

**RCRussell, LLC v Lettire Constr. Corp.**

2021 NY Slip Op 31293(U)

April 13, 2021

Supreme Court, Kings County

Docket Number: 523476/2017

Judge: Peter P. Sweeney

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS, PART 73

Index No.: 523476/2017  
Motion Date: 11-2-20  
Mot. Seq. No.: 3 & 5

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RCRUSSELL, LLC a/k/a ABRL LLC,

Plaintiff,

-against-

**DECISION/ORDER**

LETTIRE CONSTRUCTION CORP., 71 SMITH  
STREET PROPERTY OWNER, L.L.C a/k/a THE  
BOERUM CONDOMINIUM and FIDELITY &  
DEPOSIT COMPANY OF MARYLAND,

Defendants.

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Upon the following e-filed documents, listed by NYSCEF as item numbers 123-143, 173-187, the motions are decided as follows:

In this action to foreclose a mechanics lien and to recover damages for, among other things, breach of contract, the defendants move for an order (a) pursuant to CPLR 3212, granting defendants summary judgment dismissing the first cause of action asserted by plaintiff rcRussell, LLC (“RCR”) in its verified amended complaint dated March 6, 2018 (the “Complaint”), and cancelling the Notice Under Mechanic’s Lien Law filed by RCR on or about May 18, 2017 against real property situated at 71 Smith Street, Brooklyn, New York, pursuant to New York Lien Law § 39; (b) pursuant to CPLR 3212, granting Lettire summary judgment dismissing in the entirety the second and fifth causes of action of the complaint on the basis that RCR lacks standing to assert claims and enforce rights of the separate and distinct legal entity, ABRL; (c) pursuant to CPLR 3212, granting Lettire and 71 Smith Street Property Owner, L.L.C. a/k/a The Boerum Condominium (“Owner”) partial summary judgment dismissing those portions of the third and fourth causes of action of the complaint that are asserted and seek damages on behalf of ABRL; (d) Pursuant to CPLR 3025, granting Lettire leave to amend its verified answer, dated March 22, 2018 (the “Answer”), to assert its First Counterclaim against RCR for willful exaggeration of lien, pursuant to New York Lien Law §§ 39 and 39-a; and (e) for such other and further relief that this Honorable Court deems just and appropriate (**Mot. Seq. No. 3**). Plaintiff RCR cross-moves for an order pursuant to CPLR. §§ 1003 3025(b) granting plaintiff leave to amend its amended complaint (**Mot. Seq. No. 5**). Both motions are consolidated for disposition.

**Background:**

On March 19, 2014, defendant 71 Smith Street Property, LLC (“71 Smith Street”), the owner of real property located at 71 Smith St, Brooklyn, New York, entered into a written contract with Lettire Construction Corp. (“Lettire”) to perform construction management services in connection with the construction of a mixed-use condominium/hotel at the aforesaid location (“the 71 Smith Street project”). On February 25, 2015, Lettire entered into a written contract with ABRL LLC (“ABRL”) to manage the pre-construction and construction work. The plaintiff RCRUSSELL, LLC (“RCR”), is an entity that is separate and apart from ABRL and is not a party to these contracts but claims that it provided the construction management services called for under the contracts on behalf of and in conjunction with ABRL and did so at the request of Lettire and with 71 Smith Street’s knowledge. On or about May 15, 2017, Plaintiff RCR filed a notice of mechanic's lien for amounts allegedly due and owing for work it performed on the project. On June 28, 2017, RCR provided a verified itemized statement of the mechanic's lien.

**Discussion:****A. That Branch Of Defendants’ Motion For An Order Pursuant To CPLR 3212, Granting Defendants Summary Judgment Dismissing RCL’s First Cause of Action and Cancelling the Mechanic’s Lien:**

In the first cause of action, RCR seeks to foreclose the mechanic’s lien. As stated, RCR alleges that it performed construction management services with the knowledge and consent of Lettire and 71 Smith Street on the project, that it was not paid in full for its services, and that on May 15, 2017, it filed a mechanic’s lien on the property located at 71 Smith Street in the amount of \$695,437.71, the amount that it alleges is due and owing. The gist of defendants’ argument in support of that branch of their motion for summary judgment dismissing the cause of action to foreclose the mechanic’s lien is that any work performed by RCR in connection with the project was performed pursuant to a contract between Lettire and ABRL and that ABRL is the only entity that is entitled to assert a lien.

Lien Law § 3, in relevant part, provides:

A contractor . . . who performs labor or furnishes materials for the improvement of real property with the consent or at the request of

the owner thereof, or of his agent, contractor or subcontractor. . . shall have a lien for the principal and interest, of the value, or the agreed price, of such labor, including benefits and wage supplements due or payable for the benefit of any laborer, or materials upon the real property improved or to be improved and upon such improvement, from the time of filing a notice of such lien as prescribed in this chapter.

Contrary to defendants' contention, a subcontractor is not required to be in contractual privity with the property owner in order to file and foreclose on a mechanic's lien pursuant to Lien Law § 3 (*see Spectrum Painting Contractors, Inc. v. Kreisler Borg Florman Gen. Const. Co.*, 64 A.D.3d 565, 576, 883 N.Y.S.2d 262, 271; *Kuhn v. Kober*, 203 A.D.2d 536, 612 N.Y.S.2d 948; *Rainbow Elec. Co. v. Bloom*, 132 A.D.2d 539, 517 N.Y.S.2d 273; *Hartman v. Travis*, 81 A.D.2d 692, 693, 438 N.Y.S.2d 633) All that need be shown is that the contractor performed labor for the improvement of real property with the consent or at the request of the owner thereof, or of his agent, contractor or subcontractor (Lien Law § 3). Since the defendants did not demonstrate as a matter of law that RCR did not perform work on the 71 Smith Street Project, or did so without the consent or at the request of the owner or its agent or contractor (Lettire), that branch of defendants' motion for summary judgment dismissing the first cause of action is **DENIED**.

**B. That Branch of Defendants' Motion Pursuant to CPLR 3212 Granting Lettire Summary Judgment Dismissing the Second and Fifth Causes of Action on the Ground that RCR Lacks Standing:**

In the second cause of action, RCL alleged that RCL and Lettire entered into a contract, that RCL performed all its obligations under the contract and that Lettire breached its obligations under the contract by refusing to make payment under the contract. In the fifth cause of action, RCL alleges that Lettire fraudulently induced it to enter into the contract.

The plaintiff in this action is RCR a/k/a ABRL LLC [ABRL]. As stated above, it is undisputed that RCR and ABRL are two separate and distinct legal entities and that RCR was not a party to the contract the plaintiff is claiming was breached. The essential elements of a cause of action for breach of contract are "the existence of a contract, the plaintiff's performance under the contract, the defendant's breach of that contract, and resulting damages" (*Liberty Equity Restoration Corp. v. Maeng–Soon Yun*, 160 A.D.3d 623, 626, 75 N.Y.S.3d 52 [internal quotation

marks omitted)). Since the defendants established that that RCR was not a party to the contract the plaintiff claims was breached and plaintiff failed to raise a triable issue of fact, that branch of defendants' motion pursuant for summary judgment dismissing the second and fifth causes of action is **GRANTED**.

**C. That Branch Of Defendants' Motion For An Order Pursuant To CPLR 3212, Granting Defendants Lettire And 71 Smith Street Partial Summary Judgment Dismissing Those Portions Of The Third And Fourth Causes Of Action Of The Complaint Which Seek Damages On Behalf Of ABRL:**

In the third cause of action, plaintiff asserts a claim against Lettire and 71 Smith Street for quantum meruit. In the fourth cause of action plaintiff asserts a claim against Lettire and 71 Smith Street for unjust enrichment. "The elements of a cause of action sounding in quantum meruit are: (1) the performance of services in good faith, (2) the acceptance of services by the person to whom they are rendered, (3) the expectation of compensation therefor, and (4) the reasonable value of the services rendered" (*Johnson v. Robertson*, 131 A.D.3d at 672, 15 N.Y.S.3d 457; see *F & M Gen. Contr. v. Oncel*, 132 A.D.3d 946, 948, 18 N.Y.S.3d 678; *Crown Constr. Bldrs. & Project Mgrs. Corp. v. Chavez*, 130 A.D.3d 969, 971, 15 N.Y.S.3d 114). The elements of a cause of action to recover for unjust enrichment are "(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" (*Mobarak v. Mowad*, 117 A.D.3d 998, 1001, 986 N.Y.S.2d 539; see also *GFRE, Inc. v. U.S. Bank, N.A.*, 130 A.D.3d 569, 570, 13 N.Y.S.3d 452, 454). "The essential inquiry in any action for unjust enrichment or restitution 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 N.Y.2d 415, 421, 334 N.Y.S.2d 388, 285 N.E.2d 695; see *Sperry v. Crompton Corp.*, 8 N.Y.3d 204, 215, 831 N.Y.S.2d 760, 863 N.E.2d 1012). In support of the motion, the plaintiff failed to establish that these two causes of action lack merit as a matter of law.

**D. That branch of Defendants' Motion for an Order Pursuant to CPLR 3025, Granting Lettire Leave to Amend its Verified Answer to Assert a Counterclaim against RCR pursuant to New York Lien Law §§ 39 and 39-a for Willful Exaggeration of Lien:**

“In the absence of prejudice or surprise resulting directly from the delay in seeking leave, applications to amend or supplement a pleading ‘are to be freely granted unless the proposed amendment is palpably insufficient or patently devoid of merit’ ” (*Myung Hwa Jang v. Mang*, 164 A.D.3d 803, 804, 83 N.Y.S.3d 293, quoting *Lucido v. Mancuso*, 49 A.D.3d 220, 222, 851 N.Y.S.2d 238; see CPLR 3025[b]). “The burden of demonstrating prejudice or surprise, or that a proposed amendment is palpably insufficient or patently devoid of merit, falls upon the party opposing the motion” (*Wells Fargo Bank, N.A. v. Spatafore*, 183 A.D.3d 853, 853, 122 N.Y.S.3d 557). “The [decision] to permit or deny amendment is committed to the sound discretion of the trial court” (*US Bank N.A. v. Murillo*, 171 A.D.3d 984, 986, 98 N.Y.S.3d 115; see CPLR 3025[b]; *Murray v. City of New York*, 43 N.Y.2d 400, 405, 401 N.Y.S.2d 773, 372 N.E.2d 560).

Here, since the plaintiff did not meet their burden of demonstrating prejudice or surprise, or that a proposed amendment is palpably insufficient or patently devoid of merit, plaintiff’s motion to amend its answer to assert the a counterclaim against RCR pursuant to New York Lien Law §§ 39 and 39-a for willful exaggeration of the lien is GRANTED and the proposed amended answer is deemed filed and served as against the plaintiff as of the date of this order.

**E. Plaintiff’s Cross-Motion For An Order Pursuant To CPLR § § 1003 And 3025(b) Granting Plaintiff Leave to Amend its Amended Complaint:**

Here, since the defendants did not meet their burden of demonstrating prejudice or surprise, or that a proposed amendment is palpably insufficient or patently devoid of merit, plaintiff’s motion to amend its complaint is **GRANTED** and the proposed amended pleading is deemed filed and served on the defendants as of the date of this order. The plaintiff shall effect service of the amended complaint on the newly added defendant within the time provided in the CPLR.

Accordingly, it is hereby

**ORDRED** that the motion and cross-motion are decided as indicated above.

This constitutes the decision and order of the Court.

Dated: April 13, 2021



**PETER P. SWEENEY, J.S.C.**

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020