

Kuzi Design Inc. v 361 Holdings LLC

2020 NY Slip Op 33559(U)

October 26, 2020

Supreme Court, New York County

Docket Number: 152853/2014

Judge: Shlomo S. Hagler

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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 IAS MOTION 17EFM

_____X
KUZU DESIGN INC.,

Plaintiff,

- against -

361 HOLDINGS LLC, SAM ABRAHAM,
STEVEN MAKOWSKY, ROCKFORD
HOLDINGS GROUP, and 341 EAST 86TH
STREET LLC,

Defendants.

_____X

Index No. 152853/2014

Motion Date 10/23/2019

Motion Sequence No. 005

**DECISION + ORDER ON
MOTION**

HON. SHLOMO S. HAGLER, J.S.C.:

The following e-filed documents, listed by NYSCEF document number (Motion 005) 27 - 30, 54, 56 - 61, 66, 67, 68, 98, 100, 102, 106 - 108, 146 - 189, were read on this motion for SUMMARY JUDGMENT (AFTER JOINDER).

Defendants Sam Abraham, Steven Makowsky, and Rockford Holdings Group LLC ("Rockford Holdings") move, pursuant to CPLR 3212, for summary judgment dismissing the First Amended Complaint and, pursuant to 22NYCRR 130-1.1, for the imposition of sanctions against plaintiff, Kuzi Design, Inc. ("Kuzi").

Kuzi cross-moves for summary judgment on the First Amended Complaint.

BACKGROUND

Plaintiff commenced this action seeking to recover \$103,350.00 for services she allegedly performed on a renovation project located at 314 East 86th Street, New York, New York (the "Premises"). The following facts are gleaned from the submissions of the parties.

Plaintiff, through its principal Lee Kuzi, allegedly rendered more than 458 hours of project management services, project coordination services, design services, and related materials in connection with improvements to the Premises (First Amended Complaint, NYSCEF Doc. No. 28). Lee Kuzi, who is not a licensed New York architect, reportedly collaborated with nonparty Zvi Dunsky, an architect based in Israel and not licensed in New York, to provide the services.

Defendant 314 East 86th Street, LLC ("314 East") owned the Premises where plaintiff allegedly rendered the services, and subsequently sold the Premises to defendant 361 Holdings LLC ("361 Holdings") (*id.*). Rockford Holdings served as general contractor for the improvements to the Premises (*id.*). Sam Abraham and Steven Makowsky are principals of Rockford Holdings (*id.*).

It is undisputed that the parties did not have a written agreement. However, they disagree as to whether there was an oral agreement.

Plaintiff maintains that she provided the service pursuant to an oral agreement between the parties. Specifically, plaintiff asserts that Sam Abraham contacted Lee Kuzi and asked her to perform services in connection with improvements to the Premises. Plaintiff also asserts that the frequent emails and other communications between the parties demonstrate an agreement between them. Defendants deny the existence of an oral agreement.

The First Amended Complaint alleges that Rockford Holdings, Sam Abraham, and Steven Makowsky retained plaintiff to render services and related materials to the planned improvement of the Premises; that plaintiff rendered the services and related materials between November 1, 2013 and January 24, 2014, and sent an invoice (Invoice No. 00.012314.01) (the "Invoice") in the amount of \$103,350.00 on January 23, 2014; and that defendants failed to pay the Invoice (*id.*). The Invoice seeks payment of \$44,600.00 for "Project Management and Project Coordination," and \$58,750.00 for "Architecture & Design - Schematic Design" (Invoice, NYSCEF Doc. No. 176).

Plaintiff filed mechanic's liens against the Premises on February 13, 2014 ("First Lien") and April 2, 2014 ("Second Lien"). The First Lien states, in part, that "[t]he labor performed and material furnished was 'Project Coordination, Project Management, Architecture and Design Service'" (Notice of Mechanic's Lien, NYSCEF Doc. No. 30). The Second Lien states that "[t]he labor performed and material furnished was by Kuzi Design Inc., No. 4504502 for Project Coordination, Project Management, and Design Service. Kuzi Design Inc. directed, controlled, & supervised how the work was to be performed" (*id.*).

Plaintiff alleges causes of action for foreclosure of the First Lien and Second Lien against 314 East and 361 Holdings (first cause of action); payment of the invoice, with interest, against 314 East (second cause of action); payment of the First Lien, with interest, against 361 Holdings (third cause of action); unjust enrichment against all defendants (fourth cause of action); monies had and received against Rockford, Sam Abraham, Steven Makowsky and 314 East (fifth cause of action); a constructive trust (sixth cause of action); and an account stated against Rockford, Sam Abraham, and Steven Makowsky (seventh cause of action) (First Amended Complaint, *supra*).

By Order, entered January 30, 2015, this Court (Hagler, J.) dismissed the First Amended Complaint without prejudice as to 361 Holdings, and vacated and cancelled the First Lien, effectively dismissing the first and third causes of action against Rockford, Sam Abraham, and Steven Makowsky (see Transcript, NYSCEF Doc. No. 98; Order, NYSCEF Doc. No. 99). By Order, entered June 16, 2015, the Court dismissed the fifth, sixth, and seventh causes of action against Rockford, Sam Abraham, and Steven Makowsky (Order, NYSCEF Doc. No. 101; Transcript, NYSCEF Doc. No. 118), but declined to dismiss the fourth cause of action against those defendants (Order, NYSCEF Doc. 101; Transcript, NYSCEF Doc. No. 118).

Rockford, Sam Abraham and Steven Makowsky now move for summary judgment dismissing the fourth cause of action, for unjust enrichment, the only remaining cause of action against them in the First Amended Complaint. Defendants also seek the imposition of sanctions against plaintiff.

Plaintiff cross moves for summary judgment on the First Amended Complaint.

DISCUSSION

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law, tendering sufficient evidence to demonstrate the absence of any material issues of fact (see *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). Failure to make a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (see *JMD Holding Corp. v Congress Fin. Corp.*, 4 NY3d 373, 384 [2005]). However, once the showing has been made, 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 (*Zuckerman v City of New York*, *supra*). Mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient to defeat summary judgment (*id.*).

As stated, the fourth cause of action alleges unjust enrichment against Rockford, Sam Abraham, and Steven Makowsky. The essential inquiry in any action for unjust enrichment is whether it is against equity and good conscience to permit the defendant to retain what is sought to be recovered" (*Paramount Film Distrib. Corp. v State of New York*, 30 NY2d 415, 421 [1972]). In order to succeed on a claim for unjust enrichment, the plaintiff must show that the defendant was enriched, at the plaintiff's expense, and that it is against equity and good conscience to permit the

defendant to retain what is sought to be recovered (see *Georgia Malone & Co., Inc. v Rieder* [1st Dept 2011]).

In seeking summary judgment, defendants argue that plaintiff is not entitled to recovery since its principal, Lee Kuzi, is not an architect licensed in the State of New York. Defendants also argue plaintiff's purported collaboration with Zvi Dunsky is insufficient to establish entitlement to recovery since, he, too, is not an architect licensed in New York and, in any event, plaintiff cannot properly bill for his services in New York.

Defendants assert that plaintiff is simply attempting to bill for architectural services when, in fact, Lee Kuzi is not a licensed architect, and wrongfully identifies herself as an architect, in violation of New York's Education Law. Defendants further assert that based on the Education Law, plaintiff cannot recover in contract or quasi contract.

New York has taken a strict approach in the licensing area of the law, and courts have been adamant in their refusal to permit recovery under a contract where the contractor is not licensed (see *Ellis v Gold*, 204 AD2d 261, 265 [2d Dept 1994]). "Under the Education Law, only those persons licensed or otherwise authorized to practice architecture may do so, and may use the title 'architect'" (*SKR Design Group v Yonehama, Inc.*, 230 AD2d 533, 535 [1st Dept 1997]).

Education Law §7301 defines the practice of the profession of architecture as:

“[R]endeering or offering to render services which require the application of the art, science, and aesthetics of design and construction of buildings, groups of buildings, including their components and appurtenances and the spaces around them wherein the safeguarding of life, health, property, and public welfare is concerned. Such services include, but are not limited to consultation, evaluation, planning, the provision of preliminary studies, designs, construction documents, construction management, and the administration of construction contracts.”

Furthermore, Education Law §7302 prescribes that “only a person licensed or otherwise authorized ... shall practice architecture.”

“[T]he purpose of the regulatory scheme is to protect the public health and safety” (*SKR Design Group v Yonehama, Inc.*, *supra*, at 536, quoting *Charlebois v Weller Assocs.*, 72 NY2d 587, 592 [1988]). An unlicensed contractor is precluded, as a matter of public policy, from enforcing a home improvement contract or seeking recovery in quantum meruit (see *JMT Bros. Realty, LLC v First Realty Bldrs., Inc.*, 51 AD3d 453, 454 [1st Dept 2008]).

Defendants offer, among other things, the Invoice and mechanic’s liens, as well as emails exchanged between the parties (see NYSCEF Doc. No. 57) to support their position that plaintiff cannot recover for unlicensed

architectural services. The emails include, among other things, scaled diagrams of floor plans, and repeatedly refer to Lee Kuzi as “Interior Architect” (*id.*).

On review of the submissions, the Court concludes that the motion for summary judgment must be granted, and that the cross motion for summary judgment must be denied. Defendants’ evidence sufficiently establishes that that plaintiff’s services, as documented in the emails, scale diagrams, Invoice, and mechanic’s liens, constitute the unauthorized practice of architecture, for which it cannot recover (*see Alex Greenberg, DDS, PC v SNA Consultants, Inc.*, 55 AD3d 418 [1st Dept 2008]). The evidence shows that Lee Kuzi consistently identified herself as an “Interior Architect” in her emails, which included scaled designs with her name on them. Lee Kuzi also submitted the Invoice that includes \$58,750.00 for “Architecture & design - Schematic Design” and filed mechanic’s liens for, among other things, architectural services. “[T]he preparation of plans and the supervision of construction work ... are the usual functions of an architect” (*American Store Equip. & Constr. Corp. v Dempsey’s Punch Bowl, Inc.*, 174 Misc 436, 437 [Sup Ct, NY County 1939, *affd* 258 App Div 794 [1st Dept 1939], *affd* 283 NY 601 [1940]).

Plaintiff fails to raise any triable issues of fact, as the submissions make clear that none of the architectural services included in the Invoice were incurred by an architect licensed in New York. The assertion that the Education Law does not bar plaintiff's claim for unjust enrichment since it performed only interior design and project management services, and collaborated with a licensed architect, who performed the architectural services, is unavailing. While Zvi Dunsky may be a licensed architect elsewhere, he is not an architect licensed in New York. Furthermore, the submissions do not include an invoice from Zvi Dunsky for the services he allegedly performed.

The assertion that plaintiff consulted with licensed New York architect Gary Shoemaker is also insufficient to defeat summary judgment since plaintiff acknowledges that Gary Shoemaker provided the consultation services at no cost and did not submit an invoice.

Simply stated, plaintiff cannot recover for the architectural services included in the Invoice since those services were not performed by an architect licensed in New York. Furthermore, since any agreement between the parties regarding the improvement of the Premises would have been an entire, indivisible agreement, plaintiff also cannot recover for the services that were not architectural (*see P.C. Chipouras & Assocs. v*

212 Realty Corp., 156 AD2d 549, 550 [2d Dept 1989]). When plaintiff engaged in the practice of architecture without a license the entire alleged agreement became unenforceable (*id.*). As such, plaintiff cannot recover under a theory of quasi contract or unjust enrichment. Thus, the fourth cause of action is dismissed.

The request for sanctions is denied (22 NYCRR 130-1.1).

Accordingly, it is

ORDERED that the motion for summary judgment is granted and the First Amended Complaint is dismissed, with costs and disbursements to defendants as taxed by the Clerk upon the submission of an appropriate bill of costs; and it further

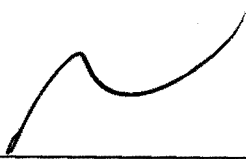
ORDERED that the request for sanctions is denied; and it is further

ORDERED that the cross motion for summary judgment is denied;

and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

10/26/2020
DATE


SHLOMO S. HAGLER, J.S.C.

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