SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JUDY H. KIM **PART** 05RCP

Justice

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UNITED CEREBRAL PALSY OF NEW YORK CITY, INC., D/B/A ADAPT COMMUNITY NETWORK,

Plaintiff,

- v -

THE NEW YORK CITY BOARD OF EDUCATION, D/B/A THE NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendant.

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INDEX NO. 654528/2021

MOTION DATE 1/18/2022

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16

were read on this motion to DISMISS.

Upon the foregoing papers, the motion by defendant the New York City Board of Education d/b/a New York City Department of Education (the "DOE"), pursuant to CPLR §3211(a)(7), to dismiss this action is denied.

This action has its genesis in contracts the DOE entered into with the New York League for Early Learning, Inc. ("NYL") – an affiliate of plaintiff United Cerebral Palsy Of New York City, Inc., d/b/a Adapt Community Network ("Adapt") – in which NYL agreed to operate seven universal pre-kindergarten ("UPK") programs and seven preschool special education programs (NYSCEF Doc. No. 1 [Complaint at ¶¶6-7]). These contracts originally ran through June 30, 2020, with some extended through June 30, 2021 (Id. at ¶6).

Pursuant to Education Law §4410, the preschool special education programs were required to include "special classes in an integrated setting" ("SCIS") which combined special education students with "typically developing" students in one classroom (Id. at ¶¶14-15). To satisfy this

requirement, NYL integrated students from its UPK programs and special education programs in its SCIS classes (Id. at ¶15).

In or about May 2015, the Office of the New York State Comptroller (the "Comptroller") audited the costs NYL had reported to the New York State Education Department for fiscal years 2012 through 2014 and issued a report recommending large cost disallowances for this period (Id. at ¶¶9-10). In response, NYL commenced a lawsuit in the New York State Supreme Court, Albany County, New York League Early Learning, Inc. v Thomas P. DiNapoli in his capacity as Comptroller of the State of New York, New York State Education Department and New York State Division of the Budget, challenging the Comptroller's recommendation (Id.). That action was settled by the parties in a Stipulation of Settlement and Order of Discontinuance so-ordered by the Honorable Roger D. McDonough on October 17, 2018 (the "Settlement Agreement") (See NYSCEF Doc. No. 16 [Settlement Agreement]).

Under the Settlement Agreement, NYL's special education programs – including their physical assets, leases, and teachers, therapists and administrators who worked in those programs – were transferred to Adapt (NYSCEF Doc. No. 16 [Settlement Agreement at ¶5]). The Settlement Agreement also stated "that it is the intention of Adapt to enter into an amendment of its present contract with the New York City Department of Education or a new contract with [DOE] providing for Adapt to operate such [special education] programs" (Id.). However, the Settlement Agreement was silent as to the UPK programs that NYL had been running in conjunction with its special education programs.

At the insistence of the New York State Education Department, NYL transferred the special education programs to Adapt on April 1, 2019 (Id. at ¶16). At that time, NYL also transferred the UPK programs to Adapt in order to continue providing the special education

programs' integrated SCIS classes required by Education Law §4410 (Id.). Adapt contends that the DOE permitted this transfer but informed Adapt that the DOE would not pay Adapt for these UPK program until NYL's contracts for these UPK programs were formally assigned to Adapt[1] (Id. at ¶¶17-18). The DOE nevertheless requested that Adapt continue to operate the UPK programs in the interim in order to maintain the continuity of the UPK programs and SCIS classes (Id. at ¶18). Adapt alleges that the DOE represented that once the permitting process was complete it would pay Adapt "retroactively for continuing to provide the UPK services" (Id. at ¶¶19, 23). Adapt maintains that, on the basis of these representations, it operated the UPK programs from April 1, 2019 through the remainder of the 2018-2019 school year and for the entirety of the 2019-2020 school year (Id. at ¶20). Adapt alleges that, although the DOE did not pay it for the UPK programs during this period, the DOE "continued to refer students to Adapt's UPK programs at [all] seven sites for the 2019-2020 school year" (Id. at ¶21).

On July 22, 2020, DOE informed Adapt that it would not pay for the UPK services that Adapt had provided from April 1, 2019 through June 30, 2020 (Id. at ¶¶ 35-36). According to Adapt, these services had a value of at least $784,250.00 (Id. at ¶37). As a result, Adapt commenced this action, asserting claims for: (1) breach of implied-in-fact contract; (2) unjust enrichment; (3) quantum meruit; (4) services rendered; and (5) promissory estoppel (Id. at ¶¶39-46, 51-70). Defendant now moves, pursuant to CPLR §3211(a)(7), to dismiss this action in its entirety.

[1] This assignment was contingent on the New York City Department of Health and Mental Hygiene approving the transfer of certain day care permits from NYL to Adapt (Id. at ¶¶17-18).

DISCUSSION

In addressing a motion to dismiss pursuant to CPLR §3211(a)(7), the Court must accept "as true the factual averments of the complaint" and determine only whether "plaintiff can succeed upon any reasonable view of the facts stated," giving plaintiff "the benefit of all favorable inferences which may be drawn from their pleading, without expressing our opinion as to whether they can ultimately establish the truth of their allegations before the trier of fact" (Campaign for Fiscal Equity, Inc. v State, 86 NY2d 307, 318 [1995] [internal citations and quotations omitted]).

In support of its motion, defendant contends that because all contracts with the DOE must, as a matter of statute, be in writing, the absence of a written contract governing plaintiff's provision of the UPK program bars this action as a matter of law. Plaintiff does not dispute that, pursuant to the DOE's Procurement Policy (promulgated by the DOE pursuant to Education Law §2590-h), all contracts with the DOE must be in writing. Neither does it dispute that, as a general principle, "where work is done pursuant to an illegal municipal contract, no recovery may be had by the vendor, either on the contract or in quantum meruit" (S.T. Grand v. City of New York, 32 NY2d 300, 305 [1973]; see also Casa Wales Hous. Dev. Fund Corp. v City of New York, 129 AD3d 451 [1st Dept 2015]). Instead, plaintiff argues that an exception to this principle applies permitting it to recover based upon the facts alleged in its complaint. Of the three cases on which plaintiff principally relies in support of this argument – Lindlots Realty Corp. v Suffolk County, 278 NY 45 (1938), Gerzof v Sweeney, 22 NY2d 297 (1968), and Vrooman v. Village of Middleville, 91 AD2d 833 (4th Dept 1982) – the Court finds that Lindlots and Gerzof have no application here, given their very different facts. However, the Court finds Vrooman to be on point and instructive.

In Vrooman, the defendant Village of Middleville ("Middleville") was directed by the New York State Department of Health to, inter alia, "submit plans for sewage treatment facilities" to

the State (Vrooman v Vil. of Middleville, 91 AD2d 833, 833 [4th Dept 1982]). To comply with this directive, Middleville retained plaintiff, Morrell Vrooman Engineers ("Vrooman"), to "provide engineering services in the design and planning of the sewage treatment facility" (Id. at p. 834). Vrooman performed these services but Middleville did not pay Vrooman for its work (Id.). At trial, Middleville argued that its agreement with Vrooman was unenforceable because no funds had been appropriated or borrowed to make this payment as required by the Village Law and, moreover, "the Commissioner of Health was not made a party to the contract" as required by the Environmental Conservation Law (Id.). The trial court rendered judgment for plaintiff, holding that "[t]he plaintiff acted in good faith, rendered substantial services to the Village and provided the Village with an approved set of plans for the construction of sewers. The Village should not be permitted to unjustly enrich itself by virtue of any actions taken in excess of its authority" (Vrooman v Vil. of Middleville, 106 Misc 2d 945, 947 [Sup Ct, Herkimer County 1981], affd, 91 AD2d 833 [4th Dept 1982] citing Onondaga County Water Auth. v City of Syracuse, 74 AD2d 733 [4th Dept 1980]).

On appeal, the Fourth Department affirmed this decision. It acknowledged that "a claim against a municipality in quantum meruit will not lie where the original contract is void as contrary to statute or ultra vires" (Id. [internal citations omitted]), but nevertheless held that Vrooman was entitled to recover on a theory of implied contract due to certain exceptional circumstances, specifically that: (1) the plaintiff had entered into the contract in good faith; (2) the municipality possessed the authority to enter into that contract; (3) the contract was not violative of public policy; and (4) the circumstances indicate that if plaintiff was not compensated, the municipality would be unjustly enriched (Id.).

The appellate court further observed that the policy concern underlying the general bar on claims against municipalities seeking recovery under illegal or otherwise void contracts — i.e., "safeguarding the taxpayers' interest against 'extravagance and collusion on the part of public officials' by requiring municipalities to abide by statutory restrictions on their contractual authority" (Id. at 835 citing Corning v Village of Laurel Hollow, 48 NY2d 348, 352 [1979]) — was not present in that case because the work at issue was necessary for the village to comply with a directive from the State (Id.). By contrast, "to absolve the municipality from liability, particularly when it has been significantly benefited by plaintiff's services, would encourage disregard of the statutory safeguards by municipal officials" (Id.).

In this case, plaintiff argues that its complaint sets forth facts which bring this action within the Vrooman exception, inasmuch as it alleges that: the DOE had the authority to contract for the services at issue (as demonstrated by their prior agreement with NYL for these services); plaintiff's provision of the UPK programs satisfied the DOE's obligation under Education Law §4410 to provide integrated SCIS classes; and the DOE would be unjustly enriched if it was excused from paying Adapt for services rendered. The Court agrees and finds Defendant's attempts to distinguish Vrooman unconvincing.

Defendant notes, and plaintiff concedes that, unlike in Vrooman, the parties herein did not have an express written contract governing Adapt's UPK program. However, plaintiff asserts that an implied-in-fact contract existed. An implied-in-fact contract has the same elements as an express contract: "consideration, mutual assent, legal capacity and legal subject matter" which are inferred from the parties' conduct rather than a written agreement (Maas v Cornell Univ., 94 NY2d 87, 93–94 [1999] [internal citations omitted]; see Anonymous v CVS Corp., 188 Misc 2d 616, 625 [Sup Ct, NY County 2001] [internal citations and quotations omitted]). In the Court's view, the

distinction between the written contract in Vrooman and the contract alleged herein created by the parties' conduct is immaterial. Rather, what is important is that, as in Vrooman, plaintiff alleges that an agreement existed and defendant argues that this agreement is unenforceable due to the parties' failure to comply with certain statutory requirements.

Defendant next attempts to distinguish this action from Vrooman by noting that there was no "state directive" which obligated plaintiff to provide the UPK programs. However, the complaint alleges that the UPK services provided by Adapt were a necessary predicate for Adapt to create the integrated classes that New York State is obligated to provide under Education Law §4410. Although the connection between the UPK programs and these integrated classrooms is more attenuated than the relationship between the state directive and the disputed contract in Vrooman (in which the defendant retained plaintiff expressly to satisfy its obligation to submit plans for sewage treatment facilities), this distinction does affect the Court's conclusion. Ultimately, as in Vrooman, the facts here do not implicate the general concern in "safeguarding the taxpayers' interest against 'extravagance and collusion on the part of public officials'" (Vrooman, 91 AD2d at 835 [4th Dept 1982] citing Corning v Village of Laurel Hollow, 48 NY2d 348, 352 [1979]) that underlies the general rule barring recovery on an invalid municipal contract.

Finally, defendant argues that the DOE would not be unjustly enriched by the dismissal of this action because the $784,250.00 sought by Adapt is less than the overpayments made to NYL under DOE's contract with NYL for the provision of special education programs, for which DOE has never been reimbursed. However, defendant has not, at this juncture, established its entitlement to any such repayment, let alone the amount of this allegedly outstanding repayment, and the Court does not credit this unsupported argument.

In light of the foregoing, the Court concludes that under the exception enunciated in Vrooman plaintiff could recover for its alleged damages should it establish the allegations set forth in its complaint.

Accordingly, it is

ORDERED that defendant's motion to dismiss this action is denied; and it is further

ORDERED that plaintiff is directed to serve a copy of this decision and order, with notice of entry, upon defendant within five days of the date of this decision and order; and it is further

ORDERED that within twenty days of the date of this decision order, plaintiff shall serve a copy of this decision and order with notice of its entry upon all parties and upon the Clerk of the Court (60 Centre St., Room 141B) and the Trial Support Office (60 Centre St., Rm. 158M) 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 this court's website at the address www.nycourts.gov/supctmanh).

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4/7/2022
DATE

JUDY H. KIM, J.S.C.

CHECK ONE:	[ ]	CASE DISPOSED		[X]	NON-FINAL DISPOSITION		
	[ ]	GRANTED	[X] DENIED	[ ]	GRANTED IN PART	[ ]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE