

Cornacchia Architects & Planners P.C. v Manhattan Schoolhouse LLC
2021 NY Slip Op 32384(U)
November 18, 2021
Supreme Court, New York County
Docket Number: Index No. 655272/2017
Judge: Margaret A. Chan
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. MARGARET CHAN PART 33

Justice

-----X

CORNACCHIA ARCHITECTS AND PLANNERS P.C.

Plaintiff,

- v -

THE MANHATTAN SCHOOLHOUSE LLC FORMERLY
KNOWN AS KFDJ HOLDINGS, LLC,

Defendant.

-----X

INDEX NO. 655272/2017

MOTION DATE 08/18/2021

MOTION SEQ. NO. 006

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 006) 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, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215

were read on this motion to/for SUMMARY JUDGMENT.

In this action arising out of a contract dispute, defendant Manhattan Schoolhouse LLC ("Manhattan Schoolhouse" or "defendant") moves for an order granting it summary judgment dismissing the amended complaint. Plaintiff Cornacchia Architects and Planner P.C. ("plaintiff" or "CAP") opposes the motion to the extent it seeks to dismiss the first three causes of action for breach of contract.

Background

This action arises out of a March 2016 agreement (the "Agreement") (NYSCEF #177) pursuant to which CAP was to provide certain architectural as well as design/build services necessary for the construction of Manhattan Schoolhouse's pre-school (the "project").

Under Section 9.2, entitled "Basic Compensation," CAP's compensation for "Basic Services," including architectural, design and construction management services, was to be "computed... [h]ourly, in accordance with the rate set forth in paragraph 10.1, not to exceed 10% of the cost of construction" (*id.*, § 9.2).

Section 3.1.1. defines the Construction Cost as:

... the total cost to the Owner [i.e., Manhattan Schoolhouse] of all elements of the project designed or specified by the Architect, including labor and materials furnished by the Owner and any equipment which

has been designed, specified, selected, or specially provided for by the Architect.

Under Section 1.6, Manhattan Schoolhouse agreed to pay CAP not only for Basic Services but also for “additional services if authorized, or confirmed in writing by [Manhattan Schoolhouse]... (*id.*, § 1.6). Additional services are defined as those “not included in Basic Services unless identified elsewhere in this [A]greement,” and include “[m]aking revisions to drawings, specifications, or other documents when such revisions are inconsistent with approvals or instructions previously given, are required by enactment or revisions to codes, laws or regulations subsequent to the preparation of documents, or are due to other causes not solely within the control of [CAP] (*id.*, § 1.6.1). These additional services also include inspection services (*id.*).

The Agreement stipulates that services related to the construction phase of the project would be performed by CAP’s affiliate, Mylestone Construction, LLC (“Mylestone”), including the performance of construction by Mylestone’s workforce (*id.*, § 1.5). It also provides for CAP’s submission to Manhattan Schoolhouse of “detailed requisitions for payment of the construction costs on a percentage of completion basis for each identifiable trade,” and states that CAP would meet with Manhattan Schoolhouse “to review the progress of the construction and the Project Budget” (*id.*, §§ 1.5.1.2 and 1.5.1.3).

Following CAP’s completion of drawings as required by the Agreement, CAP prepared a budget for the construction work necessary for the project with the president of Mylestone (NYSCEF #’s 180-186). After a number of proposals were made and rejected, in June 2016, Manhattan Schoolhouse accepted a construction budget in the amount of \$257,369.21 (NYSCEF # 185-186). The plans were subsequently revised (NYSCEF # 192 – Invoice for Extra Work and emails between the parties and third-parties regarding the new plans). The record contains evidence that the budget was subsequently increased to \$285,187.81 and that this figure included overhead and insurance costs (NYSCEF # 194).

CAP performed the work under the Agreement and maintains that it completed the work in September 2016, although certain approvals from the Department of Buildings and the Fire Department were subsequently received (NYSCEF # 176, ¶¶ 50; 52-54). After the work was completed, disputes arose between the parties, including as to whether CAP was fully paid for the work. CAP commenced this action on August 9, 2017 (NYSCEF # 6) and filed an amended complaint on August 22, 2017 (NYSCEF # 6).

The amended complaint asserts three causes of action for breach contract as well as claims for attorneys’ fees and punitive damages (NYSCEF # 153). The first cause of action alleges that plaintiff performed and/or caused to be performed

architectural design professional and construction management services as required by the Agreement, that \$32,390.45 became due and owing, and that defendant breached the Agreement by paying \$23,281.39 for services, leaving an unpaid balance of \$9,109.06 (*id.*, ¶¶ 1-11). The second cause of action alleges that the reasonable value of construction services performed on the project was the sum of \$285,187.71, that payment in the amount of \$190,000.47 was received, and that defendant owes plaintiff the sum of \$81,300.75 (*id.*, ¶¶ 12-19). The third cause of action alleges that special inspection services were performed in connection with the project, in which the sum of \$3,750.00 was due and owing and that \$250.00 of this amount has not been paid (*id.*, at ¶¶ 20-27).

Defendant answered the complaint and asserted a counterclaim seeking \$100,000 in damages based on allegations that CAP breached the Agreement and the revised budget by failing to (i) provide certain construction and other services, (ii) comply with certain local rule and regulations, (iii) maintain the project schedule, and (iv) properly oversee and administer the project (NYSCEF # 10, ¶53).

After the completion of discovery and filing of the note of issue, defendant made this motion for summary judgment dismissing the complaint. On the first, second, and third causes of action for breach of contract, defendant argues that plaintiff's claims fail because plaintiff did additional work without written authorization from defendant; that section 9.2.1 of the Agreement bars plaintiff from billing fees in excess of ten percent of the Construction Cost under section 3.1.1; and the Construction Cost improperly included the cost for insurance, overhead and profit (NYSCEF # 152 – Shaw Aff., ¶¶ 12-21). Plaintiff does not oppose the motion as to the fourth and fifth causes of action for attorney's fees and punitive damages, respectively.

Discussion

The moving party on a motion for summary judgment 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 issue of fact” (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). If the moving party makes this showing, the burden shifts to the opposing party to submit evidentiary proof sufficient to raise triable issues of fact (*Gilbert Frank Corp. v Federal Ins. Co.*, 70 NY2d 966, 967 [1988]). Moreover, “a court deciding a motion for summary judgment is empowered to search the record and may, even in the absence of a cross motion, grant summary judgment to a nonmoving party” (*Horst v Brown*, 72 AD3d 434, 437 [1st Dept. 2010], *appeal dismissed* 15 NY3d 743 [2010]; CPLR 3212[b]).

A party asserting a claim for breach of contract must establish (1) the existence of a contract; (2) the party's own performance under the contract; (3) the

other party's breach of the contract; and (4) resulting damages. (*US Bank Natl. Assn. v Lieberman*, 98 AD3d 422, 423 [1st Dept 2012]).

Regarding the first cause of action, defendant argues that allegations in the first cause of action that CAP is owed \$32,390.45 for architectural design professional and construction management services but was paid only \$23,281.39 for services, leaving an unpaid balance of \$9,109.06 are incorrect. Specifically, defendant asserts that the amount of \$26,927.50 charged by plaintiff for Basic Services exceeds 10% of the Construction Cost (\$241,684.50) or \$24,168.45 by \$2,759.05 (Faruki Aff.-NYSCEF #163, ¶ 18). In this connection, defendant argues under Section 3.1.1 of the Agreement, insurance and overhead costs are not included as a "Construction Cost" as these costs are not "elements of the project designed or specified by the Architect" (*id.*, ¶ 18). Defendant also maintains that plaintiff is not entitled to the \$3,495.00 sought for additional services as defendant did not authorize the extra items (*id.*, ¶ 17). Thus, defendant argues that the record establishes that plaintiff overcharged defendant by \$6,254.05, and that the six invoices from plaintiff detailing Basic Compensation, Additional Services and Reimbursables show that, at most, \$2,855.01 is due to plaintiff (NYSCEF # 156).

As preliminary matter, regarding the interpretation of Construction Cost under the Agreement. the court notes that "when parties set down their agreement in a clear, complete document, their writing should ... be enforced according to its terms" (*W.W.W. Assocs., Inc. v Giancontieri*, 77 NY2d 157, 162 [1990]). A written contract should be read as a whole to give each clause its intended purpose, and "[p]articular words should be considered, not as if isolated from the context, but in the light of the obligations as a whole and the intention of the parties as manifested thereby" (*Matter of Stravinsky*, 4 AD3d 75, 81 [1st Dept 2003][internal citation and quotation omitted]; *Duane Reade, Inc. v Cardtronics, LP*, 54 AD3d 137, 144 [1st Dept 2008]). Thus, a court should interpret a contract "so as to give full meaning and effect to material provisions" and so as not to "render any portion meaningless" (*Beal Savings Bank v Sommer*, 8 NY3d 318, 324-325 [2007][internal citation and quotation omitted]).

Under these principles, the court finds that term "Construction Cost" cannot be interpreted as proposed by defendant. Section 3.1.1 defines "Construction Cost" as "the total cost to the Owner of all elements of the project designed or specified by the Architect, including labor and materials furnished by the Owner and any equipment which has been designed, specified, selected, or specially provided for by the Architect." Here, as insurance and overhead were part of the "total cost" of the project, which was not narrowly defined as the design work performed by plaintiff as architect, these items would be included as part of the Construction Cost. Indeed, the budget for the construction costs included a percentage for overhead and insurance (NYSCEF #176, ¶ 63; NYSCEF # 194).

Moreover, with respect to the additional services, plaintiff submits evidence that these additional services were charged for changes to the project authorized by defendant, which required plaintiff to revise project plans previously submitted by it to DOB (Cornacchi Aff.-NYSCEF # 176, ¶¶ 32, 33; NYSCEF # 192). In any event, although the record raises issues of fact as to the exact amount due plaintiff, defendant submits no evidence that plaintiff did not perform the work and thus, upon searching the record, summary judgment is granted in favor of plaintiff as to liability on first cause of action.

Regarding the second cause of action, defendant argues that contrary to plaintiff's assertions, plaintiff is not owed \$81,300.75 for construction work and in support of this argument, defendant submits evidence that the work was performed by third parties, including Mylestone, with which plaintiff had no written contract (Faruki Aff.-NYSCEF #163, ¶¶ 11, 20). Defendant also points out that plaintiff never responded to the first notice to admit which stated that "all work for which plaintiff seeks recovery in this action was performed by Mylestone ... and/or others and not by plaintiff" (NYSCEF #158), and that plaintiff admitted in a second notice to the admit that "all work for which plaintiff seeks recovery in this action was performed by Mylestone ... and/or others and not by plaintiff" (NYSCEF #160).

Notably, however, defendant does not argue that the work was not authorized by the Agreement or submit evidence that the work for which plaintiff seeks payment was not performed or that defendant paid the balance to the third parties. Thus, defendant has not made a prima facie showing entitling it to summary judgment. Moreover, upon searching the record, including evidence that the work was performed by third parties, and that plaintiff paid Mylestone directly for the construction services (NYSCEF #210, Christian Aff., ¶¶ 10, 11), which were to be reimbursed by defendant under the Agreement (NYSCEF # 177) and in accordance with the project budget (NYSCEF # 194), summary judgment is granted in favor of plaintiff as to liability.

As for the third cause of action which seeks to recover an outstanding balance of \$250.00 for inspection services, while defendant maintains that plaintiff did not perform these services but only provided paperwork that it would perform them, the record shows that defendant agreed to plaintiff's performance of the special inspection services totaling \$3,750.00, that plaintiff performed these services and was paid \$3,500.00 leaving a balance of \$250.00 (NYSCEF #'s 172,196). Accordingly, upon searching the record, plaintiff is entitled to summary judgment on the third cause of action.

As for the fourth cause of action for attorneys' fees, and the fifth cause of action for punitive damages, summary judgment is granted dismissing these causes of action without opposition.

Conclusion

In view of the above, it is

ORDERED that defendant Manhattan Schoolhouse LLC’s motion for summary judgment is granted only to the extent of dismissing the fourth (attorneys’ fees) and fifth (punitive damages) causes of action and is otherwise denied; and it is further

ORDERED that the fourth and fifth causes of action are dismissed, and the Clerk of the Court shall enter judgment dismissing these causes of action; and it is further


ORDERED that upon searching the record, summary judgment is granted in favor of plaintiff Cornacchia Architects and Planner P.C. as to liability on the first and second causes of action and on the third cause of action with judgment on this claim in the amount of \$250.00 to be entered in connection with the determination of the remaining claims in this action; and it is further

ORDERED that the action shall continue with respect to the amount of damages due and owing on the first and second causes of action and as to defendant’s counterclaim; and it is further

ORDERED that within 20 days of e-filing this order, defendant shall serve of copy of this decision and order with notice of entry on the Clerk of the General Clerk’s Officer and the County Clerk; and it is further

ORDERED that such service upon the Clerks of the General Clerk’s Office and the County shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the “ E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh).

This constitutes the Decision and Order of the Court.

<u>11/18/2021</u> DATE	 MARGARET CHAN, J.S.C. MARGARET CHAN, J.S.C.	
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE