

Smith v Peekskill Youth Bureau

2019 NY Slip Op 31946(U)

July 11, 2019

City Court of Peekskill, Westchester County

Docket Number: SC-409-18

Judge: Reginald J. Johnson

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PEEKSKILL CITY COURT
COUNTY OF WESTCHESTER: STATE OF NEW YORK

-----X
JERMAIN SMITH d/b/a PROJECT 105
ATHLETICS and TAMARAH FERNANDEZ
BRIDGEWATER,

Plaintiffs, **DECISION & ORDER**
Index No. SC-409-18

--against--

PEEKSKILL YOUTH BUREAU and CITY Small Claims Part
OF PEEKSKILL,

Defendants.

-----X

Appearances:

Jermain Smith and Tamarah Fernandez Bridgewater, pro se
Melissa Gilbon Ferraro, Corporation Counsel, by Timothy
W. Kramer, Asst. Corporation Counsel, for the defendants

Hon. Reginald J. Johnson

I

The defendants move to dismiss this alleged breach of contract
action¹ pursuant to Civil Procedure Law and Rules (CPLR) §3211(7) for
failure to state a cause of action, and/or pursuant to CPLR §3212 for
summary judgment, based on plaintiffs’ non-compliance with the local

¹ On the Application to File Small Claim, the plaintiffs state that their claim is for “service rendered,” but the

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statutory contract procedure. The pro se plaintiffs oppose the motion. For the reasons that follow, the motion is granted and the complaint is dismissed.

II

On or about July 24, 2018, the plaintiffs filed a notice of claim with the defendant City of Peekskill alleging non-payment for services rendered on May 19, 2018 at an ENU Builds Youth Exp at the Peekskill Youth Bureau (Def's Ex. "A" [notice of claim]). On July 25, 2018, the plaintiffs commenced this action against the defendants for non-payment for services rendered. In a letter dated August 9, 2018, the defendant City of Peekskill rejected the plaintiffs' notice of claim because no contract was lawfully entered into between the parties because the statutory contract procedure for doing so was not followed (Id. at Ex. "B" [Corporation Counsel letter dated August 9, 2018]). On October 10, 2018, the parties were scheduled to appear before Judge Melissa Loehr, but the case was adjourned to November 7, 2018, and then to December 12, 2018 for possible settlement. After the parties were unable to settle this case, Judge Loehr recused herself. On January 22, 2019, this matter was transferred to this Court, and on February 27, 2019, the parties appeared in this Court and a motion schedule was set. The defendants' motion to be submitted on or before March 27, 2019, the plaintiffs'

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opposition papers to be submitted on or before April 10, 2019, the defendants' reply papers, if any, to be submitted on or before April 18, 2019, and the motion was adjourned to May 22, 2019 and marked fully submitted.

III

The plaintiffs allege that they entered into a verbal agreement with the defendants to bring an ENU Builds Youth Expo to a Peekskill Youth Bureau event on May 19, 2018, which included promoting the event by marketing it to the public; planning the logistics of the event by acquiring sponsors, vendors, and participants; supervising the event; and conducting a follow up of the event by performing an event evaluation and review, among other things (Plts' Opp. at Exh. "H" [budget breakdown]; Defs' Motion at Exh. "A" [notice of claim]). Specifically, the plaintiffs allege that there was a verbal agreement between the parties for the above referenced services, as evidenced by a Peekskill Youth Bureau Memorandum dated April 6, 2018 which mentions that ENU Builds Flow was partnering with the Peekskill Youth Bureau to create a Youth Expo (Plts' Opp. at Exh. "C" [Peekskill Youth Bureau Memorandum dated April 6, 2018]); by a Special Event application submitted by the Youth Bureau for the event on May 19, 2018 (Id. at Exh. "D" [Special Event application]); by an email dated May 1, 2018 from former Youth Bureau Director Danielle Satow to plaintiff Tamarah

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Bridgewater presumably regarding advertisement of the event with the Peekskill City School District (Id. at Exh. “E” [email from Satow to Bridgewater]); by a copy of calendars from February 2018 to July 2018 purporting to show the dates, communications, and an alleged agreement between the plaintiffs and Mayor Andre Rainey regarding the event (Id at Exh. “F” [calendars from February 2018 to July 2018]); by an email dated April 5, 2018 from plaintiff Jermain Smith to Mayor Andre Rainey regarding their meeting and an attached invoice for review for the event (Id. at Exh. “G” [email from Smith to Mayor Rainey]); by an ENU Builds Flow budget breakdown (Id. at Exh. “H” [Plts’ budget breakdown]); by an email dated April 3-5, 11, 2018 regarding plaintiffs’ coordination of the event (Id. at Exh. “I” [Satow to Brown email]); by an email dated June 18, 2018 from plaintiff Smith to Mayor Rainey regarding a meeting and an alleged agreed upon invoice for \$1500.00 to be paid by July 1, 2018 (Id. at Exh. “J” [email from Smith to Mayor Rainey]); by emails between Mayor Rainey and plaintiff Jermain Smith regarding payment for services rendered (Id. at Exh. “K” [email from Smith to Mayor Rainey]); and by a copy of the minutes from a Common Council meeting on May 8, 2017 (Id. at Exh. “L” [copy of minutes from Common Council meeting]).

The plaintiffs further allege that there is no requirement that their alleged contractual agreement comply with the certification requirement under City Charter §C103, because their contract claim was for

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\$1500.00—well below the \$5000.00 contract threshold²; that the parties did enter into a valid agreement for services; that the plaintiffs fulfilled their obligations under the agreement; and that the City received a benefit under the agreement (Smith Affirm³ at ¶¶ 3-4).

Plaintiffs argue that the City Charter does not expressly state that they have the obligation to comply with any statutory procedure for entering into a valid contract with the City⁴, but rather it is the defendants who have said responsibility and failed to do so (Id. at ¶7). According to plaintiffs, at no time prior to, during or after the event, were they advised of the statutory contract procedure (Id.). Further, plaintiffs argue that the defendants could weaponize the statutory contract procedure to defraud uninformed vendors who confer a benefit on the City to avoid financial responsibility (Id.). Specifically, plaintiffs argue that the intendment of the statutory contract procedure is “to protect the City from possible disgruntled employee(s) with malicious intent [from] entering into contracts without the knowledge of the City” (Id. at ¶9). Plaintiffs argue that the statutory contract procedure should not apply in this case because

² Although the plaintiffs allege that they were willing to accept \$1500.00 for services rendered, if paid by July 1, 2018 (Plts’ Exh. “J”), they commenced the within action seeking \$3000.00. The defendants raised the issue of compliance with City Charter §C103 based on the invoices attached to the notice of claim which totaled \$15,000.00 (see, Kramer Reply Affirm at ¶6).

³ Civil Practice Law and Rules (CPLR) §2106 permits lawyers, doctors and anyone else who is not physically present in the U.S., Puerto Rico, the U.S.V.I., or any territory subject to the jurisdiction of the U.S. to submit an affirmation to the Court. Since plaintiff Smith was physically located in the U.S. when he submitted his purported affirmation to the Court, his affirmation is unauthorized and defective. Since, however, a substantial right of the defendants is not prejudiced by this nonconformity, the Court will disregard the defect pursuant to CPLR 2001.

⁴ Peekskill City Charter (City Charter) §§C10a(9)(vi), 50, and Affidavit of City Manager Richard A. Leins at ¶8—collectively, “the statutory contract procedure.”

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“[d]efendants and its representatives actively participated in the solicitation of the [c]laimants, the negotiation of the invoice and attended activities, fully aware of the benefits provided by the [c]laimants” (Id.).

Lastly, the plaintiffs argue that they negotiated in good faith and that the defendants had an opportunity to decline to enter into the contract with plaintiffs, but instead elected to contract with the plaintiffs. In addition, the plaintiffs insisted that they would have accepted half the agreed upon contract price in the sum of \$1500.00, if paid by July 1, 2018. Plaintiffs argue that “there is no question that there were negotiations and an agreement reached” (Id. at ¶¶11-12).

The defendants simply argue that there was never a validly authorized binding contract between the parties, because the plaintiffs failed to adhere to the statutory contract procedure for entering into an authorized contractual agreement with the City of Peekskill (Kramer Affirm. at ¶¶ 11-19). The City Manager Richard A. Leins (City Manager) avers that City Charter §50 authorizes him exclusively to sign all contracts on behalf of the City, and that no contract between the parties for a Youth Bureau event was ever presented to him for his approval and execution (Defs’ Exh. “D” [Leins affidavit] at ¶¶7-10; City Charter §50 [Leins affidavit at Exh. “A”]). Further, defendants claim that the procedure set forth in ¶8 of the City Manager’s affidavit was not followed; specifically, that the alleged contract was never presented to the Common Council for discussion at a Committee of the Whole

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Meeting; that the Common Council never passed a resolution authorizing him to execute a contract between the parties regarding the Youth Bureau event; and that a copy of the alleged contract along with budget line information from the Comptroller was never submitted to him.

The defendants also argue that since the alleged contract between the parties did not comply with the statutory contract procedure, it is void and unenforceable, and that no implied contract to furnish benefits can arise from such a circumstance (Kramer Affirm. at ¶17). The defendants cite *Parsa v. State of New York*, 64 N.Y.2d 143 (1984) for the holding therein that the party contracting with a municipality is chargeable with knowledge of the municipality's statutory contract procedure (Id. at ¶18; Kramer Reply Affirm. at ¶4). The defendants further argue that the meetings, the submission of an invoice, the performance of a service, and other actions by the plaintiffs do not create a contract between the parties (Id. at ¶3).

Lastly, the defendants argue that since there was no valid, enforceable contract between the parties due to plaintiffs' failure to comply with the statutory contract procedure, the defendants are entitled to summary judgment, pursuant to CPLR §3212, as there exists no triable issue of material fact, warrant judgment in their favor as a matter of law (Kramer Affirm. at ¶¶20-22).

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IV

“A small claims court is generally ‘not bound by statutory provisions or rules of practice, procedure, pleading or evidence,’ and all that is required is that proceedings be conducted ‘in such manner as to do substantial justice between the parties according to the rules of substantive law’ (CCA 1804)” (*Buvis v. Buvis*, 38 Misc.3d 133[A] [App Term, 2d 11th & 13th Jud Dists 2013]); see also, *Williams v. Roper*, 269 A.D.2d 125, 126 [1st Dept. 2000]). Further, the determination of a trier of fact as to issues of credibility is given substantial deference, as a trial court’s opportunity to observe and evaluate the testimony and demeanor of the witnesses affords it a better perspective from which to evaluate their credibility (see, *Vizzari v State of New York*, 184 A.D.2d 564 [2d Dept. 1992]; *Kincade v. Kincade*, 178 A.D.2d 510, 511 [2d Dept. 1991]). Unless the fact-finding trial court’s conclusions could not be reached under any fair interpretation of the evidence, its determinations are usually left undisturbed by an appellate court (see, *Claridge Gardens v Menotti*, 160 A.D.2d 544 [1st Dept. 1990]). Even if an appellate court differs with a small claims court on an arguable point of fact or law, the appellate court may not reverse, absent a showing that there is not support in the record for the trial court’s conclusions or that they are otherwise so clearly erroneous as to deny substantial justice (see *Payne v.*

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Biglin, 2 Misc.3d 127[A] [App Term, 9th & 10th Jud Dists 2003]). This standard applies with greater force to judgments rendered in the Small Claims Part of the court (*Williams v. Roper*, 269 A.D.2d at 126).

In a breach of contract action, the plaintiffs have the burden of establishing “(1) the formation of a contract between the plaintiff and the defendant, (2) performance by the plaintiff, (3) the defendant’s failure to perform, and (4) resulting damages” (see, *Brualdi v. IBERIA, Lineas Aereas de Espa a, S.A.*, 79 A.D.3d 959, 960 [2d Dept. 2010]). However, when one of the parties to the contract is a municipality, the law in New York State is well settled that the contract must comply with specific statutory requirements to be valid (see, *Granda Bldgs., Inc. v. Kingston*, 58 N.Y.2d 705 [1982]; *Parsa v. State of New York*, 64 N.Y.2d 143 [1984]; *JFK Holding Co., LLC. v. New York*, 68 A.D.3d 447 [1st Dept. 2009]). A municipal contract that fails to comply with local law is invalid and unenforceable (see, *Seif v. Long Beach*, 286 N.Y. 382 [1941]; *Infrastructure Management Systems, LLC v. Nassau*, 2 A.D.3d 784 [2d Dept. 2003; *New York Telephone Co. v. Town of N. Hempstead*, 41 N.Y.2d 691 [1977]).

The rationale for requiring municipal contracts to comply with local law is to protect the public from corrupt or ill-considered actions by public officials (see, *Lutzen v. City of Rochester*, 7 A.D.2d 498 [4th Dept. 1959]; *Board of Educ. Of Plainedge Union Free School Dist. v. Connecticut General Life Ins., Co.*, 309 F.Supp.2d 416 [EDNY 2004]).

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The *Lutzen* Court stated:

[A] municipality's power to contract is statutorily restricted for the benefit of the public. Statutory restrictions on a municipal corporation's power to contract protect the public from the corrupt or ill-considered actions of municipal officials. To allow recovery under a contract which contravenes such restrictions gives vitality to an illegal act and grants the municipality power which it does not possess 'to waive or disregard requirements which have been properly determined to be in the interest of the whole.'

Id. at 499.

In *Parsa*, the Court of Appeals stated:

A party contracting with the State is chargeable with knowledge of the statutes which regulate its contracting powers and is bound by them. Moreover, the State's acceptance of benefits furnished under a contract made without authority does not estop it from challenging the validity of the contract or from denying liability pursuant to it. Even though a promise to pay may be spelled out from the parties' conduct, a contract between them may not be implied to provide 'rough justice' and fasten liability on the State when applicable statutes expressly prohibit it. The result may seem unjust but any other rule would completely frustrate

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statutes designed to protect the public from governmental misconduct or improvidence. The contractor's option is to withhold his services unless an agreement is executed and approved as the statutes requires (internal citations omitted).

64 N.Y.2d at 147

However, in *Vrooman v. Middleville*, 91 A.D.2d 833 (4th Dept. 1982), the Court held that there is an exception to the general rule that a municipal contract is void and unenforceable where it fails to comply with the local statute. In *Vrooman*, the state ordered a village to construct a sewer treatment facility, which the village did with help of the plaintiff. When the village refused to pay the plaintiff, he sued, and the village raised the defense that the contract with the plaintiff did not comply with its local statute and therefore was void (Id. at 834). Among other reasons for rejecting this defense, the *Vrooman* Court held that “[a] plaintiff is entitled to recover from a municipality where, as here, he has entered into a contract in good faith, the municipality possesses the authority to enter into the contract, the contract is not violative of public policy and the circumstances indicate that if plaintiff is not compensated, the municipality would be unjustly enriched” (Id.) (citations omitted) (see, *Mans Constr. Oversight, Ltd. v. City of Peekskill*, 114 A.D.3d 911, 912 (2d Dept. 2014)[Court recognized *Vrooman* exception but held that it was inapplicable to case]). “To absolve the municipality from liability, particularly when it has been significantly benefitted by the plaintiff’s

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services, would encourage disregard of the statutory safeguards by municipal officials” (see, *Vrooman v. Middleville*, 91 A.D.2d at 835).

Turning to the case at bar, it appears that the plaintiffs did not enter into a validly authorized contract with the defendants. The plaintiffs argue that the Peekskill City Charter does not obligate them to be knowledgeable about the local law regarding municipal contracts, but that said obligation falls on the defendants (Smith Affirm at ¶7). Further, the plaintiffs argue that at no time during negotiations did the defendants advise them of the municipality’s contract regulations (Id.). Contrary to plaintiffs’ argument, “[a] party contracting with [a municipality] is chargeable with knowledge of the statutes which regulate its contracting powers and is bound by them” (see, *Parsa v. New York State*, 64 N.Y.2d at 147). In short, the plaintiffs had an affirmative obligation to be knowledgeable about the statutes and/or regulations of the defendants regarding their municipal contracts.

Next, the plaintiffs argue that the defendants could weaponize municipal contract regulations to defraud uninformed vendors to avoid financial liability (Smith Affirm at ¶¶7,8). This is a legitimate argument, indeed, and the courts have recognized an exception to the general rule that a municipal contract that violates municipal law is void and unenforceable (see, *Vrooman v. Middleville*, 91 A.D.2d 833, *supra*). In order for a party to enforce a contract that fails to satisfy municipal regulations, that party has to show that it 1.) entered into a contract in

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good faith; 2.) the municipality possesses the authority to enter into the contract; 3.) the contract is not violative of public policy, and 4.) the circumstances indicate that if plaintiff is not compensated, the municipality would be unjustly enriched (Id. at 834). The plaintiffs have not demonstrated the existence of a contract with the defendants. At best, the parties entered into a partnership of some kind to jointly promote an event at the Youth Bureau. There is simply no proof that the defendants agreed to pay any sum of money to the plaintiffs, although there is an email from plaintiffs to Mayor Andre Rainey regarding a meeting and an alleged agreed upon verbal understanding of a \$1500.00 payment due and owing (see Smith Affirm, Exh. "J"). This email is unavailing and does not constitute proof that the parties had a lawfully binding contract. Neither the Mayor of the City of Peekskill nor any members of the Common Council can enter contractual negotiations with a third party and lawfully bind the defendants (see, *Zansville v. Mohawk Data Services Corp.*, 97 A.D.2d 64 [4th Dept. 1983]: see also, Defs' Exh. "D" [Leins affidavit at ¶8]). "Although it may seem harsh to deny plaintiff[s] payment for services rendered at the request of the municipal officials, plaintiff[s], in the absence of an appropriation, undertook the work at [their] own risk" (see, *Gill, Korff & Assoc., Architects & Eng'r, P.C. v. County of Onodaga*, 152 A.D.2d 912 [4th Dept. 1989]). Hence, the facts in this case do not fall within the *Vrooman* exception. The Court is curious as to why the plaintiffs did not simply negotiate a written

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contract with the defendants in advance of the event to memorialize the terms, conditions and obligations of the parties. Had a written contract been memorialized it could have been presented to the common council at a Committee of the Whole for discussion and preliminary approval (see, Defs' Exh. "D" [Leins affidavit at ¶8]).

The plaintiffs' reference to meetings, minutes of statements made by members of the public at a common council meeting, emails and event permits collectively do not prove that the parties entered into a binding contract for services. "Even though a promise to pay may be spelled out from the parties' conduct, a contract between them may not be implied to provide 'rough justice' and fasten liability on the State when applicable statutes expressly prohibit it" (see, *Parsa v. State of New York*, 64 N.Y.2d at 147) (citations omitted).

V

The defendants move for summary judgment pursuant to CPLR §3212, among other grounds, to dismiss the complaint. It is axiomatic that on a motion for summary judgment, this Court is constrained to view the facts "in the light most favorable to the non-moving party" (see, *Ortiz v. Varsity Holdings, LLC*, 18 N.Y.3d 335, 339 [2011]). Summary judgment is a drastic remedy, to be granted only where the moving party has "tender[ed] sufficient evidence to demonstrate the absence of any material issues of fact" (see, *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320,

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324 [1986]; *Winegrad v. New York Univ. Med. Center*, 64 N.Y.2d 851 [1985]; *Zuckerman v. City of New York*, 49 N.Y.2d 557 [1980]; *Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395 [1957]). If this prima facie showing is not made, then the motion must be denied regardless of the sufficiency of the opposing papers (see, *Winegrad v. New York Univ. Med. Center*, *supra*, at 851). Once this showing has been made, however, the burden shifts to party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action (see, *Zuckerman v. City of New York*, *supra*, at 562). It is not the court's function on a motion for summary judgment to assess credibility (see, *Glick v. Dolleck v. Tri-Pack Export Corp.*, 22 N.Y.2d 439 [1968]). In determining a motion for summary judgment, '[i]ssue-finding, rather than issue-determination, is the key to the procedure' (see, *Sillman v. Twentieth Century-Fox Film Corp.*, *supra*, 3 N.Y.2d at 404 [1957]) (citation omitted).

In the case at bar, the Court finds that the defendants have met their burden of establishing entitlement to judgment as a matter of law by demonstrating that the plaintiffs have failed to present a genuine issue of material fact warranting a trial. Simply stated, the Court finds that the plaintiffs failed to prove by competent admissible evidence that the parties entered into a lawfully binding contract pursuant to the Peekskill City Charter [see, Defs' Exh. "D" [Leins affidavit at ¶8]]. Accordingly,

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the defendants' motion for summary judgment is granted and the complaint is dismissed.

Based on the aforesaid, it is

Ordered that the complaint is dismissed.

This constitutes the decision and order of the Court.

Hon. Reginald J. Johnson
Peekskill City Court Judge

DATED: Peekskill, New York
July 11, 2019

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