

Bldg 44 Devs. LLC v Pace Cos. N.Y., LLC
2021 NY Slip Op 32777(U)
December 23, 2021
Supreme Court, New York County
Docket Number: Index No. 650390/2020
Judge: Andrea Masley
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

-----X
BLDG 44 DEVELOPERS LLC,

Plaintiff,

- v -

THE PACE COMPANIES NEW YORK, LLC D/B/A THE
PACE COMPANIES,

Defendant.

INDEX NO. 650390/2020

MOTION DATE N/A, N/A, N/A

MOTION SEQ. NO. 005 006 007

**DECISION + ORDER ON
MOTION**

AMENDED

-----X
THE PACE COMPANIES NEW YORK, LLC D/B/A THE PACE
COMPANIES

Plaintiff,

-against-

NOBLE CONSTRUCTION GROUP, LLC, RKI
CONSTRUCTION LIMITED LIABILITY COMPANY D/B/A RKI
CONSTRUCTION CORP., AUTOMATED LOGIC
CORPORATION, XTREME MECHANICAL INSULATION, LLC,
ELITE CONSULTING SYSTEMS CORP., and PREMIER
INSULATION SERVICES CORP.,

Defendants.

Third-Party
Index No. 595631/2020

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 005) 184, 185, 186, 187, 188, 189, 190, 191, 192, 229, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 294, 301

were read on this motion to/for

DISMISS

The following e-filed documents, listed by NYSCEF document number (Motion 006) 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 230, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 296, 302

were read on this motion to/for

DISMISSAL

The following e-filed documents, listed by NYSCEF document number (Motion 007) 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 231, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 297, 303

were read on this motion to/for

DISMISS

Upon the foregoing documents, it is

Third-Party Plaintiff Pace Companies New York, LLC d/b/a The Pace Companies (Pace) initiated this third-party action against five of its sub-contractors. Pace alleges against all subs: (7th Cause of action) breach of contract; (8th Cause of Action) breach of warranty; (Ninth Cause of Action) common law indemnification; (Tenth Cause of Action) contractual indemnification; and (Eleventh Cause of Action) contribution.

For the reasons stated on the record on December 21, 2021, the motion of Third-Party Defendant Xtreme Mechanical Insulation, LLC (05) is denied.

In the Twelfth Cause of action, Pace seeks to pierce the corporate veil of Third-Party Defendants Elite Consulting Systems Corp. (Elite) to reach Premier Insulation Services Corp. (Premier). For the reasons stated on the record on December 21, 2021, the motion of Elite and Premier (06) is granted to the extent that the action is dismissed against Premier. Pace's allegations in the Third-Party complaint are insufficient to support Pace's theory of piercing the corporate veil piercing.

The motions of Third-Party Defendant Automated Logic Corporation (Automated) (07) and Elite and Premier (06) regarding standing are granted based on *Robert v Ringerjeans, LLC*, 165 AD3d 609, 610 [1st Dept 2018].

GBL §130(1)(b) prohibits an entity from conducting business under any name except its legal name unless the entity first "file[s] ...in the office of the secretary of state a certificate setting forth the name or designation under which business is carried on or conducted or transacted, its corporate, limited partnership or limited liability company name..." GBL 130(9) prohibits an entity which has not complied with GBL §130(1)(b) "from maintaining an action or proceeding in any court in this state."

Third-Party plaintiff Pace initiated this action based on a contract with Pace Mechanical Corp., a company that has never existed. (NYSCEF 286, Amended Third-Party Complaint ¶¶6.) The contract does not mention any other Pace entity unlike *Unique Laundry Corp.*, 55 AD3d 382 (1st Dept 2008), a case relied upon by Pace. (NYSCEF 209, Pace Mechanical Corp. Contract with Automated; NYSCEF 270, Pace Mechanical Corp. Contract with Elite.) In *Unique Laundry*, plaintiff's registered name was "Unique Laundry Service, Inc." (*Id.*) The signature block read "Unique Laundry Corp.," a name that was never filed with the Secretary of State. (*Id.*) However, "Unique Laundry Service" appeared on the letterhead of the contract and thus plaintiff could proceed with the case. That the word "Pace" appears in the Pace Mechanical Corp. name does not save Pace's claim here.

Pace's reliance on subsequent change orders with the proper Pace entity named is misplaced since the change orders are not mentioned in the Third-Party complaint. Moreover, the change orders begin with initial purchase order with Pace Mechanical Corp.

Further, Pace's reliance on its merger between PCNY Inc. and a Delaware corporation having the same name with the surviving entity converted to a limited liability corporation named "The Pace Companies of New York, LLC" is also misplaced. (NYSCEF 286, Amended Third-Party Complaint ¶¶2-5.) This corporate merger has nothing to do with Pace Mechanical Corp.

Finally, Pace cannot cure the problem by filing a certificate with the Secretary of State because the name Pace Mechanical Corp. contains the organizational modifier

“Corp.” which is prohibited as a d/b/a by 19 NYCRR §156.4(c)(1). Indeed, Pace does not offer to do so, relying, instead, on its corporate merger theory.

Accordingly, it is

ORDERED that defendants are directed to submit the transcript to be so ordered; and it is further

ORDERED that Third-Party Defendant Xtreme Mechanical Insulation, LLC’s motion is denied and Xtreme is directed to file an answer within 30 days of the date of this decision. The remaining parties shall submit a PC Order on consent within 40 days. If the remaining parties cannot agree to a PC, the parties may submit competing parties. Proposed PCs shall be sent by email to SFC-Part48@nycourts.gov and efiled in NYSCEF. Remaining parties shall read the Part 48 rules; and it is further

ORDERED that Third-Party Defendant Elite Consulting Systems Corp.’s motion to dismiss is granted and the action is dismissed against Elite in its entirety, with costs and disbursements to this defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of this defendant; and it is further

ORDERED that Third-Party Defendant Premier Insulation Services Corp.’s motion to dismiss is granted and the action is dismissed against Premier in its entirety, with costs and disbursements to this defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of this defendant; and it is further

ORDERED that Third-Party Defendant Automated Logic Corporation motion to dismiss is granted and the action is dismissed against Automooted in its entirety, with

costs and disbursements to this defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of this defendant; and it is further

ORDERED that the action is severed and continued against the remaining defendant; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office 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).

12/23/2021

DATE

CHECK ONE:

APPLICATION:

CHECK IF APPROPRIATE:

☐
☐
☐
☐

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

☐

DENIED

☒
☒
☐
☐

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

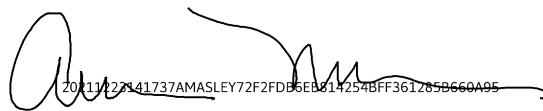
FIDUCIARY APPOINTMENT

☐

OTHER

☐

REFERENCE



ANDREA MASLEY, J.S.C.