

**Tadini Equities, LLC v M.A. Cosentino,
Architect, P.C.**

2017 NY Slip Op 30800(U)

March 2, 2017

Supreme Court, Queens County

Docket Number: 705303/2016

Judge: Cheree A. Buggs

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Short Form Order

NEW YORK SUPREME COURT-QUEENS COUNTY

Present: **HONORABLE CHEREÉ A. BUGGS**
Justice

IAS PART 30

TADINI EQUITIES, LLC,

Index No. 705303/2016

Plaintiff,

Motion

Date: October 18, 2016

-against-

Motion Cal. No. 148

M.A. COSENTINO, ARCHITECT, P.C.,
MICHAEL A. COSENTINO, R.A., and
FROGIERO CONTRACTING, INC.,

Motion Sequence No. 1

Defendants.

The following efile papers numbered 3-12, 14-16, 18-24 submitted and considered on this motion by defendants M.A. Cosentino, Architect, P.C. and Michael A. Cosentino, R.A. for an Order pursuant to CPLR 3211 (a) (1), (a) (5) and (a) (7) dismissing plaintiff Tadini Equities, LLC's complaint.

	<u>Papers Numbered</u>
Notice of Motion-Affidavits-Exhibits.....	EF 3-12
Affirmation in Opposition-Affidavits-Exhibits....	EF 14-16
Reply Affirmation-Affidavits-Exhibits.....	EF 18-24

FILED
MAR - 8 2017
COUNTY CLERK
QUEENS COUNTY

The motion is granted in its entirety.

This action arises out of alleged defective design and construction at a property located at 159-44 95th Street, Howard Beach, New York (the "Project"). Plaintiff, Tadini Equities, LLC (hereinafter "Tadini") filed a summons and complaint on May 4, 2016, alleging that it is the owner of the project property. In its first cause of action breach of contract against defendants M.A. Cosentino, Architect, P.C. and Michael A. Cosentino, R.A. (hereinafter collectively "Cosentino") and in its second cause of action Tadini alleged professional negligence and malpractice against Cosentino. Tadini seeks one million dollars (\$1,000,000.00) for each cause of action, with interest, costs, disbursements and attorneys fees. Co-defendant Frogiero Contracting, Inc. (hereinafter

“Frogiero”) filed a verified answer with affirmative defenses and cross-claims dated June 27, 2016.

Now, Cosentino moves to dismiss this action pursuant to CPLR 3211 (a) (1), (a) (5) and (a) (7). In support of the motion, Cosentino submitted the affidavit of Michael Cosentino dated July 22, 2016; a contract between Michael Cosentino, Architect, P.C. and Alicia Ragno dated November 28, 2011; plan work application for the Department of Buildings signed by Cosentino and dated December 1, 2011; Letter of Completion from the Department of Buildings; affirmation of Raymond T. Mellon, Esq. dated July 29, 2016; Tadini’s summons and complaint; Frogeiro Contracting, Inc., verified answer with affirmative defenses and cross-claims dated June 27, 2016; its memorandum of law.

The parties to the November 28, 2011 contract are Alicia Ragno and M.A. Cosentino Architect, P.C. The contract provided that the scope of the services of Cosentino’s professional corporation was to file plans and make an application to secure approval from the New York City Department of Buildings for architectural plans indicating new support for existing exterior glass bloc wall for the subject location, 159-44 95th Avenue, Howard Beach, New York. The parties agreed that Cosentino’s fee was \$3500.

According to the Letter of Completion, the application was completed and signed off in the Building Information System (BIS) on March 12, 2012.

Cosentino alleged that the plaintiff does not have standing since the contract was signed by Alicia Ragno, not Tadini Equities; that even if Tadini had standing, M.A. Cosentino, R.A. should not be sued in his individual capacity since he signed the contract on behalf of his professional corporation; that this action is time barred under the three year Statute of Limitations under CPLR § 214 (6), and that Tadini cannot circumvent the statute by alleging breach of contract; and, that co-defendant Frogiero cannot seek contribution from Cosentino pursuant to CPLR §1401. Frogiero has not submitted any opposition to this motion.

In opposition, Tadini submitted the affirmation of Matthew M. Calvi, Esq. dated August 20, 2016; the sworn affidavit of Alicia Ragno (hereinafter “Ragno”) dated August 20, 2016; and the September 24, 2015 report of Building Engineering Systems, PLLC (hereinafter BES PLLC) by Sebert Dyer, P.E.

Ragno alleged in her sworn affidavit dated August 20, 2016, that she resides at the subject property and in 2011 she hired defendants Cosentino to perform work at a project at her home; that she acted as an agent of Tadini solely for the purposes of executing documents; that she is the owner of the subject property; that Cosentino created building plans for the project and hired co-defendant Frogiero to complete the work; that the work was never completed due to Super Storm Sandy; that defendants stated that they would return to perform the work; that Cosentino failed to supervise the construction and assured her that they would return to complete the project; that Cosentino failed to supervise the work; that the final submissions were submitted prior to the project beginning; she became aware of the defects and hired a non-party contractor; that Cosentino continued to

communicate with her thereafter; that she contacted Frogiero and was told that it was directed by Cosentino to vary from the building plans; and that she hired a professional engineer to prepare a report to determine the deficiencies in the work performed on the project. Ragno signed her affidavit as a member of Tadini Equities, LLC.

BESPLLC by Sebert Dyer, P.E. (hereinafter "Dyer") performed an inspection of the subject property on August 15, 2015. It was Dyer's opinion, in sum and substance that the approved plans were not complied with and that no final inspection was performed of the final work prior to it being signed off by the Department of Buildings. In his opinion, the contractor and applicant of record were responsible. He stated that the specified steel beams and columns that were specified were not installed; windows were not framed with headers and sills; the structure was flimsy, causing separations and cracking on the outside of the building, with stripping of cantilever beams; specified weather proofing was not installed; scaffolding was still in place; that if the Department of Buildings visited the property, it would be declared unsafe for habitation.

In reply, Cosentino maintained that he did not have any contractual relationship with Tadini, only Ragno; that the structural repair design was only limited to a circular glass block wall at the property located on the right side; that Frogiero actually obtained a permit from the Department of Buildings on December 2, 2011 and that the work from its drawings were completed prior to the expiration of the initial permit; the plan/work application (PW-1) specifically states Ragno is the individual owner of the property; that Ragno paid the final invoice on April 3, 2012; and that it has not provided any services to Ragno since the letter of completion was issued March 12, 2012. Cosentino also submitted a copy of the plans.


Standing involves the determination of whether the plaintiff has a recognized claim in the outcome of the matter (*see generally Nagan Const., Inc. v Monsignor McClancy Memorial High School*, 137 AD3d 986 [2d Dept 2016]).

Based upon the foregoing, the motion is granted pursuant to CPLR 3211 (a) (1), (a) (5) and (a) (7). Here, Ragno failed to provide sufficient proof to demonstrate that she entered into a contract with Cosentino as an agent of plaintiff Tadini and failed to demonstrate her authority to bind plaintiff to a contract (*see Limited Liability Company Law* §§201; 202; 412). Moreover, the three-year applicable statute of limitations has expired (CPLR § 214 [6]; *Matter of R.M. Kliment & Frances Halband, Architects* [McKinsey & Co., Inc.] 3 NY 3d 538, 541 [2004]). Additionally, although Ragno alleged Cosentino continued to contact her regarding alleged defects with the work, she failed to submit any proof of same to satisfy the continuous representation doctrine (*see Regency Club at Walkill, LLC v Appel Design Group, P.A.*, 112 AD3d 603 [2d Dept 2013]).

Therefore, the motion is granted in its entirety.

This constitutes the decision and order of the Court.

Dated: March 2, 2017



Hon. Chereé A. Buggs, J.S.C.

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