

Schneider Elec. USA, Inc v Judlau Contr., Inc.
2020 NY Slip Op 31561(U)
May 2, 2020
Supreme Court, New York County
Docket Number: 656332/18
Judge: Melissa A. Crane
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SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK: IAS PART 15

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SCHNEIDER ELECTRIC USA, INC.,

Plaintiff,

Index No: 656332/18

-against-

JUDLAU CONTRACTING, INC.,

METROPOLITAN TRANSPORTATION AUTHORITY,

UNITED FIRE PROTECTION, INC.,

SAFWAY ATLANTIC, LLC,

BENFIELD ELECTRIC SUPPLY CORP.,

50 STATES ENGINEERING CORP.,

RISA MANAGEMENT CORP., and

ENVIRONMENTAL INTERIORS, INC.,

Defendants.

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CRANE, J.:

Plaintiff Schneider Electric USA (Schneider), a subcontractor, alleges that it was not paid for extra work. Defendant Judlau Contracting, Inc. (Judlau), the general contractor, moves to dismiss the complaint, pursuant to CPLR 3211 (a) (1) and (7).

Schneider alleges the following: Defendant Metropolitan Transportation Authority (the MTA) hired Judlau to construct part of the Second Avenue subway in New York City and, in August 2011, Judlau entered into a subcontract with Schneider for electrical work. Schneider performed the work under the subcontract and extra work pursuant to MTA-issued AWOs (additional work orders). In January 2018, Schneider submitted documentation and notification

to Judlau that Schneider had incurred costs, totaling approximately \$880,494, as a result of the AWOs.

Schneider alleges that, in August 2018, Schneider and Judlau entered into a liquidating agreement (the "Liquidating Agreement"). In the Liquidating Agreement, Judlau agreed to include Schneider's claims under the AWOs in its own claim submission to the MTA, to pursue the collection of Schneider's AWO claims, not to make any final settlement of Schneider's AWO claims without Schneider's express written consent, and to pursue recovery through litigation or a dispute resolution process should the MTA not settle Schneider's claims.

Schneider submitted documentation of its extra work to Judlau. At the end of August 2018, Judlau and the MTA entered into a final settlement, resolving the claims of Judlau and its subcontractors, including Schneider. Schneider alleges that the final settlement did not allocate Schneider the amount to which it was entitled. Schneider alleges that Judlau did not present all of the documentation Schneider submitted, settled Schneider's claims without express written consent, did not provide any notification to Schneider about the settlement, and never provided Schneider with a copy of the settlement agreement with the MTA. In addition, Judlau failed to pursue recovery for Schneider through litigation or in any other manner.

Schneider brings causes of action based on breach of contract, breach of fiduciary duty, quantum meruit/unjust enrichment, and the Lien Law. Judlau states that the parties never came to terms on a liquidating agreement, that they did not enter into such an agreement, and that Judlau did not sign anything. Judlau claims an unsigned agreement is not binding. The document Schneider submitted entitled "Liquidating Agreement" bears Schneider's signature and not that of Judlau.

Schneider argues that the Liquidating Agreement is binding and enforceable, despite that Judlau did not sign it. Schneider claims the parties' conduct shows that they made the agreement. Patrick McGann of Schneider submits an affidavit in opposition to Judlau's motion to dismiss. McGann alleges that, in May 2015, Judlau's representative sent Schneider, as well as other subcontractors, a copy of a proposed liquidating agreement, and asked Schneider and the other subcontractors to execute it. In June 2015, MTA requested that Judlau submit a proposal for the costs of some AWOs. Judlau notified Schneider and other subcontractors that if they did not execute Judlau's proposed liquidating agreement, Judlau would not include their respective

costs resulting from AWOs. Representatives for Judlau and Schneider then began negotiating the terms of a liquidating agreement. In August 2015, the parties completed negotiations of the terms and conditions of a liquidating agreement.

McGann further alleges the following. Schneider executed the Liquidating Agreement on December 14, 2015. Although Schneider requested it, Judlau failed to send Schneider or its legal counsel a copy of the agreement with Judlau's signature. "Notwithstanding the lack of signed Liquidating Agreement from Judlau, the parties continued to conduct business as if it had been fully executed by both parties" (McGann affidavit, para 25, NYSCEF # 27). In March 2016, Schneider submitted another AWO claim to Judlau. In May 2016, Judlau informed Schneider that the claim submission for AWOs had been submitted almost a year before and that Judlau was attempting to schedule a meeting with the MTA and subcontractors to discuss claims related to AWOs. McGann states that Judlau never requested that Schneider attend such a meeting.

McGann alleges that, on December 15, 2016, Judlau informed Schneider that it was meeting with the MTA about the cost of the delays and that Schneider should forward the Liquidating Agreement. Schneider did so. In January 2017, Judlau again asked for the agreement and Schneider complied. The parties continued to discuss Schneider's costs the delays on the project caused and Schneider kept submitting status updates to Judlau concerning those costs. In January 2018, Judlau informed Schneider that the MTA had rejected Schneider's cost claim related to AWOs and that the MTA was allowing Schneider to submit a revised claim. Judlau's letter begins, "In connection with the Liquidating Agreement your firm signed with Judlau . . ." (NYSC # 39). McGann states that Judlau thus acknowledged that the parties had made the agreement. Schneider submitted more documentation and Judlau again failed to provide any updates or communications to Schneider regarding the claim. In August 2018, the MTA informed Schneider that Judlau and the MTA had entered into a settlement agreement concerning Schneider's and other subcontractors claims.

The complaint does not clearly indicate whether Schneider received some or none of the payment that it seeks. The complaint alleges that Judlau failed to present properly Schneider's claims to the MTA, and failed to take any action to pursue those claims. At the end of August 2018, Judlau and the MTA entered into a final settlement, resolving the claims of Judlau and Judlau's subcontractors, including Schneider. Schneider alleges that Judlau settled Schneider's

claims without express written consent and did not provide any notification to Schneider about the settlement. Schneider brings causes of action based on breach of contract, breach of fiduciary duty, quantum meruit/unjust enrichment, and the Lien Law.

Under CPLR 3211 (a) (7), the court must evaluate whether the pleading states a cause of action and, if from its four corners factual allegations are discerned which considered together evince any cause of action cognizable at law, the court will deny the motion to dismiss (*African Diaspora Mar. Corp. v Golden Gate Yacht Club*, 109 AD3d 204, 211 [1st Dept 2013]). The court “accepts as true the facts as alleged in the complaint and affidavits in opposition to the motion, accords the plaintiff the benefit of every possible favorable inference, and determines only whether the facts as alleged manifest any cognizable legal theory” (*Elmaliach v Bank of China Ltd.*, 110 AD3d 192, 199 [1st Dept 2013] quoting *Sokoloff v Harriman Estates Dev. Corp.*, 96 NY2d 409, 414 [2001]).

Judlau contends that the parties did not enter into a liquidating agreement because Judlau did not sign one.

Parties are free to enter into a binding agreement without memorializing their agreement in a fully executed document, even if they are contemplating making such a document (*Winston v Mediafare Entertainment Corp.*, 777 F2d 78, 80 [2d Cir 1985]). The parties’ intention to commit the agreement to writing will not prevent contract formation prior to execution, if evidence indicates that the parties intended the agreement to represent the full scope of their binding obligations (*Matter of Municipal Consultants & Publs., Inc. v Town of Ramapo*, 47 NY2d 144, 149 [1979]). An unsigned agreement can be enforceable, provided that there is objective evidence establishing that the parties intended to be bound (*Flores v Lower E. Side Serv. Ctr., Inc.*, 4 NY3d 363, 369 [2005]). The deciding question is whether there was a meeting of the minds as to the essential terms of the agreement, even though only one party signed (*National City Golf Fin. v Higher Ground Country Club Mgt. Co., LLC*, 641 F Supp 2d 196, 203 [SD NY 2009], quoting *A/S Custodia v Lessin Intl., Inc.*, 503 F2d 318, 320 [2d Cir 1974]).

McGann alleges that Judlau initially sent Schneider the Liquidating Agreement, asked Schneider to sign it and return it to Judlau, and that Judlau engaged in conduct referable to the agreement by submitting Schneider’s claims to the MTA. The allegations indicate that Judlau acknowledged the agreement and represented to Schneider that there was an agreement between

them. Schneider thus presents objective evidence the parties had a meeting of the minds as to the agreement. Schneider alleges sufficient “objective manifestations of the intent of the parties as gathered by their expressed words and deeds” to sustain the claim that the parties entered into an agreement (*Flores v Lower E. Side Serv. Ctr.*, 4 NY3d 363, 368-369 [2003] [internal citation and quotation marks omitted]).

Judlau argues that the contract cause of action is too vague and conclusory to be sustained. The elements of a breach of contract claim are the existence of a valid contract, performance of the contract by the injured party, breach by the other party, and damages resulting from the breach (*Morris v 702 E. Fifth St. HDFC*, 46 AD3d 478, 479 [1st Dept 2007]). Schneider clearly states that Judlau promised to take certain actions, that it failed to do as promised, that Schneider did its part by providing Judlau with the necessary data on the AWO claims, and that, because Judlau did not fulfill its promises, Schneider did not receive all the payment to which it was entitled. While vague and conclusory allegations will not sustain a breach of contract claim (*Marino v Vunk*, 39 AD3d 339, 340 [1st Dept 2007]), the allegations here are sufficiently clear and detailed as to what was promised and was not done.

The complaint alleges that Judlau had a fiduciary duty to Schneider in relation to the AWOs and that Judlau breached its duty by not properly and diligently presenting Schneider’s claims to the MTA. Judlau states that the relationship with Schneider was not the sort to give rise to fiduciary duties. Generally, “an arms’ length business relationship, such as that between a contractor and subcontractor or a contractor and owner on a construction project does not give rise to a fiduciary relationship” (*Ehrenkranz v 58 MHR, LLC*, 47 Misc 3d 1226[A], 2015 NY Slip Op 50859[U], *11 [Sup Ct, Suffolk County 2015], *affd* 159 AD3d 872 [2d Dept 2018]). Under Article 3-A of the Lien Law, however, the contractor has a fiduciary duty to a subcontractor with respect to the funds received by the contractor for a construction project (*Centennial v Tadco*, 2007 NY Slip Op 32111[U] [Sup Ct, NY County 2007]; *AABCO Sheet Metal Co. v Lincoln Ctr. For Performing Arts*, 174 Misc 2d 232, 234 [Sup Ct, NY County 1997], *affd* 249 AD2d 39 [1st Dept 1998]). Those funds constitute a trust and the contractor is a fiduciary only concerning those funds (*Wildman & Bernhardt Const. v BPM Assocs.*, 273 AD2d 38, 39 [1st Dept 2000]; *Select Constr. Corp. v 502 Old Country Rd. LLC*, 2006 NY Slip Op

50609[U],*7-8 [Sup Ct, Nassau County [2006]]. Thus, Schneider may assert a claim for breach of fiduciary duty as related to the Lien Law. In no other manner is a fiduciary duty alleged.

Judlau argues that the quasi contract claim should be dismissed as duplicative of the contract claim. A quasi contract only applies in the absence of an express agreement (*Clark-Fitzpatrick, Inc. v Long Is. R.R. Co.*, 70 NY2d 382, 388 [1987]). A breach of contract claim and a quasi contract claim can be pleaded in the alternative when there is a dispute regarding the existence, validity, or scope of the contract (*Henry Loheac, P.C. v Children's Corner Learning Ctr.*, 51 AD3d 476 [1st Dept 2008]). Here, the parties dispute whether the Liquidating Agreement is binding. Schneider will be allowed to plead in the alternative.

Judlau states that a party who is not entitled to damages in the underlying action cannot foreclose upon a lien. That is not a reason to dismiss, because whether Schneider is entitled to damages in this action is an open question at this point.

In conclusion, it is hereby

ORDERED that the motion to dismiss by defendant Judlau Contracting, Inc. is denied with costs to be disbursed to plaintiff upon a submission of a bill to the Clerk of the Court; and it is further

ORDERED that defendant shall file an answer to the complaint within 20 days of the efiled date of this decision and order;

The parties are directed to contact the court at macrane@nycourts.gov, to arrange for a conference to take place on June 18, 2020 at ten am.

Dated: 5-2-2020

ENTER:



J.S.C.