

Housing Trust Fund Corp. v Kellaway
2024 NY Slip Op 35272(U)
March 13, 2024
Supreme Court, Suffolk County
Docket Number: Index No. 605475/2019
Judge: Frank A. Tinari
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SHORT FORM ORDER

INDEX No. 605475/2019
 CAL. No. 202300401CO

SUPREME COURT - STATE OF NEW YORK
 I.A.S. PART 50 - SUFFOLK COUNTY

PRESENT:

Hon. FRANK A. TINARI
 Justice of the Supreme Court

MOTION DATE 8/15/23
 ADJ. DATE 10/31/23
 Mot. Seq. # 001 MotD

-----X
 HOUSING TRUST FUND CORPORATION ,

Plaintiff,

- against -

WILLIAM KELLAWAY,

Defendant.
 -----X

D'ARCAMBAL OUSLEY & CUYLER
 BURK, LLP
 Attorney for Plaintiff
 40 Fulton Street, Suite 1501
 New York, New York 10038

ALAN M. DAVIS, ESQ.
 Attorney for Defendant
 1048 Old Country Road
 Westbury, New York 11590

Upon the following papers read on this motion for summary judgment: Notice of Motion/Order to Show Cause and supporting papers by plaintiff, dated July 18, 2023; Answering Affidavits and supporting papers ____; Replying Affidavits and supporting papers ____; Other Memorandum of Law ; it is

ORDERED that plaintiff's motion for summary judgment is granted in part and denied in part.

This is an action for, inter alia, breach of contract and unjust enrichment arising from an agreement between defendant and plaintiff Housing Trust Fund Corporation ("HTFC"), pursuant to which funds were dispersed to defendant for the reconstruction of his residence following damage sustained as the result of Hurricane Sandy. Plaintiff alleges that defendant received duplicate benefits for the storm damage to his residence, resulting in an overpayment to him by HTFC, which he was contractually obligated to reimburse.

Plaintiff now moves for summary judgment against defendant, arguing that it is entitled to judgment as a matter of law with regard to its claims sounding in breach of contract and unjust enrichment, based on defendant's failure to repay the overpayment. In support of its motion, plaintiff submits, inter alia, copies of the pleadings, the executed agreement between the parties, and an affidavit by Matilda Addo. No papers were submitted in opposition to the motion.

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Addo's affidavit states that she is the Managing Director of Housing, Buyout and Acquisition Programs for the Office of Resilient Homes and Communities ("RHC"). She further states that the NY Rising Homeowner Program, a subset of the NY Rising Housing Recovery Program, is administered by RHC, an office of HTFC, and that she is responsible for overseeing the day-to-day management of the NY Rising Housing Recovery Program and managing its implementation.

Addo states that defendant applied for assistance from the program on October 26, 2013, and that, following an inspection, the estimated cost of repair to his property was determined to be \$163,760.00. As defendant also received funds from the National Flood Insurance Program ("NFIP") in the amount of \$92,515.37, his "unmet need" was determined to be \$71,244.63. On April 9, 2024, a "Grant Agreement for Rehabilitation/Reconstruction" (hereinafter the "Grant Agreement") was entered between HTFC and defendant in the amount of \$46,244.63 for work to be performed on the property, in addition to an "Extraordinary Site Conditions Award" in the amount of \$25,000.00, for a total of \$71,244.63. On April 10, 2014, HTFC disbursed funds to defendant in the amount of \$48,122.32, representing one-half of the Rehabilitation/Reconstruction Award and the entire Extraordinary Site Conditions Award. Addo states that, pursuant to the Grant Agreement, defendant was required to reimburse HTFC for any duplicate benefits received from any insurance proceeds or other type of disaster-related assistance. Addo further states that defendant received duplicate benefits in the amount of \$235,745.60, including \$140,700.00 from the Small Business Administration, \$1,320.88 from private homeowners' insurance, and an additional \$15,000.00 from NFIP for elevation. As the duplicate benefits received by defendant exceeded the total project cost, plaintiff advised defendant that the grant award calculation had been reduced to account for the duplicate benefits, resulting in an overpayment in the full amount dispersed of \$48,122.32, and demanded that defendant return the overpayment. Defendant appealed the determination, and his appeal was denied by HTFC. Defendant has failed to return the overpayment.

The Grant Agreement, states, in relevant part,

IV. Duplication of Benefits; Subrogation

Homeowner acknowledges that the Program is subject to the provisions of the Stafford Act. Under the Stafford Act, Homeowner may receive assistance only to the extent that it has a disaster recovery need that is not otherwise met by insurance or any other type of disaster assistance. As such, and as a condition to HTFC making the CDBG-DR [Community Development Block Grant Disaster Recovery] Grant, Homeowner hereby agrees to the following terms and conditions:

- (a) You acknowledge your obligation to reimburse HTFC for the full amount of any related insurance proceeds or other type of related disaster assistance that you previously received, subsequently receive, or with reasonable effort would be eligible to receive for the same purposes for which the CDBG-DR Grant is awarded ("Duplicate

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Benefits”) to the extent that such proceeds or assistance has not already been considered in the calculation of your CDBG-DR Grant.

Pursuant to the Grant Agreement, defendant further agreed to “promptly pay to HTFC any actual Duplicate Benefits” that he received or was eligible to receive.

It is well settled that a party moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, offering sufficient evidence to demonstrate the absence of any material issues of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923 [1986]; *Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]). Once such a showing has been made, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923; *Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595). The failure to make such a prima facie showing requires the denial of the motion regardless of the sufficiency of the opposing papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 487 NYS2d 316 [1985]).

“The essential elements of a cause of action to recover damages for breach of contract are (1) the existence of a contract, (2) the plaintiff’s performance pursuant to the contract, (3) the defendant’s breach of its contractual obligations, and (4) damages resulting from the breach” (*Arnell Const. Corp. v New York City School Const. Auth.*, 144 AD3d 714, 715, 41 NYS3d 1010 [2d Dept 2016]; *see also Brualdi v IBERIA, Lineas Aereas de España, S.A.*, 79 AD3d 959, 913 NYS2d 753 [2d Dept 2010]; *JP Morgan Chase v J.H. Elec. of N.Y., Inc.*, 69 AD3d 802, 893 NYS2d 237 [2d Dept 2010]). The nature of the obligations undertaken in a contract is to be construed in accordance with the parties’ intent (*see generally Greenfield v Phillies Records*, 98 NY2d 562, 569, 750 NYS2d 565 [2002]), and “the best evidence of what parties to a written agreement intend is what they say in their writing” (*see Slamow v Del Col*, 79 NY2d 1016, 1018, 584 NYS2d 424 [1992]).

Here, the terms of the Grant Agreement obligate defendant to reimburse HTFC for duplicate benefits obtained through insurance proceeds or other type of related disaster assistance. As plaintiff’s submissions demonstrate that defendant received duplicate benefits, which exceeded his “unmet need,” as determined by HTFC, he is required to reimburse HTFC for the full amount that it dispersed of \$48,122.32 (the “overpayment”). As defendant has failed to reimburse HTFC for the overpayment, he has breached the Grant Agreement. In opposition to plaintiff’s prima facie showing of entitlement to summary judgment, defendant has failed to submit evidence raising a triable issue of fact (*see see Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923). Accordingly, the branch of plaintiff’s motion for summary judgment with respect to its claim for breach of contract is granted.

The branch of plaintiff’s motion for summary judgment with respect to its claim against defendant for unjust enrichment is denied. To succeed on a claim for unjust enrichment, a plaintiff must establish that the defendant was enriched at the plaintiff’s expense, and that “it is against equity and good conscience to permit the defendant to retain what is sought to be recovered” (*Paramount Film Distrib. Corp. v State of New York*, 30 NY2d 415, 421, 334 NYS2d 388 [1972], *cert. denied* 414 US

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829, 94 S Ct 57 [1973]; *see Bedoya v Rodriguez*, 186 AD3d 1308, 131 NYS3d 45 [2d Dept 2020]; *Trotta v Ollivier*, 91 AD3d 8, 933 NYS2d 66 [2d Dept 2011]; *Hamlet at Willow Cr. Dev. Co., LLC v Northeast Land Dev. Corp.*, 64 AD3d 85, 878 NYS2d 97 [2d Dept 2009]; *Whitman Realty Group, Inc. v Galano*, 41 AD3d 590, 838 NYS2d 585 [2d Dept 2007]). Recovery for unjust enrichment, however, is barred if there is a valid and enforceable contract between the parties (*see Clark-Fitzpatrick, Inc. v Long Is. R.R. Co.*, 70 NY2d 382, 521 NYS2d 653 [1987]; *Bd. of Mgrs. of 15 Union Square West Condominium v Azogui*, 220 AD3d 405, 197 NYS3d 29 [1st Dept 2023]; *Grossman v New York Life Ins. Co.*, 90 AD3d 990, 935 NYS2d 643 [2d Dept 2011]; *Whitman Realty Group, Inc. v Galano*, 41 AD3d 590, 838 NYS2d 585). As plaintiff's submissions demonstrate that there is a valid and enforceable contract between the parties, it has failed to establish entitlement to summary judgment with respect to its claim for unjust enrichment.

Dated: 3/13/24



J.S.C.

HON. FRANK A. TINARI

 FINAL DISPOSITION X NON-FINAL DISPOSITION