

Renter v Stockwell
2024 NY Slip Op 35663(U)
November 8, 2024
Supreme Court, Suffolk County
Docket Number: Index No. 620224/2018
Judge: James Hudson
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Supreme Court of the State of New York
County of Suffolk
Commercial Division Part XLVI
Memorandum Decision

PRESENT:

HON. JAMES HUDSON
Acting Justice of the Supreme Court

MOTION DATE: 7/31/24
SUBMIT DATE: 10/23/24
Mot. Seq. #: **003 - MD**

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WILLIAM RENTER and CHELSEA ROSE
CONSTRUCTION CORP.,

Plaintiffs,

BRODY LAW GROUP, PLLC
Attorneys for the Plaintiffs
46 Green Street
Huntington, NY 11743

-against-

DAVID STOCKWELL and GBT
CONSTRUCTION CORP.,

Defendants.

LIEB AT LAW, P.C.
Attorneys for the Defendants
308 West Main Street, Suite 100
Smithtown, NY 11787

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William Renter and Chelsea Rose Construction Corp. (“Chelsea”) request an order:

1) pursuant to **CPLR 3212**, granting them partial summary judgment as to liability against the defendants, David Stockwell and GBT Construction Corp. (“GBT”); and 2) awarding the plaintiffs attorneys’ fees as provided in a December 30th, 2015 promissory note.

This matter concerns a contract for the sale of Chelsea Rose Construction Corp. by its principal, William Renter to GBT Construction Corp. and its principal, David Stockwell. GBT and Mr. Stockwell simultaneously executed a \$425,000 promissory note with a 6.5-year term, payable in weekly installments to secure the purchase (“Contract”, “Note”). On October 28th, 2017 GBT defaulted on the note, which default continues

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through the present. Chelsea and Mr. Renter now move for partial summary judgment as to liability and request that damages be determined at trial.

It is well-settled law that summary judgment is a drastic remedy which should not be granted where there is any doubt as to the existence of a material issue of fact or where the issue is arguable (*In re Estate of Beckford*, 280 AD2d 472, 473, 720 NYS2d 176 [2d Dept 2001]). It is the procedural equivalent of a trial (*Rivers v. Birnbaum*, 102 AD3d 26, 42, 953 NYS2d 233 [2d Dept 2012]). The Court's task is to determine whether such issues exist, i.e. issue finding, not issue determination. The Court will carefully scrutinize the pertinent documents in the light most favorable to the party opposing the motion (*Gitlin v. Chrinkin*, 98 AD3d 561, 562, 949 NYS2d 712 [2d Dept 2012]; *Dykeman v. Hecht*, 52 AD3d 767, 769, 861 NYS3d 732 [2d Dept 2008]). Chelsea and Mr. Renter must establish their entitlement to summary judgment as a matter of law by tendering sufficient evidence to demonstrate the absence of a material issue of fact (*DeLourdes Torres v. Jones*, 26 NY3d 742, 763, 27 NYS3d 468, 47 NE3d 823 [2016]; *Voss v. Netherlands Insurance Co.*, 22 NY3d 728, 785 NYS2d 448, 8 NE3d 823 [2014]). Summary judgment will be denied if GBT and Mr. Stockwell assert an issue of fact which requires a trial (*Zar Realty LLC v. Xia*, 77 Misc3d 1225[A], *2, 180 NYS3d 890 [Sup Ct New York County 2023]; *J.P. Morgan Chase Bank, N.A. v. Galt Group, Inc.*, 84 AD3d 1028, 1029, 923 NYS2d 632 [2d Dept 2011]).

No prior motion or request has been made nor granted for bifurcation of the case (CPLR 603; 22 NYCRR 202.42 [a]; see *Castro v. Malia Realty, LLC*, 177 AD3d 58, 109 NYS3d 414 [2d Dept 2019]). The Court will not consider the request for partial summary

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judgment as to liability. It is uncontroverted that an issue of fact remains as to the matter and amount of damages.

Mr. Renter and Chelsea also argue that summary judgment should be awarded because GBT and Mr. Stockwell have breached the contract and note by defaulting on its payment. They contend that the defendants' seven counterclaims can be litigated separately (NYSCEF Doc. No. 49, para. 25). The seven counterclaims by GBT and Mr. Stockwell allege: 1) breach of the covenant of quiet enjoyment of the premises; 2) fraudulent inducement to contract; 3) breach of the contract restrictive covenant and warranties; 4) material misrepresentation as to the existence of tax liens; 5) failure to transfer business assets pursuant to the contract; 6) misappropriation by Mr. Renter of accounts receivable; and 7) misappropriation of client lists, proprietary information, and trade secrets (Answer, NYSCEF Doc. No. 8). The counterclaims are undetermined issues of material fact.

The case at bar is not, as plaintiffs' motion attempts to frame it, an action based upon an instrument for the payment of money only (**CPLR 3213**). It is a commercial breach of contract matter. There remain numerous undetermined triable issues of material fact.

The balance of plaintiffs' arguments have been carefully considered; and are denied. The request for summary judgment will be denied.

Accordingly, it is

ORDERED, that the motion (seq. no. 003) by the plaintiffs, William Renter and Chelsea Rose Construction Corp., which requests, pursuant to **CPLR 3212**, granting them partial summary judgment as to liability against the defendants, is denied; and it is further

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ORDERED, that the request for an award to the plaintiffs of their attorneys' fees, is
denied.

This memorandum also constitutes the Order of the Court.

Dated: November 8th, 2024
Riverhead, NY



HON. JAMES HUDSON
Acting Justice of the Supreme Court