

New York Disaster Interfaith Servs., Inc. v Bostick
2022 NY Slip Op 30503(U)
February 18, 2022
Supreme Court, New York County
Docket Number: Index No. 150249/2020
Judge: Lori S. Sattler
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 02TR

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NEW YORK DISASTER INTERFAITH SERVICES, INC.

Plaintiff,

- v -

TANYA BOSTICK,

Defendant.

INDEX NO. 150249/2020

MOTION DATE 09/02/2021

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

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HON. LORI SATTLER:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 were read on this motion to/for JUDGMENT - SUMMARY.

In this action seeking damages for alleged breach of contract and unjust enrichment, Plaintiff New York Disaster Interfaith Services, Inc. (“Plaintiff”) moves for an order granting it summary judgment pursuant to CPLR 3212 on both causes of action, dismissing Defendant Tanya Bostick’s (“Defendant”) counterclaims, issuing a money judgment for \$29,951.92 plus interest, and awarding counsel fees. Defendant cross-moves for an order denying Plaintiff’s motion, dismissing its causes of action pursuant to CPLR 3212 and/or 3211, and setting the matter down for a hearing on Defendant’s counterclaims. Plaintiff opposes the cross-motion.

Defendant owns a house located at 69-44 Burchell Avenue, Arverne, NY (“the Residence”). The Residence sustained significant damage during Superstorm Sandy in October 2012. In June 2017, Defendant qualified for the Build It Back program (“BIB Program”) managed by the Mayor’s Office of Housing Recovery Operations (“HRO”), which repairs participants’ homes and provides temporary housing during construction. Plaintiff is a 501(c)(3) organization offering disaster response and related services that, along with a second

organization, Center for New York City Neighborhoods (“CNYCN”), contracted with HRO to provide the BIB Program’s temporary housing.

Plaintiff rented temporary housing located at 66-03 Surf Avenue, Arverne, NY (“Unit”) from a non-party landlord, Michael Farina. Plaintiff and Farina signed a lease agreement dated July 1, 2017 (“Master Lease”) with Plaintiff as tenant and Farina as landlord. On July 7, 2017, Plaintiff and Defendant entered into an Occupancy Agreement naming Plaintiff the “Tenant” and Defendant the “User” as well as an Addendum to Occupancy Agreement naming Defendant the “Licensee.” The Occupancy Agreement provides:

User, together with User’s family . . . shall be entitled to occupy the Unit until the earliest to occur of (i) the expiration of the term of the Master Lease, (ii) Tenant notifying User that User’s home has been rebuilt and (iii) User being removed from the New York City’s Build It Back Program.

(Plaintiff’s Exhibit F at ¶ 1, NYSCEF Doc. No. 17). The Addendum to Occupancy Agreement states:

[I]f CNYCN informs NYDIS that the Licensee has been removed from the BIB Program, then NYDIS will deliver a notice to Licensee terminating the Occupancy Agreement and the Licensee shall promptly and peacefully leave the Unit on the date set forth in such notice.

(Plaintiff’s Exhibit G at 2, NYSCEF Doc. No. 18).

Defendant took possession of the Unit in July 2017 pursuant to these agreements and an additional agreement she entered into with HRO, who is not a party to this action, in furtherance of her participation in the BIB Program (“Grant Agreement”).

It is undisputed that on December 14, 2018, the New York City Department of Buildings issued a temporary Certificate of Occupancy for the Residence and a meeting was scheduled there for January 4, 2019. Plaintiff alleges this was a key turnover date and that Defendant refused to take the keys at such time. Defendant contends the meeting was a walk-through of the

Residence at which they reviewed punch list items. A second meeting was scheduled for

January 7, 2019, but the keys were again not exchanged. Defendant maintains she refused to accept the keys because the work was still ongoing and her agreement with HRO entitles her to housing until the work is completed.

Plaintiff alleges it was notified that Defendant was being removed from the BIB Program effective February 6, 2019. On January 23, 2019, Plaintiff notified Defendant by letter that “the Occupancy Agreement is terminating, effective February 6th, 2019, and that after that date you will have no further rights in respect to the Master Lease Unit” (Plaintiff’s Exhibit H, NYSCEF Doc. No. 19). Defendant remained in the Unit until July 31, 2019.

Plaintiff commenced this action for breach of contract and unjust enrichment seeking a money judgment for costs and expenses incurred due to Defendant’s remaining in the Unit after February 6th, 2019, together with interest and attorney’s fees. Defendant’s Verified Answer included six defenses, a counterclaim for declaratory judgment determining the parties’ rights and obligations, and a counterclaim for reasonable legal fees. Plaintiff now moves for summary judgment on its claims while Defendant cross-moves for their dismissal and for a hearing on her counterclaims.

A party seeking summary judgment pursuant to CPLR 3212(b) “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], citing *Winegrad v New York Univ. Med. Center*, 64 NY2d 851, 853 [1985], *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980], *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]). If such showing is made, the burden shifts to the opposing party “to produce evidentiary proof in admissible form sufficient to establish the

existence of material issues of fact which require a trial of the action” (*Alvarez*, 68 NY2d at 324; *Zuckerman*, 49 NY2d, at 562).

A cause of action for breach of contract requires a plaintiff to demonstrate “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], citing *Morris v 702 E. Fifth St. HDFC*, 46 AD3d 478, 479 [2007]). A cause of action for unjust enrichment requires a showing that a plaintiff “conferred a benefit upon the defendant, and that the defendant will obtain such benefit without adequately compensating plaintiff therefor” (*Nakamura v Fujii*, 253 AD2d 387, 390 [1st Dept 1998]).

Plaintiff’s moving papers establish that there was an agreement between the parties and that Plaintiff provided housing pursuant to that agreement. Plaintiff’s contention that Defendant violated ¶ 1 of the Occupancy Agreement by remaining in the Unit after she had been removed from the BIB Program is supported by an annexed affidavit of its Executive Director. Plaintiff further demonstrates that it conferred a benefit upon Defendant by paying the expenses for the Unit while Defendant remained there after she was no longer permitted to do so. Plaintiff has made a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any triable issues of fact.

Defendant fails to establish the existence of an issue of fact. She does not dispute that she was removed as a participant in the BIB Program; indeed, she annexes a letter to her from HRO dated March 22, 2019 which confirms that her rental assistance pursuant to the BIB Program terminated on February 6, 2019 (Defendant’s Exhibit C, NYSCEF Doc No. 31). She likewise does not contest that she remained in the Unit until July 31, 2019. Defendant argues that Plaintiff’s motion must be denied and its causes of action dismissed because the Grant

Agreement with HRO entitled her to housing assistance during the pendency of the construction and that the Residence was not completed as of February 6, 2019. That argument and any claims Defendant may have against a non-party pursuant to a separate agreement do not constitute evidentiary proof sufficient to establish an issue of fact in the instant action. Defendant's affirmative defenses are unavailing for the same reason. Accordingly, Plaintiff's motion shall be granted, and Defendant's cross-motion must be denied.

As to damages, Plaintiff's itemization annexed as Exhibit I (NYSCEF Doc. No. 20) shows it incurred damages totaling \$29,951.92 for rent, utilities, and insurance costs it paid and for management fees it charged. Defendant does not dispute these costs except to say that she believes Plaintiff was fully reimbursed by HRO, without providing any corroboration for this claim. Therefore, Plaintiff is entitled to a money judgment for this sum.

Accordingly, for the reasons set forth herein, it is hereby

ORDERED that Plaintiff's motion for summary judgment on the complaint herein is granted and the Clerk of the Court is directed to enter judgment in favor of Plaintiff and against Defendant in the amount of \$29,951.92, together with interest at the statutory rate from July 31, 2019, as calculated by the Clerk, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that Defendant's affirmative defenses and counterclaims are hereby dismissed; and it is further

ORDERED that the issue of reasonable attorney's fees is referred to a Special Referee to hear and report; and it is further

ORDERED that Plaintiff shall, within 30 days from the date of this order, serve a copy of this order with notice of entry, together with a completed Information Sheet, upon the Special

Referee Clerk in the General Clerk’s office (Room 119), who is directed to place the matter on the calendar of the Special Referee’s Part for the earliest convenient date, and on the office of the County Clerk, which shall enter judgment accordingly.

All relief sought not addressed herein is denied. This constitutes the Decision and Order of the Court.

2/18/2022
DATE


LORI SATTLER, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
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"/>	DENIED
			<input type="checkbox"/>	OTHER
			<input checked="" type="checkbox"/>	REFERENCE