

**Manda Intl. Corp. v Red Hook 160 LLC**

2023 NY Slip Op 33126(U)

August 25, 2023

Supreme Court, Kings County

Docket Number: Index No. 531163/2022

Judge: Leon Ruchelsman

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL PART 8

-----X  
MANDA INTERNATIONAL CORP.,

Plaintiff,

Decision and order

- against -

Index No. 531163/2022

RED HOOK 160 LLC, PHILADELPHIA INDEMNITY  
INSURANCE COMPANY, and JOHN DOES 1-1,

Defendants,

August 25, 2023

-----X  
PRESENT: HON. LEON RUCHELSMAN

Motion Seq. #1

The defendants have moved pursuant to CPLR §3211 seeking to dismiss the complaint. The plaintiff has opposed the motion. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

As recorded in prior orders, on December 4, 2019 the plaintiff was hired by the defendant as a construction manager to complete a construction project located at 160 Imlay Street in Kings County. The parties entered into a Construction Management Agreement, referred to as the CM Agreement and it provided a guaranteed maximum price of \$2,064,500. Further, the CM Agreement contained exhibits that delineated work to be performed by Strikeforce Mechanical Corp. The complaint alleges that the plaintiff submitted invoices for payment and that the defendant did not fully pay all the invoices. Consequently, on November 5, 2020 the plaintiff filed a mechanic's lien in the amount of \$1,595,309.25. Further, the plaintiff asserts there are other

fees owed and seeks recovery of \$2,325,881.53. The complaint alleges causes of action for breach of contract, account stated, to foreclose the mechanic's lien, quantum meruit and a declaratory judgement. The defendant has moved seeking to dismiss the complaint on the grounds the agreement was assigned to another entity, namely Churchill 160 Imlay Lender LLC [hereinafter Churchill] and that any action to recover any payments should be directed to that assignee. The plaintiff, as noted, argues the motions should be denied.

#### Conclusions of Law

It is well settled that upon a motion to dismiss the court must determine, accepting the allegations of the complaint as true, whether the party can succeed upon any reasonable view of those facts (Ripa v. Petrosyants, 203 AD3d 768, 160 NYS3d 658 [2d Dept., 2022]). Further, all the allegations in the complaint are deemed true and all reasonable inferences may be drawn in favor of the plaintiff (BT Holdings, LLC v. Village of Chester, 189 AD3d 754, 137 NYS2d 458 [2d Dept., 2020]). Whether the complaint will later survive a motion for summary judgment, or whether the plaintiff will ultimately be able to prove its claims, of course, plays no part in the determination of a pre-discovery CPLR §3211 motion to dismiss (see, Redwood Property Holdings, LLC v. Christopher, 211 AD3d 758, 177 NYS3d 895 [2d Dept., 2022]).

The assignment entered into between the owner and Churchill

states that "Contractor shall look only to the estate and interest, if any, of Lender in the Property for the satisfaction of Contractor's remedies for the collection of a judgment (or other judicial process) requiring the payment of money in the event of any default by Lender as "Owner" under the Construction Management Agreement or under this Assignment, and no other property or assets of Lender shall be subject to levy, execution or other enforcement procedure for the satisfaction of Contractor's remedies under or with respect to the Construction Management Agreement, the relationship of the "Owner" and "Construction Manager" under the Construction Management Agreement or any claim arising under this Agreement" (see, Assignment of Construction Management Agreement and Subordination of Construction Management Fees, ¶16 [NYSCEF Doc. No. ¶17]). The above language specifically states the owner remains liable for any claims. Indeed, this exclusion of liability comports with the well established rule that "an assignment does not release the assignor of its obligations under the assigned contract" (see, Mandel v. Fischer, 205 AD2d 375, 613 NYS2d 381 [1<sup>st</sup> Dept., 1994]). Thus, the assignment agreement only assigned the benefits of the construction agreement and not any of its liabilities.

The defendant argues that "pursuant to New York law, when a contracting party consents to the assignment of the contract by


the other party and accepts the assignee in place of the assignor, the assignor is relieved from its continuing liability under the contract. Therefore, RH 160, as assignor, is relieved of its continuing liability under the CM Agreement and Plaintiff must assert its claims against the true counterparty to the CM Agreement - Churchill" (see, Memorandum in Support, page 4 [NYSCEF Doc. No. 12]). However, the defendant failed to cite any cases in support of that broad proposition. In fact, that assertion is contradicted by numerous cases of the past one hundred years that have held otherwise (see, Rosenthal Paper Company v. National Folding Box & Paper Company, 226 NY 313, 226 NY 313 [1919] where the court held concerning an assignor that "the assignment did not absolve him from its obligations. Resort could still be made to him for the stipulated protection or damages for a breach"). Therefore, Manda may pursue claims against the defendants including the owner of the property.

Consequently, the motion seeking to dismiss the action is denied.

So ordered.

ENTER:

DATED: August 25, 2023  
Brooklyn N.Y.

  
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Hon. Leon Ruchelsman  
JSC