

Nead Elec. Inc. v Envirochrome Interiors, Inc.

2021 NY Slip Op 32503(U)

November 22, 2021

Supreme Court, New York County

Docket Number: Index No. 651909/2018

Judge: Lucy Billings

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 41

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NEAD ELECTRIC INC.,

Index No. 651909/2018

Plaintiff

- against -

DECISION AND ORDER
AFTER TRIAL

ENVIROCHROME INTERIORS, INC., and
BRIAN ROTHSCHILD,

Defendants

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LUCY BILLINGS, J.S.C.:

The court held a nonjury trial November 22, 2021, on plaintiff's action against defendant Envirochrome Interiors, Inc., for breach of contract and unjust enrichment. Plaintiff discontinued without prejudice its claim for misappropriation of construction trust funds under New York Lien Law § 79-a and all claims against defendant Rothschild. C.P.L.R. § 3217. Neither defendant appeared for the trial despite due notice. Upon the the testimony adduced from plaintiff's chief financial officer, Joseph Gusera, and its general superintendent on Envirochrome's construction project, Richard Lodato, and the exhibits admitted in evidence, the court finds and concludes as follows.

Plaintiff and Envirochrome Interiors entered four purchase orders for plaintiff to provide electrical work at Envirochrome Interiors' construction project at 100 Park Avenue, 13th floor, New York County. Ex. 1. Defendant signed only one of the purchase orders, but the testimony established that the parties orally agreed to proceed with the work delineated in the purchase

orders despite the absence of a signature from one or both parties. Envirochrome Interiors issued all the purchase orders under its letterhead only after Envirochrome Interiors approved the proposed work.

Envirochrome Interiors signed the first and largest purchase order dated March 22, 2012, for work at a price of \$140,000. The second purchase order was dated May 16, 2012, for work at a price of \$9,291. The last two purchase orders were dated October 2, 2015, for work priced at \$16,500 and \$6,600.

Plaintiff performed all the work delineated in the purchase orders. Defendants accepted the work performed without dispute or notice regarding any deficiency in the scope or quality of the work or in the materials plaintiff supplied.

Plaintiff then transmitted invoices to Envirochrome Interiors for the work performed. Ex. 2. Plaintiff transmitted an invoice dated May 22, 2012, to Envirochrome Interiors for \$9,291 for the work performed pursuant to the second purchase order dated May 16, 2012. After Envirochrome Interiors paid \$126,000 to plaintiff toward the first purchase order, plaintiff transmitted an invoice dated June 18, 2012, to Envirochrome Interiors for the balance of \$14,000. Plaintiff transmitted invoices dated October 20, 2015, to Envirochrome Interiors for \$16,500 and \$6,600 for the work performed pursuant to the final two purchase orders dated October 2, 2015. Pursuant to the parties' custom and practice in the construction industry, payment was due 90 days after the date of the invoice, and


plaintiff expected payment by then. Again plaintiff received no objection or dispute regarding these invoices totalling \$46,451, yet defendants have never paid them.

While plaintiff admitted that it could not complete the job of "tying in" a subtenant's security system to the project premises' fire alarm system, to permit full egress in the event of a fire, this component of the job required plaintiff's access to the subtenant's security system, which neither defendants nor the subtenant provided. Therefore plaintiff did not bill Envirochrome Interiors for this component of work that was beyond plaintiff's control and never completed.

Consequently, the court awards a judgment in favor of plaintiff against defendant Envirochrome Interiors, Inc., for \$46,451 on plaintiff's breach of contract claim, with interest at 9% per year on \$9,291 from August 20, 2012, on \$14,000 from September 16, 2012, and on \$23,100 from January 18, 2016, 90 days after the dates of plaintiff's invoices. Since the valid and enforceable written and oral contracts proved by plaintiff provide for the same recovery that plaintiff seeks on its unjust enrichment claim, those contracts foreclose an unjust enrichment claim against defendants. Clark-Fitzpatrick, Inc. v. Long Is. R.R. Co., 70 N.Y.2d 382, 388-89 (1987); Commissioner of the Dept. of Social Servs. of the City of N.Y. v. New York-Presbyt. Hosp., 164 A.D.3d 93, 102 (1st Dep't 2018); Lantau Holdings Ltd. v. General Pac. Group Ltd., 163 A.D.3d 407, 410 (1st Dep't 2017); Norcast S.ar.l. v. Castle Harlan, Inc., 147 A.D.3d 666, 668 (1st

Dep't 2017). Therefore the court dismisses plaintiff's unjust enrichment claim and, as set forth above, discontinues without prejudice the remaining claims in the complaint. The Clerk shall enter a judgment according to this decision.

DATED: November 22, 2021



LUCY BILLINGS, J.S.C.

LUCY BILLINGS
J.S.C