Island Interiors Design, LLC v Wilson
2024 NY Slip Op 35163(U)
January 14, 2024
Supreme Court, Queens County
Docket Number: Index No. 701451/2024
Judge: Mojgan C. Lancman
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

PRESENT: HON. MOJGAN C. LANCMAN

----------x IAS PART 20

ISLAND INTERIORS DESIGN, LLC,

Plaintiff,

-against-

WINSLOW WILSON and ATLANTIC SPECIALTY INSURANCE COMPANY,

Defendants.

----------x

Index No.: 701451/2024

Motion Seq. No.: 1

Motion Date: 6.26.2024

Motion Cal. No.: 23

The papers bearing NYSCEF Doc. Nos. 10-25 were read on the motion filed by the defendants, Winslow Wilson ("Wilson") and Atlantic Specialty Insurance Company ("Atlantic Specialty") (collectively, the "Defendants"), for an Order dismissing certain causes of action asserted in the complaint.

The plaintiff, Island Interiors Design, LLC (the "Plaintiff"), commenced this cause contending, in essence, that it is owed the principal sum of $40,000.00 for construction work it performed at the premises located 717 Sackman Street, Brooklyn, New York (the "Premises"). Presently before the Court is the Defendants' motion to dismiss the second and fourth causes of action asserted in the complaint. For the following reasons, the motion is denied.

I. Factual Background and Procedural History

In August 2019, the Plaintiff, as general contractor, and Wilson, as the property owner, entered into a contract for construction work at the Premises. The original contract price was in the sum $484,000.00.

Between February 2020 and June 2021, the Plaintiff performed construction work at the Premises. As the result of the several change orders, the contract price was increased to $550,500.00. The Plaintiff contends that there were numerous work stoppages because of violations issued by the New York City Department of Buildings. It is alleged that the violations were issued because Wilson failed and/or refused to obtain an access agreement from his neighbor.

The Plaintiff and Wilson agreed to end the Plaintiff's work prior to the completion of construction. The Plaintiff maintains that when the parties agreed to do so, retainage in the sum of $40,000.00 was due it. This cause was commenced because said sum was never paid.

This cause was commenced on January 19, 2024. The complaint alleges four causes of action. The present motion seeks to dismiss the second and fourth causes of action.

The second cause of action, which is asserted against Atlantic Specialty, is grounded in breach of contract. It is asserted therein that Atlantic Specialty: issued a discharge bond to discharge a mechanic's lien filed by the Plaintiff in the sum of $40,000.00; (2) that it is obligated to pay said sum, together with interest, to the Plaintiff; and (3) that it has wrongfully refused to pay said sum, which represents the retainage, to the Plaintiff.

The fourth cause of action, which is asserted against Wilson, seeks attorneys' fees in the sum of "approximately $20,000." This cause of action is predicated upon the assertion that a prior special proceeding commenced by Wilson against the Plaintiff herein in 2022 was frivolous (the "Prior Action"). The Prior Action was filed in the Supreme Court, Kings County; entitled *Winslow Wilson v. Island Interiors Design LLC*; and assigned index no. 504464/2022. The Prior Action was discontinued, without prejudice, in February 2023.

II. Discussion

A. CPLR 3211 [a] [1]

CPLR § 3211 [a] [1] states: "[m]otion to dismiss cause of action. A party may move for judgment dismissing one or more causes of action asserted against him [or her] on the ground that: 1. A defense is founded upon documentary evidence."

"A motion to dismiss a cause of action on the ground that the cause of action is barred by documentary evidence pursuant to CPLR 3211[a] [1] may be granted only where the documentary evidence utterly refutes the plaintiff's factual allegations, thereby conclusively establishing a defense as a matter of law" (*Bedford-Carp Construction, Inc. v Brooklyn Union Gas*, 215 AD3d 907, 908 [2d Dept 2023] [internal quotation marks, brackets and citations omitted]).

"A paper will qualify as documentary evidence only if it satisfies the following criteria: (1) it is unambiguous; (2) it is of undisputed authenticity; and (3) its contents are essentially undeniable" (*see VXI Lux Holdco S.A.R.L. v SIC Holdings, LLC*, 171 AD3d 189, 193 [1st Dept 2019] [internal quotation marks and citations omitted]). Examples of documentary evidence include "judicial records and documents reflecting out-of-court transactions such as mortgages, deeds, contracts, and any other papers, the contents of which are essentially undeniable" (*Xu v Van Zwienen*, 212 AD3d 872, 874 [2d Dept 2023] [internal quotation marks and citations omitted]).

"In opposition to a motion pursuant to CPLR § 3211 [a], a plaintiff may submit affidavits to preserve inartfully pleaded, but potentially meritorious, claims" (*Matter of Koegel*, 160 AD3d 11, 21 [2d Dept 2018] [internal quotation marks and citations omitted]).

The second cause of action alleges, in essence, that Atlantic Specialty is obligated to pay the Plaintiff the retainage pursuant to the discharge bond and that it has wrongfully refused to so. In seeking dismissal, Atlantic Specialty argues that because the lien expired, the lien and bond must be discharged. Here, the insurer contends that the Premises is of the one-family variety; that the lien thus expired after one year, on February 15, 2023; and that the lien was not properly extended.

The documentary evidence that Atlantic Specialty relies on is a certificate of occupancy (the "CO") issued by the City of New York Department of Buildings, dated December 16, 1987, which was certified on December 20, 2023 (*see* NYSCEF Doc. No. 12). The CO indicates that the Premises is a "One (1) Family Residence." The CO thus reflected the status of the Premises as of December 16, 1987 as a one-family home. There is no reference therein to the construction work at issue in this cause. Moreover, in opposition, the Plaintiff, through the affirmation of its members, Farhad Rahimian, contends that the new structure built at the Premises "consists of a multi-family home."

Therefore, on this record, Atlantic Specialty fails to "utterly refute[] the Plaintiff's factual allegations, conclusively establishing a defense as a matter of law" (*Goshen v Mutual Life Ins. Co. of New York*, 98 NY2d 314, 326 [2002]). The branch of the motion to dismiss the second cause of action pursuant to CPLR § 3211 [a] [1] is therefore denied.

The fourth cause of action may also not be dismissed pursuant to CPLR § 3211 [a] [1] because, as explained below, the documentary evidence in support of this branch of the motion, the stipulation of discontinuance without prejudice, fails to utterly refute the Plaintiff's factual allegations (*see Goshen v Mutual Life Ins. Co. of New York*, 98 NY2d 314).

B. CPLR §3211 [a] [5]

"[U]nder res judicata, or claim preclusion, a valid final judgment bars future actions between the same parties on the same cause of action" (*Landau, P.C. v LaRossa, Mitchell & Ross*, 11 NY3d 8, 12 [2008] [internal quotation marks and citations omitted]).

"A voluntary discontinuance ordinarily is not a decision on the merits, and res judicata does not bar a [party] from maintaining another proceeding for the same claim unless the order of discontinuance recites that the claim was discontinued or settled on the merits" (*Matter of AutoOne Ins. Co. v Valentine*, 72 AD3d 953, 955 [2d Dept 2010]). "Thus, a stipulation to discontinue an action without prejudice is not subject to the doctrine of res judicata" (*Maurischat v County of Nassau*, 81 AD3d 793, 794 [2d Dept 2011]).

The fourth cause of action seeks attorneys' fees on the ground that the Prior Action was frivolous within the meaning of 22 NYCRR 130-1.1 [a]. Wilson's contention that the subject cause of action is barred by the doctrine of res judicata is incorrect because the Prior Action was discontinued without prejudice (*Matter of AutoOne Ins. Co. v Valentine*, 72 AD3d 953; *Maurischat v County of Nassau*, 81 AD3d 793). The branch of the motion to dismiss the fourth cause of action pursuant to CPLR § 3211 [a] [5] is thus denied.

Notwithstanding the foregoing determination, the law is clear that "New York does not recognize a separate cause of action to impose sanctions pursuant to 22 NYCRR 130–1.1" (*see Praxis Intl. Corp. v Prime Alliance Group, Ltd.*, 202 AD3d 840, 841 [2d Dept 2022] [internal quotation marks and citations omitted]). An application pursuant to CPLR § 3211 [a] [7] has not been made to dismiss the fourth cause of action and the Court declines to dismiss same *sua sponte*. However, Wilson, if so advised, may file the appropriate motion seeking the dismissal thereof.

III. Conclusion

For the reasons stated above, it is hereby:

ORDERED, that the Defendant's motion is denied.

This constitutes the Decision and Order of the Court.

Dated: Jamaica, New York
January 14, 2024

MOJGAN C. LANCMAN, J.S.C.