

Building Bridges LLC v Congregation Mount Sinai

2019 NY Slip Op 33069(U)

October 7, 2019

Supreme Court, Kings County

Docket Number: 510458/19

Judge: Leon Ruchelsman

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL PART 8

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BUILDING BRIDGES LLC, d/b/a BUILDING
BRIDGES PRESCHOOL,

Plaintiff,

Decision and order

- against -

Index No. 510458/19

CONGREGATION MOUNT SINAI,

MS # 2

Defendant,

October 7, 2019

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PRESENT: HON. LEON RUCHELSMAN

The defendant has moved pursuant to CPLR §3211 seeking to dismiss the complaint. The plaintiff has opposed the motion. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

On April 26, 2018 the plaintiff and defendant entered into a shared space agreement whereby the plaintiff agreed to rent space from the defendant to be used as a preschool and summer camp. Indeed, the plaintiff had been a tenant of the defendant for a few years prior to the execution of the shared space agreement. On September 9, 2016 the plaintiff sent an email to defendant seeking resolution regarding the air conditioning at the premises, complaining the classrooms are too hot. Further, on May 17, 2017 the plaintiff sent an email to defendant inquiring whether the air conditioning at the premises would be addressed and replaced in time for the summer. The next day the defendant responded and noted that they would "get the ball rolling again

on the quotes" (see, Email dated May 17, 2017 at 2:52 PM). On June 12, 2017 the plaintiff sent another email complaining about the air conditioning noting that it has been almost a year since the issue had first been raised. A half hour later the defendant responded and wrote "we are 100% committed to getting the air conditioning fixed...our priority needs to be getting correct quotes from the vendors we already have" (see, Email dated May 12, 2017 at 10:34 AM). Concerning further questions about the air conditioner repairs on April 8, 2018 the defendant responded and wrote "yes, Performance HVAC came in and completed the work that they were supposed to do. There are several other problems with our A/C. I have asked them to look at these issues and work up a proposal for us on these" (see, Email dated April 8, 2018 at 10:20 AM). The plaintiff further complained about the lack of sufficient air conditioning and on August 5, 2018 the defendant wrote "we understand that, for the sake of your school and for the Synagogue, we need to commit to an emergency plan of action. We have secured the services of an architect to advise and implement both short term and long term remediation - all within the health and building codes. In all prior efforts we have been 'flying blind' without adequate guidance regarding price, efficacy or legal compliance" (see, Email dated August 5, 2018 at 6:49 PM). This lawsuit was commenced May 2019. The complaint contains causes of action for breach of contract, unjust

enrichment and permanent injunction. The defendant has now moved seeking to dismiss the lawsuit on the grounds it fails to allege any cause of action.

Conclusions of Law

"[A] motion to dismiss made pursuant to CPLR §3211[a][7] will fail if, taking all facts alleged as true and according them every possible inference favorable to the plaintiff, the complaint states in some recognizable form any cause of action known to our law" (see, e.g. AG Capital Funding Partners, LP v. State St. Bank and Trust Co., 5 NY3d 582, 808 NYS2d 573 [2005], Leon v. Martinez, 84 NY2d 83, 614 NYS2d 972, [1994], Hayes v. Wilson, 25 AD3d 586, 807 NYS2d 567 [2d Dept., 2006], Marchionni v. Drexler, 22 AD3d 814, 803 NYS2d 196 [2d Dept., 2005]). Whether the complaint will later survive a motion for summary judgment, or whether the plaintiff will ultimately be able to prove its claims, of course, plays no part in the determination of a pre-discovery CPLR §3211 motion to dismiss (see, EBC I, Inc. v. Goldman Sachs & Co., 5 NY3d 11, 799 NYS2d 170 [2005]).

The e-mails above demonstrate the plaintiff has successfully pled the defendant had undertaken to fix the air conditioning at their own expense. The defendant repeatedly assumed responsibility for the repairs and the accompanying expenses associated with those repairs. The defendant argues they only

agreed to "investigate Bridges' alleged HVAC issues, and help determine what, if any, repairs were needed to the HVAC system and to assess the cost of those repairs" (see, Affirmation in Reply, ¶ 19). However, in an e-mail dated May 17, 2017 the plaintiff complained about the slow response from the defendant about the ongoing air conditioning problem. The plaintiff wrote "we had children in the classrooms last year and it was over 80 degrees. We were promised this issue would be resolved for this summer" (see, Email dated May 17, 2017 at 3:39 PM). Shortly thereafter the defendant responded "I agree - I'm not sure what happened. I think he has a quote for both but was trying to get another estimate. I'll speak to him tomorrow to get more details" (see, Email dated May 17, 2017 at 4:20 PM). These correspondences surely raise issues whether the defendant had agreed to do more than just determine the repairs needed and costs. This is especially true since in an e-mail dated July 2, 2018 the plaintiff wrote that "we even supplied you with 5 quotes in 2016/17 and we were asked to pass them on to Bob...We are at a point where we strongly feel that we must consider cancelling the remaining three weeks of camp due to the lack of A/C" (see, Email dated July 2, 2018 at 4:56 PM). Thus, even where the plaintiff presented quotes the defendant still maintained an obligation to repair the air conditioning at the premises. Therefore, the motion seeking to dismiss the breach of contract claim is denied.

Turning to the motion seeking to dismiss the cause of action for unjust enrichment, it is well settled that a claim of unjust enrichment is not available when it duplicates or replaces a conventional contract or tort claim (see, Corsello v. Verizon New York Inc., 18 NY3d 777, 944 NYS2d 732 [2012]). As the court noted "unjust enrichment is not a catchall cause of action to be used when others fail" (id). Therefore, the motion seeking to dismiss the claim of unjust enrichment is granted. The third cause of action for an injunction has been rendered moot and is consequently dismissed.

So ordered.

ENTER



DATED: October 7, 2019
Brooklyn N.Y.

Hon. Leon Ruchelsman
JSC

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KINGS COUNTY CLERK
FILED

