

**County Wide Masonry Corp. v Hudson Meridian  
Constr. Group LLC**

2023 NY Slip Op 30988(U)

March 29, 2023

Supreme Court, New York County

Docket Number: 654485/2022

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH PART 14**

*Justice*

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COUNTY WIDE MASONRY CORP.,  
Plaintiff,

INDEX NO. 654485/2022

MOTION DATE N/A

MOTION SEQ. NO. 001

- v -

HUDSON MERIDIAN CONSTRUCTION GROUP  
LLC, ROSE ASSOCIATES, INC., 440 HAMILTON  
DEVELOPER LLC, BELDEN BRICK SALES & SERVICE,  
INC. D/B/A BELDEN TRI-STATE BUILDING MATERIALS,  
LIBERTY MUTUAL INSURANCE COMPANY OF BOSTON,  
MASSACHUSETTS D/B/A LIBERTY MUTUAL INSURANCE  
COMPANY

**DECISION + ORDER ON  
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32

were read on this motion to/for DISMISS.

Defendants Hudson Meridian Construction Group, LLC, Rose Associates, Inc. 440 Hamilton Developer LLC and Belden Brick Sales & Service, Inc. (collectively, "Movants") move to dismiss the first and third causes of action asserted against Rose Associates, Inc. ("Rose") and 440 Hamilton Developer LLC ("Hamilton"), to dismiss the second and fourth causes of action against Hudson Meridian Construction Group, LLC ("Hudson"), Hamilton and Rose and to dismiss the punitive damages claim. The motion is granted in part and denied in part.

Plaintiff's cross-motion to amend is granted in part and denied in part.

## Background

This action arises out of a construction project in White Plains. Plaintiff alleges it entered into an agreement with Hudson to do masonry work at the premises. The brick was to be delivered by Belden. Plaintiff argues that defendants have withheld payments as there are alleged issues with the bricks.

Hudson was the general contractor and subcontracted with plaintiff. Movants explain that Hudson was hired by Hamilton as part of the underlying project, which involved the construction of a residential apartment building. Hamilton is the owner of the project and Movants assert that Rose is a separate legal entity and has no connection to the project.

Movants contend that the first cause of action for breach of contract against Hamilton and Rose should be dismissed because the contract was solely between plaintiff and Hudson. They argue that there was no privity of contract between plaintiff and the other defendants.

Movants assert that the second claim for quantum meruit should be dismissed because there is a valid contract. They argue that the third claim—to foreclose on a mechanic’s lien—must fail because the lien has been bonded and removed against the property. Movants maintain that the fourth cause of action for tortious interference with prospective economic relations should be dismissed because the complaint did not adequately allege what prospective economic opportunity failed to materialize.

In opposition and in support of its motion to amend, plaintiff seeks to add unjust enrichment claims against Hamilton and Hudson as well as a breach of the implied covenant of good faith and fair dealing against Hudson. Plaintiff agrees to discontinue the action against Rose. Plaintiff also contends, that “as the facts and circumstances of this case continue to be revealed, [plaintiff] will agree to discontinue its causes of action for tortious interference with

economic relations and foreclosure of mechanic's lien" (NYSCEF Doc. No. 26 at 5). Plaintiff also insists it wants to retain its claims for quantum meruit and for punitive damages against Hudson.

In reply, Movants contend that the cross-motion for leave to amend should be denied because the proposed amendments are devoid of merit and are based upon the same alleged wrongs in the amended complaint.

### **Cross-Motion**

The Court begins its analysis with the claims in the cross-motion. "Although CPLR Section 3025(b) provides that leave to amend a complaint shall be freely granted, this Court has held that in determining whether to grant leave to amend the court must examine the underlying merits of the causes of action asserted therein, since, to do otherwise, would constitute a waste of judicial resources" (*Glenn Partition, Inc. v Trustees of Columbia Univ. in City of New York*, 169 AD2d 488, 489, 564 NYS2d 361 [1st Dept 1991] [citation omitted]).

Movants contend that the second (quantum meruit against Hudson) and sixth (quantum meruit against Belden) causes of action in the proposed amended complaint should be dismissed because there is a valid and binding contract between plaintiff and Hudson. Plaintiff says it needs this claim should the contract fail at a later stage and so it should be permitted to run parallel with the breach of contract claim.

The Court dismisses the second cause of action only. There is no dispute that there is a valid contract that forms the basis of the case. That precludes plaintiff's ability to pursue a quantum meruit claim against Hudson (*Nakamura v Fujii*, 253 AD2d 387, 390, 677 NYS2d 113 [1st Dept 1998]). Even though the matter is in its early stages, there is no indication that there is a genuine dispute over the validity of the contract.

However, the Court denies Movants' claim to dismiss the sixth cause of action (the quantum meruit claim against Belden) as Movants did not seek to dismiss this claim in their notice of motion. Although plaintiff sought to amend in their cross-motion, this claim was included in both the amended complaint (the pleading upon which Movants brought this motion) and in the proposed amended complaint. It is improper for Movants to seek dismissal for the first time in reply under these circumstances. However, nothing prevents Movants from seeking this relief as a response to the proposed amended complaint (when plaintiff ultimately files it).

Movants also seek to dismiss the third cause of action for unjust enrichment against Hudson and Hamilton on the ground that there is an express contract with Hudson. The Court agrees—as stated above, there is a valid contract between plaintiff and Hudson and the unjust enrichment claim is duplicative of the breach of contract claim (*GSCP VI EdgeMarc Holdings, L.L.C. v ETC Northeast Pipeline, LLC*, 192 AD3d 454, 456, 144 NYS3d 168 [1st Dept 2021]). There is no basis for an unjust enrichment claim against either the general contractor (Hudson) or the owner (Hamilton), with whom plaintiff did not contract.

The Court also finds that the proposed cause of action for implied breach of good faith and fair dealing against Hudson is also severed and dismissed. “Generally, a breach of the covenant of good faith and fair dealing is a breach of the contract itself. Therefore, a separate cause of action for breach of the covenant cannot be maintained where, as here, it is premised on the same conduct that underlies the breach of contract cause of action and is intrinsically tied to the damages allegedly resulting from a breach of the contract” (*Parlux Fragrances, LLC v S. Carter Enterprises, LLC*, 204 AD3d 72, 91-92, 164 NYS3d 108 [1st Dept 2022]).

The Court finds that the allegations in the proposed amended complaint for this cause of action are intrinsically tied to the damages from the breach of contract. That plaintiff

characterizes the breaching of the agreement as "malicious" and "calculating" does not create a basis for a separate cause of action.

The Court severs and dismisses plaintiff's demand for punitive damages as "[t]here is no evidence of any egregious or morally reprehensible conduct, or any of the other extreme aggravating factors which would warrant such relief" (*Rudolph v Jerry Lynn, D.D.S., P.C.*, 16 AD3d 261, 263, 792 NYS2d 410 [1st Dept 2005]). The allegations relating to the demand for punitive damages in the proposed amended complaint do not constitute egregious or morally reprehensible conduct. Plaintiff contends that defendants intentionally failed to provide plaintiff with direction about the brick work in order to induce a breach of contract claim in their favor, as part of an effort to recuperate losses to due to unrelated delays. Assuming that is true (as the Court must on a motion to dismiss), that does not rise to the level of conduct to justify punitive damages.

### **Remaining Claims**

The remaining causes of action to be analyzed are the first cause of action for breach of contract against Hamilton as well as the fourth cause of action alleged against Hudson, Rose, and Hamilton.

The Court dismisses the breach of contract claim against Hamilton as it is undisputed that the contract was solely with Hudson.

The Court also dismisses the fourth cause of action for tortious interference with prospective economic relations as plaintiff removed this cause of action in its proposed amended pleading.


Accordingly, it is hereby

ORDERED that defendants Hudson Meridian Construction Group, LLC, Rose Associates, Inc. 440 Hamilton Developer LLC and Belden Brick Sales & Service, Inc.’s motion to dismiss is granted to the extent that the first and third causes of action asserted against Rose Associates, Inc. and 440 Hamilton Developer LLC and to dismiss the second and fourth causes of action against Hudson Meridian Construction Group, LLC, as well as the claim for punitive damages are severed and dismissed; and it is further

ORDERED that plaintiff’s cross-motion to amend is granted in part; however, the second, third, fourth and the punitive damages are severed and dismissed from the proposed amended complaint; and it is further

ORDERED that plaintiff shall upload an amended complaint conforming to this decision to NYSCEF on or before April 19, 2023 and defendants shall respond pursuant to the CPLR.

Conference: June 15, 2023 at 11:30 a.m. By June 8, 2023, the parties are directed to upload 1) a stipulation about discovery signed by all parties, 2) a stipulation of partial agreement that identifies the areas in dispute or 3) letters explaining why no agreement could be reached. Based on these submissions, the Court will assess whether an in-person appearance is required. The failure to upload anything by June 8, 2023 will result in an adjournment of the conference.

<u>3/29/2023</u> <b>DATE</b>	 <b>ARLENE P. BLUTH, J.S.C.</b>			
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
			<input type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE