

Tecchia v Bellati

2021 NY Slip Op 31208(U)

April 12, 2021

Supreme Court, New York County

Docket Number: 652257/2015

Judge: Andrew Borrok

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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. ANDREW BORROK PART IAS MOTION 53EFM

Justice

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SARA TECCHIA, 5N WOOSTER LLC,

Plaintiff,

- v -

BARTOLOMEO BELLATI D/B/A MINIMAL USA, STEFANO
VENIER, CANOVA, INC.

Defendant.

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INDEX NO. 652257/2015

MOTION DATE 02/11/2020

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213

were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER).

Upon the foregoing documents and for the reasons set forth below, Canova Inc. d/b/a Minimal USA, Bartolomeo Bellati, and Stefano Venier's (collectively, the **Defendants**) motion for summary judgment with respect to their first counterclaim for breach of contract and dismissal of the Second Amended Complaint (hereinafter defined) is granted because Sara Tecchia contracted with Canova Inc. d/b/a Minimal USA to obtain custom millwork and not specific millwork from the Italian company, Minimal Cucine, which they provided and for which she has not paid for in full without appropriate justification.

The Relevant Facts and Circumstances

Canova Inc. is a Delaware corporation that does business under the trade name Minimal USA (**Minimal USA**; NYSCEF Doc. No. 148). Mr. Bellati is the president of Minimal USA and Mr.

Venier is its principal (NYSCEF Doc. No. 107, ¶ 1). Since 2012, Minimal USA has had exclusive distribution rights for Minimal Cucine products in the United States pursuant to a certain Distribution Agreement (*id.*, ¶¶ 4-5; NYSCEF Doc. No. 110).

In January 2010, Ms. Tecchia purchased a condominium at 42-50 Wooster St., New York, New York (the **Condo**) for \$7,450,000 (NYSCEF Doc. No. 104, ¶ 15). She proceeded to hire a general contractor and architect for Condo renovations in 2012 (the **Project**) (NYSCEF Doc. No. 142 at 9-11). Ms. Tecchia first visited the Minimal USA showroom in mid-2012. She was not aware of Minimal USA before this time (*id.* at 13:4-22). During the visit, Mr. Bellati showed her Minimal USA catalogs and products that she understood referred to Minimal USA and not Minimal Cucine (*id.* at 15:21-16:5). Ms. Tecchia believed that Minimal USA was an Italian company that provided custom-made home solutions and that it was represented in New York City by Minimal USA – i.e., she erroneously believed that Minimal Cucine and Minimal USA were the “same thing” (*id.* at 32:2-19; 177:25-178:8). Ms. Tecchia asserts that Mr. Bellati told her he would provide “Minimal products” (*id.* at 35:11-17). Ms. Tecchia hired Minimal USA within a week of the initial meeting (*id.* at 17:17-21).

Pursuant to a Contract (the **Contract**; NYSCEF Doc. No. 114), by and between Minimal USA and Ms. Tecchia, Minimal USA would sell to Ms. Tecchia “[c]ustom furniture and millwork made in Italy,” among other things, for the price of \$819,727, which was later adjusted for a net price of \$796,206 (NYSCEF Doc. No. 107, ¶¶ 15-16). The Contract primarily concerned the design and manufacture of custom goods, including a custom-built kitchen, customized shower, custom built master beds and guest beds, closets, doors, vanity, and plumbing and bath

appliances (*id.*, ¶¶ 17-18). Mr. Bellati signed the Contract on October 30, 2013. Ms. Tecchia's financial advisor, Gregory Griffin, signed the Contract on her behalf on February 24, 2014.

In September 2013, Ms. Tecchia hired Reidman Associates, Inc. to provide construction management services for the Project. At that time, Daryl Wugalter became her general contractor (NYSCEF Doc. No. 143 at 7-9; NYSCEF Doc. No. 170, ¶¶ 1-3). During the Project, Ms. Tecchia claimed that items installed by the Defendants were defective and needed replacement (NYSCEF Doc. No. 179, ¶ 25). Ms. Tecchia terminated her contract with Minimal USA on or around February 2015 (*id.*, ¶ 27).

The Defendants received payment from Ms. Tecchia amounting to \$593,808.29 from February 2012 to June 2014, leaving a balance of \$202,397.71 due under the Contract (NYSCEF Doc. No. 107, ¶¶ 16, 28). The Defendants claim that they substantially completed the work by December 2014 and issued a punch list in February 2015 with resolved issues, other than those they were precluded from completing (*id.*, ¶¶ 41, 44).

Ms. Wugalter asserts that she was kept on the Project through most of 2015 due to Mr. Bellati's delays (NYSCEF Doc. No. 170, ¶ 11). She also asserts that she provided two sets of change orders that were allegedly charged to fix Mr. Bellati's work – i.e., the first set for approximately \$120,000 in deficient work, and the second set for approximately \$300,000 in delay damages (NYSCEF Doc. Nos. 175, 177; NYSCEF Doc. No. 214 at 15-17).

In November 2015, Ms. Tecchia retained Ryan Serhant and Peggy Zabakolas as brokers to rent the Condo (NYSCEF Doc. No. 142 at 183). Although two offers were made for \$40,000/month or \$43,000/month, Ms. Techia rejected both offers (NYSCEF Doc. No. 146 at 19:9-16). In a Wall Street Journal online article dated November 19, 2015, she responded to potential renters' requests for changes with "[i]f you're looking to change, you're not getting it" (NYSCEF Doc. No. 138).

Ultimately, after Ms. Tecchia met with one of the potential tenants, she decided to sell the Condo instead (*id.* at 20:7-17). The Condo was initially listed for \$23 million. She did not however receive any offers at that price (NYSCEF Doc. No. 146 at 21:12-23:22). The Condo was then relisted for \$16.95 million in 2016 (*id.* at 25:8-14). Ms. Tecchia admitted potential buyers said that they were not interested because of the price (NYSCEF Doc. No. 142 at 187:2-17). Since 2017, Ms. Tecchia has hired two other brokers (*id.* at 188-190).

Ms. Tecchia and 5N Wooster LLC (collectively, the **Plaintiffs**) commenced this action alleging that the Defendants breached the Contract by failing to provide Minimal Cucine products, failing to properly install the products, and failing to complete the job in a timely manner (NYSCEF Doc. No. 104; the **Second Amended Complaint**) asserting claims for (1) breach of contract against Minimal USA, (2) breach of contract against Minimal USA (identified separately in the Second Amended Complaint as Canova), and (3) fraud (*id.*). The Defendants asserted counterclaims for (1) breach of contract to recover the unpaid balance of \$202,397.71 and (2) delay damages. The Defendants now move for summary judgment as to their first counterclaim for breach of contract and for dismissal of the Second Amended Complaint.

Discussion

On a motion for summary judgment, the movant “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], citing *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). The burden then shifts to the opposing party to “produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact” (*Zuckerman v New York*, 49 NY2d 557, 562 [1980]).

A. Breach of Contract (First and Second Causes of Action)

The elements of a claim for breach of contract are (1) the existence of a contract, (2) the plaintiff’s performance, (3) the defendant’s breach, and (4) resulting damages (*Harris v Seward Park Hous. Corp.*, 79 AD3d 425, 426 [1st Dept 2010]). The first and second causes of action must be dismissed. Simply put, the Plaintiffs fail to adduce evidence of damages that flow from the alleged breach because (i) the Minimal Cucine products (which products were not expressly identified or provided for in the Contract) were not the products that were contracted for, (ii) the Defendants supplied products available to satisfy the custom requirements of Ms. Tecchia (NYSCEF Doc. No. 114), and (iii) the lack of Minimal Cucine products did not cause any rental or sales failures. Among other things, Ms. Tecchia represented to the world that her apartment was customized and she would not permit any changes to it when offered on a rental basis (*see* NYSCEF Doc. Nos. 136, 138).

The Plaintiffs have also failed to adduce credible evidence of delay damages, that any of the Defendants’ delays caused delay in completion of the contract (eliminating overlapping or

duplication of delays), the plaintiff suffered damages as a result of these delays, and that there exist some rational basis to estimate damages (*Manshul Constr. Corp. v Dormitory Auth. of NY*, 79 AD2d 383, 387 [1st Dept 1981]). The unsigned change orders and lack of proof of payment do not create an issue of fact to preclude the award of summary judgment (*see* NYSCEF Doc. No. 175).

Although the Plaintiffs adduced certain emails indicating that the Defendants needed to provide information at times for Ms. Wugalter, there is no evidence that this caused an increase in costs or otherwise caused compensable delay damages. Indeed, the only damages with proof of payment in the record were produced by the Plaintiffs in February 2020 and total \$36,398 of repair work (NYSCEF Doc. No. 147). The Plaintiffs do not allege that Ms. Tecchia paid for the unsigned change orders. There was also no expert report or testimony adduced in support of any of the Plaintiffs' purported damages claim.

Ms. Tecchia's claim that she subsequently had trouble selling the Condo at her chosen price is also not a basis for recoverable delay damages. Any purported delays by the Defendants were not the proximate cause of Ms. Tecchia's difficulty in selling the Condo. Ms. Tecchia admitted that buyers in 2016 had said they were not interested due to the price. Equally important, the Defendants did not reasonably anticipate the build for sales purposes (*see also Kenford Co. v County of Erie*, 67 NY2d 257, 261 [1986] [recovering loss of future profits for breach of contract requires, among other things, a showing that the damages were in the contemplation of the parties to the contract when it was made]). It is entirely speculative to assume that Ms. Tecchia's taste in interior design would have fetched her desired rental or sales price or would have

resulted in an offer had the Project been completed earlier. The court notes that the record is silent as to why Ms. Tecchia could not have offered the apartment prior to completion with renditions and shop drawings as is often done with new construction or homes built on speculation.

Under the circumstances, the Plaintiffs do not raise a genuine issue of fact as to their claim for damages other than the \$36,398, which sum the Defendants concede may be credited against their damages claim (NYSCEF Doc. No. 149 at 17). Accordingly, the branch of the Defendants' motion to dismiss the first and second causes of action for breach of the Contract in the Second Amended Complaint is granted.

B. Fraud (Third Cause of Action)

The fraud claim in this case must be dismissed because it is duplicative of the breach of contract claim (*see Caniglia v Chicago Tribune-New York News Syndicate*, 204 AD2d 233, 234 [1st Dept 1994]). Here, there was an agreement with the attendant future promise for the delivery of custom millwork pursuant to the express terms of the Contract. The claim that Ms. Tecchia paid for millwork by the wrong manufacturer is both belied by the Contract, which is with Minimal USA and does not provide for Minimal Cucine products, and her deposition testimony where she indicated a lack of appreciation of the difference between Minimal USA and Minimal Cucine products (NYSCEF Doc. No. 142 at 15-16, 31-32). The alleged pre-contract promises outside the scope of the contract between the parties are not separately actionable (*see Coutts Bank (Switz.) Ltd. v Anatian*, 261 AD2d 307, 307 [1st Dept 1999] [conflict between prior alleged oral representation and express provision in written contract negates claim of reasonable reliance on

the oral representation]). Accordingly, the branch of the Defendants' motion to dismiss the third cause of action for fraud is granted.

Finally, NYC Administrative Code § 20-387 does not bar the Defendants from recovery under the Contract because the Defendants were not required to obtain a license (*see* NYC Administrative Code § 20-386). A license is also not required for decorative additions and the installation of appliances (*see Raywood Assoc., Ltd. v Seibel*, 172 AD2d 154, 154 [1st Dept 1991]). The Contract obligated the Defendants to install cabinets, cabinet lights, countertops, and backsplashes but expressly excluded any structural modifications (NYSCEF Doc. No. 114). Thus, the Defendants' motion for summary judgment as to their first counterclaim for breach of contract is granted and the Clerk is directed to enter judgment in favor of the Defendants and against the Plaintiffs less the offset amount of \$36,398 for the total sum of \$165,999.71, plus interest from February 24, 2014.

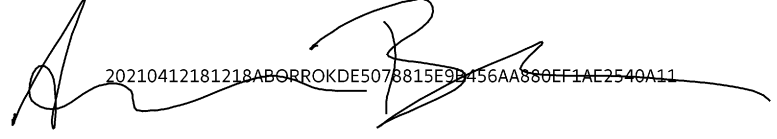
Accordingly, it is

ORDERED that Defendants' motion for summary judgment is granted; and it is

ORDERED that the Clerk is directed to enter judgment in favor of Canova Inc. d/b/a Minimal USA, Bartolomeo Bellati, and Stefano Venier and against Ms. Tecchia and 5N Wooster LLC in the amount of \$165,999.71, plus statutory interest of 9% from February 24, 2014 until the date of entry of judgment, and statutory interest of 9% per annum from the date of entry of judgment

until satisfaction, together with costs and disbursements as allocated by the Clerk, for a total of

_____ . The Defendants shall have execution thereof.


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4/12/2021
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED DENIED

GRANTED IN PART OTHER

APPLICATION: SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT REFERENCE