

75 First Ave. Club LLC v United Glass Sys. Corp.

2023 NY Slip Op 31420(U)

April 27, 2023

Supreme Court, New York County

Docket Number: Index No. 652658/2022

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
COUNTY OF NEW YORK: PART 14

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75 FIRST AVENUE CLUB LLC,	INDEX NO. <u>652658/2022</u>
Plaintiff,	MOTION DATE <u>03/30/2023</u>
- v -	MOTION SEQ. NO. <u>002</u>
UNTED GLASS SYSTEMS CORP., UNITED GLASS SYSTEMS, METAL YAPI INC., METAL YAPI USA CORP., METAL YAPI NORTH AMERICA, LLC, SAFTI FIRST	DECISION + ORDER ON MOTION
Defendant.	
-----X	

HON. ARLENE P. BLUTH:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 17, 18, 19, 20, 21, 22, 26, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54
were read on this motion to/for DISMISSAL.

The motion by defendant Metal Yapi to dismiss plaintiff's claims for joint venture liability and breach of implied and express warranties is denied.

Background

This case arises out of a contractual dispute after faulty glass panels were installed in a residential building owned by plaintiff. After installation, the glass became distorted and allegedly looked like a "fun house." Plaintiff initially contracted with United Glass Systems to install the 168 glass panels at 75 First Avenue, New York, New York. United Glass subsequently contracted with Safti First to obtain the glass panels for the project. United Glass then entered into an agreement with Metal Yapi Holding A.S., based in Turkey, to provide curtain wall systems for the project. Safti First admitted the glass was faulty and assisted in replacing the glass panels, allegedly at plaintiff's expense. Plaintiff brought this action to recover damages for the cost of replacing the glass.

Metal Yapi (named in this action as Metal Yapi Inc., Yapi USA Corp., and Metal Yapi North America) now moves to dismiss plaintiff's claims against it for joint venture liability and breach of warranty, contending that it never contracted with plaintiff and was not involved in the glass panel project. Metal Yapi contends that any claims for breach of express or implied warranty should be dismissed because there is no contract between Metal Yapi and plaintiff. Additionally, Metal Yapi argues plaintiff failed to state a claim for joint venture liability as plaintiff offers no evidence of the existence of a joint venture and also failed to bring a claim against the joint venture itself. Metal Yapi maintains that plaintiff is improperly suing the individuals involved in the alleged joint venture. In support of its claims, Metal Yapi relies on the affidavit of the president and sole director of the Metal Yapi defendants.

In opposition, plaintiff asserts that the Purchase Order for the defective glass panels contained the name "United Glass Metal Yapi," thus the documentary evidence does not demonstrate that Metal Yapi had no involvement in the project. Plaintiff further argues that the warranty issued by "United Glass Metal Yapi" failed in its essential purpose because it will force plaintiff to suffer a \$3 million loss due to its having to replace the faulty glass panels. Because Safti First admitted the panels were faulty, plaintiff contends that United Glass Metal Yapi should not be able to hide behind a limited repair and replace warranty. In anticipation of Metal Yapi's reply, plaintiff also alleges that Metal Yapi breached the duty of good faith and fair dealing as there was an understanding among all the parties that the replacement of the glass would occur under warranty and not leave plaintiff with the damages alleged. Finally, plaintiff contends it adequately alleged the existence of a joint venture, but requests leave to amend the complaint in the alternative so that the caption can correctly reflect the joint venture title. Plaintiff, however, did not make a motion to amend and so that request is a nullity.

In reply, Metal Yapi repeats that it did not issue an express or implied warranty. Metal Yapi argues the Purchase Order submitted by plaintiff as proof of any contractual obligations between the parties includes Metal Yapi's name because someone mistakenly used a letterhead that reads "United Glass Metal Yapi". Metal Yapi further maintains no joint venture existed between United Glass and Metal Yapi on this project, arguing the contract submitted by plaintiff unequivocally establishes that there is no contractual privity between Metal Yapi and plaintiff. Moreover, Metal Yapi asserts that there is no proof of any sharing in losses or profits between Metal Yapi and United Glass that would suggest the existence of a joint venture. According to Metal Yapi, the purchase order was signed by United Glass, billing and price quotes were addressed to United Glass, and plaintiff's shareholder admitted to contracting with United Glass in his affidavit, thus entitling Metal Yapi to dismissal of plaintiff's claims.

Discussion

"On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction. We accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory. Under CPLR 3211(a)(1), a dismissal is warranted only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law" (*Leon v Martinez*, 84 NY2d 83, 87-88, 614 NYS2d 972 [1994]).

The Court denies Metal Yapi's motion to dismiss the claims for joint venture liability and breach of implied and express warranties. Plaintiff submitted a copy of a purchase order with United Glass Metal Yapi as the letterhead (NYSCEF Doc. No. 42 at 4). and a six-year warranty with the same letterhead at the top (*id.* at 6). The warranty lists United Glass Metal Yapi as the acronym UGMY and clearly notes the project is located at 75 1st Avenue, New York, New York.

The Court cannot ignore that the warranty form was updated with the project information, but the letterhead somehow was not. Moreover, an affidavit from Metal Yapi is not documentary evidence that utterly refutes plaintiff's allegations (*see Mamoon v Dot Net Inc.*, 135 AD3d 656, 658, 25 NYS3d 85 [1st Dept 2016] [holding that affidavits do not constitute documentary evidence]). Discovery is needed as to whether these parties were engaged in a joint venture. Based on this record, Metal Yapi's self-serving contentions that it had no role in the project are not a basis to dismiss. The Court is unable, as counsel for Metal Yapi suggested at oral argument, to consider the entire record and selectively disregard the inclusion of Metal Yapi on the purchase order and the warranty. It may be that discovery reveals that Metal Yapi was not in a joint venture with United Glass on this project and that someone used an old letterhead (twice), but the Court cannot simply make that determination on a motion to dismiss based on Metal Yapi's self-serving written testimony.

The exhibits submitted by plaintiff clearly demonstrate that plaintiff was given a 6-year warranty by UGMY (the purported joint venture). The existence of contractual privity between Metal Yapi and plaintiff is, on this record, a question of fact.

Accordingly, it is hereby

ORDERED that the motion by Metal Yapi to dismiss plaintiff's claims for joint venture liability and breach of implied and express warranty is denied and it is directed to answer pursuant to the CPLR.

Next Conference: July 18, 2023 at 11:00 a.m.

By July 11, 2023, the parties shall 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 about discovery could be reached. The Court will then assess

whether a conference is necessary (i.e., if the parties agree, then an in-person conference may not be required).

If nothing is uploaded by July 11, 2023, the Court will adjourn the conference.



<u>4/27/2023</u>				<u>ARLENE P. BLUTH, J.S.C.</u>
DATE				
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE