

MiLaw Contr. Corp. v 964 Acquisition Group LLC.

2024 NY Slip Op 34131(U)

November 19, 2024

Supreme Court, New York County

Docket Number: Index No. 656114/2023

Judge: Louis L. Nock

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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. LOUIS L. NOCK **PART** **38M**

Justice

-----X

MICLAW CONTRACTING CORP.,
Plaintiff,

- v -

964 ACQUISITION GROUP LLC., ROBERT RIKOON, and
ZACH WOLLARD,

Defendants.

-----X

INDEX NO. 656114/2023

MOTION DATE 01/23/2024

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document numbers (Motion 001) 7, 8, 9, 10, 11, 12, 13, 14, 43, 44, 45, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, and 62

were read on this motion to DISMISS THE COMPLAINT & CROSS-MOTION
FOR SUMMARY JUDGMENT.

LOUIS L. NOCK, J.

The individual defendants move to dismiss the claims against them on grounds that they are not parties to the contract attached to the complaint and forming the basis for this lawsuit. They also move to dismiss the second cause of action against them for quasi-contract on grounds that any claims herein must be grounded in the contract governing the transactions and circumstances underlying this lawsuit. Defendants also seek sanctions against plaintiff for frivolous litigation per 22 NYCRR 130-1.1. Plaintiff opposes the motion and cross-moves for summary judgment on its complaint.

This action relates to a construction project located at 964 Dean Street, Brooklyn, New York (the "Project") and related contract between 964 Dean Acquisition Group LLC, as owner, and plaintiff, as general contractor (the "Contract") (NYSCEF Doc. No. 3). The individual defendants are not parties to, or guarantors of, the Contract. Accordingly, there no basis for

maintaining a breach of contract cause of action against them. Thus, plaintiff's first cause of action should be dismissed as against them.

Moreover, plaintiff's second cause of action sounding in quasi-contract should be dismissed as it is duplicative of plaintiff's breach of contract claim against the corporate defendant. Additionally, plaintiff's said cause of action must be dismissed against the individual defendants because plaintiff does not allege that either one of them acted in a capacity other than as corporate principals of the corporate defendant.

The Court of Appeals has made it clear that causes of action sounding in quasi-contract will be dismissed when a valid and enforceable written contract exists and that a quasi-contract only applies in the absence of an express agreement (*Clark-Fitzpatrick, Inc. v Long Island R. Co.*, 70 NY2d 382 [1987]; *see also, Scott v Fields*, 92 AD3d 666, 669 [2d Dept 2012] ["a cause of action predicated on a theory of implied contract or quasi-contract is not viable where there is an express agreement that governs the subject matter underlying the action"]; *Goldstein v CIBC World Mkts. Corp.*, 6 AD3d 295 [1st Dept 2004] [unjust enrichment claim unavailable in light of contract between the parties covering the same subject matter]).

Here, plaintiff alleges the existence of a Contract that governs the work at the Project between the corporate defendant and plaintiff, and exhibits that very Contract with the complaint. Additionally, the Appellate Division, First Department, routinely endorses dismissal of claims against corporate principals for unjust enrichment for failure to plead that the principal acted other than in his corporate capacity as principal (*see, Nuntnarumit v Lyceum Partners LLC*, 165 AD3d 532 [1st Dept 2018], citing *Ishin v QRT Mgt., LLC*, 133 AD3d 449 [1st Dept 2015]). The complaint fails to allege any factual allegations that either individual defendant acted other

than in their corporate capacities. Accordingly, in light of the foregoing, Plaintiff's second cause of action must be dismissed against each of the Defendants in its entirety.

The court has examined defendants' cross-motion for summary judgment, finding nothing therein that would cause the court to alter its conclusions hereinabove concerning the non-merit of all claims asserted against the individual defendants and the quasi-contract claim asserted against the corporate defendant. Accordingly, it is denied.

Defendants have moved for sanctions on the ground of frivolous litigation. They support that motion by way of their filing of email correspondence dispatched to plaintiff demanding withdrawal of the claims asserted against the individual defendants (*see*, NYSCEF Doc. No. 12). While the court is pleased with that effort, it notices that the withdrawal demand did not address the remaining ground for dismissal – quasi-contract as duplicative of contract – which necessitated the within treatment, and dismissal, thereof. Therefore, the court is hesitant to issue a sanction in this particular instance. Accordingly, the motion for sanctions is denied.

Accordingly, it is

ORDERED that defendants' motion to dismiss all causes of action against the individual defendants is granted, and said causes are dismissed as against them and said defendants are hereby severed and discontinued from this action; and it is further

ORDERED that defendants' motion to dismiss the second cause of action is granted and, therefore, said cause is dismissed; and it is further

ORDERED that the first cause of action for breach of contract shall continue against the corporate defendant alone; and it is further

ORDERED that plaintiff's cross-motion for summary judgment is denied; and it is further

ORDERED that plaintiff’s application for sanctions is denied; and it is further

ORDERED that a preliminary conference shall be held before this court on January 22, 2025, at 10:00 a.m., at the Courthouse, 111 Centre Street, Room 1166, New York, New York; and it is further

ORDERED that the caption of this action shall henceforth read:

“-----X
 MICLAW CONTRACTING CORP., :

 Plaintiff, :

 -against- :

 964 ACQUISITION GROUP L.L.C., :

 Defendant. :
 -----X”.

This will constitute the decision and order of the court.

ENTER:



11/19/2024
DATE

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE