

UA Bldrs. Corp. v Imperial Gen. Constr., Corp.

2025 NY Slip Op 30773(U)

March 5, 2025

Supreme Court, New York County

Docket Number: Index No. 652639/2019

Judge: Emily Morales-Minerva

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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. EMILY MORALES-MINERVA PART 42M

Justice

-----X

UA BUILDERS CORP.,

Plaintiff,

- v -

IMPERIAL GENERAL CONSTRUCTION, CORP.,
XHELADIN VELIU, and ARBEN VELIU, AFRIM VELIU

Defendants.

-----X

INDEX NO. 652639/2019

MOTION DATE 12/16/2024

MOTION SEQ. NO. 007

DECISION + ORDER ON
MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 007) 82, 83, 84
were read on this motion to/for REARGUMENT/RECONSIDERATION.

APPEARANCES:

Tuttle Yick LLP, New York, New York (Alexa Elizabeth
DePierro Esq., of counsel) for plaintiff.

HON. EMILY MORALES-MINERVA:

In this action for, among other things, breach of contract,
plaintiff UA BUILDERS CORP., moves, by notice of motion (seq.
no. 007), pursuant to CPLR 2221, for leave to reargue its
previous motion (seq. no. 006) to the limited extent that this
court denied plaintiff attorneys' fees as requested therein.¹

Defendants do not appear and do not submit opposition.

¹ In making this application, plaintiff also relies on CPLR § 5019, which permits a trial court to cure a mistake, defect or irregularity in a judgment or order not affecting a substantial right of a party. However, reliance on this statute is misplaced, as the court's denial of attorneys' fees was not a mistake, defect or irregularity, but an explicit and deliberate holding.

For the reasons set forth below, the court denies plaintiff's motion for reargument.

A motion to reargue "shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion but shall not include any matters of fact not offered on the prior motion" (CPLR § 2221 [d] [2] [emphasis added]).² "Reargument is not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided . . . or to present arguments different from those originally asserted" (Setters v AI Properties and Developments (USA) Corp., 139 AD3d 492 [1st Dept 2016] [emphasis added]; see also Pro Brokerage, Inc. v Home Ins. Co., 99 AD2d 971, 971 [1st Dept 1984]).

Here, while seeking to reargue its previous motion, plaintiff explicitly states that the court "correctly" determined said motion based on the facts and arguments that it put forth (New York State Court Electronic Filing System [NYSCEF] Doc. No. 83, notice of motion, p 3, ¶ 8). In other words, plaintiff makes no allegation that this court misapprehended law or fact.

² CPLR § 2221(d) states, "a motion for leave to reargue: (1) shall be identified specifically as such; (2) shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion; and (3) shall be made within thirty days after service of a copy of the order determining the prior motion and written notice of entry."

Indeed, the court denied that part of plaintiff's motion (seq. no. 006) seeking attorneys' fees because -- in support of such relief -- plaintiff solely relied on paragraph 33 of the applicable subcontracts, which establishes a prevailing parties' right to attorneys' fees only in the context of arbitration (see NYSCEF Doc. No. 81, Decision and Order on Motion [seq. no. 006], dated December 12, 2024, at 4; see also NYSCEF Doc. No. 40, subcontract between UA Builders Corp. and Imperial General Construction Corp., dated August 21, 2018, p 5, ¶ 33; subcontract between UA Builders Corp. and Imperial General Construction Corp., dated September 01, 2018, p 5, ¶ 33; subcontract between UA Builders Corp. and Imperial General Construction Corp., dated July 30, 2018, p 5, ¶ 33).

Plainly, paragraph 33 provides, in pertinent part:

"If a principal of either Contractor or the Subcontractor declares an impasse between the parties [regarding a] claim or dispute [arising from the work called for in the subcontract], then the claim or dispute shall be resolved by arbitration in accordance with JAMS rules for the administrative appointment of an arbitrator. The decision rendered by the Arbitrator shall be final and judgment may thereafter be entered upon it in the Supreme Court of the State of New York. The Arbitrator's decision may only be challenged upon grounds as provided in applicable State law. If a challenge to the Arbitrator's decision is made by a party in the State Court and such challenge is thereafter rejected, by appeal or otherwise, the prevailing Party shall be entitled to its reasonable

attorneys' fees and expenses for such proceeding(s) "

(id.).³

Plaintiff now alleges that it miscited paragraph 33 of the subcontracts and intended to cite paragraph 29 of the subcontracts for the proposition that it is entitled to attorneys' fees. However, such contention appears duplicitous as plaintiff referred to paragraph 33 repeatedly and pointedly throughout its papers in support of its initial application for attorneys' fees (see NYSCEF Doc. No.83, affirmation in support of motion to reconsider, p 3, ¶ 5; see also NYSCEF Doc. No. 74, affirmation in support of motion [seq. no. 006], p 9, ¶ 62; NYSCEF Doc. No. 79, affidavit of Albert Gurakuq Gjonbalaj, p 3-5, ¶¶ 17, 23, and 31). To now argue that such citations and references were essentially typos or aberrations is baldly self-serving and disingenuous.

³ In full, paragraph 33 in each subcontract states: "In the event of a claim or dispute arising out of the Work called for in this Agreement, Contractor or the Subcontractor, may, by written notice to the other, seek to resolve such claim, or dispute as follows: within ten (10) days of such written notice, a meeting shall take place between no less than one principal of Contractor or Contractor's Project Manager, and the Subcontractor, wherein an attempt shall be made in good faith to resolve the claim or dispute. If the disagreement is not resolved during this initial meeting, one or more additional meetings shall promptly be held until such time as the matter is resolved. If a principal of either Contractor or the Subcontractor declares an impasse between the parties with regard to the claim or dispute, then the claim or dispute shall be resolved by arbitration in accordance with JAMS rules for the administrative appointment of an arbitrator. The decision rendered by the Arbitrator shall be final and judgment may thereafter be entered upon it in the Supreme Court of the State of New York. The Arbitrator's decision may only be challenged upon grounds as provided in applicable State law. If a challenge to the Arbitrator's decision is made by a party in the State Court and such challenge is thereafter rejected, by appeal or otherwise, the prevailing Party shall be entitled to its reasonable attorneys' fees and expenses for such proceeding(s). The venue for any arbitration proceeding pursuant to this Agreement shall be conducted in the County of New York, State of New York. This provision shall not apply to third-party claims for contribution and indemnity" (NYSCEF Doc. No. 40, Subcontracts p 5, 26, 51 [emphasis added]).

In any event, paragraph 29 of the subcontracts -- which plaintiff contends it meant to cite to in support of its previous motion for attorneys' fees -- does not require a different result. "Under the American Rule, a prevailing party in litigation generally may not recover attorney's fees from the losing party" (Sage Sys., Inc. v. Liss, 39 NY3d 27, 29 [2022], citing Hooper Assoc. v AGS Computers, 74 NY2d 487, 491 [1989]). Indeed, no such recovery is permissible absent statute, agreement, or contract, containing "'unmistakably clear' language" permitting a successful party to payment of attorneys' fees (Sage Sys, Inc., 39 NY3d at 31 [emphasis added], quoting Hooper, 74 NY2d at 492).

Paragraph 29 merely states:

"For any failure of Subcontractor to comply with the provisions of this Agreement, Contractor may, in its sole discretion, terminate this Agreement for cause. . . . Contractor shall also be entitled to all collections costs and attorneys' fees as applicable"

(NYSCEF Doc. No. 40, subcontract between UA Builders Corp. and Imperial General Construction Corp., dated August 21, 2018, p 4, ¶ 29; subcontract between UA Builders Corp. and Imperial General Construction Corp., dated September 01, 2018, p 4, ¶ 29; subcontract between UA Builders Corp. and Imperial General

Construction Corp., dated July 30, 2018, p 4, ¶ 29 [emphasis added]).

This language is consistent with paragraph 33, upon which plaintiff relied in its initial application. Further -- read together with paragraph 33 or alone -- paragraph 29 does not constitute "'unmistakably clear' language" permitting the recovery of attorneys' fees in this cause of action (Sage Sys, Inc., 39 NY3d at 31).

Accordingly, it is

ORDERED that plaintiff UA BUILDERS CORP.'S motion (seq. no.007 for leave to reargue is denied in its entirety.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

3/5/2025

DATE

Emily Morales-Minerva
EMILY MORALES-MINERVA, J.S.C.

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