

Dashing Dan's Plumbing & Heating Inc. v Haricon Inc.
2022 NY Slip Op 35236(U)
November 3, 2022
Supreme Court, Westchester County
Docket Number: Index No. 58802/2019
Judge: David S. Zuckerman
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DISPO Seq 1 Motion and Case

To commence the 30 day statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
DASHING DAN'S PLUMBING & HEATING INC.,

Plaintiff,

-against -

HARICON INC.,

Defendant.

-----X
ZUCKERMAN, J.

DECISION/ORDER

Index No.
58802/2019

The papers filed in NYSCEF as Documents 1 through 37 were read in connection with this motion by Plaintiff, pursuant to CPLR 3212, for summary judgment. Defendant opposes the motion.

FACTS

In a "sub-contract" dated January 24, 2018, Plaintiff agreed to perform certain plumbing-related services for Defendant. Plaintiff asserts that it is owed an additional \$5,000.00 for work that it completed. Defendant claims that the work was not completed and, in any event, was sub-standard.

On June 7, 2019, Plaintiff Dashing Dan's Plumbing & Heating Inc. commenced this action by filing a Summons and Complaint. The Complaint sets forth three causes of action: quantum meruit, account stated, and breach of contract. On July 8, 2019, Defendant Haricon Inc. filed an Answer. In it, Defendant generally denies Plaintiff's claims, asserts eight affirmative defenses and pleads a counterclaim for breach of contract. On October 8, 2019, Plaintiff filed a "Reply to Defendants Answer." In it, Plaintiff makes specific arguments regarding each of the affirmative defenses and denies the allegations in the counterclaim.

DISCUSSION

Pursuant to CPLR §3212(b), a motion for summary judgment "shall be granted if, upon all of papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party." The Court of Appeals has explained that "[s]ummary judgment is designed to expedite all civil cases by eliminating from the Trial Calendar claims which can properly be resolved as a matter of law ... when there is no genuine issue to be resolved at trial, the case should be summarily decided, and any unfounded reluctance to employ the remedy will only serve to swell the Trial

Calendar and thus deny to other litigants the right to have their claims promptly adjudicated" (*Andre v Pomeroy*, 35 NY2d 361, 364 [1974])).

In a summary judgment motion, the movant bears the initial burden of presenting evidence, in competent and admissible form, establishing the absence of any material issues of fact. (*Viviane Etienne Medical Care v Country-Wide Insurance Company*, 25 NY3d 498 [2015]; *Bank of New York Mellon v Gordon*, 171 AD3d 197 [2d Dept 2017]; *Winegrad v New York University Medical Center*, 64 NY2d 851 [1985])). In the event that initial burden is met, the non-moving party must come forward with proof, also in admissible form, that there are material issues of fact which require a trial of the action. (*Alvarez v Prospect Hospital*, 68 NY2d 320 [1986])).

In *Celardo v. Bell*, 222 AD2d 547 [2d Dept 1995], the court stated:

It is axiomatic that summary judgment is a drastic remedy which should only be granted if it is clear that no material issues of fact have been presented. Issue finding, rather than issue determination, is the court's function (*Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395 (1957.)) If there is any doubt about the existence of a triable issue of fact or if a material issue of fact is arguable, summary judgment should be denied (*Museums at Stony Brook v Village of Pachogue Fire Dept.*, 146 AD2d 572 (1989) ...

In analyzing the contrasting factual allegations, the court may not engage in weighing the evidence. Rather, the court must draw all reasonable inferences in favor of the non-moving party. (*Rizzo v. Lincoln Diner Corp.* 215 AD2d 546 [2d Dept 2000]). Then, the court must determine whether "by no rational process could the trier of facts find for the non-moving party" (*Jastrzebski v. N Shore Sch Dist*, 232 AD2d 677 678 [2d Dept 1996]). Where facts are in dispute, there are issues of credibility, or conflicting inferences may be drawn from the evidence, summary judgment will not lie. (*Id.* at 678).

To establish a claim for quantum meruit, Plaintiff must demonstrate "(1) the performance of services in good faith, (2) the acceptance of the services by the person to whom they are rendered, (3) an expectation of compensation therefor, and (4) the reasonable value of the services allegedly rendered" (*Stephan B. Gleich & Assocs. v Gritsipis*, 87 A.D.3d 216, 222 [2d Dept 2011]). "To establish a prima facie case to recover on an account stated, the plaintiff must establish that it submitted invoices and that the defendant received and retained the invoices without objection for an unreasonable period of time" (*Bank of Am., N.A. v Ball*, 188 A.D.3d 974, 974 [2d Dept 2020]). The essential elements in an action for breach of contract "are the existence of a contract, the plaintiff's performance pursuant to the contract, the defendant's

breach of his or her contractual obligations, and damages resulting from the breach" (*Dee v Rakower*, 112 AD3d 204, 209 [2d Dept 2013]; *Elisa Dreier Reporting Corp. v Global Naps Networks, Inc.*, 84 AD3d 122, 127 [2d Dept 2011]).

Here, Plaintiff has satisfied these requirements by providing documents in admissible form that establish, *prima facie*, the elements of each cause of action and damages. Thus, Plaintiff has met its initial burden to demonstrate entitlement to summary judgment.

"Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment 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 v Prospect Hosp.*, 68 NY2d 320, 324 [1986] citing *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). Here, Defendant has set forth allegations of fact which establish material issues for each cause of action. Therefore, Plaintiff's motion for summary judgment must be denied.

Accordingly, upon the foregoing papers, it is

ORDERED that Plaintiff Dashing Dan's Plumbing & Heating Inc.'s

motion, pursuant to CPLR 3212, for summary judgment is denied.

The foregoing constitutes the Opinion, Decision & Order of the Court.

Dated: White Plains, New York
November 3, 2022

A handwritten signature in dark ink, appearing to be 'D. S. Zuckerman', written in a cursive style.

HON. DAVID S. ZUCKERMAN, A.J.S.C.

TO: All parties via NYSCEF