

Billd Exch., LLC v Palace Elec. Contrs., Inc.

2025 NY Slip Op 31367(U)

April 15, 2025

Supreme Court, New York County

Docket Number: Index No. 655414/2024

Judge: Lyle E. Frank

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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. LYLE E. FRANK PART 11M

Justice

-----X

BILLD EXCHANGE, LLC,

Plaintiff,

- v -

PALACE ELECTRICAL CONTRACTORS, INC., GEORGE
DHAIM

Defendant.

-----X

INDEX NO. 655414/2024

MOTION DATE 02/28/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, plaintiff’s motion is granted unopposed.

Background

In February of 2024, Billd Exchange, LLC (“Plaintiff”) and Palace Electrical Contractors, Inc. (“Business Defendant”) entered into a master contractor agreement (“MCA”). The MCA provided for Plaintiff to supply construction materials to Business Defendant on credit and gave terms for the Business Defendant to pay for said materials. The materials were meant for various construction projects in New York. George Dhaim (“Individual Defendant”, collectively with the Business Defendant the “Defendants”) executed an unconditional personal guaranty (the “Guaranty”) whereby he guaranteed the performance and payment of the Business Defendant under the MCA. Plaintiff alleges that the Business Defendant has failed to pay for a variety of materials, with a total outstanding amount of “at least” \$1,139,857.13. Plaintiff also alleges that the Individual Defendant has failed to make payments on behalf of the Business Defendant pursuant to the terms of the Guaranty.

Plaintiff brought this underlying proceeding in October of 2024, alleging claims of breach of contract, misappropriation of constructive trust funds, account stated, violation of the prompt payment act, and unjust enrichment. The MCA and the Guaranty contain an Arizona choice of law provision, and states that any actions brought against Plaintiff arising out of the MCA must be brought in Arizona. The MCA is silent as to claims brought *by* Plaintiff arising out of the MCA. Defendants have appeared in this proceeding and filed an Answer in December of 2024. Plaintiff brings the present motion for summary judgment in their favor on the breach of contract claims. Defendants have not opposed the motion.

Standard of Review

Summary judgment is available in Arizona when there is no dispute as to any material fact and when the movant is entitled to judgment as a matter of law. *See Rosenberg v. Sanders*, 256 Ariz. 359, 363 (Ariz. 2023). When a party moves for summary judgment and meets their initial burden of production, the burden then shifts to the non-moving party who may not rest on their pleadings but must “call the court’s attention to evidence overlooked or ignored by the moving party or must explain why the motion should otherwise be denied.” *Nat’l Bank of Ariz. V. Thruston*, 218 Ariz. 112, 119 (Ariz. Ct. App. 2008).

Discussion

Plaintiff alleges that the Business Defendant breached the terms of the MCA by failing to pay for materials received, failing to make scheduled payments for Finance Charges and Weekly Payment Amounts, and failing to make payments by the applicable maturity date outlined in each purchase statement. In support of their motion, Plaintiff has submitted the signed MCA, a sworn affidavit by the director of financial operations for Plaintiff, the company’s ledger of payments, the notice of default and demand for payment sent to the Business Defendant, and the

outstanding account balance ledger. A prima facie case of breach of contract in Arizona requires proof of “the existence of the contract, its breach and the resulting damages.” *Graham v. Asbury*, 112 Ariz. 184, 185 (Ariz. 1975). Here, Plaintiff has established a prima facie case of breach of contract.

Plaintiff also seeks summary judgment against the Individual Defendant for breach of the unconditional Guaranty. Courts applying Arizona law must “enforce the guaranty as written” and a failure of a guarantor to pay when the primary party defaults is an enforceable breach of contract claim. *Colton Health, LLC v. Arthritis Health, LTD*, 2023 Ariz. App. Unpub. LEXIS 273, * 17 (Ariz. Ct. App. 2023). Where a guaranty agreement states, as the Guaranty does here, that it is absolute and unconditional, it is a guaranty of payment and the creditor does not need to first exhaust remedies against the primary party. *Tenet HealthSystem TGH, Inc. v. Silver*, 203 Ariz. 217, 220 (Ariz. Ct. App. 2002). Plaintiff has established a prima facie case of breach of the Guaranty. Plaintiff also seeks attorneys’ fees and costs pursuant to the terms of the MCA and Ariz. Rev. Stat. § 12-341.01(A), which allows a court to award reasonable attorneys’ fees to a party in a dispute arising out of a contract. Plaintiff has established entitlement to attorneys’ fees under the terms of the MCA. Finally, Plaintiff seeks to collect post judgment interest on the outstanding amount owed. Arizona has a statutory interest rate for any judgment “based on a written agreement evidencing a loan, indebtedness or obligation that bears a [lawful] rate of interest.” *Everlove v. Chalker (In re Estate of Chalker)*, 2020 Ariz. App. Unpub. LEXIS 979, *11 (Ariz. Ct. App. 2020). Trial courts do not have discretion to decline to award such post judgment interest. *In re Estate of Miles*, 172 Ariz. 442, 445 (Ariz. Ct. App. 1992). Accordingly, it is hereby

ADJUDGED that the motion is granted; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of plaintiff Billd Exchange, LLC against defendants Palace Electrical Contractors, Inc. and George Dhaim in the sum of \$1,148,562.43 together with costs and disbursements as calculated by the Clerk and post-judgment interest at the rate of 10%; and it is further

DECLARED that the plaintiff may make a separate application for attorney’s fees upon proper documentation.


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4/15/2025
DATE

LYLE E. FRANK, J.S.C.

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