

**New York & Presbyt. Hosp. v BAM Architectural  
Studio, D.P.C.**

2022 NY Slip Op 34173(U)

December 8, 2022

Supreme Court, New York County

Docket Number: Index No. 650813/2022

Judge: Lyle E. Frank

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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. LYLE E. FRANK PART 11M

Justice

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THE NEW YORK AND PRESBYTERIAN HOSPITAL

Plaintiff,

- v -

BAM ARCHITECTURAL STUDIO, D.P.C.,

Defendant.

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INDEX NO. 650813/2022

MOTION DATE 09/13/2022

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17

were read on this motion to/for DISMISSAL.

Plaintiff THE NEW YORK AND PRESBYTERIAN HOSPITAL ("NYPH") commenced the present action alleging three causes of action against defendant BAM ARCHITECTURAL STUDIO, D.P.C. ("BAM"): (1) Breach of Contract; (2) Defective Design Plans and Design for the Project; and (3) Professional Malpractice. This complaint stems from an agreement between the parties to retain BAM for design and other professional services in connection with the LIC JACX Project ("The project"). That agreement identified this project as involving a new medical facility for Primary Care, Imaging and Orthopedics in Long Island City. BAM agreed to "provide all of the professional services, including normal architectural, structural, mechanical, electrical, landscape and civil engineering services necessary to complete the design and construction of the Project to the satisfaction of" the Project's Owner, which at the time was Weill Cornell Medicine.

Defendant BAM now moves pursuant to CPLR 3211(a)(7) seeking to dismiss plaintiff's Complaint as against BAM for plaintiff's failure to state a cause of action upon which relief can be granted, arguing that plaintiff has failed to adequately plead a breach of contract by failing to provide the actual contract, and that the remaining causes of action are duplicative of the breach

of contract. plaintiff's argument is that the breach of action has been adequately pled, and that the remaining causes of action are alternative to the breach of contract, which the Plaintiff argues is permitted at this stage of the litigation. For the reasons set below, the Court agrees with plaintiff's argument and accordingly denies defendant's motion to dismiss.

### **Discussion**

For the purposes of this motion, the court accepts the allegations in the complaint as true and interprets the complaint liberally (*see Alden*, 159 AD3d at 621-622). Moreover, it gives plaintiff "the benefit of every . . . favorable inference" and "determine[s] only whether the facts as alleged fit within any cognizable legal theory" (*Gottlieb v Wynne*, 159 AD3d 799, 800 [2nd Dept 2018]).

### **Adequate pleadings**

With regards to the adequacy of pleadings in the case of a breach of contract, the Third Department held in *12 Baker Hill Rd. v. Miranti*, 130 A.D.3d 1425, 1426 (3d Dep't 2015) that:

It is well settled that the primary function of a pleading is to apprise an adverse party of the pleader's claim. To fulfill this purpose, a complaint must be sufficiently detailed "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" (CPLR 3013). When examining the facial sufficiency of the complaint, it must be construed liberally, and any technical defects may be ignored in the absence of prejudice to the opposing party. Here, the amended complaint's fourth cause of action identified the parties and the subject property and alleged that defendant agreed to purchase the subject property for \$75,000 and that defendant breached the contract, resulting in damages. Plaintiff was not required to attach a copy of the contract or plead its terms verbatim, and we find that the allegations contained in the amended complaint were sufficient to provide defendant with adequate notice of plaintiff's claim.

Here, plaintiff has quoted verbatim the provisions of the contract that was allegedly breached and specifies how BAM failed to meet its obligations under those provisions. The Court

finds this as sufficient at this stage of litigation, and that plaintiff has adequately pled the breach of contract cause of action. Accordingly, defendant's motion to dismiss is denied with regards to the breach of contract cause of action.

### **Duplicative causes of action**

At the motion to dismiss stage of litigation, it is well-settled that alternative pleadings are allowed. "At this early juncture, we find that plaintiff should be permitted to plead in the alternative (see CPLR 3014)". *Man Advisors, Inc. v. Selkoe*, 174 A.D.3d 435, 101 N.Y.S.3d 843, 844 (2019). Further, "There is no requirement that the pleading explicitly state that those causes of action are pleaded in the alternative or that some are hypothetically applicable only if another cause of action is deemed inapplicable." *Villnave Constr. Servs., Inc. v. Crossgates Mall Gen. Co. Newco, LLC*, 201 A.D.3d 1183, 1185 (3d Dep't 2022).

Here, the crux of BAM's argument concerns the duplicative nature of the causes of action, which this Court finds unpersuasive at this point. Claims pled in a complaint may be potentially duplicative, or even mutually exclusive, but they should not be dismissed prior to an answer and factual development that clearly marks the path most appropriately taken. See, e.g., *May Advisors, Inc. v. Selkoe*, 174 A.D.3d 435 (1st Dep't 2019). The Court has considered defendant's remaining arguments and finds them unavailing. Accordingly, it is hereby

ORDERED and ADJUDGED that defendant's motion to dismiss is denied in its entirety; and it is further

ORDERED that defendant shall answer plaintiff's complaint not more than twenty days following service of this Decision and Order with notice of entry.

  
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**LYLE E. FRANK, J.S.C.**

**12/8/2022**  
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**DATE**

CHECK ONE:  APPLICATION:  CHECK IF APPROPRIATE:	<input type="checkbox"/> CASE DISPOSED <input type="checkbox"/> GRANTED <input type="checkbox"/> SETTLE ORDER <input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION <input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> SUBMIT ORDER <input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> OTHER  <input type="checkbox"/> REFERENCE
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