At an IAS Term, Part 45 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 5th day of July, 2012.

P R E S E N T:

HON. ANN T. PFAU,
Justice.

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LEVENT OZKURT,

Plaintiff,

-against-

HYATT REALTY, LLC, BLAKE HYATT & LEA HYATT,

Defendants.

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ORDER

Index No. 27088/11

The following papers numbered 1 to 6 read on motion:

	Papers Numbered
Notice of Motion, Motion and Exhibits Annexed	1 – 4
Opposing Affidavits (Affirmations) and Exhibits Annexed	5 – 6

Plaintiff Levent Ozkurt ("Ozkurt") sued defendants Hyatt Realty, LLC, Blake Hyatt, and Lea Hyatt (collectively, "the Hyatts") to recover monies expended for repairs performed on property owned by the Hyatts, who now move to dismiss. For the reasons stated below, the motion is granted in part.

In his complaint, Ozkurt alleges that he and Blake Hyatt through their memberships in a Masonic organization. In December 2010, he and the Hyatts entered into an agreement whereby Ozkurt would lend them $40,000 to help pay off

debts, and to permit the Hyatts to make repairs to a property located on Butler Street in Brooklyn ("the property"). Once the repairs were made, it was expected that the Hyatts would be able to refinance the property. Later on, it became apparent that more repairs were needed, and Ozkurt agreed to commit his time, money, and resources to improving the property. He describes his role as a "construction project manager" (Complaint, Notice of Motion, Ex. A, paragraph 1). He performed significant repair work on the building, keeping the Hyatts informed of his efforts. On October 14, 2011, Ozkurt and the Hyatts prepared a "punch list" of work needed to complete the project, which was signed by all the parties. On the same date, it was agreed that the Hyatts would pay Ozkurt $313,800 in satisfaction of all his claims (presumably, including the $40,000 loan), of which they actually paid him $156,900.

Ozkurt alleges that a disagreement arose regarding payment for the balance of the money owed, and Ozkurt then commenced this action in December 2011. Ozkurt also alleges that a man the Hyatts knew, named "Angel," stole his tools, and Ozkurt demands that the Hyatts pay for the tools.

The Hyatts now move to dismiss. They argue that, because Ozkurt is not a licensed home improvement contractor within the meaning of NYC Administrative Code § 20-387, he cannot recover expenses incurred in the course of the performance of an illegal home improvement contract (*see* CPLR 3015[e]). They also argue that Ozkurt admits being paid more than $40,000, so his claim for the alleged loan should be dismissed, and that his claim for the value of his stolen tools is self-contradictory and unavailing.

When deciding a motion to dismiss under CPLR 3211(a)(7), the Court must liberally construe the complaint "in the light most favorable to the plaintiff and all allegations must be accepted as true" (*Pac. Carlton Dev. Corp. v. 752 Pac., LLC*, 62 AD3d 677, 679 [2d Dep't 2009] [citing *Leon v. Martinez*, 84 NY2d 83, 87 (1994)]). "Initially, the sole criterion is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law a motion for dismissal will fail" (*id.* [quoting *Guggenheimer v. Ginzburg*, 43 NY2d 268, 275 (1977)] [internal quotation marks omitted]). Conclusory statements in the complaint are not entitled to be accepted as true by the Court (*see, e.g., Ruffino v. N.Y.C. Transit Auth.*, 55 AD3d 817, 818 [2d Dep't 2008]). However, if the facts pleaded in the complaint fit any cognizable legal theory, the complaint survives the motion to dismiss (*see Leon*, 84 NY2d at 88-89).

NYC Admin. Code § 20-387(a) reads, "No person shall solicit, canvass, sell, perform or obtain a home improvement contract as a contractor or salesperson from an owner without a license therefor," and NYC Admin. Code § 20-386 defines all relevant terms. There is no dispute that Ozkurt is a person under the meaning of NYC Admin. Code § 20-386(1); that he received his work from the owner, as defined by NYC Admin. Code § 20-386(4); and, that he does not have a license to obtain home improvement contracts.

A "home improvement contract" within the meaning of the statute refers to agreements between "a *contractor* and an owner . . . " (NYC Admin. Code § 20-386[6] [emphasis added]). Ozkurt and the Hyatts agreed that Ozkurt would

perform home improvement services and be compensated for them. The inquiry, then, is whether Ozkurt was a contractor or salesperson within the meaning of NYC Admin. Code § 20-386 and § 20-387(a), and whether he was required to obtain a license before performing work at the property. If he was required to obtain a license but did not, then he may not recover for services rendered (*Intrepid Elec. Contracting Co. v. Serure*, 34 AD3d 430, 431 [2d Dep't 2006]).

A contractor is "any person or salesperson . . . who owns, operates, maintains, conducts, controls or transacts a home improvement business and who undertakes or offers to undertake or agrees to perform any home improvement or solicits any contract therefor . . . " (NYC Admin. Code § 20-386[5]). A salesperson is "any individual who negotiates or offers to negotiate a home improvement contract with an owner, or solicits or otherwise endeavors to procure in person a home improvement contract from an owner on behalf of a contractor, or for himself or herself should the salesperson be also the contractor . . . " (*id.* at § 20-386[9]). The question is whether Ozkurt owned, operated, maintained, conducted, controlled, or transacted a home improvement business within the meaning of NYC Admin. Code § 20-386(5), or was a salesperson for such a company. If so, then his agreement with the Hyatts constituted a home improvement contract and he was required to be licensed. If not, then the agreement did not constitute a home improvement contract, and no license was required.

Ozkurt's complaint can be read to describe work that was not performed through a home improvement business within the meaning of NYC Admin. Code § 20-386. If Ozkurt himself performed the work described in the

complaint, and it was not performed through a business, then it is not work that meets the criteria for NYC Admin. Code § 20-387(a) (*see Capital Constr. Mgmt. of N.Y., LLC v. E. 81st, LLC*, 28 Misc3d 259, 263-65 [Sup Ct NY Cnty 2010]). Given the alleged relationships of the parties, it is not clear that Ozkurt performed this work as a contractor within the meaning of the statute. Ozkurt claims that he loaned the money and performed the work not as a contractor offering services to a consumer, but as a "fraternal brother" offering his money and services to assist a fellow Mason, which, it can be read, developed into an agreement to develop the property to their mutual profit.

Ozkurt's complaint describes work performed by other contractors, but their relationship to him is unclear, as is his claim to be paid for their work. The Hyatts refer to a lien placed on the property by Rycorr Mechanical, Inc. ("Rycorr"), which Ozkurt allegedly owns. Whether Ozkurt is entitled to payment for Rycorr's work, or whether Rycorr itself is an unlicensed contractor which has no claim for payment, presents an issue of fact that cannot be decided on this motion (*see Capital Constr. Mgmt. of N.Y., LLC*, 28 Misc3d 259, 265 [to permit a construction manager to complete the project with unlicensed contractors is an invitation to circumvent the law's protection "which should not be countenanced"]). Therefore, that part of the Hyatt's motion contending that the complaint must be dismissed pursuant to N.Y.C. Admin. Code § 20-386, *et seq.*, is denied.

The branch of the Hyatts' motion to dismiss Ozkurt's claim for the $40,000 loan also is denied. Ozkurt alleges that the Hyatts paid him $156,900, or half of the money he was owed, and agreed to pat the other half at a later date. The

Hyatts contend that this payment was meant to repay the loan, but whether the payment was meant to satisfy the loan is a question of fact that cannot be dismissed under CPLR 3211(a)(7).

Ozkurt's claim for the stolen tools, however, is without merit. He alleges that: a man named "Angel" may have stolen his tools; the Hyatts knew or should have known that "Angel" was a thief; and, therefore, the Hyatts converted his tools. "A conversion takes place when someone, intentionally and without authority, assumes or exercises control over personal property belonging to someone else, interfering with that person's right of possession" (*Colavito v. N.Y. Organ Donor Network, Inc.*, 8 NY3d 43, 49-50 [2006] [citation omitted]). Ozkurt does not allege that the Hyatts intentionally exercised control over his property or interfered with his right to possession, so this claim is dismissed.

Accordingly, it hereby is

ORDERED that the motion to dismiss is granted to the extent that the conversion claim is dismissed, and otherwise is denied; and it further is

ORDERED that the defendants shall file and serve an answer within twenty days of service of a copy hereof with notice of entry.

ENTER,

Ann T. Pfau
J. S. C.

HON. ANN T. PFAU