

London & Stamford, LLC v A D Renovation Solution Inc.
2022 NY Slip Op 32136(U)
July 5, 2022
Supreme Court, New York County
Docket Number: Index No. 656817/2021
Judge: Laurence Love
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LAURENCE LOVE PART 63M

Justice

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INDEX NO. 656817/2021

LONDON & STAMFORD, LLC,

MOTION DATE 04/01/2022

Plaintiff,

MOTION SEQ. NO. 001

- v -

A D RENOVATION SOLUTION INC., NEW YORK
RENOVATIONS SOLUTIONS CORP, DANIEL LUZON,
DAMIAN KOWALSKI

**DECISION + ORDER ON
MOTION**

Defendants.

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

were read on this motion to/for STRIKE PLEADINGS.

Upon the foregoing documents, it is

The following read on plaintiff's motion for a more definitive statement – CPLR 3024(a), regarding the first and third counterclaims; and to dismiss – CPLR 3211(a)(7), the second counterclaim.

This litigation involves a construction contract at the real property of 130 East 38th Street, New York, NY 10016, with an alleged agreed value of approximately \$380,000. Causes of action include i) breach of contract, ii) unjust enrichment, iii) “negligence/breach of fiduciary duty,” and iv) fraud.

Defendants submitted an answer with counterclaims for i) “defendant NY Renovations entitled to the unpaid sum of \$125,000,” ii) “defendant NY Renovations is due a net balance of \$125,000,” and iii) “defendant NY Renovations filed a Notice Under Mechanic’s Lien Law ... demands judgment in the sum of \$125,000” (see NYSCEF Doc. No. 4).

A review of the answer shows “NY Renovations” and a Verification by Daniel Luzon, “President of defendant” (see NYSCEF Doc. No. 4 P. 7). Per the Request for Judicial Intervention (“RJI”), this court does not see an appearance by London & Stamford LLC, A D Renovation Solution Inc., nor Damian Kowalski (see NYSCEF Doc. No. 11 P. 2).

CPLR 3024(a) Motion to correct pleadings. Vague or ambiguous pleadings. If a pleading is so vague or ambiguous that a party cannot reasonably be required to frame a response he may move for a more definite statement.

Plaintiff’s affirmation in support states, “[t]he first and third counterclaims are so vague and ambiguous ... [i]n particular ... do not contain 1) the date of the alleged contract, 2) the terms of the contract including the time deadlines of the contract, the scope of defendant’s work, and the fees and costs to be charged by defendant, 4) a description of the construction work to be provided by defendant under the alleged contract 5) a description of the type and amount of ‘material’ delivered by defendant under the alleged contract for which defendant has not been paid, 6) the dates and amount of the ‘labor’ provided by defendant under the alleged contract for which defendant has not been paid, 7) the dates and amount of total labor that was performed by defendant, 8) the dates, amounts and type of all the materials were alleged delivered by defendant, 9) the date of any alleged ‘invoices’ that defendant requested payment for alleged ‘work performed,’ 10) the amount of money that defendant requested payment from plaintiff in each of the alleged invoices, 11) the method by which defendant sent the invoices to plaintiff, and 12) a description as to how defendant calculates the amount of money allegedly owed by plaintiff” (see NYSCEF Doc. No. 9 P.2).

Defendants’ affirmation in opposition states, “[h]ere, the first and third counterclaims unequivocally give notice of the exact transaction and the elements under which the

counterclaims were alleged. [T]he work performed and matter in which the plaintiff breach contract (its failure to pay the invoices due under the contract) were all sufficiently alleged in [paragraphs] 15-20 of Defendants' Answer with Counterclaims. Moreover, a copy of the Contract and the unpaid invoices, duly submitted to Plaintiff for payment are indisputably in Plaintiff's possession and are also attached. [C]opies of both the Notice of Lien and the Extension of Lien were attached to the answer with counterclaims." (see NYSCEF Doc. No. 14 Par. 5 – 7, 9).

Defendants' affirmation in opposition continues, "[p]laintiff's motion for dismissal of the unjust enrichment claims at this juncture is premature. There must first be a determination of a valid contract between the parties and a breach of same. In the event the contract is deemed unenforceable in part or in whole, Defendant Ny Renovations has a valid claim for reimbursement of the fair and reasonable value of the labor and material supplied to the Plaintiff. Discovery must first be undertaken in this matter. Plaintiff has not even admitted to the existence of a valid contract under the first counterclaim yet has inexplicably moved for a dismissal of the unjust enrichment claim without providing any documentary evidence in support of its application for dismissal" (see NYSCEF Doc. No. 14 Par. 13).

Defendants submit various "contract and invoices" (see NYSCEF Doc. No. 15).

CPLR 3013. Particularity of statements generally. Statements in a pleading shall be sufficiently particular to give the court and parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved and the material elements of each cause of action or defense.

“The test for determining the sufficiency of a pleading is simply whether the pleading gives notice of the transactions relied upon and the material elements of the causes of action” (see *Van Gaasbeck v. Webatuck Cent. Sch. Dist. No. 1*, 21 N.Y.2d 239 [1967]).

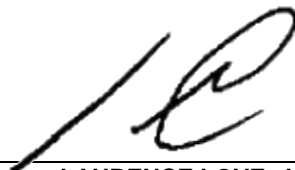
At this juncture the defendants counterclaims are sufficiently pled. The items and issues requested by plaintiff may all be presented within discovery and through the exchange of various documents between the litigants. Upon completion of said discover additional motion practice related to the counter claims maybe warrented.

It is now,

ORDERED that plaintiff’s motion for a more definitive statement as to the first and third counterclaims, CPLR 3024(a), is DENIED; and it is further

ORDERED that plaintiff’s motion to dismiss, CPLR 3211(a)(7), the second counterclaim, is DENIED.

7/5/2022
DATE


LAURENCE LOVE, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: