

Shields v WD Design Build LLC

2025 NY Slip Op 31339(U)

April 9, 2025

Supreme Court, Kings County

Docket Number: Index No. 504375/2024

Judge: Lisa S. Ottley

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS – PART 24

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NKOSI SHIELDS

Mot. Seq. #s 1 and 2

Plaintiff,

Index # 504375/2024

-against-

DECISION AND ORDER

WD DESIGN BUILD LLC, WILLIAM DUBOSE, and
DAVINDRA KOWLESSAR d/b/a J&Y CUSTOM
IMPROVEMENTS,

Defendants.
-----X

HON. LISA S. OTTLEY

Recitation, as required by CPLR 2219(a), of the papers considered in the review of these Notice of Motions to Dismiss and to Add a necessary party submitted on June 17, 2024.

Papers	Numbered
Notice of Motion and Affirmation	1, 2 [Exh. A-B]; 7, 8 [Exh. 1]
Affirmation/Affidavit in Opposition.....	4[Exh. A-B],
Memoranda of Law.....	3, 5
Reply Memorandum.....	6

The plaintiff, Nkosi Shields, commenced this action for fraudulent inducement (first), breach of contract (second), unjust enrichment (seventh), and breach of the covenant of good faith and fair dealing (eighth), among other causes of action. The plaintiff alleges that the defendants’ malfeasance and misrepresentations resulted in faulty renovations to a residential property in Brooklyn owned by the plaintiff. The defendant, William DuBose (hereinafter, “Mr. DuBose) is the purported architect and project coordinator, while the defendant, Davindra Kowlessar (hereinafter, Mr. Kowlessar), is the general contractor recommended for the project by Mr. DuBose. According to the plaintiff, he contracted with WD Design Build LLC (hereinafter, “WD”) through Mr. DuBose in his corporate capacity for architectural and design services, and later with Mr. Kowlessar for construction and renovation services, yet the property remains uninhabitable, and plaintiff has disbursed \$47,000.00 to Mr. DuBose and \$420,177.52 to Mr. Kowlessar for their services. Plaintiff further alleges that the defendants could not provide the property with a non-leaking roof, a functional HVAC system, nor working plumbing. Plaintiff commenced this action after defendants failed to redress the flaws in the work or to otherwise compensate the plaintiff.

According to the plaintiff's complaint, on or about September 26, 2021, the plaintiff and Mr. DuBose began discussing renovations required for a residential property owned by the plaintiff located at 310 MacDonough Street, in Brooklyn. Mr. DuBose offered to perform the relevant designs, obtain contractors, and manage the contractors' performance of the work. Mr. DuBose was not and is not a licensed architect, which was unknown to the plaintiff at this time. The plaintiff alleges that Mr. DuBose intentionally misrepresented that he was a licensed architect and intentionally misrepresented his intention to obtain a licensed and competent contractor to perform the work. The plaintiff relied upon Mr. DuBose's representations and signed a written contract with WD, on or about October 1, 2021. On or about June 5, 2022, Mr. DuBose represented to plaintiff that Mr. Kowlessar was competent to act as principal contractor for the work. On or about June 5, 2022, Mr. Kowlessar represented to plaintiff that he was a licensed contractor. The plaintiff relying upon Mr. DuBose and Mr. Kowlessar's representations, signed a "Home Improvement and Construction Contract," on or about July 9, 2022. The construction contract states, in part, "Contractor . . . represents and warrants that it is insured and fully licensed in the State of New York and in good standing." The plaintiff subsequently learned that this was and remains a false statement. The plaintiff alleges that WD and Mr. DuBose engaged in fraudulent inducement to enter into a contract based on their intentional misrepresentations and plaintiff has suffered damages as a proximate result.

Motion to Dismiss

The defendants, WD and Mr. DuBose, move pursuant to CPLR §§ 3211(a)(1) and 3211(a)(7) for an order dismissing the plaintiff's first, second, seventh, and eighth causes of action based upon documentary evidence and failure to state a cause of action (Motion Seq. # 1).

The plaintiff opposes said motion as to Mr. DuBose on the grounds that he has pled viable causes of action for fraudulent inducement (first), unjust enrichment (seventh), and breach of the covenant of good faith and fair dealing (eighth), and the documentary evidence submitted by the defendants does not refute the claimed causes of action. The plaintiff does not address defendants' motion dismissing the breach of contract (second) cause of action as to Mr. DuBose since the complaint did not plead a cause of action for breach of contract as to Mr. DuBose. The plaintiff does not oppose the defendants' motion dismissing the fraudulent inducement (first), breach of contract (second), unjust enrichment (seventh), and breach of the covenant of good faith and fair dealing (eighth) causes of action as to WD.

"In considering a motion to dismiss a complaint pursuant to CLPR 3211(a)(1), the documentary evidence must utterly refute the plaintiff's factual allegations, conclusively establishing a defense as a matter of law." See, *Lessin v. Piliaskas*, 188 A.D.3d 859, 136 N.Y.S.3d 87 (2nd Dept., 2020), citing *Gould v. Decolator*, 121 A.D.3d 845, 994 N.Y.S.2d 368 (2nd Dept., 2014). To constitute documentary evidence, the evidence must be "unambiguous, authentic, and undeniable," such as 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. See, *Karpovich v City of New York*, 162 A.D.3d 996, 80 N.Y.S.3d 364 (2nd Dept., 2018).

When reviewing a defendant's motion to dismiss a complaint for failure to state a cause of action, the court must afford the pleadings a liberal construction, accept the allegations of the complaint as true, and provide the plaintiff the benefit of every possible favorable inference. See, Cortland Street Recovery Corp v. Bonderman, 31 N.Y.3d 30, 73 N.Y.S.3d 95 (2018). Whether a plaintiff can ultimately establish its allegations is not part of the calculus in determining a motion to dismiss. Furthermore, "unlike on a motion for summary judgment where the court searches the record and assesses the sufficiency of the parties' evidence, on a motion to dismiss the court merely examines the adequacy of the pleadings." *Id.*, *supra*, citing, EBC I, Inc. v. Goldman Sachs & Co., 5 N.Y.3d 11, 799 N.Y.S.2d 170 (2005). On a motion to dismiss for failure to state a cause of action, the sole criterion is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable by law, the motion for dismissal will fail. See, Harrison DGR44, LLC v. Luiso 44 Harrison, LLC, 219 A.D.3d 1413, 196 N.Y.S.3d 734 (2nd Dept., 2023); Podesta v. Assumable Homes Development II Corp., 137 A.D.3d 767, 31 N.Y.S.3d 74 (2nd Dept., 2016). The test of the sufficiency of a pleading is whether the pleading gives sufficient notice of the occurrences or series of occurrences intended to be proved and whether the requisite elements of any cause of action known to our law can be discerned from its averments. See, Hampshire Props. V. BTA Bldg. & Developing, Inc., 122 A.D.3d 573 (2nd Dept., 2014).

Fraudulent Inducement

CPLR 3016(b) provides that where a cause of action or defense is based upon misrepresentation, fraud, mistake, willful default, breach of trust or undue influence, the circumstances constituting the wrong shall be stated in detail. See, CPLR 3016(b). To recover damages for fraudulent inducement, a plaintiff must prove "(1) a misrepresentation or an omission of material fact which was false and known to be false by the defendant, (2) the misrepresentation was made for the purpose of inducing the plaintiff to rely upon it, (3) justifiable reliance of the plaintiff on the misrepresentation or material omission, and (4) injury." See, ANBE Props., LLC v Curatola, 227 A.D.3d 654, 211 N.Y.S.3d 133 (2nd Dept., 2024).

Here, the court finds that the plaintiff's alleged facts are sufficiently detailed to permit a reasonable inference of the alleged conduct and meet the requirements of CPLR 3016(b) as to Mr. DuBose. The allegations in the complaint establish the elements of fraudulent inducement, namely, misrepresentations of being a licensed architect and the intention to obtain a licensed contractor, knowledge of the misrepresentations, intent to induce reliance, reliance, and damages. The court further finds that the complaint gives sufficient notice of the occurrences or series of occurrences intended to be proved by the plaintiff.

Unjust Enrichment

Defendants argue that plaintiff has failed to state a viable cause of action for unjust enrichment because the complaint also alleges the existence of a contract between the parties and the claim for unjust enrichment is duplicative of the breach of contract cause of action. In

opposition, plaintiff argues that the claim for unjust enrichment is based on duties outside the contract, such as the duties to not make material misrepresentations and to perform work competently.

The theory of unjust enrichment lies as a quasi-contract claim. See, Goldman v. Metropolitan Life Ins. Co., 5 N.Y.3d 561, 572, 807 N.Y.S.2d 583 (2005). It is an obligation imposed by equity to prevent injustice, in the absence of an actual agreement between the parties. Where the parties executed a valid and enforceable written contract governing a particular subject matter, recovery on a theory of unjust enrichment for events arising out of that subject matter is ordinarily precluded. See, Clark-Fitzpatrick, Inc. v. Long Is. R.R. Co., 70 N.Y.2d 382, 388, 521 N.Y.S.2d 653 (1987). Where there is a bona fide dispute as to the existence of a contract or the application of a contract to the dispute in issue, a plaintiff may proceed upon a theory of quasi contract as well as breach of contract. See, Parkash v Utilisave Corp., 295 AD2d 330, 743 N.Y.S.2d 889 (2nd Dept., 2002).

In the case at bar, the court finds that plaintiff adequately states a claim for unjust enrichment as to Mr. DuBose since plaintiff has not alleged that he entered into a contract with Mr. DuBose, individually. Furthermore, plaintiff has not alleged a breach of contract cause of action against Mr. DuBose. Instead, plaintiff has alleged in his complaint that he entered into a contract with WD and has alleged a breach of contract cause of action solely against WD, as a corporate entity. Thus, it is undisputed that there is no contract between the plaintiff and Mr. DuBose, individually, and plaintiff may proceed with the unjust enrichment cause of action as to Mr. DuBose.

Breach of Covenant of Good Faith and Fair Dealing

Defendants argue that plaintiff has failed to state a viable cause of action for breach of covenant of good faith and fair dealing because it is duplicative of the breach of contract cause of action and there is no privity through contract between plaintiff and Mr. DuBose. In opposition, plaintiff argues that the claim for breach of covenant of good faith and fair dealing is based on duties outside the contract, such as the duties to not make material misrepresentations and to perform work competently.

Implicit in all contracts is a covenant of good faith and fair dealing in the course of contract performance. See, Van Valkenburgh, Nooger & Neville v Hayden Publ. Co., 30 N.Y.2d 34, 330 N.Y.S.2d 329 (1972). The covenant embraces a pledge that "neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract." See, Dalton v Educational Testing Serv., 87 N.Y.2d 384, 639 N.Y.S.2d 977 (1995). "The duty of good faith and fair dealing, however, is not without limits, and no obligation can be implied that 'would be inconsistent with other terms of the contractual relationship.'" See, Legend Autorama, Ltd. v Audi of Am., Inc., 100 A.D.3d 714, 954 N.Y.S.2d 141 (2nd Dept., 2012).

The court finds that the plaintiffs have not plead sufficient facts to state a breach of covenant of good faith and fair dealing cause of action as to Mr. DuBose since plaintiff has not alleged that Mr. DuBose, in his individual capacity, was a party to the contract between plaintiff and WD. As such, the cause of action for breach of covenant of good faith and fair dealing against the defendant, William DuBose, is dismissed.

Accordingly, the defendants, WD and Mr. DuBose's motion (Mot. Seq. # 1) to dismiss pursuant to CPLR §§ 3211(a)(1) and 3211(a)(7), is hereby granted in its entirety, as to the defendant, WD.

Accordingly, the defendants, WD and Mr. DuBose's motion (Mot. Seq. # 1) to dismiss pursuant to CPLR §§ 3211(a)(1) and 3211(a)(7), is hereby granted for plaintiff's eighth cause of action (breach of the covenant of good faith and fair dealing), but denied for plaintiff's first cause of action (fraudulent inducement) and seventh cause of action (unjust enrichment), as to the defendant, Mr. DuBose.

Motion to Add Necessary Party

The plaintiff moves pursuant to CPLR § 1001(a) for an order directing that Striving Design LLC (hereinafter, "Striving") be joined in the subject action as a necessary party defendant on the ground that the absence of Striving Design will prevent complete relief from being accorded between the parties (Motion Seq. # 2). The defendants have not opposed plaintiff's motion.

Accordingly, plaintiff's motion (Mot. Seq. # 2) for an order directing that Striving Design LLC be joined in the subject action as a necessary party defendant pursuant to CPLR § 1001(a), is hereby granted in its entirety.

Based on the foregoing, it is hereby

ORDERED, that the defendants, WD and Mr. DuBose's motion (Mot. Seq. # 1) to dismiss pursuant to CPLR §§ 3211(a)(1) and 3211(a)(7), is hereby granted in its entirety, as to the defendant, WD, and it is further,

ORDERED, that the defendants, WD and Mr. DuBose's motion (Mot. Seq. # 1) to dismiss pursuant to CPLR §§ 3211(a)(1) and 3211(a)(7), is hereby GRANTED as to plaintiff's eighth cause of action (breach of the covenant of good faith and fair dealing), but DENIED as to plaintiff's first cause of action (fraudulent inducement) and seventh cause of action (unjust enrichment), as to the defendant, Mr. DuBose, and it is further

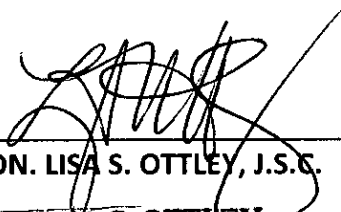
ORDERED, that the plaintiff's motion (Mot. Seq. # 2) for an order directing that Striving Design LLC be joined in the subject action as a necessary party defendant pursuant to CPLR § 1001(a), is hereby granted in its entirety; and it is further

ORDERED, that Striving Design LLC be joined in the above-entitled action as a party defendant, and it is further

ORDERED, that a supplemental summons and complaint be served upon Striving Design LLC, with an address at 217 Thompson Street, Suite #8, New York, New York 10012, and in care of the New York Department of State.

This constitutes the decision and order of this Court.

Dated: Brooklyn, New York
April 9, 2025



HON. LISA S. OTTLEY, J.S.C.
HON. LISA S. OTTLEY

KINGS COUNTY CLERK
FILED
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