

**Deal Delancey LLC v Akram**

2025 NY Slip Op 32958(U)

July 2, 2025

Supreme Court, New York County

Docket Number: Index No. 653249/2023

Judge: L. Austin D'Souza

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SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

PRESENT: HON. L. AUSTIN D'SOUZA PART 63

Justice

X

DEAL DELANCEY LLC,

INDEX NO. 653249/2023

Plaintiff,

DECISION AFTER TRIAL

- v -

QAISER AKRAM,

Defendant.

X

Appearances:

Plaintiff: Cyruli Shanks & Zizmor LLP by Jeffrey Bodoff, Esq.

Defendant: Self-represented.

In this breach of contract case, Plaintiff/licensor seeks recovery of fees associated with Defendant's use of a commercial unit owned by Plaintiff. Defendant counterclaimed for damage to personal property. A trial was held on April 30, 2025.

FACTS & TESTIMONY

Daniel Cayre, a property manager for Clearstory Properties ("Clearstory"), testified for the Plaintiff as follows. Plaintiff owns the building located at 101 Ludlow Street, New York, NY. Clearstory manages the property for Plaintiff. Mr. Cayre's duties include overseeing bookkeeping, leasing (licensing), and other practical aspects of property management such as repairs.

The parties entered into a license agreement ("License") dated November 9, 2022, wherein Defendant would use "the ground floor area known as 96 Delancey Street" to operate a retail clothing store (see plaintiff's exhibit 4). The term of the license was six months. The License expressly stated that utilities were not included in the license (*id.* at ¶4).

Plaintiff maintained an account with Consolidated Edison, Inc. ("ConEd") for electrical services for the unit and asked Defendant multiple times to transfer the account to his own name. Despite these requests, Defendant did not comply. On May 31, 2023 and June 1, 2023, Plaintiff found several windows to the licensed space broken. Plaintiff paid \$1,687.50 to repair the windows. Defendant vacated on June 1, 2023. Upon vacating, Defendant left a balance, after the application of the

security deposit, of \$354.83 in license fees. In addition to license fees, Plaintiff alleges that Defendant owes \$9,673.61 for utilities, paid by Plaintiff, from which Defendant benefited.

Through Mr. Cayre's testimony, Plaintiff introduced the following into evidence: certified copies of three deeds (*see* plaintiff's exhibits 1-3), which showed Plaintiff to be the owner of the premises; the License (*see* plaintiff's exhibit 4); ConEd's response to a subpoena for billing records for the account for the space from the date range November 9, 2022 through September 2023 (*see* plaintiff's exhibit 6A); ConEd bills for the period November 9, 2022 through April 27, 2023 (*see* plaintiff's exhibit 6B); and receipts dated June 2, 2023 showing payment for repair of the glass windows (*see* plaintiff's exhibit 10).

Defendant testified that he had paid everything that was ever demanded of him and that he had moved out owing no debt to Plaintiff. Defendant had never been presented any utility bills and had never seen any of them prior to the commencement of this action. Defendant submitted an email dated June 1, 2023 in which he asserted he had a zero balance (*see* defendant's exhibit A).

In support of his counterclaim, Defendant testified that on December 25, 2022, a water leak caused damage to several boxes of leather jackets. Defendant seeks compensation for the value of the damaged property. Defendant submitted pictures of wet boxes of clothing (*see* defendant's exhibit B).

## ANALYSIS

### 1. *Plaintiff's Motion to Amend Its Complaint is Granted.*

After resting its case in chief, Plaintiff asked that the pleadings be amended to conform to the evidence presented, pursuant to CPLR 3025(c), and that in addition to the breach of contract claim, that the Court allow them to amend their complaint to add a claim for unjust enrichment. Defendant did not object to the request. The Court reserved decision on the application.

A court may give leave to amend a pleading at any time upon such terms as may be just (*see* CPLR 3025[c]). Factors to be considered include prejudice to the non-moving party and orderly prosecution of the trial (*see Murray v New York*, 43 NY2d 400, 405 [1977]).

Here, amending the complaint to add a cause of action for unjust enrichment does not prejudice the Defendant. For a finding of prejudice "there must be some indication that the party has been hindered in the preparation of the party's case or has been prevented from taking some measure in support of its position" (*Loomis v Civetta Corinno Constr. Corp.*, 54 NY2d 18, 23 [1981]). The relief sought was

outlined in the complaint and the facts underlying the cause of action are nearly identical to those in the complaint. Defendant knew that Plaintiff was seeking money for the utility bills and this alleged debt was discussed at several pre-trial conferences. Defendant cannot claim prejudice or surprise regarding the facts supporting the claim. Nor can Defendant claim prejudice based on the alternate legal theory. Defendant's defense did not rest in an interpretation of the contract; rather, his defense was that he was unaware of these bills and did not believe them to be accurate. These defenses could be applied equally to a contract breach and to the equitable claim of unjust enrichment.

Accordingly, Plaintiff's application to amend the complaint to include a cause of action for unjust enrichment, as relates to the utility services, is granted.

*2. Plaintiff's Cause of Action for Breach of Contract and Unjust Enrichment is Partially Dismissed.*

A. Reimbursement for ConEd bills.

Under the contract, Defendant is liable to Plaintiff for any unpaid license fees (see plaintiff's exhibit 4 at ¶3) and for repairs to the property (*id.* at ¶¶ 5, 9). The license states that the premises does not include utilities and Plaintiff is not obligated to provide them (*id.* at ¶4).

To succeed on a claim for unjust enrichment, the plaintiff must show (1) that the other party was enriched, (2) that it was at the expense of the Plaintiff, and (3) that it would be against equity and good conscience to permit the enrichment to go uncompensated (see *Mandarin Trading Ltd. v Wildenstein*, 16 NY3d 173 [2011]). "[T]he essential elements of a cause of action for breach of contract are the existence of a contract, the plaintiff's performance under the contract, the defendant's breach of that contract, and resulting damages" (*US Bank N.A. v Lieberman*, 98 AD3d 422, 423 [1st Dept 2012]).

Here, Plaintiff's claim for damages for the ConEd bills under either a theory of breach of contract or unjust enrichment was not proven. Plaintiff contends that it paid ConEd bills on Defendant's behalf when Defendant failed to update the ConEd account under his own name. However, Plaintiff failed to prove that it paid the ConEd bills<sup>1</sup>. Instead, Plaintiff merely presented the ConEd bills as proof of the amounts owed *and* proof of payment. Plaintiff asked the Court to rely on the subpoenaed records, but the subpoenaed records show a check for payment from DLS Inc, thus casting doubt on whether Plaintiff actually paid the bills (see plaintiff's exhibit 6A).

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<sup>1</sup> Ironically, Plaintiff correctly argued that Defendant's counterclaim should be dismissed because it was not supported by any proof of actual losses.

Plaintiff also never proved that it presented the bills to the Defendant as they came due or demanded payment or reimbursement. The only emails that they presented reflected them asking Defendant to put the electric bill into his name (*see* plaintiff's exhibit 7). Plaintiff's failure to demand payment/reimbursement before bringing this action conflicts with the requirement that Defendant's enrichment was unjust, inequitable, or offensive to good conscience.

B. Reimbursement for damage glass door.

By contrast, Plaintiff proved that it paid to replace a damaged glass door in the amount of \$1,687.50 (*see* plaintiff's exhibit 10) that Defendant was obligated to fix pursuant to the License (*see* plaintiff's exhibit 4 at ¶¶ 5, 9). Defendant's contention that the glass door would not have been damaged were it not for Plaintiff's failure to install a gate in front of the premises is unpersuasive because it is speculative. In either event, Defendant agreed to accept the premises in "as is" condition (*id.* at ¶ 1).

C. Unpaid license fee balance.

Plaintiff also presented sufficient, credible proof showing that there was an unpaid balance of \$354.83 for license fees. Defendant's proof to the contrary, by way of an email he sent to Mr. Cayre (*see* defendant's exhibit A) on June 1, 2023 asserting that neither owed each other anything, is not probative because it is a self-serving statement and Defendant did not provide a copy of Plaintiff's response to the email. Defendant's credibility is undermined by Plaintiff's well-documented proof of a balance.

3. *Defendant's Cause of Action for Property Damage is Dismissed.*

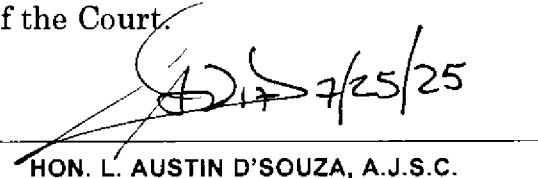
Defendant's counterclaim for property damage related to flooding in December 25, 2025 is dismissed because, among other things, it was not supported by sufficient, credible, documented proof reasonably estimating the amount of damages Defendant sustained.

Accordingly, it is hereby

ORDERED that judgment be entered in favor of Plaintiff for \$2,042.33 (representing \$1,687.50 in damages for repair of the glass door and \$354.83 in license fees), plus costs and disbursements; and it is further

ORDERED that Plaintiff's claim for damages related to the ConED bills and Defendant's counterclaim are **DISMISSED WITH PREJUDICE**.

This constitutes the Decision and Order of the Court.

 7/25/25  
HON. L. AUSTIN D'SOUZA, A.J.S.C.

DATE: 7/2/2025

Check One:

Case Disposed

Non-Final Disposition