

Valcon Constr. Indus. v Soho Props., Inc.

2023 NY Slip Op 33498(U)

October 5, 2023

Supreme Court, New York County

Docket Number: Index No. 650228/2023

Judge: Lyle E. Frank

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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. LYLE E. FRANK PART 11M

Justice

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VALCON CONSTRUCTION INDUSTRIES

Plaintiff,

- v -

SOHO PROPERTIES, INC.,

Defendant.

-----X

INDEX NO. 650228/2023

MOTION DATE 08/01/2023

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing reasons, Plaintiff's motion is granted in part and denied in part.

Background

This action concerns an agreement plaintiff ("Valcon") alleges it entered into with the defendant ("Soho") for construction management services on two adjacent properties, 45 Park place, New York, NY and 51 Park Place, New York, NY. The parties do not dispute that there is a contract between the parties for services rendered at 51 Park Place, however, defendant refutes plaintiff's allegation that the agreement extended to work on 45 Park Place. Plaintiff contends that while there is no written agreement with regard to 45 Park Place, such agreement was made and understood by the parties. Plaintiff alleges that while defendant paid some invoices, it failed to pay a number of invoices sent from December 11, 2018, to May 28, 2019. As such plaintiff seeks to recover the balance of these invoices, totaling \$80,784.000.

Plaintiff moves to amend the caption of its complaint to substitute the original named plaintiff "Valcon Construction Industries" for "Valcon Construction Advisors" and for summary judgment pursuant to CPLR § 3212 as to its cause of action for an account stated. Plaintiff

asserts it is entitled to summary judgment on the basis that defendant paid previous invoices to plaintiff, defendant received the outstanding invoices over five years ago, and did not object to the invoices. In opposition, defendant argues summary judgment is not appropriate because although it is uncontested it had an agreement with plaintiff for work to be performed at 51 Park Place, there is no such agreement as it pertains to 45 Park Place. Moreover, defendant argues while the previous invoices it paid list 51 Park Place, the outstanding invoices list 45 Park Place, and are therefore the invoices alone not prove defendant's obligation to pay.

Standard of Review

An application for summary judgment pursuant to CPLR § 3212 “must make a prima facie showing of entitlement to judgement as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact.” *See Alvarez v Prospect Hosp.*, 68 N.Y.2d 320 [1986]; *see also Zuckerman v. New York*, 49 N.Y.2d 557, 404 N.E.2d 718 (1980). “Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action.” *Id.* “[B]ald, conclusory assertions or speculation and ‘[a] shadowy semblance of an issue’ are insufficient to defeat summary judgment. *See Stonehill Capital Mgt. LLC v. Bank of the W.*, 28 N.Y.3d 439, 448 (2016).

Discussion

With respect to plaintiff's request to amend the caption as “Valcon Construction Advisors” plaintiff's motion is granted as there has been no showing that prejudice would result. With respect to plaintiff's motion for summary judgement on its account stated claim, the Court

finds plaintiff has failed to establish a prima facie showing of entitlement to judgment as a matter of law.

Plaintiff argues the Court should grant summary judgment on the grounds that the invoices it sent to the defendant were not disputed and defendant paid its previous invoices. Plaintiff asserts this establishes an undisputable balance owed to it by defendant. Yet, while it is undisputed that the parties had a contract for work on the premises of 51 Park Place, there is a dispute as to whether there was an agreement between the plaintiff and defendant for 45 Park Place. This creates a genuine dispute as to whether defendant is liable for the outstanding invoices.

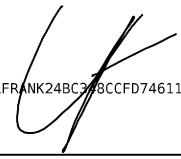
In its reply plaintiff argues the contract which lists 51 Park Place was intended to cover 45 Park Place as well, and defendant is attempting “to distinguish between Defendant’s corporate entities in order to insert doubt into the proper parties to the lawsuit.” However, the Court must view the facts in the light most favorable to the nonmoving party. Thus, whether the defendant is the correct entity and whether there was an agreement for the services invoiced are questions of fact which exist at present.. Thus, plaintiff has failed to establish its prima facie burden to establish it is entitled to summary judgment as to the account stated claim.

Accordingly, it is hereby,

ORDERED that plaintiff’s motion to amend its complaint is granted and the Clerk of the Court shall amend the caption to have the plaintiff now read “Valcon Construction Advisors”; and it is further

ADJUDGED that the motion for summary judgment is denied.

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10/5/2023

DATE

LYLE E. FRANK, 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