

Morrow v Vibration Mounting & Controls, Inc.

2024 NY Slip Op 34888(U)

September 25, 2024

Supreme Court, Suffolk County

Docket Number: Index No. 602803/2019

Judge: James Hudson

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This opinion is uncorrected and not selected for official publication.

Supreme Court of the State of New York
County of Suffolk
Commercial Division Part XLVJ
Memorandum Decision

PRESENT:

HON. JAMES HUDSON
Acting Justice of the Supreme Court

MOTION DATE: 6/26/24 (#002)
MOTION DATE: 7/3/24 (#003)
SUBMIT DATE: 7/31/24
Mot. Seq. #: **002 – MD**
003 – XMG

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ROBERT L. MORROW, III,

Plaintiff,

-against-

VIBRATION MOUNTING & CONTROLS, INC.
D/B/A THE VMC GROUP, THE VMC
ACQUISITION GROUP, INC. AND THE VMC
GROUP, INC.,

Defendants.
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LEWIS JOHS AVALLONE AVILES, LLP
Attorneys for the Plaintiff
One CA Plaza, Suite 225
Islandia, NY 11749

COLE SCHOTZ P.C.
Attorneys for the Defendants
1325 Avenue of the Americas, Suite 1900
New York, NY 10019

The Defendant, Vibration Mountings & Controls, Inc. d/b/a The VMC Group, i/s/h/a The VMC Acquisition Group, Inc. and The VMC Group, Inc., in its motion (Mot. Seq. 002) requests an order, pursuant to **CPLR 3212**, for summary judgment dismissing the complaint.

The plaintiff, Robert L. Morrow, III, in his cross motion (Mot. Seq. 003) requests an order, pursuant to **CPLR 3025 (b)** and **(c)** for leave to amend the complaint and to file and serve a supplemental summons and amended complaint.

The plaintiff was employed by the defendant from 2002 to 2013. On February 8th, 2019, the plaintiff commenced this action against the defendant, alleging that it breached

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an agreement to issue him “phantom stock” in an amount equivalent to a 1.5% interest in the defendant.

By order dated July 20th, 2021, the Court (Emerson, J.), inter alia, determined that the plaintiff failed to state a cause of action for breach of contract due to lack of consideration, and sua sponte, converted the first cause of action from one alleging breach of contract to one alleging promissory estoppel. Said order was reversed by decision dated January 17th, 2024, the Appellate Division, Second Department, which determined that the plaintiff adequately stated a cause of action for breach of contract and that the plaintiff adequately alleged that the agreement was supported by consideration (223 AD3d 736, 203 NYS3d 377 [2d Dept 2024]).

This Court will first consider whether the plaintiff’s cross motion to amend should be granted since the defendant’s summary judgment motion may be rendered moot to the extent leave is granted and the amended pleading supersedes the original complaint (*see Baker v 16 Sutton Place Apartment Corp.*, 2 AD3d 119, 768 NYS2d 198 [1st Dept 2003]).

The plaintiff seeks leave to amend his complaint to assert causes of action for quantum meruit and unjust enrichment. Motions for leave to amend pleadings should be freely granted in the absence of prejudice or surprise directly resulting from the delay in seeking leave. Other grounds for denial include where the amendment is palpably insufficient or patently devoid of merit (*see CPLR 3025 [b]; Urias v Daniel P. Buttafuoco & Associates, PLLC*, 173 AD3d 1244, 104 NYS3d 712 [2d Dept 2019]). The legal sufficiency or merits of a proposed amendment will not be examined unless the insufficiency or lack of merit is clear and free from doubt (*see Lucido v Mancuso*, 49

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AD3d 220, 227, 851 NYS2d 238 [2d Dept 2008]). The decision whether to grant leave to amend is within the motion court's discretion, which will not be lightly disturbed (*see Hofstra Univ. v Nassau County, N.Y.*, 166 AD3d 861, 89 NYS3d 1 [2d Dept 2018]).

Here, the causes of action alleging quantum meruit and unjust enrichment sounding in quasi-contractual claims are not duplicative of the breach of contract cause of action. Where, as here, a bona fide dispute exists as to the existence of a contract, the plaintiff may proceed alternatively upon quasi-contractual theories (*see Emby Hosiery Corp. v Tawil*, 196 AD3d 462, 151 NYS3d 406 [2d Dept 2021]; *Karimian v Time Equities, Inc.*, 164 AD3d 486, 83 NYS3d 227 [2d Dept 2018]; *DePasquale v Estate of DePasquale*, 44 AD3d 606, 843 NYS2d 357 [2d Dept 2007]).

In opposition, the defendant alleges that it will suffer prejudice or surprise as a result of the plaintiff's delay in seeking the amendment because it would be deprived of the opportunity to engage in the discovery necessary to defend itself since the discovery end date has long passed, and that further depositions and discovery would be required to enable the defendant to adduce evidence relevant to these new claims.

However, mere lateness is not a barrier to amendment, absent prejudice (*see Edenwald Contr. Co. v City of New York*, 60 NY2d 957, 471 NYS2d 55 [1983]; *Verdi v SP Irving Owner, LLC*, 227 AD3d 932, 211 NYS3d 490 [2d Dept 2024]). Instead, it must be lateness coupled with significant prejudice to the other side (*see Mackoff v Bluemke-Mackoff*, 222 AD3d 67, 200 NYS3d 396 [2d Dept 2023]; *R & G Brenner Income Tax Consultants v Gilmartin*, 166 AD3d 685, 89 NYS3d 85 [2d Dept 2018]). Further, prejudice is not found in the mere exposure of the defendant to greater liability. Instead,

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there must be some indication that the defendant has been hindered in the preparation of his or her case or has been prevented from taking some measure in support of his or her position (see *Kimso Apartments, LLC v Gandhi*, 24 NY3d 403, 998 NYS2d 740 [2014]; *Americore Drilling & Cutting, Inc. v EMB Contr. Corp.*, 198 AD3d 941, 156 NYS3d 355 [2d Dept 2021]; *Metropolitan Lofts of NY, LLC v Metroeb Realty 1, LLC*, 160 AD3d 632, 75 NYS3d 271 [2d Dept 2018]). The burden of establishing prejudice is on the party opposing the amendment (see *Kimso Apts., LLC v Gandhi, supra*; *Metropolitan Lofts of NY, LLC v Metroeb Realty 1, LLC, supra*).

First, the defendant argues that the plaintiff failed to proffer any reason for delaying five years to assert these additional claims despite his longstanding awareness of their availability. The Court finds that the plaintiff did not delay in seeking the amendment. Rather, the plaintiff filed his cross motion to amend to assert causes of action for quantum meruit and unjust enrichment several months after the Appellate Division, Second Department, determined that a cause of action for breach of contract was adequately stated. Next, contrary to the defendant's contention that the quasi-contractual claims are duplicative, it is well settled that the causes of action alleging quantum meruit and unjust enrichment sounding in quasi-contractual claims are not duplicative of the breach of contract cause of action and that the plaintiff may proceed alternatively upon quasi-contractual theories, as discussed above (see *Emby Hosiery Corp. v Tawil, supra*). Moreover, the defendant failed to establish that the plaintiff's proposed amendment would be prejudicial (see *Mackoff v Bluemke-Mackoff, supra*). Thus, the plaintiff's cross motion for leave to amend his complaint to add the causes of action alleging quantum meruit and

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unjust enrichment is granted, which thereby renders the defendant's motion for summary judgment moot.

Accordingly, it is

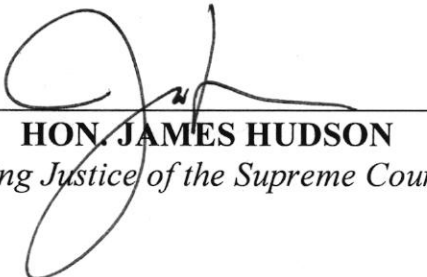
ORDERED that the plaintiff's cross motion (Mot. Seq. 003) for an order for leave to amend the complaint and to file and serve a supplemental summons and amended complaint is granted; and it is further

ORDERED that the defendant's motion (Mot. Seq. 002) for summary judgment dismissing the complaint is denied, as moot; and it is further

ORDERED that the parties are directed to appear on **Monday, November 4, 2024** at 10:00 a.m. for a virtual TEAMS meeting with the undersigned for a status conference.

This memorandum also constitutes the Order of the Court.

Dated: September 25th, 2024
Riverhead, NY



HON. JAMES HUDSON
Acting Justice of the Supreme Court