

Raikos Elec., LLC v T.M. Bier & Assoc., Inc.
2021 NY Slip Op 31242(U)
April 13, 2021
Supreme Court, New York County
Docket Number: 657320/2020
Judge: Arlene P. Bluth
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART IAS MOTION 14

Justice

-----X

RAIKOS ELECTRIC, LLC,

Plaintiff,

- v -

T.M. BIER & ASSOCIATES, INC., HUNTER ROBERTS
CONSTRUCTION GROUP, THE RECTOR CHURCH
WARDENS AND VESTRYMEN OF TRINITY CHURCH IN
THE CITY OF NEW YORK

Defendant.

-----X

INDEX NO. 657320/2020

MOTION DATE N/A

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24

were read on this motion to/for DISMISS.

The motion by defendants to dismiss the complaint is granted.

In this mechanic’s lien case, plaintiff contends that it was hired by a subcontractor, defendant TM Bier & Associates, Inc. (“TM Bier”) to do work at a property owned by defendant Trinity Church. Defendant Hunter Roberts Construction Group (“Hunter Roberts”) was hired by Trinity Church and contracted with TM Bier on the project, although Hunter Roberts did not enter into an agreement with plaintiff. Plaintiff claims that it performed the work but over \$360,000 remains unpaid. Plaintiff brings two causes of action: one to foreclose on a mechanic’s lien and the other for breach of the implied covenant of good faith and fair dealing.¹

Defendants move to dismiss both causes of action. They contend that plaintiff cannot sustain a mechanic’s lien foreclosure cause of action. Defendants also insist that the second

¹ The Court observes that both causes of action in the complaint are alleged against “McGovern” an entity that is not named in the complaint. The Court will assume this is a typo.

cause of action cannot be maintained. They argue that there are no allegations that defendants TM Bier or Hunter Roberts prevented plaintiff from completing its work. They also point out that there was no contract between plaintiff and Hunter Roberts.

In opposition, plaintiff acknowledges that it cannot maintain a mechanic's lien foreclosure claim under the terms of the Lien Law but insists that it has a valid cause of action for breach of the covenant of good faith and fair dealing.

In reply, defendants emphasize that the second cause of action cannot be asserted in the absence of a breach of contract claim. They conclude that this claim cannot survive if the first cause of action is dismissed.

Discussion

“On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction. We accept the facts as alleged in the [pleading] as true, accord [the proponent of the pleading] the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory” (*Leon v Martinez*, 84 NY2d 83, 87-88, 614 NYS2d 972 [1994] [citations omitted]). “At the same time, however, allegations consisting of bare legal conclusions . . . are not entitled to any such consideration” (*Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 141, 75 NE3d 1159 [2017] [citation and internal quotations omitted]).

As an initial matter, the Court dismisses the first cause of action as plaintiff admitted in opposition that it cannot maintain this claim. The Court also dismisses the remaining claim for breach of the covenant of good faith and fair dealing.

“In New York, all contracts imply a covenant of good faith and fair dealing in the course of performance. This covenant embraces a pledge that neither party shall do anything which will

have the effect of destroying or injuring the right of the other party to receive the fruits of the contract. While the duties of good faith and fair dealing do not imply obligations inconsistent with other terms of the contractual relationship they do encompass any promises which a reasonable person in the position of the promisee would be justified in understanding were included” (*511 W. 232nd Owners Corp. v Jennifer Realty Co.*, 98 NY2d 144, 153 [2002] [internal quotations and citations omitted]).

Here, the allegations related to this cause of action (NYSCEF Doc. No. 2, ¶¶ 40-44) merely claim that plaintiff was not paid for the work that was performed. Although plaintiff uses the word “bad faith” in these paragraphs, the assertion is that defendants TM Bier and Hunter Roberts tried to deprive plaintiff of the money it was due under the contract with defendant TM Bier. An ordinary contract dispute does not automatically state a claim for the breach of the covenant of good faith and fair dealing.

After all, “A cause of action for breach of the implied duty of good faith and fair dealing cannot be maintained where the alleged breach is intrinsically tied to the damages allegedly resulting from a breach of the contract” (*The Hawthorne Group, LLC v RRE Ventures*, 7 AD3d 320, 323, 776 NYS2d 273 [1st Dept 2004] [internal quotations and citation omitted]). And while this cause of action is not always duplicative of a breach of contract claim (*25 Bay Terrace Assoc., L.P. v Pub. Serv. Mut. Ins. Co.*, 144 AD3d 665, 667, 40 NYS3d 469 [2d Dept 2016]), plaintiff did not allege any facts separate from TM Bier’s failure to pay plaintiff what it was allegedly owed under the contract. Plaintiff did not point to any other implied obligations that a reasonable party in plaintiff’s position would be justified in believing was part of the agreement. Instead, as stated above, the claim is simply that there was a dispute about what plaintiff was owed. For instance, plaintiff contends that defendant TM Bier sent a statement seeking back

charges, a statement plaintiff characterizes as false (NYSCEF Doc. No. 2, ¶ 43). That evidences a contract dispute, not the breach of an implied obligation.

Even if plaintiff could state a cognizable cause of action for breach of the covenant of good faith and fair dealing, the Court would dismiss it against defendants Hunter Roberts and Trinity Church because plaintiff did not contract with either entity.

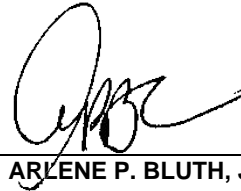
The Court observes that plaintiff did not cross-move to amend the complaint and so the complaint is dismissed without prejudice.

Accordingly, it is hereby

ORDERED that the motion by defendants to dismiss is granted without prejudice and the Clerk is directed to enter judgment accordingly along with costs and disbursements upon presentation of proper papers therefor.

4/13/2021

DATE



ARLENE P. BLUTH, 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