

**Mages 21, LLC v Unity Constr. Group, LLC**

2025 NY Slip Op 31971(U)

June 3, 2025

Supreme Court, New York County

Docket Number: Index No. 654951/2023

Judge: Andrea Masley

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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MAGES 21, LLC, GAIL ZGODNY, AND RICHARD WINTER, ON BEHALF OF THEMSELVES AND ON BEHALF OF ALL OTHERS ENTITLED TO SHARE IN THE FUNDS RECEIVED BY UNITY CONSTRUCTION GROUP, LLC, and CHARLES BALSAMO,

Plaintiffs,

- v -

UNITY CONSTRUCTION GROUP, LLC, CHARLES BALSAMO, GEORGE DISTEFANO, NEW YORK DESIGN ARCHITECTS LLP, GUISEPPE ANZALONE, JOSEPH J. SMERINA, ATTENTION TO DETAIL PLUMBING & HEATING INC., STEPHEN STROUSE, and JOHN DOE 1 THROUGH JOHN DOE 100,

Defendants.

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ATTENTION TO DETAIL PLUMBING & HEATING INC.,

Plaintiff,

-against-

TD BANK, N.A., MAGES 21, LLC, UNITY CONSTRUCTION GROUP, LLC, and JOHN DOE,

Defendants.

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INDEX NO. 654951/2023

MOTION DATE --

MOTION SEQ. NO. 003 004

**DECISION + ORDER ON MOTION**

Third-Party  
Index No. 595131/2024

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 49, 50, 51, 52, 53, 54, 55, 63, 65, 68, 70, 72, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 94, 101

were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 56, 57, 58, 59, 60, 61, 62, 66, 67, 69, 71, 87, 88, 89, 90, 91, 95, 102, 103, 104

were read on this motion to/for DISMISSAL.

In motion sequence number 003, defendants Unity Construction Group, LLC (Unity), Charles Balsamo, and George Distefano move pursuant to CPLR 3211(a)(1)

and (7) to dismiss the causes of action of the amended verified complaint (complaint) alleging (ii) fraud and (iii) willful exaggeration of lien.

In motion sequence number 004, defendants New York Design Architects LLP (NYDA), Giuseppe Anzalone, and Joseph J. Smerina (together, NYDA defendants) move pursuant to CPLR 3211(a)(1), (3), (5), and (7) to dismiss the causes of action of the complaint alleging (v) professional negligence (architectural malpractice) and (vi) breach of contract, and to dismiss any cross-claims against the NYDA defendants.

This is a contract dispute. Plaintiffs are Mages 21, LLC (Mages 21), Gail Zgodny, and Richard Winter, on behalf of themselves and on behalf of all others entitled to share in the funds received by Unity, Balsamo, and Distefano, as trustees, in connection with the improvements of certain real property.

This decision supplements the decision made on the record on June 2, 2025.

### **Motion Sequence Number 003**

The claim for fraud is dismissed against Balsamo and Distefano in absence of any allegation of their participation in the alleged fraud. This claim is dismissed against Unity as duplicative of the claim for breach of contract.

The claim for willful exaggeration of lien is dismissed against Balsamo and Distefano in absence of any allegation of their participation in the alleged exaggeration other than as officers of Unity. The willful exaggeration of lien claim may proceed against Unity. The court rejects the argument that plaintiffs cannot raise willful exaggeration of lien in this action. This case is joined for discovery and trial with the related case, *Unity Construction Group, LLC v Mages 21 LLC*, Index No. 651838/2023,

where Unity seeks foreclosure of a lien. (See Index No. 651838/2023, NYSCEF 1, Complaint ¶¶ 20-28.)

“In any action or proceeding to enforce a mechanic’s lien upon a private or public improvement or in which the validity of the lien is an issue, if the court shall find that a lienor has wilfully exaggerated the amount for which he claims a lien as stated in his notice of lien, his lien shall be declared to be void and no recovery shall be had thereon.” (Lien Law § 39.)

#### **Motion Sequence 004**

Plaintiffs concede that claims against Anzalone and Smerina shall not proceed. (NYSCEF Doc. No. [NYSCEF] 102, Opp Brief at 8/28 n 2.) They likewise concede that the breach of contract claim against NYDA should be dismissed to the extent alleged by Mages 21. (*Id.* at 10/28 n 3.) Further, the claim for professional negligence (architectural malpractice) against NYDA is dismissed.

The court rejects the NYDA defendants’ argument that all claims by Zgodny and Winter shall be dismissed under the release. The NYDA defendants failed to quote the entirety of the release language. Under the omitted provision, there is an issue of fact as to whether NYDA was terminated for cause.

The cross-claims against the NYDA defendants are dismissed in absence of opposition.

The remaining causes of action are (i) breach of contract against Unity; (iii) willful exaggeration of lien against Unity; (iv) diversion of trust funds against Unity, Balsamo, and Distefano; (vi) breach of contract by Winter and Zgodny against NYDA; (vii) unjust enrichment against Attention to Detail Plumbing & Heating Inc. (ATD); and (viii) willful exaggeration of lien against ATD and Stephen Strouse.

Accordingly, it is

ORDERED that motion sequence 003 is granted, in part, to the extent that the cause of action for (ii) fraud against Unity Construction Group, LLC, Charles Balsamo, and George Distefano is dismissed; and the cause of action for (iii) willful exaggeration of lien is dismissed as against Charles Balsamo and George Distefano; and it is further

ORDERED that motion sequence 004 is granted, in part, to the extent that the cause of action for (v) professional negligence (architectural malpractice) against New York Design Architects LLP is dismissed; the cause of action for (vi) breach of contract against New York Design Architects LLP is dismissed to the extent alleged by Mages 21, LLC; the cross-claims against New York Design Architects LLP are dismissed; and the complaint is dismissed in its entirety and the cross-claims are dismissed against Giuseppe Anzalone and Joseph J. Smerina, with costs and disbursements to these defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of these defendants; and it further

ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal of defendants Giuseppe Anzalone and Joseph J. Smerina and that all future papers filed with the court bear the amended caption; and it is further

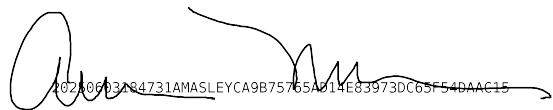
ORDERED that counsel for Giuseppe Anzalone and Joseph J. Smerina shall serve a copy of this order with notice of entry upon the Clerk of the Court and the Clerk of the General Clerk's Office, who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website); and it is

ORDERED that Unity Construction Group, LLC, Charles Balsamo, George Distefano, and New York Design Architects LLP are directed to serve an answer to the complaint within 20 days after service of a copy of this order with notice of entry; and it is further

ORDERED that discovery shall proceed in accordance with the Preliminary Conference Order (NYSCEF 108); and it is further

ORDERED that movants shall submit a copy of the transcript to be so ordered.



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6/3/2025  
DATE

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ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED  
 GRANTED  DENIED

NON-FINAL DISPOSITION  
 GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE