

Goldberg Zonio & Assoc. of N.Y., PC v Bo Jin Zhu
2021 NY Slip Op 31544(U)
May 6, 2021
Supreme Court, Kings County
Docket Number: 504764/2019
Judge: Loren Baily-Schiffman
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At an IAS Part 65 of the Supreme Court of the State of New York, County of Kings at a Courthouse Located at 360 Adams Street, Brooklyn, New York on the 6th day of May, 2021.

PRESENT: HON. LOREN BAILY-SCHIFFMAN

JUSTICE

GOLDBERG ZONIO & ASSOCIATES OF NEW YORK, PC d/b/a
GZA ENVIRONMENTAL OF NEW YORK,

Plaintiff,

- against -

BO JIN ZHU,
DUPONT STREET DEVELOPERS,
DUPONT REALTY NY LLC

Defendants.

Index No.: 504764/2019

Motion Seq. # 1

DECISION & ORDER

As required by CPLR 2219(a), the following papers were considered in the review of this motion:

	<u>PAPERS NUMBERED</u>
Notice of Motion, Affidavits, Affirmation and Exhibits	1
Affirmation in Opposition to Cross-Motion	2
Plaintiff's Reply Affirmation, Affidavit and Exhibits	3

Upon the foregoing papers, Goldberg Zonio & Associates ("Plaintiff") moves this Court for an Order (a) pursuant to CPLR § 3212, granting summary judgment in favor of Plaintiff and against Bo Jin Zhu, DUPONT Street Developers LLC and DUPONT Street NYC LLC ("Defendants"), and entering judgment in Plaintiff's favor as a matter of law; (b) pursuant to CPLR §3025 Amending the caption and substituting Dupont Realty NY LLC. for Defendants All Year Managment NY INC., All Year Management BK LLC., and All Year Managment LLC. *nunc pro tunc*; (c) awarding Plaintiff its costs, expenses, interest, and reasonable attorneys' fees incurred in connection with this action; and (d) granting such other, further, and different relief as to this Court may seem just, proper, and equitable.

Background

This case arises out of environmental improvements and engineering that Plaintiff performed and Defendants never paid for. Plaintiff is an engineering firm. On August 16, 2019, Plaintiff entered into a contract with Defendant Dupont Street Developers LLC to perform environmental work on 280 Franklin Street, 10 Clay Street, 22 Clay Street, 26 Clay Street, 30 Clay Street, 32 Clay Street, 93 Dupont Street and 55 Dupont Street, Brooklyn, NY (“the Premises”). The Premises is owned by Dupont Street Developers LLC. Bo Jin Zhu is member-manager of Dupont Street Developers LLC. Plaintiff performed work to the Premises between January 9, 2018 and July 12, 2018. It is undisputed that to date Defendant Dupont Street Developers LLC has not paid for the work performed.

Discussion

Piercing Corporate Veil

Plaintiff attempts to hold Defendant Bo Jin Zhu personally liable for nonpayment of invoices by piercing the corporate veil of Defendant Dupont Street Developers. “A party seeking to pierce the corporate veil must establish that (1) the owners exercised complete domination of the corporation in respect to the transaction attacked; and (2) that such domination was used to commit a fraud or wrong against the plaintiff which resulted in the plaintiff's injury.” ***Minico Ins. Agency, LLC v. AJP Contr. Corp., 166 A.D.3d 605, 606-607.*** “The party seeking to pierce the corporate veil must further establish that the controlling [party] abused the privilege of doing business in the corporate form to perpetrate a wrong or injustice against that party such that a court in equity will intervene.” ***Id at 607.*** In the present case, Plaintiff has not shown that Zhu exercised complete domination over Dupont Street Developers LLC, that the alleged

domination was used to commit a wrong against Plaintiff, or that Zhu abused the corporate form to wrong Plaintiff. Plaintiff's only argument to this affect was that Zhu used Dupont Street Developers LLC to avoid paying Plaintiff. Accordingly, the Court rejects Plaintiff's attempt at piercing the corporate veil and denies the motion as against Bo Jin Zhu.

Summary Judgment

A motion for summary judgment will be granted if, upon all the papers and proof submitted, the cause of action or defense is established sufficiently to warrant directing judgment in favor of any party as a matter of law. **CPLR 3212 (b); Gilbert Frank Corp.v. Federal Ins. Co., 70 N.Y.2d 966, 967 (1988); Zuckerman v. City of New York, 49 N.Y.2d 557, 562 (1980).** On such a motion, the evidence will be construed in a light most favorable to the party against whom summary judgment is sought. **Spinelli v. Procassini, 258 A.D.2d 577 (2d Dep't 1999); Tassone v. Johannemann, 232 A.D.2d 627, 628 (2d Dep't 1996); Weiss v. Garfield, 21 A.D.2d 156, 158 (3d Dep't 1964).**

In the instant case, Plaintiff moves for summary judgment on all the causes of action detailed in the Complaint, specifically: breach of contract; account stated; quantum meruit and foreclosure of mechanic's lien. Defendants do not oppose summary judgment on these causes of action individually. Defendants oppose summary judgment on the grounds that Plaintiff's invoices contained errors and the work performed was deficient and resulted in flooding.

Defendant opposes summary judgment by claiming that the work Plaintiff did was inadequate. Specifically, Bo Jin Zhu alleges that the RW-12 extraction system was not working, and its timer had been altered. Zhu further contends that in December 2018, these defects caused a "spill" which Defendant Dupont Street Developers LLC was required to expend

substantial funds to remedy. However, Plaintiff had left the jobsite and terminated the contract because of non-payment on July 18, 2018. Moreover, under the fee schedule, all invoices had to be paid within 45 days from the invoice date. As December 2018 is more than 45 after the last invoice was dated, the arrears should have been paid before the alleged flooding occurred. Accordingly, summary judgment on the breach of contract; account stated; quantum meruit and foreclosure of mechanic's lien causes of action is granted as against Dupont Street Developers LLC.

Defendants also oppose summary judgment because the invoices contain errors. Upon review of said invoices, there appear to be inconsistencies about the amount of arrears that Plaintiff does not resolve in the papers. Accordingly, the Court refers this issue to a referee to hear and determine the amount due to Plaintiff.

Attorneys' Fees and Costs

Plaintiff moves for the award of attorneys' fees and costs. Plaintiff argues that Defendants owe \$14,000 in attorneys' fees. Defendants contend that much of those fees resulted in Plaintiff initially suing the wrong Defendants as bona fide purchasers for value, and the as a result Plaintiff being forced to research who the correct parties were. Defendants further contend that the bona fide purchaser could have easily been determined by an ACRIS search, so Defendants should not be required to pay said attorneys' fees. Accordingly, the issue of attorneys' fees is referred to a referee to hear and determine on the amount of attorneys fees due to Plaintiff.

Amending Caption

Plaintiff moves to amend the caption of this case to replace All Year Management NY Inc., All Year Management BK LLC and All Year Management LLC with Dupont Realty NY LLC. Defendants do not oppose this branch of the motion. By So Ordered Stipulation, the parties have already amended the caption to reflect this. The Court, therefore, need not address this element of relief.

For the foregoing reasons it is HEREBY

ORDERED that summary judgment on the breach of contract; account stated; quantum meruit and foreclosure of mechanic’s lien causes of action is GRANTED as against Dupont Street Developers LLC; and it is further

ORDERED that the issue of the amount due to Plaintiff on the outstanding invoices is referred to a referee to hear and determine; and it is further

ORDERED that the issue of attorneys’ fees is referred to a referee to hear and determine.

This is the Decision and Order of the Court.

ENTER



HON. LOREN BAILY-SCHIFFMAN