

**901 Props., LLC v Bear Glass Inc.**

2025 NY Slip Op 33002(U)

August 8, 2025

Supreme Court, New York County

Docket Number: Index No. 656798/2021

Judge: Arlene P. Bluth

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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART 14

*Justice*

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901 PROPERTIES, LLC,

INDEX NO. 656798/2021

Plaintiff,

- v -

DECISION AFTER TRIAL<sup>1</sup>

BEAR GLASS INC.,

Defendant.

-----X

The opening statements in this bench trial suggested that this was a routine breach of contract case between a building owner and a contractor. Plaintiff, the owner, claimed that the contractor’s work was slow, lacked quality, caused damage to other parts of the building and that other workers had to be called in to repair the damages and complete the job. Defendant, like many contractors often argue, took the position that although there were delays, everything was eventually completed, money is now due and that plaintiff’s complaints are exaggerated in order to avoid paying what is owed. However, the routine nature of this action shifted dramatically as the trial proceeded. It became abundantly clear that the plaintiff was not going to call, and did not call, witnesses who actually did this alleged remedial work and did not present any evidence to substantiate its claims about defendant’s poor work.

**Plaintiff’s Affirmative Case**

It is undisputed that plaintiff hired defendant Bear Glass to install windows at plaintiff’s commercial building in North White Plains. Jack Dweck, a principal of the plaintiff owner and a

<sup>1</sup> The Court gratefully acknowledges the contributions of the part’s intern, Sarah R. Siegel, in drafting this opinion.

**DECISION AFTER TRIAL**

practicing attorney with offices in midtown Manhattan, insisted that he hired defendant to replace all the windows in the building for \$90,000. And while the Court believes that Mr. Dweck may have *thought* that to be the case when he agreed to the \$90,000, the documents do not make that belief reasonable nor do they substantiate that conclusion.

The proposal, part of plaintiff's exhibit 1, was considered by the parties to be the contract. Glaringly obvious from that document is that nowhere does it say "all windows" or anything remotely similar. It says "177 windows, 59 of which will have outswing awnings" (*id.*). If Mr. Dweck, an accomplished and experienced attorney, intended it to be all windows, then it was easy enough for him to add, somewhere, anywhere, that it covered "all windows."

This brings the Court to a credibility issue concerning the testimony of Mr. Dweck and the resident building manager, Charles Goh. They claimed, even at trial, to have no idea how many windows were in the building; the Court did not believe that at all. This case is all about windows in an office building: the proposal mentions a specific number of windows and more than that were installed. Long ago, counterclaims were interposed, claiming extra fees for extra windows and upcharges for openable windows. Even if Mr. Dweck did not know before he decided to replace windows, he presumably would have been curious and had the windows counted when Bear Glass wanted more money. Certainly, during the course of the litigation, and then again in preparing for trial, both Mr. Dweck and Mr. Goh had to become aware of how many windows are in the building. The fact that both of them denied knowing the number of windows in the building, when asked under oath, was far too convenient. And while the Court understands that Mr. Dweck's position was that it did not matter how many windows there were because he thought he hired Bear Glass to replace them all, he was asked directly how many windows were in his building and he claimed not to know or even to suggest a document that

might refresh his recollection (such as the aforementioned proposal). When asked at the trial he could have answered “I did not know then but I know now...” but he did not. For Mr. Dweck and Mr. Goh to swear under oath at a trial about windows that they do not know the number of windows was preposterous.

Aside from claiming to not know the number of windows, the Court found Mr. Dweck credible. The Court can see how plaintiff got itself in this position of entering into a proposal/contract that does not say “all windows” and paying a lot of money without being able to prove any damages. Mr. Dweck, an attorney admitted for 63 years and still sharp as a tack, is a busy man and juggles many things at the same time. He delegated—while he was in Manhattan, he relied on others to be his eyes and ears in Westchester. He believed them and acted based on what they told him. And so when he testified that he sought \$116,767.71 in damages, he was telling what he believed to be the truth. However, nearly all of his contentions about Bear Glass’ work were premised on hearsay and cannot be considered. That is, they were based upon statements that others made to him and, unfortunately for plaintiff, those individuals did not testify on behalf of plaintiff.

For example, Mr. Dweck testified that he paid another contractor, Osman Ltd. (“Osman”), to complete and to repair Bear Glass’ assigned work. But, critically, no one from Osman was called to testify as to what it was asked to do and what it actually did (if anything). The managing agent, Charles Goh, who did testify and had an office in the building, failed to offer any insight into Osman’s work at all. And so although the Court believes Mr. Dweck paid Osman and believes Mr. Dweck *thinks* he paid Osman because of poor work by Bear Glass, no reliable proof was presented at the trial to show exactly what Osman did and why.

For instance, a witness from Osman could have offered testimony about Bear Glass' work and presumably could have supported these assertions through pictures or other documents. Instead, this Court was left with Mr. Dweck's conclusory claim, based on hearsay, that he paid Osman to fix and complete Bear Glass' work based solely on what others told him. To be sure, plaintiff submitted proof that he paid Osman (*e.g.*, plaintiff's exhibit 21) but that only proves that a bill was paid. It does not satisfy plaintiff's burden to show that he incurred this expense because of Bear Glass and so the Court cannot conclude that Bear Glass is liable for these amounts.

There was no testimony by Mr. Dweck about his personal observations with respect to the building—that is, he did not claim he went to the premises and personally saw that Bear Glass failed to do certain work or that the work was shoddy. For all this Court knows, Osman's scope of work far exceeded what Bear Glass was assigned to do or Osman may have caused some damage itself. Or Osman was doing other work in the building and it was billed to Mr. Dweck as related to windows. And while there were invoices that involved Osman Ltd., none of them indicated that the work they were doing was the window replacement that the plaintiff claims Bear Glass failed to do. For instance, plaintiff's exhibit 21 is an invoice for \$10,000 for capital improvements. The Court cannot conclude from this notation that capital improvements means window work that Bear Glass was supposed to complete.

This Court is not saying that Mr. Dweck was duped into paying Osman or that Osman failed to do any work at the building. Clearly, the information conveyed to Mr. Dweck was good enough for him to write the checks; it just isn't good enough to meet plaintiff's burden of proof at trial. At the trial, plaintiff was required to present direct evidence describing exactly what Osman was hired to do and to provide supporting evidence for such claims. In other words,

plaintiff should have presented a witness with personal knowledge and backup to support its contention that Osman was hired to fix up and complete Bear Glass' work instead of conveying hearsay testimony from plaintiff's principal about what he heard from others concerning Bear Glass' performance.

The hearsay testimony was not limited to Osman's work. Plaintiff also provided only hearsay testimony about purported damage to the premises allegedly caused by Bear Glass. Although Mr. Dweck and Mr. Goh offered vague recollections about complaints from tenants at the building, not a single email or other document was produced on this topic. Plaintiff did not, for instance, submit a single written complaint from a tenant or proof that it extended a rent credit or some other type of concession. Similarly, although they spoke of a wet carpet and wet walls, not a single picture was produced to show these alleged damages. Again, the Court believes that Mr. Dweck *was told* that there was damage and that he needed to hire someone to repair it, but that does not satisfy plaintiff's burden of proof that Bear Glass was responsible.

The Court finds that plaintiff failed to fulfill its prima facie burden in showing that defendant's delays or installations caused any damages to plaintiff. The record at trial persuasively shows that plaintiff was annoyed with the pace of Bear Glass' work, but it did not include the detail required to substantiate the damages that plaintiff seeks. This Court is simply unable to leap to the conclusion that the checks made out to Osman somehow satisfy plaintiff's burden. That, combined with the lack of other evidence, compels the Court to find that plaintiff is not entitled to recover against Bear Glass.

### **The Counterclaims**

Turning to the counterclaims, Bear Glass seeks the amount remaining due from the contract plus an additional 16 windows installed as well as additional costs in changing many

windows from sealed glass to openable windows suitable for ventilation (*see* defendant's exhibit I [detailing the increase in windows from 177 to 193 and that the number of operable windows from 59 to 100]). As discussed earlier, Mr. Dweck's insistence that the contract was to replace all the windows is just not credible in light of this invoice and given that plaintiff did not produce a single document to support its claim that the original contract was for all windows. Conversely, Mr. Ira Lehman, Bear Glass' witness, testified credibly, with the documentation to back it up, that originally Bear Glass was hired to replace 177 windows, only 59 of which could be opened (*see id.*).

Mr. Lehman also testified credibly that Mr. Dweck instructed Bear Glass to deal with the on-site manager, Charles Goh. Mr. Dweck never denied that assertion and it makes sense. The Court sees that this fits into Mr. Dweck's style of delegating and then relying upon the on-site people to advise him about the happenings at the property. It is completely understandable that Mr. Dweck would delegate issues to his property manager, who was also on site.

The real question, however, is liability for the extra windows installed. Mr. Dweck's contention that more windows were not added because the contract was for all windows is rejected. As stated earlier, the contract does not say all windows. More windows were added to the original order, some of them openable, and some windows were modified so that they could be opened. Even Mr. Goh testified that the tenants wanted openable windows to improve ventilation.

Mr. Lehman testified that he went through the building with Mr. Goh and then proceeded with the extra work; he pointed the Court to defendant's exhibit J—a rendering of the building that had “W”s drawn near windows. Mr. Lehman testified that Mr. Goh approved the work. Mr. Goh begrudgingly recalled going through the building with Mr. Lehman but denied that he was

the one who wrote the “W”s on the rendering. Mr. Goh clearly testified that he had no authority to approve work that exceeded a thousand dollars and that only Mr. Dweck could approve work over that amount. Mr. Dweck confirmed this assertion in his testimony. There is no doubt that in Mr. Goh’s contract to manage plaintiff’s property, it states that “Any expenditure over \$1000.00 for any one item shall be made only with the prior approval of the undersigned” (plaintiff’s exhibit 9).

Critically, however, no one testified that anyone ever told *Bear Glass* that Mr. Goh lacked authority to authorize extra work. “Essential to the creation of apparent authority are words or conduct of the principal, communicated to a third party, that give rise to the appearance and belief that the agent possesses authority to enter into a transaction” (*Hallock v State*, 64 NY2d 224, 231, 64 NY2d 224 [1984]). Here, the uncontradicted testimony suggests that Bear Glass reasonably believed that Mr. Goh possessed the authority to authorize the additional work as Mr. Dweck clearly delegated the supervision of this project to Mr. Goh. Given Mr. Dweck’s contention that he thought all windows were included and that there was a flat rate for the work (\$90,000), it makes sense that he told Mr. Goh that he could approve whatever made sense for the building. It is quite possible that Mr. Goh could have approved the changes not realizing there would be extra fees that conflicted with his contractual authority.

In any event, considering Mr. Dweck’s instructions to Bear Glass to deal with Mr. Goh, Mr. Lehman’s testimony that he was dealing with Mr. Goh and based on the demeanor of Mr. Goh when he testified, the Court finds that Dweck and Goh certainly gave Bear Glass the impression that Goh was authorized to approve the changes to the window order. And based on the demeanor of Goh when he testified, the Court finds that he did authorize the extra work. Bear

Glass had no reason to question Mr. Goh's authority as Jack Dweck told Bear Glass to deal with Mr. Goh.

The Court did not find Mr. Goh's denial of giving Bear Glass the go-ahead credible. There was a hesitation before Mr. Goh answered and his loyalty and employment is justifiably with plaintiff. He knew what this case was about, and he was not about to readily admit that he approved these changes that ended up being a substantial upward modification of the work and part of a lawsuit. This Court therefore finds that Mr. Goh gave the go-ahead to Bear Glass. Whether Goh checked with Dweck first is obviously unknown to this Court and that issue is beside the point. The fact is that the Court is confronted with a window installer who was told to deal with the property manager, obtained approval for the installation of thousands of dollars worth of extra windows from that manager, did the work and sued to get paid for that work.

The Court concludes that Bear Glass reasonably concluded it had permission and would be paid to order and install the extra windows. It simply makes no sense why Bear Glass would undertake such a significant task unless it thought it was going to be paid for it. There was no indication that Bear Glass runs its business as a charity or on "spec." And there was no testimony that anyone tried to stop Bear Glass from doing that extra work. Based on Dweck's actions, and Goh's actions, Goh had apparent authority to approve the change to the order.

Moreover, it is wholly unfair for plaintiff to get all those windows, including newly openable ones, for free. The fact is that Bear Glass asserted unjust enrichment in its answer, which is certainly applicable here. Plaintiff benefitted from this portion of Bear Glass' work, and it would be wholly inequitable for plaintiff to receive that benefit for free.

## Summary

Plaintiff was understandably frustrated with the pace of Bear Glass' progress. Mr. Dweck claimed in an email that Bear Glass had promised to do the job within two months and there is no dispute that it took much, much longer (*see* plaintiff's exhibit 12). But, as this Court stressed at the beginning of this decision, plaintiff presented almost exclusively hearsay and conclusory evidence concerning its damages. If aggravation was compensable, perhaps Mr. Dweck would be a rich man.

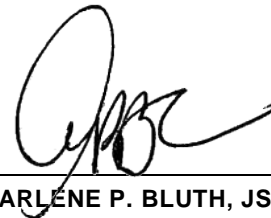
To his credit, Mr. Dweck paid his bills that he thought he owed, but there was no firsthand testimony or even pictures of any work associated with the claimed damages. While Mr. Dweck believed he was paying bills related to issues with Bear Glass, his attorneys failed to show the proof necessary to causally connect those bills to Bear Glass' purported failures. Plaintiff simply paid another entity, Osman, but did not offer a witness in this trial to prove what Osman did and why.

With respect to the counterclaims, Bear Glass showed proof of the extra windows ordered and installed and that certain windows were modified so they could now be opened. Bear Glass credibly testified that Mr. Dweck directed Bear Glass to deal with Charles Goh. And the Court finds that although Mr. Goh did not have actual authority to approve contracts over \$1,000, he had apparent authority to do so. The Court found Mr. Lehman's testimony, that he walked through the building with Mr. Goh to determine which windows to order and gained approval for the installation of additional windows and openable windows, as credible. And plaintiff was unjustly enriched by having extra windows installed in its building and should have to pay for those windows.

Therefore, defendant Bear Glass is entitled to \$62,400. This includes the amounts in defendant’s exhibit I—the \$10,000 remaining the contract and the additional amounts invoiced to plaintiff for the additional work. Plaintiff did not attack the substance of these invoices—it merely reiterated its claim that it thought the original contract was for all windows.

Accordingly, it is hereby

ORDERED that the Clerk, upon presentation of proper papers therefor, enter judgment in favor of defendant BEAR GLASS INC. and against plaintiff 901 PROPERTIES LLC in the amount of \$62,400 plus interest from January 8, 2021 (a reasonable midpoint of the three invoices in defendant’s exhibit I) plus costs and disbursements.



ARLENE P. BLUTH, JSC

DATE: 8/8/2025

Check One:

Case Disposed

Non-Final Disposition

Check if Appropriate:

Other (Specify \_\_\_\_\_ )