

G & Y Maintenance Corp. v 540 W. 48th St. Corp.

2022 NY Slip Op 31169(U)

April 7, 2022

Supreme Court, New York County

Docket Number: Index No. 652108/2020

Judge: Melissa Crane

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MELISSA CRANE PART 60M
Justice
INDEX NO. 652108/2020
G & Y MAINTENANCE CORP., MOTION DATE N/A
Plaintiff, MOTION SEQ. NO. 004

- v -

540 WEST 48TH ST. CORP., GLSC 48 SPECIAL
LLC, CORE CONTINENTAL CONSTRUCTION
LLC, CHUNG-LIN CHIANG

DECISION + ORDER ON MOTION

Defendant.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 109, 110, 111, 112, 113, 114, 115, 117, 118, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 163, 164, 165, 166, 167, 177

were read on this motion to/for DISMISS

Defendants Core Continental Construction, LLC ("Core") and Chunlin Chiang s/h/a Chung-lin Chiang move to dismiss the amended complaint against them pursuant to CPLR 3211(a)(1), (a)(5), and (a)(7). Plaintiff G&Y Maintenance Corp. cross-moves to extend time to serve defendant Chunlin Chiang pursuant to CPLR 306-b. This is the second motion to dismiss in this matter. For the following reasons, defendants' motion is granted in part and plaintiff's cross-motion is denied as moot.

I. BACKGROUND

Plaintiff G&Y Maintenance ("G&Y") is a subcontractor who entered an oral contract with defendant Core Continental Construction LLC ("Core"), a general contractor, to provide heating and air conditioning work at 538 West 48th Street for \$533,000 (Block: 01076, Lot: 0051) (the "Property") (Amended Compl. ¶¶ 3, 6, 17-18, 21, 46, 51 [NYSCEF Doc. No. 57]). Defendant Chunlin Chiang served as the principal of Core and several related corporations (id. ¶¶ 7, 10). From 2012 through June 4, 2014, G&Y performed the contract, including a \$148,000 Change Order that, upon information and belief, former defendant and owner of the Property 540 West requested between December 2013 and February 2014 and Core awarded to G&Y

(“Change Order 1”) (*id.* ¶¶ 20, 22, 33, 37-38, 47-50). No written contract defined the relationship between the parties or detailed the applicable terms and conditions with regards to the alleged contract or Change Order 1 (*id.* ¶¶ 19, 23). Change Order 1 was executed alongside change orders at two other locations where G&Y was performing work on Core’s behalf (*id.* ¶ 33). G&Y completed the alleged contract and provided \$147,941 worth of services on the property’s Change Order (*id.* ¶¶ 20, 39). Core, however, defaulted on its payment obligations, owing an outstanding balance of \$274,500 to G&Y (*id.* ¶¶ 21, 51-52). Against defendant Core, plaintiff alleges claims for: (i) breach of contract; (ii) account stated; (iii) unjust enrichment; and (iv) quantum meruit. Against defendant Chiang, plaintiff alleges claims for: (i) unjust enrichment; (ii) quantum meruit; and (iii) breach of contract on an alter ego theory.

II. DISCUSSION

Defendants Core and Chiang seek dismissal of the entire complaint. Defendants specifically argue that: (i) plaintiff fails to state a claim against Chiang, (ii) the complaint does not sufficiently allege grounds to pierce the corporate veil, and (iii) plaintiff fails to state a claim for breach of contract against Core.

A. Duplicative Claims

As an initial matter, the court dismisses as duplicative plaintiff’s unjust enrichment and quantum meruit claims. Quasi contract claims, such as unjust enrichment or quantum meruit, are not available where they duplicate, or replace, conventional contract or tort claims (*see Corsello v Verizon New York, Inc.*, 18 NY3d 777, 790-791 [2012]; *Clark Fitzpatrick, Inc. v Long Is. R.R. Co.*, 70 NY2d 382, 388-389 [1987]). Here, plaintiff’s quasi contract claims rest upon the exact same foundation as the breach of contract claims, namely that plaintiff G&Y performed a contract, defendants’ failure to pay G&Y breached that contract, and resulting damages (Compl. ¶¶ 45-52, 58-69). Consequently, plaintiff’s third and fourth causes of action for unjust enrichment and quantum meruit are dismissed with prejudice.

B. Claims Against Defendant Chunlin Chiang

Although no explicit rules determine when the corporate veil is pierced, veil-piercing allegations generally require a showing that the owner exercised complete domination of the corporation with respect to the transaction attacked and that the domination was used to commit a fraud or wrong against the plaintiff resulting in plaintiff’s injury (*Morris v New York State Dept. of Taxation and Finance*, 82 NY2d 135, 141 [1993]). When assessing disregard for the

corporate form, courts often consider: (i) failure to adhere to corporate formalities; (ii) inadequate capitalization; (iii) commingling of assets; and (iv) use of corporate funds for personal use. Veil-piercing allegations require particularized facts detailing fraud or other corporate misconduct (*Sheridan Broadcasting Corp. v Small*, 19 AD3d 331 [1st Dept 2005]; *Adejo Corp. v South St. Seaport Ltd. Partnership*, 40 AD3d 407 [1st Dept 2007]). Allegations of domination and control of a corporation are not alone sufficient to maintain a veil-piercing cause of action. Instead, the complaint must also allege that the domination led to inequity, fraud, or malfeasance (*TNS Holdings v MKI Sec. Corp.*, 92 NY2d 335, 339 [1998]; *Franklin v Daly Holdings Inc.*, 135 AD3d 87 [1st Dept 2015]).

Plaintiff's allegations against defendant Chunlin Chiang must be dismissed for failure to plead the requisite veil-piercing factors. Plaintiff alleges defendant Chiang, through his sole domination of defendant Core, caused Core to default while owing an outstanding balance to plaintiff for its work on the Subject Premises (Compl. ¶¶ 27-30, 41, 71). Plaintiff attempts to allege Core's inadequate capitalization, but Core's bank statements contradict these allegations (Core Bank Statements [NYSCEF Doc. No. 115]).¹ On this motion, plaintiff has failed to explain how the corporate veil should be pierced when Core is capable of satisfying the outstanding balance. Thus, plaintiff fails to allege specifically how Chiang's alleged abuses led to damages (*JTS Trading v Trinity White City Ventures Limited*, 139 AD3d 630, 631 [1st Dept 2007]). Finally, allegations of a "simple breach of contract, without more," do not constitute a fraud or wrong warranting corporate veil-piercing (*Skanska USA Bldg. Inc. v Atlantic Yards B2 Owner LLC*, 146 AD3d 1, 12 [1st Dept 2016]; *Bonacasa Realty Co., LLC v Salvatore*, 109 AD3d 946, 947 [2d Dept 2013]). Consequently, plaintiff's allegations are insufficient to pierce the corporate veil and plaintiff's claims against Chunlin Chiang are dismissed with prejudice.

Because all claims against defendant Chiang have been dismissed, plaintiff's cross-motion to extend time to serve Chiang is denied as moot.

C. Claims Against Defendant Core Continental Construction, LLC

Plaintiff's claim for an account stated against defendant Core is dismissed pursuant to CPLR 3211(a)(5). An account stated claim accrues on the date of the last transaction in the account, and expires in six years (CPLR § 213(2); *Elie Int'l, Inc. v Macy's W. Inc.*, 106 AD3d

¹ Plaintiff bizarrely argues the statements show insufficient funds to pay \$745,434 in his affirmation in opposition despite the complaint never alleging an amount owed over \$274,500 (*id.*).

442, 443 [1st Dept 2013]; *Kyer v Ravena Coeysman-Selkirk Cent. Sch. Dist.*, 144 AD3d 1260, 1262 [1st Dept 2016]). Here, it is undisputed that the last invoice in the account was issued on March 1, 2014 (NYSCEF Doc. No. 59). Further, the latest date plaintiff provides for any kind of payment from defendants is March 15, 2014 (Compl. ¶¶ 38, 52). The Governor's Order tolling the Statute of Limitations in New York State was not issued until March 20, 2020 (Executive Order 202.8). Plaintiff's account stated claim expired, at the latest, on Monday, March 16, 2020. Consequently, plaintiff's account stated claim is dismissed with prejudice on statute of limitations grounds.

Defendants' motion to dismiss plaintiff's breach of contract claim against defendant Core pursuant to CPLR 3211(a)(7) is denied. To sustain a breach of contract cause of action, plaintiff must show: (1) an agreement; (2) plaintiff's performance; (3) defendant's breach of that agreement; and (4) damages (*see Furia v Furia*, 116 AD2d 694, 695 [2d Dept 1986]). "The fundamental rule of contract interpretation is that agreements are construed in accord with the parties' intent . . . and '[t]he best evidence of what parties to a written agreement intend is what they say in their writing' Thus, a written agreement that is clear and unambiguous on its face must be enforced according to the plain terms, and extrinsic evidence of the parties' intent may be considered only if the agreement is ambiguous [internal citations omitted]" (*Riverside South Planning Corp. v CRP/Extell Riverside LP*, 60 AD3d 61, 66 [1st Dept 2008], *affd* 13 NY3d 398 [2009]). Whether a contract is ambiguous presents a question of law for resolution by the courts (*id.* at 67). Courts should adopt an interpretation of a contract which gives meaning to every provision of the contract, with no provision left without force and effect (*see RM 14 FK Corp. v Bank One Trust Co., N.A.*, 37 AD3d 272 [1st Dept 2007]). Here, defendants solely argue the complaint fails to allege what specific terms of the contract between Core and plaintiff were breached (*Barker v Time Warner Cable, Inc.*, 83 AD3d 750, 751 [2d Dept 2011]); *Kraus v Visa Int'l Serv. Ass'n*, 304 AD2d 408 [1st Dept 2003]). Although the complaint cites no provision, a claim for breach of contract resulting from Core's failure to pay G&Y money owed in exchange for labor and materials is plainly stated. Further, it would be nearly impossible for plaintiff to specify a provision as the complaint alleges the contract was oral (Compl. ¶ 19). Consequently, plaintiff's breach of contract claim against Core remains.

Defendants' motion to dismiss plaintiff's breach of contract claim pursuant to CPLR 3211(a)(5) is similarly denied. The statute of limitations for breach of contract does not begin to

run until substantial completion of the work (*Mendelsohn v City of New York*, 89 AD3d 569, 569 [1st Dept 2011]; *Phillips Constr. Co. v City of New York*, 61 NY2d 949, 951 [1984]). Although defendants correctly note that plaintiff's invoices to Core state all work was completed as of March 1, 2014, plaintiff has provided affidavits from Chen Yao Peng and Gin Lau which attest to working through April 8, 2014 and June 4, 2014 respectively (Compl., Ex. D; Gin Lau Aff. ¶ 7 [NYSCEF Doc. No. 129]; Exhibit Y ¶ 4 [NYSCEF Doc. No. 153]). Because an issue of fact exists regarding when work under the alleged contract was substantially complete, this court cannot yet determine when the tolling period on plaintiff's breach of contract claim began without further development of the record. Consequently, plaintiff's breach of contract claim against Core survives.

Accordingly, it is

ORDERED that all claims against defendant Chunlin Chiang are dismissed with prejudice; and it is further

ORDERED that plaintiff's third and fourth causes of action for unjust enrichment and quantum meruit are dismissed with prejudice; and it is further

ORDERED that plaintiff's second cause of action for an account stated is dismissed with prejudice; and it is further

ORDERED that defendants' motion to dismiss is denied as to count one for breach of contract as against defendant Core Construction LLC; and it is further

ORDERED that plaintiff's cross-motion to extend time to serve defendant Chunlin Chiang is denied as moot.

4/7/2022
DATE


MELISSA CRANE, J.S.C.

CHECK ONE:

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APPLICATION:

CHECK IF APPROPRIATE: