3d Dept 1999] citing *Matter of Board of Educ. v Ambach*, 70 NY2d 501, 508, *cert denied sub nom. Margolin v Board of Educ.*, 485 US 1034). In determining the parameters of the collective bargaining agreement and the types of complaints required to be grieved pursuant thereto, the provisions of such agreement will govern (*Matter of Moses v Rensselaer County*, *supra*).

Pursuant to Article 22 of the Bargaining Contract:

5. Any dispute, complaint, or controversy, claim or grievance hereunder which any employee may have against the Employer may be instituted and processed only in the manner herein provided. No employee shall have the right individually to institute or process any action or proceeding with reference to any dispute, complaint or grievance

Also pursuant to Article 22 of the Bargaining Contract:

6. It is agreed that the machinery provided herein for the settlement of all disputes, claim, controversies, complaints and grievances arising under, out of, or in connection with, or any manner related to the relationship between the parties, shall be the exclusive means for the determination thereof, and that neither the Employer, nor the Union or any employee covered by this Agreement, shall institute any action or proceeding against the other in any court of law or equity, state or federal, other than effecting arbitration as herein provided, or preserving the status quo pending arbitration

or pending confirmation of an award, or respecting enforcement of an arbitrator's award rendered hereunder.

Plaintiffs' breach of contract claims arise under the provision of the *City Contract* between Maramont and the City that requires that Maramont pay the workers defined therein pursuant to the attached wage schedules, and not under any clauses contained in the Bargaining Agreement (see *Wysocki v Kel-Tech Construction, Inc.*, Sup. Ct, N.Y. Co., April 8, 2005, Solomon, J., Index No. 603591/03, *aff'd on other grounds*, 33 AD3d 375 [1st Dept 2006], citing *Livadas v Bradshaw*, 512 US 107, 123-124 [1994]). Since plaintiffs are not asserting that the failure to pay prevailing or living wages and benefits violated the terms of the Bargaining Agreement or that there exists a dispute regarding the meaning of any of its provisions, the dispute does not "directly or indirectly arise under, out of, or in connection with or any manner relate to this [Bargaining] Agreement or the breach thereof" (Bargaining Agreement Article 22 § 1). Further, the interpretation of the terms and conditions of the Bargaining Agreement are irrelevant and have no bearing on the sufficiency of plaintiffs' claims.

The cases cited by the defendants are factually distinguishable (*P & T Iron Works v Talisman Contr. Co., Inc.*, 18 AD3d 527 [2d Dept 2005] [plaintiffs' claim was brought directly for violation of Labor Law 220]; *Garcia v Allied Parking Systems*, 300 AD2d 219, 752 NYS2d 316 [1st Dept 2002] [plaintiffs claims rested on the rate provided in the collective bargaining agreement, and such claims were preempted by federal law (Labor-Management Relations Act)]; *Sheridan v Town of Orangetown*, 21 AD3d 365 [2d Dept 2005] [documentary evidence established that the plaintiff's claim was governed by a *collective bargaining agreement* and he failed to pursue the grievance procedure contained therein and exhaust his administrative

remedies]; *Matter of D'Onofrio v City of Mount Vernon*, 226 AD2d 719 [2d Dept 1996] [proceeding was brought pursuant to CPLR article 78 to compel the municipal employer to pay to the petitioner the wage supplement and all benefits provided by General Municipal Law § 207-a (2); *see also, Pesantez v Boyle Envtl. Servs.*, 251 AD2d 11 [1st Dept 1998]).

Further, where a public works contract incorporates the requirements of Labor Law § 220 and a schedule of prevailing wages, common-law breach of contract causes of action, asserting third-party beneficiary status, are not preempted by section 301 of the Labor Management Relations Act of 1947 (61 US Stat 156, codified at 29 USC § 185) since the rights so conferred are independent of the collective bargaining agreement (*Wysocki v Kel-Tech Const. Inc.*, 46 AD3d 251, 847 NYS2d 166, *supra*). While collective bargaining agreements are helpful on the issue of prevailing wage rates (*see Lingle v Norge Div. of Magic Chef, Inc.*, 486 US 399, 413 n. 12 [1988]), they are not necessarily determinative, and do not bear on every issue presented under Labor Law § 220 (*Wysocki v Kel-Tech Constr. Inc.*, 44 AD3d 251 [1st Dept 2007]).

Therefore, defendants' contention that plaintiffs failed to exhaust the remedies provided in the Bargaining Agreement is misplaced, and insufficient to warrant dismissal of plaintiffs' breach of contract claims.

With respect to the branch of plaintiffs' first and second causes of action seeking a reformation of the City Contracts, an action to reform a written agreement rests upon the theory that the parties came to an understanding, but in reducing it to writing, through mutual mistake, or through mistake on one side and fraud on the other, omitted some provision agreed upon, or inserted one not agreed upon (*William P. Pahl Equipment Corp. v Kassis*, 182 AD2d 22, 588 NYS2d 8 [1st Dept 1992]).

Labor Law § 220 (3) provides that public works contracts

. . . shall contain a provision that each laborer, workman or mechanic, employed by such contractor, subcontractor or other person about or upon such public work, shall be paid the wages herein provided.

Here, the City Contract contains a schedule which “sets forth the prevailing wage rates required to be annexed to and form part of the contract specifications for New York City Administrative Code § 6-109. . . .” The City Contract also provides that “The attached schedule of wages are the prevailing rates and the contractor engaged in public work is obligated to pay each security, temporary (clerical), cleaning and food service worker not less than the rates specified in this schedule for the trade or occupation utilized upon such public work need be annexed to the contract.” Further, plaintiffs do not claim that anything was inserted into the agreements contrary to the intentions of the parties. And, there was no mutual mistake, or mistake on one side and fraud on the other, which resulted in the failure of the written instruments to express that which the statute required. Whether the provisions in the City Contracts inserted pursuant to the Labor Law apply to the plaintiffs, does not justify reformation. Therefore, to the extent plaintiffs allege that the City Contracts failed to provide language mandating the payment of living wages and health benefits supplements to other employees, so as to warrant reformation to include such language, this claim is dismissed.

Third Cause of Action for *Quantum Meruit*

In their third cause of action for *quantum meruit*, plaintiffs allege that they are entitled to the reasonable value of the services they performed at the request and for the benefit of Maramont. The existence of an enforceable contract covering the disputed issue of plaintiffs

compensation precludes a recovery in *quantum meruit* (*Schuit v Tree Line Management Corp.*, 46 AD3d 405, 847 NYS2d 580 *citing Zito v Fischbein, Badillo, Wagner & Harding*, 35 AD3d 306, 307, 831 NYS2d 25 [2006]). Here, plaintiffs expressly state that there is no claim under Administrative Code § 6-109, and that their first and second causes of action are common law claims for breach of contract and not statutory claims. Thus, plaintiffs' *quantum meruit* claim warrants dismissal (*see Clark-Fitzpatrick, Inc. v Long Is. R.R. Co.*, 70 NY2d at 388; *Heller v Kurz*, 228 AD2d 263, 264 [1996]; *H.B.L.R., Inc. v Command Broadcast Associates, Inc.*, 156 AD2d 151 1 Dept 1989]).

Fourth Cause of Action for Unjust Enrichment

The theory of unjust enrichment lies as a *quasi-contract* claim (*see State of New York v Barclays Bank of N.Y.*, 76 NY2d 533, 540 [1990]). A *quasi contract* only applies in the absence of an express agreement, and is not really a contract at all, but rather a legal obligation created in the absence of any agreement in order to prevent a party's unjust enrichment (*Clark-Fitzpatrick, Inc. v Long Is. R.R. Co.*, 70 NY2d 382 [1987]).

In their fourth cause of action for unjust enrichment, plaintiffs allege that when Maramont entered into the City Contracts, Maramont agreed to pay the required prevailing wage and supplemental benefit rate and/or living wage and health benefit to its employees, which it had no intention of paying. As a result of Maramont's failure to pay such wages and benefits, Maramont was unjustly enriched for work and services performed by plaintiffs, resulting in damages to the plaintiffs. As stated above, however, plaintiffs expressly state that there is no claim under Administrative Code § 6-109, and that their first and second causes of action are common law claims for breach of contract and not statutory claims. Given that plaintiffs' claims arise out of

the alleged breach by Maramont of the wage and benefit provisions contained in the City Contracts, and the disputed terms and conditions fall entirely within the City Contract, there is no valid claim for unjust enrichment (*De La Cruz v Caddell Dry Dock & Repair Co., Inc.*, 22 AD3d 404]; see *Clark-Fitzpatrick, Inc. v Long Is. R.R. Co.*, 70 NY2d 382, 388 [1987] ["(t)he existence of a valid and enforceable written contract governing a particular subject matter ordinarily precludes recovery in quasi contract for events arising out of the same subject matter"]). Thus, the fourth cause of action also warrants dismissal.

Fifth Cause of Action

In their fifth cause of action for attorneys' fees and costs, plaintiffs allege that Maramont's failure to pay the prevailing rates of wages and supplemental benefits was "willful" as that term is used in Article 6 of the New York Labor Law. Plaintiffs claim that Maramont's violation of Article 6 of the New York Labor Law entitles plaintiffs to statutory attorneys' fees and costs pursuant to New York Labor Law Sections 198(1) and 198(1-A).¹ Such statutory remedies of an award of attorneys' fees and liquidated damages which plaintiffs seek "are limited to actions for wage claims founded on the substantive provisions of Labor Law article 6" and are not recoverable, as here, in a common-law contractual remuneration action (*Gottlieb v Kenneth D. Laub & Co.*, 82 NY2d 457, 464 [1993]).

Conclusion

In accordance with the foregoing, it is hereby

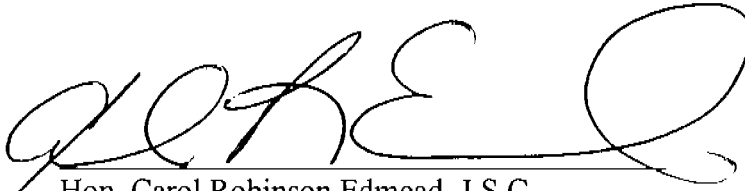
¹ The sixth, seventh, and eighth causes of action against the Individual Defendants are dismissed, without prejudice as premature.

ORDERED that the motion by defendants to dismiss the complaint is granted solely to the extent that the claims for reformation in plaintiffs' first and second causes of action are dismissed, plaintiffs' third, fourth, and fifth causes of action are dismissed; and plaintiffs' sixth, seventh, and eighth causes of action are dismissed without prejudice; and it is further

ORDERED that defendants serve a copy of this order with notice of entry upon all parties within 20 days of entry.

This constitutes the decision and order of the Court.

Dated: March 12, 2008



Hon. Carol Robinson Edmead, J.S.C.

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