

**City of New York v Steven Holl Architect, P.C.**

2023 NY Slip Op 34180(U)

December 1, 2023

Supreme Court, New York County

Docket Number: Index No. 451306/2023

Judge: Louis L. Nock

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT:** HON. LOUIS L. NOCK **PART** **38M**

*Justice*

-----X

THE CITY OF NEW YORK,  
  
Plaintiff,

**INDEX NO.** 451306/2023

**MOTION DATE** 11/02/2023

**MOTION SEQ. NO.** 001

- v -

STEVEN HOLL ARCHITECT, P.C., STEVEN HOLL ARCHITECTS, STEVEN HOLL, and CHRISTOPHER McVOY,

**DECISION + ORDER ON MOTION**

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document numbers (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16

were read on this motion to DISMISS.

LOUIS L. NOCK, J.

Upon the foregoing documents, the motion is granted without opposition, for the reasons set forth in the moving papers (NYSCEF Doc. Nos. 5, 9, 14) and the exhibits attached thereto, in which the court concurs, as summarized herein.

In this action for breach of contract; professional malpractice; and personal liability as to shareholders of a professional corporation pursuant to Business Corporation Law § 1505(a), plaintiff City of New York (“plaintiff”) seeks to recover damages from defendants Steven Holl Architect, P.C., Steven Holl Architects (together, “SHA”), Steven Holl (“Holl”), and Christopher McVoy (“McVoy”). Holl and McVoy are shareholders in SHA. SHA was contracted by plaintiff to design the Hunters Point Library as part of the Queens Borough Public Library. Plaintiff, the Library, and the Library’s board of trustees were later sued by nonparties Tanya Jackson and the Center for Independence of the Disabled, New York, in an action captioned *Jackson, et al. v Queens Borough Public Library, et al.*, pending in the United States District

Court for the Eastern District of New York (No. 19-cv-06656) (the “*Jackson Action*”), in which the plaintiffs alleged that the design of the Hunters Point Library is in violation of Titles II and III of the Americans with Disabilities Act (“ADA”) (42 USC §§ 12101, *et seq.*), Section 504 of the Rehabilitation Act (29 USC §§ 701, *et seq.*), and the New York City Human Rights Law (“NYCHRL”) (NYC Administrative Code §§ 8-101, *et seq.*).

Plaintiff sues defendants herein for breach of contract; contractual indemnification; professional malpractice; and personal liability as to Holl and McVoy pursuant to Business Corporation Law § 1505(a). Defendants now move to dismiss the first cause of action for breach of contract, third cause of action for indemnification, fourth cause of action for professional malpractice, and the fifth and sixth causes of action brought pursuant to Business Corporation Law § 1505(a). At this time, defendants do not seek dismissal of the second cause of action for breach of contract. The motion is unopposed.

“On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction” (*Leon v Martinez*, 84 NY2d 83, 87 [1994]). “[The court] accept[s] the facts as alleged in the complaint as true, accord[ing] plaintiff the benefit of every possible favorable inference, and determin[ing] only whether the facts as alleged fit within any cognizable legal theory” (*id.* at 87-88). Ambiguous allegations must be resolved in plaintiff’s favor (*JF Capital Advisors, LLC v Lightstone Group, LLC*, 25 NY3d 759, 764 [2015]). “The motion must be denied if from the pleadings’ four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law” (*511 West 232nd Owners Corp. v Jennifer Realty Co.*, 98 NY2d 144, 152 [2002] [internal citations omitted]). “[W]here ... the allegations consist of bare legal conclusions, as well as factual claims either inherently incredible or flatly

contradicted by documentary evidence, they are not entitled to such consideration” (*Ullmann v Norma Kamali, Inc.*, 207 AD2d 691, 692 [1st Dept 1994]).

The causes of action that defendants seek to dismiss all seek, in effect, to indemnify plaintiff for all of its damages in the *Jackson* Action. However, such indemnity is not available for claims under the ADA and the Rehabilitation Act, and, therefore, state law claims allowing plaintiff to shift its nondelegable liability under those statutes are barred (*Equal Rights Ctr. v Niles Bolton Assoc.*, 602 F3d 597, 602 [4th Cir 2010]; *Feltenstein v City School Dist. of New Rochelle*, 2015 WL 10097519, \*3 [SDNY Dec. 18, 2015, No. 14-cv-7494 (CS)] [“The City is correct that no right to indemnification or contribution exists under New York common law for actions brought under the ADA or Rehabilitation Act”]). To the extent these causes of action all seek to indemnify plaintiff for its damages suffered as a result of the *Jackson* Action’s NYCHRL claims, courts apply the protections of the NYCHRL even more liberally than comparable federal statutes such as the ADA and the Rehabilitation Act (*see Makinen v City of N.Y.*, 30 NY3d 81, 87 [2017]). Accordingly, the same principles that would bar such claims with respect to the underlying ADA and Rehabilitation Act claims apply with equal or greater force to the claim under the NYCHRL.

Separate and apart from the above, the fourth cause of action must also be dismissed as duplicative. Where, as here, a claim for professional malpractice arises from the same facts and seeks the same damages as a claim for breach of contract, without alleging a distinct injury, it should be dismissed as duplicative (*Anderson v Pinn*, 185 AD3d 534, 536 [2d Dept 2020]; *City of N.Y. v Eastern Shipbuilding Group, Inc.*, 162 AD3d 469, 470 [1st Dept 2018]).

The sixth cause of action against McVoy must be dismissed as time-barred. A claim for professional malpractice has a statute of limitations of three years (CPLR 214[6]). McVoy last

worked on the project pursuant to the contract on November 7, 2018 (McVoy aff., NYSCEF Doc. No. 5, ¶ 7), which plaintiff does not dispute. The statute of limitations was tolled by the Governor’s COVID-19 Executive Orders from March 20, 2020, through November 3, 2020, after which it began to run again, and expired thereafter on June 22, 2022 (*Murphy v Harris*, 210 AD3d 410, 411 [1st Dept 2022]). While McVoy later entered a tolling agreement for February 14, 2023, through April 17, 2023, extended from April 21, 2023, through May 21, 2023, the agreement explicitly provides that McVoy may raise a statute of limitations defense in regard to a claim that was time-bared prior to the agreement (amended tolling agreement, NYSCEF Doc. No. 12, ¶ 4).

Accordingly, it is hereby

ORDERED that the defendants’ motion to dismiss is granted, and the first and third through sixth causes of action of the complaint are dismissed; and it is further

ORDERED that defendants are directed to serve an answer to the complaint within 20 days after service of a copy of this order with notice of entry; and it is further

ORDERED that counsel are directed to appear for a preliminary conference in Room 1166, 111 Centre Street, New York, New York, on January 24, 2024, at 10:00 AM.

This constitutes the decision and order of the court.



<u>12/1/2023</u> DATE					<u>LOUIS L. NOCK, J.S.C.</u>
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE