

Seaport Mgt. Dev. Co., LLC v Shop Architects, P.C.

2023 NY Slip Op 32105(U)

June 25, 2023

Supreme Court, New York County

Docket Number: Index No. 657263/2019

Judge: Andrea Masley

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

-----X

SEAPORT MANAGEMENT DEVELOPMENT COMPANY,
LLC,

Plaintiff,

- v -

SHOP ARCHITECTS, P.C., HUNTER ROBERTS
CONSTRUCTION GROUP, LLC, SCHNEIDER ELECTRIC
SYSTEMS USA, INC.,

Defendants.

INDEX NO. 657263/2019

MOTION DATE N/A, N/A

MOTION SEQ. NO. 014 015

**DECISION + ORDER ON
MOTION**

-----X

SHOP ARCHITECTS, P.C.

Plaintiff,

-against-

SCHNACKEL ENGINEERS, INC.

Defendant.

Third-Party
Index No. 595060/2020

-----X

HUNTER ROBERTS CONSTRUCTION GROUP, LLC

Plaintiff,

-against-

B&G ELECTRICAL CONTRACTORS OF NEW YORK

Defendant.

Second Third-Party
Index No. 595178/2020

-----X

HUNTER ROBERTS CONSTRUCTION GROUP, LLC

Plaintiff,

-against-

ENCLOS CORP.

Defendant.

Third Third-Party
Index No. 595713/2020

-----X

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 014) 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 567

were read on this motion to/for

SUMMARY JUDGMENT(AFTER JOINDER)

The following e-filed documents, listed by NYSCEF document number (Motion 015) 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 562, 563, 564, 565, 566

were read on this motion to/for

JUDGMENT - SUMMARY

Upon the foregoing documents, it is

In motion seq. no. 014, defendant SHoP Architects, P.C. (SHoP) moves, pursuant to CPLR 3212, for summary judgment (1) dismissing plaintiff's claim for breach of the Architecture Services Agreement (ASA) (Count 1) on the basis that plaintiff lacks standing as well as plaintiff's claim for damages of \$12.8 million due to lost usage and (2) on SHoP's counterclaim for an account stated. In motion seq. no. 015, plaintiff moves, pursuant to CPLR 3212, for summary judgment.

On the record on March 28, 2023, the court granted SHoP's motion on its counterclaim for an account stated but denied the motion as to dismissing plaintiff's breach of the ASA on standing grounds. As to the portion of the motion seeking attorneys' fees in connection with the account stated counterclaim, the motion is granted. (See NYSCEF 54, ASA ¶ 18.6 [provision permitting attorneys' fees and costs to prevailing party].) As to the portion of the motion seeking to dismiss plaintiff's claim for damages for lost usage, the motion is denied.

SHoP argues that plaintiff cannot prove damages for lost usage of rental space with reasonable certainty. SHoP asserts that an expert is required to ascertain these damages, and plaintiff failed to retain one. While expert testimony is required "[w]here a

factual issue transcends the realm of knowledge that lay persons possess,” (*Viacom Intl. v Midtown Realty Co.*, 193 AD2d 45, 55 [1st Dept 1993] [citation omitted]), that is not the case here. Plaintiff submits the affidavit of George Giaquinto, Senior Vice President of Development of The Howard Hughes Corporation, who details how plaintiff calculated these damages and came up with the amount of pro forma rent for the space at issue. (NYSCEF 550, Giaquinto aff ¶¶ 15-22.) As a Pier 17 executive, Giaquinto has the requisite knowledge to testify as to the lost value of Pier 17 and the calculations he relies on. Thus, an expert is not required and the lack of one does not foreclose of plaintiff’s claim. (*Family Operating Corp. v Young Cab Corp.*, 129 AD3d 1016, 1018 [2d Dept 2015] [citations omitted] [holding that plaintiff needs only a “reasonably reliable foundation upon which to calculate [its] damages]; see also *Ashland Mgt. v Janien*, 82 NY2d 395, 403 [1993] [“Damages resulting from the loss of future profits are often an approximation. The law does not require that they be determined with mathematical precision. It requires only that damages be capable of measurement based upon known reliable factors without undue speculation.”].) SHoP will have the opportunity to cross examine Giaquinto at trial and challenge his assessment of damages.

As to SHoP’s argument that plaintiff does not own the property, and therefore, is not entitled to these damages, SSSLP’s assignment to plaintiff resolves this issue. (See NYSCEF 575, tr. at 81:12-14 [oral argument] [“And the problem is the damages and they fixed that when they got the assignment albeit years later.”].) As to whether these damages were contemplated by the parties when they entered into the APA, an issue of fact exists, particularly where SSSLP’s assignment to plaintiff happened after the APA was entered into. Finally, SHoP’s arguments that these damages do not account for

costs or restored space, does not foreclose damages for lost usage. Any damages awarded would be reduced if the factfinder accepts SHoP's argument.

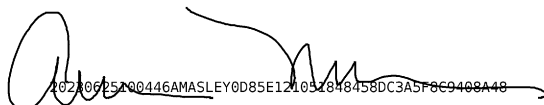
ORDERED that SHoP's motion for summary judgment is granted, in part, on SHoP's counterclaim for an account stated and attorneys' fees and costs in connection with that counterclaim, and denied as to plaintiff's standing; and it is further

ORDERED that SHoP shall submit an affirmation of services and invoices within 10 days of the date of this order or waived (email and e-file); and it is further

ORDERED that SHoP is directed to submit a judgment within 10 days of the date of this order in Microsoft Word format or waived (email and e-file); and it is further

ORDERED that plaintiff's motion is denied; and it is further

ORDERED that the parties shall review the Part 48 Trial Procedures and appear for a Trial Scheduling Conference on August 1, 2023 at 12:30 pm.



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6/25/2023

DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE