

**Ametek, Inc. v Goldfarb**

2024 NY Slip Op 33173(U)

September 5, 2024

Supreme Court, New York County

Docket Number: Index No. 656948/2021

Judge: Andrew Borrok

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  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

-----X

AMETEK, INC.,HCC INDUSTRIES, INC.,

Plaintiff,

- v -

ANDREW GOLDFARB, DENISE GOLDFARB, STEVEN  
GOLDFARB

Defendant.

INDEX NO. 656948/2021

MOTION DATE 11/06/2023,  
11/20/2023

MOTION SEQ. NO. 009 010

**DECISION + ORDER ON  
MOTION**

-----X

HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 009) 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 245, 246, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 301, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER).

The following e-filed documents, listed by NYSCEF document number (Motion 010) 241, 242, 243, 247, 285, 300, 302

were read on this motion to/for VACATE/STRIKE - NOTE OF ISSUE/JURY DEMAND/FROM TRIAL CALENDAR.

Upon the foregoing documents, the plaintiffs (**Ametek**)’s motion for summary judgment for breach of contract and attorneys’ fees (Mtn. Seq. No. 009) is GRANTED.

Reference is made to (i) an Interim Order dated May 30, 2024 (NYSCEF Doc. No. 299; the **May Interim Order**) pursuant to which the Court, among other things, granted the branch of the plaintiff’s summary judgment motion seeking to dismiss the defendants’ claim for reformation and indicating that the Court would address the balance of the motions by subsequent decision

and order(s), including the plaintiff's motion to strike the defendants' jury demand and also the request for the court to grant summary judgment; and (ii) an Interim Order dated June 8, 2024 (NYSCEF Doc. No. 301; the **June Interim Order**) pursuant to which the Court, among other things, granted the plaintiffs' motion seeking to strike the defendants' jury demand (Mtn. Seq. No. 010).

As relevant to this decision and order, in addition to the foregoing, previously, the Court held that Ametek had met its *prima facie* burden of coming forward with evidence demonstrating its entitlement to judgment that the defendants breached their co-management and indemnification obligations under the Supplemental Agreement (*Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]) (because the defendants failed to authorize payments for EPA-mandated remedial work, failed to invoke (or otherwise refused to engage with Ametek when Ametek offered to engage in) the agreed upon dispute resolution of Section 4.4 of the Supplemental Agreement, and instead filed suit in California in violation of Section 12.4 of the 1997 Purchase Agreement (NYSCEF Doc. No. 189).<sup>1</sup> In their opposition papers, the defendants argued that Ametek had, by unilaterally completing work without first informing the defendants, breached its co-management obligations under Section 4.1, breached its obligation under Section 4.2 to provide budgets for planned work, and breached its obligation to invoke the Section 4.4 dispute resolution procedure prior to completing disputed work. More specifically, the defendants argued that Ametek did not inform them of certain CAP 3, 4, and 5 work before causing it to be performed. But, as previously

---

<sup>1</sup> This Court had held (just as the Court in California had previously held) that nothing in the Supplemental Agreement superseded the exclusive forum selection clause contained in the Purchase Agreement [NYSCEF Doc. No. 226, at 5-7] which required suit to be brought in New York.

discussed, this argument seemed to be irreconcilably at odds with the fully developed record before the Court which did not appear support this argument at all.

In fact, the opposite seemed to be firmly established by the record -- *i.e.*, the defendants were informed of the work that they feign ignorance of, they were provided with budgets, the work was mandated by the EPA (NYSCEF Doc. No. 301, at 9-11) such that it became part of the approved budget and the record made clear that when Ametek offered to engage in the bargained-for dispute resolution procedure contemplated by the parties agreement, the defendants refused and instead brought a lawsuit in California (and not in New York where the parties had agreed any disputes should be litigated). In addition, the evidence that the defendants relied upon appeared to establish their own breach in that it indicated that they were trying to hold-up EPA mandated work which they were not permitted to do (*see* NYSCEF Doc. No. 356). However, inasmuch as it was not clear what information the defendants argued that they did not receive (such that they had argued that they could not engage in the agreed upon dispute resolution procedure set forth in the parties agreement as to things they did not know about) given that Ametek demonstrated by virtue of indisputable and unrefuted documents in the record at oral argument that the defendants had in fact been informed of that which the defendants claimed ignorance of such that there were no issues of fact warranting trial, in an abundance of caution, the Court permitted the parties to provide supplemental briefing on a narrow set of issues:

- (i) what work specifically the Goldfarbs allege they did not know about, when in fact they found out about such work and whether such work was mandated by the EPA such that it became part of the approved EMOU budget, (ii) why they did not know about such work given that Steven Goldfarb was permitted to monitor the work the Rosemead Facility and to communicate directly with the EPA to the extent that he wished to as to EMOU, (iii) why the defendants did not agree to Section 4.4 when Ametek offered to go

forward with Section 4.4 knowing that if the Evaluator deemed anything unnecessary it would be a non-reimbursable expense of Ametek and (iv) to the extent that the defendants indicate that the course of conduct between the parties during the Supplemental Agreement should be considered what in fact they mean by that and how they believe that should inform the court

(NYSCEF Doc. No. 301, at 12-13).

Having reviewed the supplemental briefing, the supplemental briefing confirms that there are no issues of fact exist warranting further proceeding. Ametek informed the Goldfarbs of the work which Steven Goldfarb claims he was not informed of, including the timelines and budgets for the actual performance (*i.e.*, and not just planning) of that work, and that the work was in any case mandated by the EPA such that it became “a part of the approved EMOU Budget” pursuant to Section 4.2 of the Supplemental Agreement (NYSCEF Doc. No. 192, § 4.2) and the defendants have breached their obligation to indemnify Ametek for up to \$30 million in payments to cover environmental liabilities pursuant to Sections 11.3 and 11.4 of the Purchase Agreement and Section 2.1 of the Supplemental Agreement (NYSCEF Doc. Nos. 189, §§ 11.3, 11.4; 191, § 2.1). Indeed, the record firmly establishes that Steven Goldfarb attempted to hold up EPA mandated work simply because he did not want to pay for it – *i.e.*, seeing no end to what the EPA required and claiming that the EPA should make others do it, and that he could have (but chose not to) engage in the agreed upon dispute resolution procedure set forth in Section 4.4 about work which he knew about:

Tom and Mark,

It was my understanding we were going to discuss a path forward to see if we could come up with a solution that would be acceptable to both the Selling Shareholders and Ametek in connection with both the EPA obligations for Hermetic/Ametek West Side El Monte

Superfund Site and the ongoing Indemnity obligations. It is still my objective to seek a solution that does not involve lawyers but I fear your silence may indicate otherwise.

On behalf of the Selling Shareholders I wanted to let you know that as manager of the cleanup I have no intention of authorizing and future construction of any work within the operable unit until EPA undertakes or agrees to have other responsible parties undertake site cleanup as required by EPA regulation. I realize this will create a procedural nightmare for all, but 23 years of doing everything EPA wants us to do while they do not meet their obligations is enough. Additionally the agreement you sent me (Supplemental Agreement 2005) which I have informed you we had never seen before and did not authorize or agree to needs to be addressed.

Let me know if you wish to substantively address these issues with the purpose of reaching an acceptable solution. We only have a couple of weeks to work this out amicably before EPA will be expecting that we undertake future work.

If you do not wish to discuss this please advise as I am under great pressure to turn this over to our attorney and go in another direction.

Regretfully

Steve

(NYSCEF Doc. No. 356, exhibit 1).<sup>2</sup>

Ametek responded:

Hi Steve,

Hope you are well.

Our Legal Department is reviewing files from 2004/05 to see what transpired and will determine next steps. Many of the files are in Stroock, Stroock, and Lavan's archives and many of the attorney's that worked n the deal retired or moved on. This has caused a bit of delay in procuring documents. However, we expect this to be done in a couple of weeks, and will get back to you on feedback thereafter.

Regards,  
Mark

---

<sup>2</sup> The Court has already addressed Steven Goldfarb's contention that he was not bound by the Supplemental Agreement in prior decisions and orders.

(*id.*).

To be clear, contrary to what Steven Goldfarb argues, this email does not reflect an agreement between Ametek and the defendants to stop EPA mandated work or to forego the dispute resolution procedure set forth in Section 4.4. It establishes the opposite. The email reflects that Steven Goldfarb objected to the scope of work to be performed by Ametek because he felt that the environmental issues created were the responsibility of others. It also reflects that Steven Goldfarb threatened to “involve lawyers” if Ametek did not agree with his position (*i.e.*, to engage with the EPA in attempting to convince them to reduce the scope of work or have others do it) and his firm understanding that his refusal to do work would create a major problem because this was work mandated by the EPA. It does not reflect an agreement by Ametek or his understanding as to an agreement with Ametek as to a path forward. In fact, the email indicates his understanding of the lack of agreement based on Ametek’s silence. The email also serves as evidence of the defendants’ breach. Steven Goldfarb was not permitted to flatly withhold consent to work mandated by the EPA. To the extent he disagreed with the scope of work to be performed, the email serves to establish that he could have engaged in the agreed upon dispute resolution procedure between the parties (as it was his obligation to do) and that if he was successful, the parties then could have engaged with the EPA pursuant to the Consent Decree. Ametek’s response does not establish or even suggest an agreement to hold off doing EPA mandated work or a knowing, intelligent waiver of the agreed upon dispute resolution procedure set forth in Section 4.4. At most, it suggests that they would look at the files (when they came over from Stroock) to evaluate his position that the EPA should be looking to others to do the

work. This does not create an issue of fact for trial between these parties as to whether the defendants have breached their obligation.

The record also firmly establishes that Ametek fulfilled all of its obligations under the Supplemental Agreement by performing work which was mandated by the EPA and therefore became “a part of the approved EMOU Budget,” and by keeping the defendants apprised (including by providing budgets) at every step of the process pursuant to its co-management obligations (NYSCEF Doc. No. 192, § 4.2).

For the avoidance of doubt, the defendants contention that Ametek did not tell them it planned to, and did, drill a certain Well ERP 23 in connection with the CAP 3 work, and that the defendants did not find out about the installation of this well until April 2021, months after it was drilled (NYSCEF Doc. No. 304, at 1) is belied by the documentary evidence in the record. Steven Goldfarb was kept apprised of this work going back to the Spring of 2019 at the latest, many months prior to its installation, and was kept apprised throughout its installation (*see* NYSCEF Doc. Nos. 311-314, 326, 330, 336). And, contrary to the defendants’ contentions, Ametek has adduced overwhelming documentary evidence showing that Ametek informed the defendants of all planned CAP 3 work, including but not limited to Well ERP 23, and that this information included budgets for the planned work (*see* NYSCEF Doc. Nos. 311-314, 321-327). Indeed, Steven Goldfarb approved invoices for the planning and mobilization of the CAP 3 and ERP 23 work (*see* NYSCEF Doc. Nos. 345-345, 349-350). Ametek has also shown that the CAP 3 work was mandated by the EPA and was required to be included in the “approved EMOU Budget” pursuant to Section 4.2 of the Supplemental Agreement (NYSCEF Doc. No. 330). As

such, Steven Goldfarb could not require Ametek to withhold his consent based on some uncommunicated requirement not reflected in the Supplemental Agreement that they talk the EPA into a different scope of work (which the EPA was not under any obligation to do). Section 4.4 provides the mechanism by which the parties to the Supplemental Agreement could dispute the scope of planned remedial work. It permits the objecting party to dispute the scope of the planned work by submitting the issue to an independent third party evaluator. It does not permit the defendants to invoke the dispute resolution procedures of Section 4.4 to narrow the scope of EPA-mandated work.

Despite being informed months or years in advance of the planned, EPA-mandated work, at no time during this period did Steven Goldfarb attempt to communicate his concerns to the EPA, as he had a right to do under Section 4.5 of the Supplemental Agreement, or invoke the dispute resolution procedures of Section 4.4, as it was his obligation to do if he intended to dispute the scope of the CAP 3 work. The Supplemental Agreement did not provide Steven Goldfarb the right to hold up the remedial work and refuse to pay invoices for remedial work (in particular, EPA-mandated work) without invoking Section 4.4's dispute resolution procedure. The November 2020 email from Steven Goldfarb, adduced by the defendants, in which Steven Goldfarb announced his intention not to "authoriz[e] any future construction of any work within the operable unit until EPA undertakes or agrees to have other responsible parties undertake site cleanup" is in fact evidence of a breach (NYSCEF Doc. No. 356, exhibit 1).

In his supplemental affidavit, Steven Goldfarb contends that the letters, emails, budgets, work plans, invoices, etc., referenced above only related to "preliminary planning work," which he did

approve, but not to actual performance of the work, which he did not approve (NYSCEF Doc. Nos. 356, ¶¶ 2-5). The argument fails. It is belied by the substantial documentary evidence offered by Ametek, which contains repeated references to timetables and budgets for completion of the work. By way of example, Ametek has adduced a CAP 3 Phase 1 Implementation Schedule providing an “approximate timeframe” of “Nov 2 – Nov 25” to “install ERP23” (NYSCEF Doc. No. 336). The timeframe for “Field Activities” (*i.e.*, actual performance of the work) begins a mere 3 days after the end of “Planning/Pre-Field Activities” (*i.e.*, the preliminary planning of which Steven Goldfarb admittedly approved) (*id.*). Steven Goldfarb’s self-serving affidavit, belied by the evidentiary record before the Court, does not create a question of fact for trial (*Perez v. Paramount Commc’ns, Inc.*, 247 A.D.2d 264, 264, [1998]).

Ametek has similarly demonstrated that it kept the defendants apprised of work related to CAPs 4 and 5, and that this work was also mandated by the EPA (*see* NYSCEF Doc. Nos. 315-328, 333-334, 340-354). However, remedial work at CAPs 4 and 5 did not commence until after the defendants filed suit in California which, as the Court held in the May Interim Order, was a breach of the Supplemental Agreement’s exclusive jurisdiction provision (NYSCEF Doc. No. 299, at 1). This prior breach excused Ametek of its obligations in any case.

Finally, Ametek has shown that the defendants were informed of all remedial work done at the Rosemead facility (*see* NYSCEF Doc. Nos. 288-295). It is undisputed that Ametek has incurred \$7,575,298 of costs as of June, 2023 subject to the defendant’s indemnification obligation and that it remains unpaid. As such, Ametek is entitled to an award of summary judgment.

Ametek is also entitled to recover its reasonable attorneys' fees, costs, and expenses incurred in this action pursuant to Section 12.14 of the Purchase Agreement which provides that "[i]n the event of any Action for the breach of [the] Agreement or misrepresentation by any party, the prevailing party shall be entitled to reasonable attorneys' fees, costs, and expenses incurred in such Action" (NYSCEF Doc. No. 189. § 12.14). Ametek shall submit a bill of its reasonable attorneys' fees, costs and expenses within 30 days of this order. If the defendant does not object, Ametek shall submit a second judgment in this amount. If, on the other hand, the defendants object to the amount requested as unreasonable, the matter will be referred to a JHO to hear and determine reasonable attorneys' fees, costs and expenses.

The Court has considered the defendants remaining arguments and finds them unavailing.

Accordingly, it is hereby

ORDERED that Ametek's motion for summary judgment (Mtn Seq. No. 013) is granted; and it is further


ORDERED that Ametek may submit judgment on notice; and it is further

ORDERED that Ametek shall submit a bill to the defendants of its reasonable attorneys' fees, costs, and expenses within 30 days of this order; and it is further

ORDERED that if the defendants object to the fees requested, the parties shall alert Part 53 ([sfc-par53@nycourts.gov](mailto:sfc-par53@nycourts.gov)) and the Court shall refer the matter to a JHO; and it is further

ORDERED that if the defendants do not object, Ametek may submit a judgment for its reasonable attorneys' fees, costs, and expenses.

20240905140051ABORROK830837705F1CA269C234ACA454EE405



---

**ANDREW BORROK, J.S.C.**

9/5/2024  
DATE

CHECK ONE:  CASE DISPOSED  DENIED  NON-FINAL DISPOSITION

APPLICATION:  GRANTED  GRANTED IN PART  OTHER

CHECK IF APPROPRIATE:  SETTLE ORDER  SUBMIT ORDER

INCLUDES TRANSFER/REASSIGN  FIDUCIARY APPOINTMENT  REFERENCE