

AIK Renovation Inc. v 1231 Tonda LLC

2025 NY Slip Op 33001(U)

August 7, 2025

Supreme Court, New York County

Docket Number: Index No. 655915/2024

Judge: Phaedra F. Perry-Bond

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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. PHAEDRA F. PERRY PART 35

Justice

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AIK RENOVATION INC., Plaintiff,

- v -

1231 TONDA LLC, LOU RAMIREZ, TONDA DEVELOPMENT LLC, HERITAGE GRAND BAKERY NEW YORK, 1239 OPERATING LLC Defendant.

INDEX NO. 655915/2024

MOTION DATE 02/10/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 6, 7, 8, 9, 10, 11 and 12 were read on this motion to/for JUDGMENT-SUMMARY.

Upon the foregoing documents, defendant's, 1239 Operating LLC (Owner), motion for summary judgment/motion to dismiss is granted.

Procedural History

On or about November 11, 2024, plaintiff, AIK Renovation Inc. (Plaintiff), filed a summons and complaint. (NYSCEF Doc. No. 1.) On November 14, 2024, service on Owner¹ was made on the Secretary of State of the State of New York, pursuant to Business Corporation Law §306. (NYSCEF Doc. No. 5.) On December 30, 2025, Plaintiff and Owner stipulated an extension of time for Owner to respond to the complaint. (NYSCEF Doc. No. 6.) On February 5, 2025, Owner filed a notice of appearance and answer to the complaint. (NYSCEF Doc. No. 7.)

On February 10, 2025, Owner filed a notice of motion seeking summary judgment, pursuant to Civil Practice Law and Rules (CPLR) 3212, and/or motion to dismiss under 3211(a)(7)

¹ The affirmation of service states service was for 1239 Operating Corporation sued here as 1239 Operating LLC. (NYSCEF Doc. No. 5). However, Owner stipulated to personal jurisdiction (NYSCEF Doc. 6).

for failure to state a cause of action. (NYSCEF Doc. Nos. 8, 9, 10 and 11.) No opposition papers were filed, and the motion was fully submitted on March 3, 2025.

Plaintiff's complaint alleges the real property located at 1231 Broadway, New York, NY (Property), where Plaintiff performed renovation work for a tenant, 1231 Tonda Pizza LLC (Tenant), is owned by Owner. (NYSCEF Doc. No. 1, ¶2.) The only cause of action Plaintiff asserted against Owner is the third cause of action for unjust enrichment. (NYSCEF Doc. No. 1, ¶¶60-68.) In the motion papers, Owner confirms ownership of the Property, but Owner never signed a contract with Plaintiff, there never was privity of contract, nor did Owner ever assume an obligation to pay Plaintiff for the work performed. (NYSCEF Doc. No. 10, ¶¶5-10)

Discussion

It is well settled “[t]he proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact.” (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986], citing *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985].) Since summary judgment is a drastic remedy, it should never be granted when there is any doubt as to the existence of a triable issue of fact. (*Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978])

The court's function on summary judgment is “issue-finding rather than issue-determination.” (*Mayo v Santis*, 74 AD3d 470, 471 [1st Dept 2010].) In deciding the motion, “the court should draw all reasonable inferences in favor of the nonmoving party” and deny summary judgment if there is any doubt as to the existence of a material issue of fact. (*Assaf v Ropog Cab Corp.*, 153 AD2d 520, 521 [1st Dept 1989] [citations omitted].)

Theory of Unjust Enrichment and Quasi-Contract Claims

To successfully plead an unjust enrichment claim “a plaintiff must allege that (1) the other party was enriched, (2) at that party's expense, and (3) that it is against equity and good conscience to permit the other party to retain what is sought to be recovered.” (*Philips Intl. Invs., LLC v Pektor*, 117 AD3d 1, 7 [1st Dept 2014] [internal quotation marks and brackets omitted], quoting *Georgia Malone & Co., Inc. v Rieder*, 19 NY3d 511, 516 [2012].)

As the Court of Appeals noted in several cases, a plaintiff cannot succeed on an unjust enrichment claim unless it has a sufficiently close relationship with the other party or a connection that is not too attenuated. (*Sperry v Crompton Corp.*, 8 NY3d 204, 210 [2007]; *Mandarin Trading Ltd. V Wildenstein*, 16 NY3d 173, 182-183 [2011]; and *Georgia Malone & Co., Inc. v Rieder*, 19 NY3d 511, 516-519 [2012]. A plaintiff may support an unjust enrichment theory and satisfy the requirement of a connection between the parties by having the pleadings show the relationship “could have caused reliance or inducement.” (*Philips Intl. Invs., LLC v Pektor*, 117 AD3d 1, 7 [1st Dept 2014] quoting *Georgia Malone*, 19 NY3d at 517.)

Here, Plaintiff's pleadings constantly reference a contract, business dealings and agreements with Tenant, its affiliates and Tenant's controlling member, Lou Ramirez. (NYSCEF Doc. No. 1.) The only connection Plaintiff makes in its pleadings to Owner is ownership of the Property. There is nothing in the pleadings suggesting Owner and Plaintiff had a relationship that caused Plaintiff's reliance and inducement to perform the renovations. (NYSCEF Doc. No. 1, ¶¶ 61, 63-68) Plaintiff's absence of a response to the motion papers, or make any attempt to avail itself of corrective measures under the CPLR enforces the Court's decision to grant Owner's motion in its entirety.

Conclusion

Accordingly, it is

ORDERED that 1239 Operating LLC’s motion for summary judgment is granted; and it is further

ORDERED that within twenty (20) days after this decision and order is uploaded to NYSCEF, counsel for 1239 Operating LLC shall serve a copy of this decision and order, with notice of entry, on all parties, as well as, the Clerk of the Court, who shall enter judgment accordingly; and it is further

ORDERED that, service upon the Clerk of the Court 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 at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that the Clerk of the Court shall amend the caption to remove 1239 Operating LLC from the list of defendants; and it is further

ORDERED that the remaining parties are directed to appear for a preliminary conference on August 19, 2025.

8/07/2025

DATE



PHAEDRA F. PERRY-BOND, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE