

Mandracchia v Renovate-Create Sourcing & Procurement Corp.
2021 NY Slip Op 31676(U)
May 18, 2021
Supreme Court, New York County
Docket Number: 653953/2019
Judge: Arthur F. Engoron
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. ARTHUR F. ENGORON PART IAS MOTION 37EFM

Justice

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MARTINE MANDRACCHIA,

Plaintiff,

- v -

RENOVATE-CREATE SOURCING AND PROCUREMENT
CORP., ALAN FRIEDBERG, IMAGEN ARCHITECTURE
LLC, CUTSOGEOGE TOOMAN & ALLEN ARCHITECTS
PC, DOUGLAS ELLIMAN REALTY LLC, DOUG ELLIMAN
PROPERTY MANAGEMENT, 405/63 OWNERS' CORP,
JOHN AND JANE DOES 1-10

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 005) 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88

were read on this motion to/for

REARGUMENT/RECONSIDERATION

Upon the foregoing documents, it is

Upon the foregoing documents, it is hereby ordered that plaintiff's motion to re-argue this Court's decision and order dated February 9, 2021 is granted, and upon re-argument, defendant's prior motion to dismiss is denied in part.

Background

On October 17, 2019, plaintiff, Martine Mandracchia ("Mandrachia"), filed her first amended complaint against defendants, seeking to recover monetary damages arising out of an alleged substandard renovation project. On January 31, 2020, defendant Imagen Architecture, LLC ("Imagen") filed a notice of motion to dismiss the first amended complaint, specifically the seventh cause of action, for breach of contract, and the eighth cause of action, for negligence. In support of its motion Imagen argued, inter alia, that the breach of contract and negligence claims were duplicative, as Mandracchia failed to allege a violation of a legal duty independent of Imagen's contractual duties. Mandracchia opposed the motion to dismiss as it related to the negligence cause of action, arguing that Imagen assumed a duty outside of the parties' contract. By decision and order dated February 9, 2021, this Court granted Imagen's motion to dismiss, holding, inter alia, that the negligence claim was duplicative of the breach of contract claim.

Mandrachia now moves, pursuant to CPLR 2221(d), to reargue only that portion of the February 9, 2021 decision and order that dismissed the negligence cause of action; pursuant to

CPLR 2201, for a stay of the action pending appeal of the February 9, 2021 decision and order and/or to extend discovery; and, pursuant to CPLR 3025(b), for leave to amend the pleadings to include a new cause of action against Imagen for fraud.

Discussion

CPLR 2221(d), Motion for Leave to Reargue

Pursuant to CPLR 2221(d), a motion for leave to reargue “shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion.”

Mandracchia’s motion for leave is granted. As Mandracchia correctly asserts, this Court overlooked and/or misapprehended Mandracchia’s argument that Imagen had a duty of care as a professional architect, separate and apart from its contractual duty, by virtue of Imagen voluntarily inspecting the property and the project and, most importantly, certifying with the Department of Buildings that Imagen inspected the work and that the project complied with all applicable laws etc. Thus, the previous decision and order “does not address how the voluntary ‘non-contractual’ performance of the inspection imposed a duty on Imagen ... [and] if the knowing and admitted false certification of the construction work [to the Department of Buildings] violated that duty.” (NYSCE Doc. No. 88, at 4).

While it is true that the parties’ contracts states that Imagen “will not be required to make exhaustive or continuous on-site inspections to check quality or quantity of the work” and that Imagen “is not being retained to perform ... construction supervision ... or contractor supervision” and that it was Mandracchia and/or the contractor’s duty to “appoint a person to be in charge of the work who shall be responsible for complying with all state and local codes and applicable ordinances during construction.” (NYSCEF Doc. No. 40, at 4). Here, Imagen assumed a duty, outside and independent of Imagen’s contractual duties, when it certified that it inspected the work and thus, certified the condition/status of the project with the Department of Buildings. In assuming the duty to self-certify documents with the Department of Buildings, Imagen was obligated to perform its inspection and certification to the Department of Buildings in a non-negligent manner. Thus, this Court agrees with Mandracchia that, despite the language in the parties’ contract, a professional architect, when assuming a duty to inspect a property, has a duty not to certify false and fraudulent documents with the Department of Buildings. See Sommer v Federal Signal Corp., 79 NY2d 540, 551-52 (1992) (“A legal duty independent of contractual obligations may be imposed by law as an incident to the parties’ relationship. Professionals, common carriers and bailees, for example, may be subject to tort liability for failure to exercise reasonable care, irrespective of their contractual duties. In these instances, it is policy, not the parties’ contract that gives rise to a duty of care.”) (Internal citations omitted); see also AJ Contr. Co. v Trident Managers, 234 AD2d 195, 196 (1st Dept. 1996) (“Regardless of whether a specific promise has been made, a professional is required to exercise the skill and knowledge normally possessed by members of his or her trade or profession in good standing in similar communities. (Restate [Second] of Torts § 299 A).”).

Similar to the defendant in Sommer v Federal Signal Corp., Imagen’s duty to act with reasonable care also stems from the nature of the services it rendered. Here, Imagen, a New York licensed

architect who was allowed to self-certify documents with the Department of Buildings, has an obligation to take due care in the performance of its work. By voluntarily assuming a duty to inspect the property, Imagen was obligated to perform its inspection and self-certification in the same accepted standard or practice as other architects. See New York Univ. v Cont'l Ins. Co., 87 NY2d 308, 316 (1995) (“defendant may be liable in tort when it has breached a duty of reasonable care distinct from its contractual obligations, or when it has engaged in tortious conduct separate and apart from its failure to fulfill its contractual obligations.”). It would be against public policy to allow an architect to self-certify a project with the Department of Buildings while allowing that architect to be absolved from liability through the terms of a contract. Arguably, the self-certification with the Department of Buildings, if done negligently, could catastrophically affect plaintiff and other unit owners.

Imagen argues that the holding in Sommer v Federal Signal Corp. has not been extended to cover cases involving purely economic harm. However, “many types of malpractice actions, such as those against an accountant or attorney, will frequently result in economic loss only.” 17 Vista Fee Assocs. v Teachers Ins. & Annuity Ass’n of Am., 259 AD2d 75, 83 (1st Dept. 1999) (internal citation omitted). Furthermore, in this Court’s June 26, 2020 decision and order, which granted in part and denied in part a motion to dismiss by defendant Cutsogeorge Tooman & Allen Architects PC, this Court, in denying that part of CTA’s motion to dismiss the fifth cause of action for negligence, stated, “this Court believes that Mandracchia’s claim is not for ‘economic damage’ per se.” (NYSCEF Doc. No. 50, at 4).

Here, the first amended complaint alleges that Imagen: assumed a duty to perform its [voluntary] work in a non-negligent manner; breached its professional duty as an architect by signing off on the job with the Department of Buildings despite knowing that the project was incomplete and failed to conform to the requirements of the plans and was of poor quality; and that this negligence was the proximate cause of the damages suffered by plaintiff. These allegations are sufficient to survive a motion to dismiss brought pursuant to CPLR 3211(a)(7).

CPLR 2201, Motion for Stay of Action Pending Appeal and/or to Extend Discovery
Mandracchia’s request to stay the action pending appeal and/or to extend discovery is denied, solely as moot, as the instant motion to reargue has been granted and upon the ground that note of issue has been extended to August 1, 2021.

CPLR 3025(b), Motion for Leave to Amend Complaint
That part of Mandracchia’s motion for leave to amend the pleadings to add a cause of action against Imagen sounding in fraud is denied as Mandracchia has failed to provide this Court with a copy of the proposed amended or supplemental pleading clearly showing the changes or additions to be made in the pleading, as CPLR 3025(b) requires.

Conclusion

Mandracchia’s motion is granted in part and denied in part. That part of Mandracchia’s motion for leave to reargue this court’s decision and order dated February 9, 2021, is granted, and upon re-argument, Imagen’s request to dismiss Mandracchia’s eighth cause of action is denied, and

that cause of action is restored to active status. All other relief requested in Mandracchia's motion is hereby denied.

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5/18/2021

DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:

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CASE DISPOSED

☒

NON-FINAL DISPOSITION

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GRANTED

☐

DENIED

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GRANTED IN PART

☐

OTHER

APPLICATION:

☐

SETTLE ORDER

☐

SUBMIT ORDER

CHECK IF APPROPRIATE:

☐

INCLUDES TRANSFER/REASSIGN

☐

FIDUCIARY APPOINTMENT

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REFERENCE