

**World Wide Plumbing Supply, Inc. v Park Devs.&
Bldrs., Inc.**

2020 NY Slip Op 30107(U)

January 6, 2020

Supreme Court, New York County

Docket Number: 651715/2015

Judge: Anthony Cannataro

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. ANTHONY CANNATARO PART IAS MOTION 41EFM

Justice

-----X

WORLD WIDE PLUMBING SUPPLY, INC.,
Plaintiff,

INDEX NO. 651715/2015

MOTION DATE 08/28/2019

MOTION SEQ. NO. 001

- v -

PARK DEVELOPERS AND BUILDERS, INC. D/B/A,
METRO PLUMBING & MECHANICAL, LLC, CHELSEA
DYNASTY, LLC, JOHN DOE

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37

were read on this motion to/for JUDGMENT - SUMMARY.

Defendant Chelsea Dynasty, LLC ("Chelsea") moves pursuant to CPLR 3212 for summary judgment dismissing plaintiff World Wide Plumbing Supply, Inc.'s complaint in its entirety. Plaintiff's complaint includes causes of action against defendant Chelsea for foreclosure of a mechanic's lien and for *quantum meruit*.

The causes of action arise out of a construction project for the renovation and development of the property located at 222 West 23rd Street, New York, New York. On or about July 9, 2012, Chelsea, as owner of the property, entered into a construction management services agreement with co-defendant Park Developers & Buildings, Inc. d/b/a Metro Plumbing & Mechanical, LLC ("Park Developers"). Plaintiff World Wide Plumbing entered into a contract with Park Developers to provide certain plumbing materials for the project. Plaintiff filed a mechanic's lien on or about June 16, 2014 in the amount of \$151,249.92 for monies due and owing to it by Park Developers. The lien was discharged by a payment bond on or about January 17, 2017. Co-defendant Park

Developers never appeared in the instant action and plaintiff has not sought a default judgment against them.

Chelsea argues that recovery by plaintiff on the basis of foreclosure of the mechanic's lien is precluded because Chelsea fulfilled its obligations under the construction management services agreement it entered into with Park Developers by paying in full. Chelsea asserts that as a contract is in place which governs the subject matter of the underlying dispute, plaintiff's quasi-contract claim sounding in *quantum meruit* must be dismissed. Further, Chelsea argues that as it is not in privity with plaintiff, plaintiff is not entitled to recover damages from Chelsea for any purported loss suffered in connection with the project.

Plaintiff argues that the affidavit in support of Chelsea's motion submitted by Mohsan Idris, the Assistant Controller and former Staff Accountant of defendant, is insufficient as he lacks personal knowledge of the facts and circumstances surrounding the action. Plaintiff also argues that Chelsea fails to submit adequate proof of payment to the prime contractor.

"The proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact" (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Once the proponent has met this showing, "the burden shifts to the 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" (*Id.*). To defeat a motion for summary judgment, "mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient" (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

"It is settled that where there is no fund due to a subcontractor by whom a lienor has been engaged the lien cannot be upheld" (*Wynkoop v People*, 1 AD2d 620, 622 [2d

Dept 1956], *affd sub nom. Wyncoop v People*, 4 NY2d 892 [1958], [internal citations omitted]). Here, Chelsea asserts that it paid Park Developers in full prior to plaintiff's filing of the mechanic's lien. In support of this claim, Chelsea submits the affidavit of Mohsan Idris, a Staff Accountant for plaintiff at the time the cause of action arose and current Assistant Controller, who states based on personal knowledge that Chelsea had paid Park Developers in full at the time the lien was filed by plaintiff. In addition, Chelsea submits an accounting evidencing payments made by Chelsea to Park Developers during the project. This evidence sufficiently demonstrates that Chelsea paid Park Developers in full for the balance of the prime contract and is thus not liable to plaintiff for Park Developer's possible failure to pay plaintiff. Further, "a subcontractor cannot assert a cause of action to recover damages for breach of contract against a party with whom it is not in privity" (*Perma Pave v Pawdegat*). As plaintiff entered into a contract only with Park Developers as general contractor and had no direct dealings with the owner Chelsea, there is no privity between plaintiff and Chelsea and thus can be no recovery for damages for breach of contract.

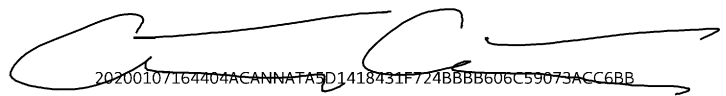
"The existence of a valid and enforceable written contract governing a particular subject matter ordinarily precludes recovery in quasi contract for events arising out of the same subject matter" (*Clark-Fitzpatrick, Inc. v Long Is. R. Co.*, 70 NY2d 382, 388 [1987], [internal citations omitted]). This preclusion extends to non-contracting parties, and is "especially true where, as here, a subcontractor has attempted to sue an owner when privity does not exist" (*A & V 425 LLC Contr. Co. v RFD 55th St. LLC*, 15 Misc 3d 196, 207 [Sup Ct 2007], citing *Contelmo's Sand & Gravel, Inc. v J & J Milano, Inc.* 96 AD2d 1090, 1091 [2d Dept 1983]; *Metro. Elec. Mfg. Co. v Herbert Const. Co., Inc.*, 183 AD2d 758, 759 [2d Dept 1992]). Here, a contractual relationship exists between plaintiff and Park Developers which serves as the basis for plaintiff's breach of contract cause of action and governs the underlying subject matter this dispute. This precludes plaintiff, the

subcontractor, from bringing a quasi-contractual claim against Chelsea, the owner. As such, plaintiff's claim based in quasi-contract is dismissed.

Accordingly, it is

ORDERED that Chelsea Dynasty, LLC's motion for summary judgment is granted and the complaint is dismissed with costs and disbursements to defendant as taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.


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1/6/2020
DATE

ANTHONY CANNATARO, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE