Minnich v City of New York
2020 NY Slip Op 32633(U)
August 6, 2020
Supreme Court, New York County
Docket Number: 653852/2019
Judge: Nancy M. Bannon
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: I.A.S. PART 42

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TIMOTHY MINNICH, ROBERT SCOTTO, MINNICH & SCOTTO INC.

Plaintiffs,

DECISION AND ORDER
Index No. 653852/2019
MOT SEQ 001, 002, 003

- v -

CITY OF NEW YORK, NEW YORK DEPARTMENT OF ENVIRONMENTAL PROTECTION, LOUIS BERGER & ASSOCIATES P.C.,

Defendants.

---x

NANCY M. BANNON, J.:

I. INTRODUCTION

In this action seeking damages for, *inter alia*, breach of contract, unjust enrichment, and tortious interference with contract, relating to an environmental services agreement regarding a pilot air study in the Newtown Creek area, the defendants, The City of New York (NYC), and the New York City Department of Environmental Protection (DEP) (collectively the municipal defendants), move, pre-answer, pursuant to CPLR 3211(a)(7) to dismiss the complaint as against them (MOT SEQ 001). The defendant Louis Berger & Associates P.C. (LBA) also moves pre-answer pursuant to CPLR 3211(a)(1) and (7) to dismiss the complaint as against it (MOT SEQ 002). The plaintiffs move pursuant to CPLR 3211(b) to dismiss the defendant's defenses in

this action, or, in the alternative, to granting a continuance of the defendants' pending motions until thirty days from the defendants' production of a contract between the DEP and LBA in response to the plaintiffs' notice to produce.

The municipal defendant's motion to dismiss is granted. LBA's motion to dismiss is granted in part. The plaintiffs' motion to dismiss the defendants' defenses is denied.

II. BACKGROUND

The plaintiff Minnich & Scotto, Inc. (MSI) is an environmental consulting firm. Plaintiffs Timothy Minnich and Robert Scotto are MSI's principals. For over 20 years, the DEP has investigated the extent of environmental contamination at Gowanus Canal and Newton Creek, stemming from the discovery by the United States Coast Guard of an approximate 17-million-gallon oil spill from an oil refinery in Newton Creek in 1978.

The plaintiffs allege that in March 2016, Eileen Mahoney, at the time the Director of Hazardous Materials Assessment and Superfund Planning for the DEP, and her deputy assistant, Ron Weissbard, agreed that the plaintiffs would perform a full-scale Air Pathway Analysis (APA) focusing on toxic ambient emissions from Newton Creek and its tributaries. The plaintiffs further allege that Mahoney and Weissbard worked with the plaintiffs to revise, expand, and finalize the scope of the APA, and that,

prior to the initial agreement in March, the plaintiffs made it clear that they would need at least a $15,000.00 retainer and payment, as they could not postpone any payments for the cost and expense of the APA until after its completion. Thereafter, the plaintiffs claim that Mahoney told them to enter into a subcontract with LBA, which has had a longstanding contract with the DEP to provide environmental consulting services to the DEP, including the Gowanus Canal and Newton Creek projects, for the purpose of memorializing the plaintiff's agreement with the DEP.

The plaintiffs allege that on May 2, 2016, they met with LBA to memorialize the plaintiffs' agreement with the DEP, but LBA was unprepared to discuss memorialization of the agreement, compensation for the plaintiff's almost two-months of uncompensated work, or any payment terms going forward, and instead spent the time questioning the methodology of the APA. The plaintiffs further contend that LBA conceded that it had been working on a proposed modification of a previous air quality study for the DEP when it was informed of the plaintiff's agreement with Mahoney to do the APA instead.

The plaintiffs claim that on May 21, 2016, LBA sent them a memorialization of the agreement that it had been working on, that did not provide for the plaintiff's payment terms or for any immediate payment for the plaintiff's previous two months of

work. Thereafter, on May 23, 2016, before the plaintiffs had an opportunity to object to the payment terms, LBA informed the plaintiffs that the DEP had suspended the APA because the DEP wanted to do a pilot APA before resuming a full-scale APA.

Thereafter, the plaintiffs, understanding that a pilot APA would not preclude them from further work on the APA, entered into a contract for a value of $25,000.00 to provide work on the pilot APA. The plaintiffs claim that approximately three months later, in August 2016, the DEP cancelled all further work on the APA and, through LBA, offered the plaintiffs $8,100.00 for the work that they had performed on the pilot APA. Neither the DEP nor LBA sought to compensate the plaintiffs for their work on the initial APA project.

On November 27, 2018, the plaintiffs filed a Notice of Claim with the New York City Office of the Comptroller seeking $350,000.00 in damages from NYC, plus interest and attorneys' fees.

On July 7, 2019, the plaintiffs commenced the instant action alleging five causes of action. The first cause of action is for breach of contract against all defendants. The second and third causes of action are for unjust enrichment and quantum meruit against all defendants. The fourth and fifth causes of action are for tortious interference with contract and tortious

interference with economic relations, respectively, as against LBA.

III. DISCUSSION

A. Municipal Defendants' Motion to Dismiss - CPLR 3211(a)(7)

The municipal defendants' motion to dismiss the three causes of action against for breach of contract, unjust enrichment, and quantum meruit pursuant to CPLR 3211(a)(7) is granted.

When assessing the adequacy of a pleading in the context of a motion to dismiss under CPLR 3211(a)(7), the court's role is "to determine whether [the] pleadings state a cause of action." 511 W. 232nd Owners Corp. v Jennifer Realty Co., 98 NY2d 144 (2002). To determine whether a claim adequately states a cause of action, the court must "liberally construe" it, accept the facts alleged in it as true, accord it "the benefit of every possible favorable inference" (id. at 152; see Romanello v Intesa Sanpaolo, S.p.A., 22 NY3d 881 [2013]; Simkin v Blank, 19 NY3d 46 [2012]), and determine only whether the facts, as alleged, fit within any cognizable legal theory. See Hurrell-Harring v State of New York, 15 NY3d 8 (2010); Leon v Martinez, 84 NY2d 83 (1994); Weil, Gotshal & Manges, LLP v Fashion Boutique of Short Hills, Inc., 10 AD3d 267 (1st Dept. 2004); CPLR 3026.

Here, the municipal defendants seek to dismiss the causes of action against them on the grounds that (i) there is no written contract between the plaintiffs and the municipal defendants, let alone a contract registered by the comptroller, as required by New York law, and therefore the alleged oral agreement between the plaintiffs and the DEP is unenforceable, (ii) to the extent that the plaintiffs' claims may relate to the agreement between the plaintiffs and LBA, the municipal defendants were not party to that agreement, and (iii) the DEP, as an entity separate from NYC itself, is not a suable entity pursuant to the NYC Charter.

1. No Written Contract

It is well settled that there can be no enforceable municipal contract where the statutory requirements for such a contract have not been met. See Henry Modell & Co. v City of New York, 159 AD2d 354 (1st Dept. 1990). "[A]ny enforceable agreement with the City must be in writing, approved as to form by the Corporation Counsel, and registered with the Comptroller" and if any of these requirements are not met, an agreement is on its face invalid and unenforceable. JFK Holding Company v City of New York, 68 AD3d 477, 478 (1st Dept. 2009) (affirming dismissal of plaintiff's complaint seeking to enforce alleged oral contract with NYC Department of Homeless Services to assume obligations under a lease because it was not entered into

pursuant to statutory requirements); see also DeFoe Corp. v New York City Department of Transportation, 87 N.Y.2d 754, 760 (1996) (a "contract is not effective until it has been registered"). "[W]here work is done pursuant to an illegal municipal contract, no recovery may be had by the vendor, either on the contract or in quantum meruit." S.T. Grand v City of New York, 32 NY2d 300, 305 (1973); see also Kooleraire Serv. & Install. Corp. v Board of Educ., 28 NY2d 101 (1971). Furthermore, "[m]unicipal contracts which violate express statutory provisions are invalid." Granada Buildings, Inc. v City of Kingston, 58 NY2d 705, 708 (1982).

Here, it is undisputed that the plaintiffs did not enter into any written contract with the municipal defendants, let alone have one entered by the comptroller. Instead, the plaintiffs allege that Mahoney, as a DEP employee, made oral representations to them that (i) the DEP was going to engage them to work on the APA, and (ii) that the DEP would pay them for their work by causing them to be entered into a subcontract with LBA. These allegations are wholly insufficient to plead an enforceable agreement with either of the municipal defendants inasmuch as the agreements are neither in writing, approved by the NYC Corporation Counsel, or properly registered by the comptroller, and therefore the first cause of action for breach

of contract fails to state a cause of action. See JFK Holding Company v City of New York, supra.

In opposition, the plaintiffs argue that (i) they are entitled to equitable estoppel inasmuch as they believed Mahoney had actual authority to bind the City and her representations caused them to continue working on the APA in reliance upon her statement that they would eventually be paid pursuant to a subcontract with LBA, or (ii) that the City thereafter ratified their oral agreement. These arguments are without merit.

The doctrine of equitable estoppel applies "where a governmental subdivision acts or comports itself wrongfully or negligently, inducing reliance by a party who is entitled to rely and who changes his position to his detriment or prejudice." Bender v New York City Health & Hosps. Corp., 38 NY2d 662, 668 (1976); Delacruz v Metro. Transp. Auth., 45 AD3d 482 (1st Dept. 2007). The doctrine is to be invoked sparingly and only under exceptional circumstances. See Nowinski v City of New York, 189 AD2d 674 (1st Dept. 1993). This is not one of those cases. In Casa Wales Hous. Dev. Fund Corp. v City of New York, 129 AD3d 451, 451 [2015], the Appellate Division, First Department, under similar circumstances, held that:

> "It is well settled that 'where there is a lack of authority on the part of agents of a municipal corporation to create a liability, except by compliance with well-

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> established regulations, no liability can result unless the prescribed procedure is complied with and followed.' Lutzken v City of Rochester, 7 AD2d 498, 501 (4th Dept. 1959).
>
> Consequently, those dealing with municipal agents must ascertain the extent of the agents' authority, or else proceed at their own risk. See Emerman v City of New York, 34 AD2d 901 (1st Dept. 1970).
>
> The courts of this state have long held that 'no implied contract to pay for benefits furnished by a person under an agreement which is invalid because it fails to comply with statutory restrictions and inhibitions can create an obligation or liability of the city' Seif v City of Long Beach, 286 NY 382, 387 (1941); see also Henry Modell & Co. v City of New York, 159 AD2d 354 (1st Dept. 1990).
>
> Estoppel can be invoked against a municipality or municipal agency only in the rarest cases... and this is not one of those cases. Plaintiffs were well aware of the requirements for a binding contract with the City, and these statutory requirements [were] expressly set forth in the proposed contract. Accordingly, they proceeded with certain expenditures at their own risk."

Therefore, because Mahoney could not unilaterally bind the DEP through an oral agreement, as a entering into a contract with the City to provide services is governed by well-established regulations requiring a written agreement, approved by the NYC Corporation Counsel, and entered by the comptroller, estoppel is not available to the plaintiffs in this action. See Casa Wales Hous. Dev. Fund Corp. v City of New York, supra. That the plaintiffs claim that they believed Mahoney had actual authority to bind the DEP is irrelevant (see Emerman v City of

New York, supra), as is the plaintiffs' contention that they have previously entered into contracts with the DEP in such a way. See Henry Modell & Co. v City of New York, supra.

As to the plaintiffs' claim that the municipal defendants somehow ratified their purported oral contract with the DEP, inasmuch as they accepted the plaintiffs' work, it is well settled that acceptance of benefits by a municipality under an unauthorized contract, does not prevent the municipality from challenging the validity of the contract and denying liability thereunder. See Parsa v New York, 64 NY2d 143 (1984); Seif v City of Long Beach, supra. Inasmuch as the plaintiffs fail to allege any actions by the defendants whereby ratification of the oral contract may be able to be inferred, such as recognition of the outstanding payments needed to be made to the plaintiffs or some payment thereon, the plaintiffs' argument that the oral agreement was ratified is without merit.

2. Plaintiffs Not Party to LBA Contract

To the extent that the plaintiffs' complaint could be read to allege a cause of action for breach of contract against the municipal defendants for the discontinuance of the Pilot APA prior to the completion of the agreement in August 2016, the municipal defendants are correct that the contract under which the plaintiffs performed work for the Pilot APA was between the

plaintiffs and LBA, and does not impute any liability to the municipal defendants. See E. States Elec. Contractors, Inc. v. William L. Crow Const. Co., 153 AD2d 522 (1st Dept. 1989) citing Delta Elec., Inc. v. Ingram and Green, Inc., 123 AD2d 369 (2nd Dept. 1986) (where there is no agreement or contract between a sub-contractor and the project owner, there is no privity giving rise to a cause of action for breach of contract).

Therefore, as the plaintiffs are not able to recover from the municipal defendants under the alleged oral agreement with Mahoney or the Pilot APA contract entered into with LBA, dismissal of the plaintiffs' first cause of action for breach of contract pursuant to CPLR 3211(a)(7) is warranted.

3. Claims for Unjust Enrichment and Quantum Meruit

The plaintiffs' second and third causes of action for unjust enrichment and quantum meruit likewise warrant dismissal pursuant to CPLR 3211(a)(7). The Court of Appeals has expressly held that no recovery can be had on claims for unjust enrichment or quantum meruit under an agreement with a municipality that fails to comply with statutory restrictions. See S. T. Grand, Inc. v City of New York, 32 NY2d 300, 305 (1973) ("the rule is that where work is done pursuant to an illegal municipal contract, no recovery may be had by the vendor, either on the contract or in quantum meruit"); see also Casa Wales Hous. Dev.

Fund Corp. v City of New York, supra; Lutzken v City of Rochester, supra ("Although other jurisdictions may recognize a claim upon a quantum meruit...even though there were irregularities or defects in the method of contracting for the services, it is clear that such is not the law in this State.").

Therefore, the complaint is dismissed as against the municipal defendants.

4. DEP is Improper Party

The court also notes that, even were the complaint not dismissed as against both municipal defendants, the municipal defendants are correct that the DEP is not a suable entity under the New York City Charter § 396, and therefore the complaint should be dismissed as against DEP on those grounds as well. The plaintiffs' do not address this point in their papers, and therefore they fail to raise any sufficient opposition to dismissal on these grounds.

B. LBA's Motion To Dismiss - CPLR 3211(a)(1) and (7)

Although not specified in their Notice of Motion, LBA's motion to dismiss is in part, in essence, a motion to dismiss pursuant to CPLR 3211(a)(1) on the grounds that the Pilot APA contract requires that any disputes between the plaintiffs and LBA first be attempted to be negotiated by the parties, then be

mediated by the parties, and then finally be commenced in New Jersey.

Dismissal under CPLR 3211(a)(1) is warranted where the documentary evidence submitted "resolves all factual issues as a matter of law, and conclusively disposes of the plaintiff's claim." Fortis Financial Services, LLC v Fimat Futures USA, 290 AD2d 383, 383 (1st Dept. 2002); see Amsterdam Hospitality Group, LLC v Marshall-Alan Assoc., Inc., 120 AD3d 431 (1st Dept. 2014). A contractual provision conditioning litigation upon one or more conditions precedent, such as mediation or arbitration, constitutes documentary evidence. See Archstone Dev. LLC v Renval Constr. LLC, 156 AD3d 432 (1st Dept. 2017); MCC Dev. Corp. v Perla, 81 AD3d 474 (1st Dept. 2011). Contractual provisions limiting access to mediation, arbitration, or litigation will be enforced only to the extent that they are clear and unambiguous and have not been waived by the party seeking to enforce the condition precedent. CC Dev. Corp. v Perla, supra.

Similarly, "[a] contractual forum selection clause is documentary evidence...that may provide a proper basis for dismissal pursuant to CPLR 3211(a)(1)." Landmark Ventures, Inc. v Birger, 147 AD3d 497 (1st Dept. 2017) citing Lischinskaya v Carnival Corp., 56 AD3d 116, 123 (2nd Dept. 2008). "Forum selection clauses are enforced because they provide certainty

and predictability in the resolution of disputes." Boss v American Express Fin. Advisors, Inc., 6 NY3d 242, 247 (2006); citing Brooke Group v JCH Syndicate 488, 87 NY2d 530, 534 (1996). The parties to an agreement "may freely select a forum which will resolve any disputes over the interpretation or performance of the contract." Brooke Group v JCH Syndicate 488, supra. Such a forum selection clause is *prima facie* valid and enforceable "unless it is shown by the challenging party to be unreasonable, unjust, in contravention of public policy, invalid due to fraud or overreaching, or it is shown that a trial in the selected forum would be so gravely difficult that the challenging party would, for all practical purposes, be deprived of its day in court." LSPA Enter., Inc. v Jani-King of NY, Inc., 31 AD3d 394, 395 (2nd Dept. 2006). "Absent a strong showing that it should be set aside, a forum selection agreement will control." DiRuocco v Flamingo Beach Hotel & Casino, 163 AD2d 270, 272 (2nd Dept. 1990); see also Sterling National Bank v Eastern Shipping Worldwide, Inc., 35 AD3d 222 (1st Dept. 2006).

In support of its motion pursuant to CPLR 3211(a)(1), LBS submits the subcontract between it and the plaintiffs. Paragraph 8.12 of the subcontract provides that if a dispute arose between LBS and the plaintiffs, there had to first be a written notice of the dispute after which the parties agreed to "negotiate a resolution of the dispute," by first having "a minimum of three

face-to face meetings" whereby the parties were required to negotiate in good faith. If the negotiations were unsuccessful the parties then agreed to attend mediation with a "[m]inimum of three face-to-face meetings." If the negotiations and mediation sessions were unsuccessful only then, under the agreement, could a party file a lawsuit. Paragraph 8.12.3 of the subcontract also requires that if a lawsuit is to be filed following the exhaustion of the dispute resolution process, any such lawsuit was required to be filed in State Court in Morris County, New Jersey or Federal Court in Newark, New Jersey. Although LBS fails to submit documentary proof that the plaintiffs never attempted to negotiate or mediate the issue pursuant to the agreement, the plaintiffs concede that they never attempted to do so.

The subcontract establishes, *prima facie*, that the plaintiffs' causes of action attributable to a breach of the Pilot APA agreement must be dismissed, as the plaintiffs have failed to comply with a condition precedent to litigation, and even had the plaintiffs complied with the conditions precedent, any such claim must be litigated in New Jersey.

In opposition, the plaintiffs argue that LBS is attempting to dismiss all of its claims under the Pilot APA contract, which only governs a small portion of the allegations brought against

LBS in this action. Specifically, the plaintiffs claim that LBS ignores the claims that LBS aided or abetted the municipal defendants' breach of contract by refusing to enter into a contract as directed by Mahoney, and thereafter tortiously interfered with its contractual and economic relationships by convincing the DEP to enter into the Pilot APA project.

As such, the plaintiffs fail to demonstrate why the portions of their complaint that relate to the breach of the Pilot APA agreement, and for any claims for unjust enrichment and quantum meruit that may also exist thereunder should not be dismissed, so as to require they be negotiated, mediated, and then litigated in New Jersey if necessary pursuant to the Pilot APA agreement. Thus, the portions of the plaintiffs' complaint relating to claims under the Pilot APA agreement are dismissed pursuant to CPLR 3211(a)(1).

As to the portions of the plaintiffs' complaint that relate to LBS' liability for breach of the alleged oral agreement between the plaintiffs and the municipal defendants, its aiding and abetting thereof, or any claims for unjust enrichment or quantum meruit related to the alleged oral agreement, such claims are not viable since, as previously discussed herein, no enforceable contract between the plaintiffs and the municipal defendants exists.

To the extent that the complaint could be read to allege causes of action against LBS for unjust enrichment and quantum meruit relating to its failure to pay the plaintiffs on behalf of the municipal defendants based upon Mahoney's alleged oral agreement with the plaintiffs, such claims are not viable and are subject to dismissal pursuant to CPLR 3211(a)(7).

To state a cause of action for unjust enrichment, a plaintiff must allege (1) the defendant was enriched, (2) at the plaintiff's expense and (3) that it is against equity and good conscience to permit the defendant to retain what is sought to be recovered. See Citibank, N.A. v Walker, 12 AD3d 480 (2nd Dept. 2004). Similarly, the elements of a cause of action sounding in quantum meruit are: (1) the plaintiff's performance of services in good faith; (2) the defendant's acceptance of services by the plaintiff; (3) the plaintiff's expectation of compensation therefor; and (4) damages. See DiSario v Rynston, 138 AD3d 672 (2nd Dept. 2016).

Here, the plaintiffs fail to allege any manner in which LBS, specifically, was either enriched by or accepted the plaintiffs' work on the prospective APA project for the DEP, as it appears from the complaint that LBA was attempting to come up with its own plan to study the air quality in the area surrounding Newtown Creek, and that neither the plaintiffs' nor

LBA's proposals were used, as the DEP ultimately decided to terminate any plans for further air quality testing.

Similarly, the two remaining causes of action against LBA, the fourth cause of action for tortious interference with contract, and the fifth cause of action for tortious interference with economic relations, also fail to sufficiently state a cause of action.

To state a cause of action for tortious interference with contract, it is necessary to demonstrate "the existence of a valid contract between the plaintiff and a third party, defendant's knowledge of that contract, defendant's intentional procurement of the third-party's breach of the contract without justification, actual breach of the contract, and damages resulting therefrom." Lama Holding Co. v Smith Barney, Inc., 88 N.Y.2d 413, 424 (1996); see also 330 Acquisition Co., LLC v Regency Sav. Bank, F.S.B., 293 AD2d 314, 315 (1st Dept. 2002).

A plaintiff asserting a cause of action for tortious interference with prospective economic advantage, "must plead that the defendant directly interfered with a third party and that the defendant either employed wrongful means or acted for the sole purpose of inflicting intentional harm on plaintiff." Posner v Lewis, 18 NY3d 566, 570 (2012). "Wrongful means includes physical violence, fraud or misrepresentation, civil

suits and criminal prosecutions, and some degrees of economic pressure." Carvel Corp. v Noonan, 3 NY3d 182, 195 (2004). The use of professional persuasion to induce a party to switch to a competing business relationship does not rise to the level of wrongfulness necessary to sustain such a cause of action. See Don Buchwald & Assocs., Inc. v Rich, 281 AD2d 329 (1st Dept. 2001).

As previously discussed herein, no valid contract exists between the plaintiffs and the municipal defendants. Therefore, the fourth cause of action for tortious interference with a contract must be dismissed pursuant to CPLR 3211(a)(7). See Lama Holding Co. v Smith Barney, Inc, supra.

Regarding the plaintiffs' claim that LBA tortuously interfered with the plaintiffs' prospective economic relations with the DEP, the plaintiffs claim that (i) Mahoney orally agreed to enter into a contract with the plaintiffs for their work on the APA, (ii) that she directed the plaintiffs to enter into a subcontract with LBA to memorialize their agreement, (iii) that at their first meeting to enter into the purported subcontract LBA did not enter into any contract with the plaintiffs as directed by Mahoney, questioned the methodology of the plaintiffs' APA, and mentioned that LBA was also working on a similar proposal, and (iv) that LBA purposefully withheld from

entering into an agreement with the plaintiffs regarding their previous work for the DEP, and thereafter convinced the DEP to conduct a Pilot APA project that plaintiffs' enter into. These allegations are insufficient to establish that LBA directly interfered with DEP and the plaintiffs' relationship, that they acted through wrongful means, or that their actions were motivated solely by their desire to inflict harm upon the plaintiffs. Rather, it appears from their allegations that the plaintiffs' grievance is that LBA declined to retroactively pay the plaintiffs' through a subcontract for work they did on a competing proposal pursuant to an unenforceable oral agreement made between the plaintiffs and Mahoney on a project that was ultimately disbanded by the DEP.

Therefore, the fourth and fifth causes of action for tortious interference with contract and economic relations are dismissed pursuant to CPLR 3211(a)(7).

C. Plaintiffs' Motion to Dismiss Defenses

Inasmuch as the complaint has been dismissed as against all parties, the plaintiffs' motion to dismiss the defendants' defenses is moot. Moreover, as correctly noted by the defendants, a motion to dismiss defenses pursuant to CPLR 3211(b) is properly aimed at the affirmative defenses raised in a defendant's responsive pleadings. Inasmuch as the defendants

have all moved pre-answer to dismiss the complaint, the plaintiffs' current motion is nothing more than an improper attempt to collaterally attack the defendants' motions to dismiss and supplement the plaintiffs' arguments against them.

Moreover, the plaintiffs' alternative request for "a continuance of the defendants' pending motions until 30 days from the defendant's production of true and correct copies of [the contract between the DEP and LBA]" is improper. In any event, the defendants have represented that full and correct copies of the documents sought by the plaintiffs were provided in January 2020.

IV. CONCLUSION

Accordingly, it is hereby,

ORDERED that the motion of defendants City of New York and the New York City Department of Environmental Protection to dismiss the complaint as against them pursuant to CPLR 3211(a)(7) is granted in its entirety (MOT SEQ 001); and it is further,

ORDERED that the motion of defendant Louis Berger & Associates P.C. to dismiss the complaint as against it pursuant to CPLR 3211(a)(1) and (7) is granted to the extent that, the first, second, and third causes of action for breach of

contract, unjust enrichment and quantum meruit, as they relate to claims arising from the Pilot APA Agreement, are dismissed pursuant to CPLR 3211(a)(1), and the remaining causes of action are dismissed pursuant to CPLR 3211(a)(7) (MOT SEQ 002); and it is further,

ORDERED that the motion of the plaintiffs, Timothy Minnich, Robert Scotto, and Minnich & Scotto Inc., to dismiss the defendants' defenses pursuant to CPLR 3211(b) is denied, and it is further

ORDERED that the Clerk shall enter judgment accordingly.

This constitutes the Decision and Order of the court.

Dated: August 6, 2020 **ENTER:** **HON. NANCY M. BANNON**