

**35 Cornelia LLC v Yenom Corp.**

2012 NY Slip Op 30744(U)

March 23, 2012

Sup Ct, New York County

Docket Number: 104605/09

Judge: Louis B. York

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SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

PRESENT: LOUIS B. YORK  
J.S.C. Justice

PART 2

Index Number : 104605/2009  
35 CORNELIA  
vs.  
YENOM  
SEQUENCE NUMBER : 002  
SUMMARY JUDGMENT

INDEX NO. \_\_\_\_\_  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. \_\_\_\_\_

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

Notice of Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_ | No(s). \_\_\_\_\_  
Answering Affidavits — Exhibits \_\_\_\_\_ | No(s). \_\_\_\_\_  
Replying Affidavits \_\_\_\_\_ | No(s). \_\_\_\_\_

Upon the foregoing papers, it is ordered that this motion is

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE  
FOR THE FOLLOWING REASON(S):

MOTION IS DECIDED BY TELEPHONE  
WITH ACCOMPANYING MEMORANDUM DECISION.

FILED

MAR 27 2012

NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 3/23/12

Levy, J.S.C.

LOUIS B. YORK

- 1. CHECK ONE: .....  CASE DISPOSED
- 2. CHECK AS APPROPRIATE: ..... MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
- 3. CHECK IF APPROPRIATE: .....  SETTLE ORDER  SUBMIT ORDER  
 DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

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

-----x

35 CORNELIA LLC AND EMIL CHYNN,

Plaintiffs,

Index No 104605/09

-against-

YENOM CORP., 257 BLEECKER LLC, STEVEN CROMAN  
and M&E MANAGEMENT COMPANY,

Defendants,

-----x

**FILED**

**MAR 27 2012**

NEW YORK  
COUNTY CLERK'S OFFICE

**YORK, J.:**

Defendants move, pursuant to CPLR 3212, for summary judgment dismissing the complaint in its entirety. Plaintiffs cross-move in opposition to the motion and for summary judgment on all claims against defendants Yenom Corp., 257 Bleecker LLC and Steven Croman.

**BACKGROUND**

In February 2005 plaintiff Chynn purchased, through 35 Cornelia LLC, a townhouse located at 35 Cornelia Street ("Chynn Residence") from Yenom Corp. ("Yenom") which had previously acquired two adjoining buildings, 35 and 37 Cornelia Street. 37 Cornelia Street is also known as 257 Bleecker Street. At the closing, Yenom assigned all its rights and obligations under the contract to 257 Bleecker Street LLC ("Bleecker LLC"). M&E Management Company ("M&E") manages 257 Bleecker Street. Defendant Steven Croman is principal of Yenom, Bleecker LLC

and M&E.

At the time of purchase, 35 and 37 Cornelia shared several utilities and utility meters, including heat, gas, water and electricity. In addition, one of the furnaces, a gas meter and line for 257 Bleecker Street ("Croman Building"), was located in the basement of the Chynn Residence. The electric meter and line, and water meter and line supplying the Chynn Residence ran through the basement of the Croman Building. At the closing, Bleecker LLC agreed to pay for "the transfer and/or replacement of the existing heating system by September 1, 2005." In a letter dated May 25, 2006, Bleecker LLC took upon itself an additional obligation to "separate the boiler and hot water heater and to neatly remove the boiler and furnace from the basement" and to separate all utilities (gas, water and electric) and corresponding meters. It assumed all the associated costs. The letter was signed by Steven Croman as managing member of Bleecker LLC.

Plaintiff Chynn claimed that defendants failed to timely perform these obligations, and instead Chynn himself had to arrange the work. As a result, he allegedly incurred expenses amounting to no less than \$40,000 and sued defendants Yenom, Bleecker LLC, Steven Croman and M&E for breach of contract (the first cause of action) and unjust enrichment (the second cause of action).

He further alleged that defendants and/or their agents, servants or employees entered his basement on two occasions, removed fixtures and personal property belonging to him and caused damage to the premises. The third cause of action is for trespass and misappropriation of plaintiff's property. The fourth cause of action, arising from the same events, is for defendants' negligent supervision of actions of their agents, servants, and/or employees.

Chynn further alleged that defendants tapped into his meter to supply electricity to common areas at 257 Bleecker Street and seeks redress for conversion (the fifth cause of action).

The sixth through eighth causes of action are based on alleged damage to the façade of the Chynn Residence in the amount of \$10,000 due to construction work on the adjacent Croman Building. The sixth cause sounds in negligence. The seventh cause is for denial of quiet enjoyment of the Chynn Residence, and the eighth cause of action is for gross negligence.

Plaintiffs commenced this action on April 2, 2009 and on April 2, 2010 moved for summary judgment as to liability. By order dated July 8, 2010, the court denied plaintiff's motion, finding that there remained disputed issues of fact.

Presently, defendants move for summary judgment dismissing the complaint in its entirety. Plaintiffs cross-move for summary judgment against defendants Yenom Corp., 257 Bleecker LLC and Steven Croman, reiterating their complaint and adding new evidence which they did not submit with their previous motion for summary judgment. Even though plaintiffs did not characterize their motion as that for renewal of their previously denied motion for summary judgment, in effect it is.

## DISCUSSION

### A. Defendants' motion for summary judgment dismissing the complaint

Defendants assert that there was no contractual obligation on the part of defendants Croman, Yenom or M&E to perform any work to separate utilities at Cornelia Street, and the action must be dismissed as against them. Defendant Yenom assigned all its rights and obligations in relation

to the Chynn Residence to Bleecker LLC. M&E has no contractual relationship with plaintiffs, while Steven Croman signed contractual documents with plaintiffs only on behalf of the Bleecker LLC, and not in his personal capacity. These facts are not in dispute. Accordingly, this action is dismissed against M&E and Steven Croman on contractual and quasi-contractual claims (the first and second causes of action) and against Yenom in its entirety.

Defendant Bleecker LLC claims that it performed all the work required of it, and that its contractual obligations were satisfied. There is a dispute between the parties as to the extent of the obligations assumed by Bleecker LLC, as well as the time and the circumstances under which these obligations were entered into. Chynn contends, without proffering any proof, that there existed an additional written rider to the sale and purchase agreement, and that the opposite side made oral commitments to separate all utilities in the adjoining buildings at the time of the sale. However, the only written documents governing parties' relationships are a single contractual clause in the sale agreement and a letter from Croman dated May 26, 2006. Bleecker LLC asserts that the letter was provided to Chynn under duress and questions its obligations to perform more than it took upon itself in the original contract, namely, removal of the furnace from Chynn's basement. Given that in various affidavits submitted in support of this motion, Bleecker LLC admits its obligation to separate the utilities, this obligation is deemed established.

The only factual dispute between the parties is whether Bleecker LLC performed its obligation. As part of its *prima facie* case, Bleecker LLC submitted certain invoices for the work allegedly done to separate the utilities, the documents from the New York City Department of Buildings that purport to show that the Department accepted this work, and explanations in Croman's deposition of what various items in the documents mean. Chynn came up with his invoices for

setting up separate utilities on his property. Viewed in a light most favorable to him as a non-moving party, this evidence is sufficient to deny defendant's Bleecker LLC summary judgment on the contractual claim.

Bleecker LLC correctly argues that the second cause of action, for unjust enrichment, is duplicative of the contract claim where there exists a valid written contract covering the same circumstances. Clark-Fitzpatrick, Inc. v Long Is. R. Co., 70 NY2d 382, 389, 521 N.Y.S.2d 653, 656 [1987]. Accordingly it is entitled to summary judgment on this cause of action.

Defendants Bleecker LLC, Croman and M&E move to dismiss all tort claims against them as based on the theory of vicarious liability. According to defendants, work done on the premises was performed by licensed professional independent contractors, and if plaintiffs were aggrieved in any way, they must seek redress directly from the contractors.

Concerning the construction work performed at 257 Bleecker Street, which allegedly damaged the façade of the Chynn Residence, defendants put in, by affidavit of Barry G. Blenis, uncontroverted evidence that the work was done by independent contractors. The general rule is that an employer who hires an independent contractor is not liable for the independent contractor's negligent acts. Rosenberg v Equit. Life Assur. Soc. of U.S., 79 NY2d 663, 668, 584 N.Y.S.2d 765 [1992]. Whitaker v. Norman, 75 N.Y.2d 779, 782, 552 N.Y.S.2d 86 [1989]. None of the exceptions to this rule were argued by plaintiffs, and in any case none apply. Accordingly, the sixth through eighth causes of actions are dismissed as against all defendants.

The dismissal of the third and fourth causes of action related to trespass and negligence in

connection with the removal of a furnace is requested by defendants on the same ground. In this case, however, they failed to present any evidence that the alleged actions were performed by independent contractors. Their claim that Bleecker LLC has no employees, and thus could not be liable to Chynn for the actions of its agents or servants, is contradicted by their own evidence that refers to the staff employed by Bleecker LLC. Summary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of a triable issue. Sillman v. Twentieth Century-Fox Film Corp., 3 NY2d 395, 404, 165 N.Y. S.2d 498, 505 [1957]. Therefore, this part of the defendants' motion is denied.

Finally, defendants move to dismiss the claim of conversion. In support of their motion they present several invoices to Con Edison showing that Bleecker LLC did pay its bills for electricity supplied to the common areas. In opposition to the motion, plaintiffs put forward two letters from customer representatives of Con Edison who report, after investigation, that some of the electricity passing through plaintiff's meter supplied service to the halls and basement of the property at 37 Cornelia Street. The material issue of fact remains as to whether electricity was intentionally diverted by defendants or the faulty wiring was a careless oversight of which they were unaware. Good Sports of New York, Inc. v Llorente, 280 AD2d 261, 262, 720 N.Y.S.2d 119 [1st Dep't 2001]

#### B. Plaintiffs' cross-motion for summary judgment

The factual issues raised in defendant's moving papers concerning the causes of action for breach of contract and conversion preclude summary judgment. Plaintiffs have not presented evidentiary proof entitling them to judgment on the trespass and negligent supervision causes of

action as a matter of law.

CONCLUSION

For the foregoing reasons it is

ORDERED that plaintiff's cross-motion for summary judgment is denied; and it is further

ORDERED that defendants' motion for summary judgment is granted in part, and the second, sixth, seventh and eighth causes of action are dismissed; and it is further

ORDERED that the complaint is dismissed as against Yenom Corp. on all grounds, and against Steven Croman and M&E on the contractual cause of action.

Dated: 3/23/12

**FILED**

**MAR 27 2012**

**NEW YORK  
COUNTY CLERK'S OFFICE**

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J.S.C.

**LOUIS B. YORK  
J.S.C.**