

Entech Eng'g, P.C. v Copper Servs., LLC

2020 NY Slip Op 31428(U)

May 12, 2020

Supreme Court, New York County

Docket Number: 653899/2019

Judge: Louis L. Nock

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 38

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 ENTECH ENGINEERING, P.C., : Index No. 653899/2019
 Plaintiff, : DECISION & ORDER
 -against- :
 COPPER SERVICES, LLC, :
 Defendant. :
 -----X

LOUIS L. NOCK, J.

Plaintiff moves (seq. no. 001) for summary judgment in lieu of complaint (CPLR 3213) in respect of five checks tendered by defendant to plaintiff in the aggregate amount of \$26,000 which were dishonored by defendant, post-tender. The motion is opposed based on defendant’s post-tender assertion that the services for which the tender was made did not conform to alleged oral modifications to plaintiff’s written work proposal as to which the tender was made. The motion is granted for the reasons that follow.

HISTORY OF PERTINENT EVENTS

On or about September 29, 2017, plaintiff sent a work proposal to defendant undertaking to provide mechanical piping, plumbing, and sprinkler plans for defendant’s use in connection with a construction project, for a total price of \$130,000 (Bayat Aff. Exh. 1). After completing a first portion of the work described in the proposal, plaintiff dispatched an invoice to defendant, dated October 10, 2017, for corresponding payment in the amount of \$26,000 (Bayat Aff. Exh. 2). On November 14, 2017, defendant proffered payment of that invoice through its tender to plaintiff of five checks drawn on its business account, each in an amount of \$5,200, aggregating, in all, the invoiced sum of \$26,000 (Bayat Aff. Exh. 3). Plaintiff deposited those checks into its

own bank account; however, its bank returned those checks to plaintiff on December 7, 2017, as dishonored by the defendant, post-tender (*see, id.*, Exh. 4). Defendant has refused to honor its checks to plaintiff despite plaintiff's demand therefor. This proceeding was commenced to collect the \$26,000 reflected in the face amounts of the checks tendered, but later dishonored, by the defendant on account of plaintiff's invoice to it in that exact sum.

DISCUSSION

Summary judgment in lieu of complaint procedure is appropriate in cases where the claim is "based upon an instrument for the payment of money only" (CPLR 3213), and, in such case, "is intended to provide a speedy and effective means of securing a judgment" (*Interman Industrial Prods., Ltd. v R.S.M. Electron Power, Inc.*, 37 NY2d 151, 154 [1975].) It is elementary that checks drawn by a maker and tendered to a drawee are "'prototypical example[s]' of instruments for the payment of money only" (*Thunderball Marketing, Inc. v Riemer*, 273 AD2d 29, 30 [1st Dept 2000]). Moreover, a "[d]efendant's assertion of defenses dehors the checks sued on does not take" them "outside the ambit of CPLR 3213" (*id.*).

Defendant does not dispute the fact of its tender of the checks, or that said tender corresponded to the plaintiff's invoice, or that said invoice was proffered in connection with plaintiff's work proposal. Instead, defendant opposes this straightforward attempt to secure judgment on instruments for the payment of money only, by injecting what it hopes the court will find to be some sort of need to consider issues that are "dehors the checks" (*Thunderball, supra*). Specifically, defendant asserts that plaintiff ought not be entitled to the payment reflected in the checks (which were tendered by the defendant, but later dishonored) because of the asserted existence of additional, oral, terms "discussed and agreed to that are not reflected in the Proposal" (Andreadakis Aff. ¶ 5). However, apart from the principle noted above,

concerning the dispositive import of negotiable instruments in relation to CPLR 3213, it is also undisputed that defendant's tender was made in direct response to plaintiff's invoice which, in turn, was directly based on the clear and unambiguous work proposal. It is elementary that "courts may not by construction add or excise terms, nor distort the meaning of those used and thereby make a new contract for the parties under the guise of interpreting the writing" (*Beinstein v Navani*, 131 AD3d 401, 405 [1st Dept 2015] [citations omitted]).

Defendant injects further factual assertions that might be appropriate as defenses to a plenary action asserting a cause of action for breach of contract – or as claims for restitution in its own plenary action, which defendant, by the way, is entirely free to institute. However, such matters "dehors the checks" (*Thunderball, supra*) are not appropriate matters for consideration in this summary CPLR 3213 proceeding predicated upon instruments for the payment of money only, such as the checks tendered by the defendant.

Consequently, the motion is granted.¹

Accordingly, it is

ORDERED that plaintiff's motion for summary judgment in lieu of complaint is granted; and it is, therefore, further

ORDERED that plaintiff Entech Engineering, P.C., shall have judgment against defendant Copper Services, LLC, for the principal sum of \$26,000, plus interest accrued and accruing thereon from December 7, 2017, to the date of satisfaction of judgment, plus the costs and disbursements of this proceeding as taxed by the clerk, and that said plaintiff shall have execution therefor; and it is further

ORDERED that the clerk shall enter judgment accordingly.

¹ The court notes, though, in closing, that the work proposal contains no attorneys' fee provision.

This shall constitute the decision and order of the court.

Dated: New York, New York
May 12, 2020

ENTER:



Hon. Louis L. Nock, J.S.C.