

**Quality Sheet Metal, Inc. v Alliance Mech. Group,
Inc.**

2022 NY Slip Op 30404(U)

February 1, 2022

Supreme Court, New York County

Docket Number: Index No. 652976/2018

Judge: Andrea Masley

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

-----X

QUALITY SHEET METAL, INC.,

INDEX NO. 652976/2018

Plaintiff,

MOTION DATE N/A

- v -

MOTION SEQ. NO. 002

ALLIANCE MECHANICAL GROUP, INC., ONE BEACON
INSURANCE GROUP, and ATLANTIC SPECIALTY
INSURANCE COMPANY,¹

**DECISION + ORDER ON
MOTION**

Defendants.

-----X

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 36, 37,² 38, 39, 40,
41, 42, 43, 44, 45, 53, 54, 55, 65, 67, 69, 80, 83, 84, 86³

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, it is

Plaintiff Quality Sheet Metal Inc. moves for summary judgment against defendant Alliance Mechanical Group, Inc. (Alliance).⁴ For the reasons stated on the record on January 11, 2022, the motion is granted as to liability. This is a supplemental decision regarding damages.

¹ The parties stipulated to substitute RLI Insurance Company for defendants One Beacon Insurance Group and Atlantic Specialty Insurance Company. (NYSCEF 100, Stipulation.) However, the caption has yet to be changed.

² Parties are reminded of Rule 202.8(c) which provides "Affidavits shall be for a statement of the relevant facts, and briefs shall be for a statement of the relevant law."

³ Alliance relies on its opposition papers, which were filed in connection with motion sequence no. 003. (NYSCEF 71, Peter J. Creedon, Esq. aff in Opposition; NYSCEF 72, Exhibit A to Creedon aff, Vito Virgilio aff.) However, motion seq. no. 003 was withdrawn. (NYSCEF 95 [motion seq. no. 003], Decision and Order.) Therefore, motion sequence number 002 is effectively unopposed by Alliance.

⁴ All parties agreed at argument on January 11, 2022 that plaintiff is seeking summary judgment against Alliance, but not against the other defendants which bonded plaintiff's lien.

Under CPLR 3212, “the proponent of a summary judgment motion 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 issues of fact.” (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986] [citations omitted].) Once the movant has made such a showing, the burden shifts to the opposing party to demonstrate, with admissible evidence, facts sufficient to require a trial, or summary judgment will be granted. (See *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985] [citation omitted].)

This is an action for breach of contract. The elements of a cause of action for breach of contract are “the existence of a contract, the plaintiff’s performance thereunder, the defendant’s breach thereof, and resulting damages.” (*Harris v Seward Park Hous. Corp.*, 79 AD3d 425, 426 [1st Dept 2010] [citation omitted].) There is no dispute that the parties had contracts to work together on a variety of construction projects, though Alliance insists there are no outstanding amounts due to Quality from prior projects. (NYSCEF 72, Virgilio aff ¶ 1.)

Narendra Lachmansingh, president of Quality, establishes that Quality performed the work for which \$305,334.74 was due and owing to Quality, the amount which is not inclusive of the outstanding balance remaining on the Astor Project. (See NYSCEF 37, Jeffrey S. Ettenger, Esq. aff ¶ 17-18 [total remaining balance of \$697,857.24 less \$392,522.50, the amount owed on The Astor project]; see *a/so* NYSCEF 43, Lachmansingh aff ¶ 7 [remaining balance for The Astor project]; NYSCEF 42, December 28, 2016 Invoice at 5⁵ [showing the same outstanding balance for The Astor

⁵ Pages cited refer to NYSCEF generated pagination.
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Motion No. 002

project]; NYSCEF 43, Lachmansingh aff ¶ 8 [total balance owed by Alliance to Quality including any amounts owed for The Astor project].) “Alliance never questioned the invoices, the work that was performed or the balance due. They simply either paid nothing, or less than the amount owed.” (NYSCEF 43, Lachmansingh aff ¶ 6.) Virgilio’s conclusory denial of owing Quality for projects prior to the Astor project is insufficient to overcome Quality’s evidence. Therefore, plaintiff has established damages in the amount of \$305,334.74.

As to The Astor project, plaintiff established that it performed the work and invoiced Alliance \$392,522.50, to which Alliance failed to object. (NYSCEF 44, Feb. 27, 2018 Email from Quality to Alliance [regarding unpaid balances and invoices]; NYSCEF 43, Feb Lachmansingh aff ¶ 7; NYSCEF 42, Invoices; NYSCEF 37, Ettenger aff ¶¶ 16-18.) Alliance admits that Quality invoiced Alliance for \$368,595 on The Astor project which remains unpaid, but Alliance challenges whether plaintiff fully performed at the Astor project and the amount of damages. (See NYSCEF 72, Virgilio aff ¶ 1.) Alliance’s opposition consists of an email thread between Alliance and nonparty Thomas Mahony with subject line “ASTOR” concerning Quality’s purported failure to perform as compared to the “shop drawings” for The Astor project. (See NYSCEF 74, Jan. 7, 2015 Email Chain.) Virgilio asserts that Quality was contractually obligated to provide the shop drawings, but failed to do so. (NYSCEF 72, Virgilio aff ¶ 2.) However, there is no evidence that Quality was a recipient of the email, it is not mentioned in the email, and there is no proof that Quality is responsible for the shop drawings discussed in the email. Contrary to what Alliance believes, “flawless” performance is not required

under New York Law. (*Id.* ¶ 7; *Jacobs & Young v Kent*, 230 NY 239, 241 [1921].)

Nevertheless, Alliance fails to establish lack of performance.

Alliance also argues that since Quality walked off The Astor job before it was complete, Quality is not owed the full \$368,595 that was admittedly invoiced. (NYSCEF 72, *Virgilio aff* ¶ 3.) Rather, Alliance claims to have incurred delay expenses and costs to engage a substitute contractor. (*Id.*) However, there is no evidence that Alliance incurred any additional expenses as a result of Quality walking off the job in 2018, when, at the time, it was owed over \$750,000. (NYSCEF 43, *Lachmansingh aff* ¶ 6; *NYSCEF 37, Ettenger Aff* ¶ 17.) *Virgilio's* conclusory statement of added costs and expenses is insufficient. Rather, *Virgilio* explains Alliance was not paid by the owner, and thus Alliance failed to pay contractors, including Quality, when the project was infiltrated by the “Gambino organized crime family.” (NYSCEF 77, Jan. 15, 2021 EDNY Press Release.) Further, the court finds Alliance’s unpaid bill ledger, (NYSCEF 73, Exhibit B to *Virgilio aff*), unreliable as there is no foundation as to how the record is kept; a list of invoice numbers and amounts is insufficient to show that it is a complete list of all invoices received and that amounts owing are correctly entered on the ledger. Therefore, the court finds that Alliance fails to demonstrate, with admissible evidence, facts sufficient to require a trial.

Accordingly, it is

ORDERED that plaintiff shall submit the transcript to be so ordered; and it is further

ORDERED that the plaintiff's motion for summary judgment is granted in part in favor of plaintiff Quality Sheet Metal, Inc. and against defendant Alliance Mechanical Group, Inc. on the first cause of action as follows; and it is further

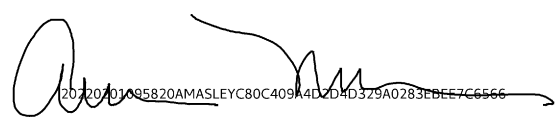
ORDERED that the Clerk shall enter judgment in favor of plaintiff and against defendant in the amount of \$697,857.24, together with interest at the statutory rate of 9% per annum from the date of February 27, 2018, until the date of the decision on this motion, and thereafter at the statutory rate, as calculated by the Clerk; and it is further

ORDERED that the first cause of action is severed and the balance of the claims are continued; and it is further

ORDERED that the second and third causes of action are dismissed as moot for the reasons discussed on the record; and it is further

ORDERED that the action shall continue as to the fourth cause of action; and it is further

ORDERED that plaintiff shall amend the complaint, on consent of RLI on the record, within 20 days of the date of this decision; otherwise waived.



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2/1/2022
DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input type="checkbox"/>	GRANTED		

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input checked="" type="checkbox"/>	GRANTED IN PART		

APPLICATION:

<input type="checkbox"/>	SETTLE ORDER
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<input type="checkbox"/>	SUBMIT ORDER
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CHECK IF APPROPRIATE:

<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN
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<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE
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