

**CM & Assoc. Constr. Mgt. LLC v  
Admiral A.C. Corp.**

2023 NY Slip Op 31976(U)

June 12, 2023

Supreme Court, New York County

Docket Number: Index No. 651872/2020

Judge: Arlene P. Bluth

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SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF NEW YORK: PART 14

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CM AND ASSOCIATES CONSTRUCTION MANAGEMENT LIMITED LIABILITY COMPANY  Plaintiff,  - v -  ADMIRAL AIR CONDITIONING CORP.,  Defendant.	<table border="0"> <tr> <td style="padding-right: 10px;"><b>INDEX NO.</b></td> <td style="border-bottom: 1px solid black; padding-left: 10px;">651872/2020</td> </tr> <tr> <td style="padding-right: 10px;"><b>MOTION DATE</b></td> <td style="border-bottom: 1px solid black; padding-left: 10px;">05/16/2023</td> </tr> <tr> <td style="padding-right: 10px;"><b>MOTION SEQ. NO.</b></td> <td style="border-bottom: 1px solid black; padding-left: 10px;">002</td> </tr> </table> <p style="text-align: center;"><b>DECISION + ORDER ON MOTION</b></p>	<b>INDEX NO.</b>	651872/2020	<b>MOTION DATE</b>	05/16/2023	<b>MOTION SEQ. NO.</b>	002
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HON. ARLENE P. BLUTH:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108

were read on this motion to/for SUMMARY JUDGMENT.

Defendant’s motion for summary judgment is denied.

**Background**

This case arises out of a dispute involving a leaking HVAC system. Plaintiff, a general contractor, hired defendant to provide the labor, materials, and equipment required to install an HVAC system at a construction project in 2013. The question in this case is what caused the leak. Plaintiff blames defendant for not following industry standards while defendant insists it was simply following the plans designed by plaintiff and the building’s engineers.

Defendant moves for summary judgment to dismiss the complaint. It claims that that plaintiff changed the plans for the installation of the HVAC unit without consulting defendant. Specifically, defendant argues that plaintiff decided it wanted an air-cooled system instead of a water-cooled system. The original plans required defendant to use expansion joints in the

installation of the water pumps. These joints are used to compensate for changing temperature conditions and how metal pipes can expand and contract.

Defendant maintains that when the plans were changed, the new specifications did not provide for the use of the expansion joints. It argues that it did not have discretion to deviate from those plans. Defendant blames the general contractor (plaintiff) and the design engineers for removing the requirement to use expansion joints, which allegedly led to the leak at issue.

It argues that the HVAC unit was not approved for the size of plaintiff's building and that the presence of a representative of the HVAC company during installation was unusual, which suggests that it knew the installation was out of the ordinary. According to defendant, the type of HVAC unit used in the installation was only approved in circumstances where the vertical run of piping would be less than 140 feet. Here, the run would exceed 300 feet. Defendant argues that the decision to install an HVAC unit under these circumstances caused the leak, not defendant's actions. Moreover, defendant argues at the time of installation, there was no industry standard requiring expansion joints on this type of installation.

In opposition, plaintiff complains that defendant used plastic zip ties in lieu of sturdy expansion joints and performed a shoddy installation job. Plaintiff argues that industry standards and the plan specifications required that defendant use copper riser clamps to secure the vertical pipes and to properly secure certain metal brackets. It insists that defendant's failure to comply with these requirements caused excessive strain on the elbow joints of the pipes, which caused them to crack and leak.

In reply, defendant contends that plaintiff created plans for the HVAC installation without consulting defendant. Defendant argues that plaintiff and its design engineers made the poor decision to use the HVAC unit under parameters for which the unit was not designed.

Defendant claims that plaintiff is attempting to blame it for the miscalculations of plaintiff's design engineers.

### **Discussion**

To be entitled to the remedy of summary judgment, the moving party "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact from the case" (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 NYS2d 316 [1985]). The failure to make such a prima facie showing requires denial of the motion, regardless of the sufficiency of any opposing papers (*id.*). When deciding a summary judgment motion, the court views the alleged facts in the light most favorable to the non-moving party (*Sosa v 46th St. Dev. LLC*, 101 AD3d 490, 492 [1st Dept 2012]).

Once a movant meets its initial burden, the burden shifts to the opponent, who must then produce sufficient evidence to establish the existence of a triable issue of fact (*Zuckerman v City of New York*, 49 NY2d 557, 560, 427 NYS2d 595 [1980]). The court's task in deciding a summary judgment motion is to determine whether there are bonafide issues of fact and not to delve into or resolve issues of credibility (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 505, 942 NYS2d 13 [2012]). If the court is unsure whether a triable issue of fact exists, or can reasonably conclude that fact is arguable, the motion must be denied (*Tronlone v Lac d'Amiante Du Quebec, Ltee*, 297 AD2d 528, 528-29, 747 NYS2d 79 [1st Dept 2002], *affd* 99 NY2d 647, 760 NYS2d 96 [2003]).


The motion for summary judgment is denied. Plaintiff raised a triable issue of fact as to how the HVAC unit began leaking. Plaintiff's theory, established through the affidavit of its Director of Mechanical, Electrical and Plumbing, Mr. Bahnan, (NYSCEF Doc. No. 93) raises

numerous issues of fact that prevent the Court from granting the instant motion. Mr. Bahnan contends that defendant failed to follow certain plan specifications that caused the leak at issue, including that defendant did not use certain clamps or properly secure metal brackets.

Defendant’s assertion that it was merely a subcontractor who did its job and that an engineer hired by the building had an obligation to notice an allegedly defective installation does not compel the Court to grant defendant’s motion. The Court cannot credit one account of the cause of the leak on a motion for summary judgment. It may be that defendant persuades a fact finder that it merely did what it was supposed to do and it was plaintiff’s faulty planning that caused the leak. Of course, the jury could also believe plaintiff’s theory that defendant’s shoddy installation caused the leak or it could conclude something else. But the Court cannot reach any conclusion on this record.

Accordingly, it is hereby

ORDERED that defendant’s motion for summary judgment is denied.

<u>6/12/2023</u> <b>DATE</b>			 <hr/> <b>ARLENE P. BLUTH, J.S.C.</b>
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> OTHER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> REFERENCE