

**VG Private Contr. v Canzoneri**

2025 NY Slip Op 33133(U)

August 19, 2025

Supreme Court, New York County

Docket Number: Index No. 654382/2024

Judge: Arthur F. Engoron

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also attest that during this time, plaintiffs used their own money to pay subcontractors and buy materials, and that ultimately, plaintiffs were not compensated for their services or reimbursed for their materials etc. Id.

Plaintiffs allege that in October 2022 they ceased work on the Construction Project because they ran out of money to advance the subcontractor and material costs. Plaintiffs further allege that since July 22, 2022, defendants have paid only \$3,000 on invoices totaling \$80,568.05, resulting in \$77,568.05 outstanding. NYSCEF Doc. No. 3.

On August 26, 2024, plaintiffs commenced the instant action against defendants, seeking \$77,568.05, plus statutory interest, plus costs and disbursements, asserting five causes of action: (1) account stated; (2) breach of contract; (3) unjust enrichment; (4) breach of implied covenant of good faith and fair dealing; and (5) quantum meruit. NYSCEF Doc. No. 1.

#### Motion to Dismiss

On November 18, 2024, defendants moved, pursuant to CPLR 3211(a)(7) and (a)(1), to dismiss plaintiffs' complaint against the individual defendants, to dismiss the claims against CPH aside from breach of contract, and to change the venue to Seneca County. NYSCEF Doc. Nos. 4, 5.

In support of their motion, defendants do not dispute that they had business dealings with plaintiffs via CPH but contend that: there was an overarching goal of a joint venture between plaintiffs and CPH; and that the Verbal Agreement was "vague." NYSCEF Doc. No. 11. Defendants assert that plaintiffs are not entitled to payment of these invoices because plaintiffs did not receive a prior authorization pursuant to the Verbal Agreement, and thus plaintiffs breached the Verbal Agreement. Id.

Defendants argue, inter alia, that pursuant to CPLR 3211(a)(7), plaintiffs do not state a claim against the individual defendants, as the trio were not parties to the Verbal Agreement. NYSCEF Doc. No. 11. Defendants note that the copy of Seneca County's approval of the Construction Project (NYSCEF Doc. No. 2) explicitly names CPH only, with no reference to Canzoneri, Perla, or Gobins in their individual capacities. Id. Defendants contend that in light of the foregoing, plaintiffs' claims against the individual defendants should be dismissed. Id.

As to plaintiffs' claims against CPH, defendants argue that plaintiffs' causes of action for unjust enrichment, quantum meruit, and breach of implied covenant of good faith and fair dealing should be dismissed, pursuant to CPLR 3211(a)(7), because the causes of action are duplicative of plaintiffs' breach of contract cause of action. Id.

Additionally, defendants argue that plaintiffs' account stated claim against CPH should be dismissed because defendants objected to plaintiffs' invoices. Id. Defendants cite the affidavit of Canzoneri (NYSCEF Doc. No. 10), Manager of CPH, attesting that in August 2022, defendants objected to the invoices over several telephone conversations with plaintiffs.

Defendants further argue that the account stated cause of action should be dismissed because it is duplicative of the breach of contract claim. NYSCEF Doc. No. 11.

In opposition, plaintiffs contend that the Verbal Agreement was with the individual defendants, and that during negotiations, CPH, the registered owner of the Waterloo Property, was “never mentioned” and that “all discussions and obligations” were made between plaintiffs and the individual defendants. NYSCEF Doc. No. 17. Plaintiffs’ state that during the time that defendants paid invoices, said payments were made by Canzoneri personally, rather than through CPH. Plaintiffs argue that this conduct demonstrates that the individual defendants assumed contractual obligations. NYSCEF Doc. No. 21. Plaintiffs allege that CPH was not “introduced” to them until mid-2022, “when the parties needed to expedite town and county paperwork to obtain necessary permits, which had to be in [CPH’s] name.” Id.

Plaintiffs further argue that their unjust enrichment and quantum meruit claims should not be dismissed, because defendants have failed to establish that a valid and enforceable contract exists between plaintiffs and CPH. Id. Plaintiffs contend that even though CPH was not a direct party to the Verbal Agreement, it still benefitted from plaintiffs’ work. Id.

In reply and further support of their motion, defendants assert that the intent of the Verbal Agreement and the understanding of the parties was that plaintiffs were to provide labor and construction services for CPH and that work in excess of \$1,000 was to be pre-authorized by CPH. NYSCEF Doc. No. 24. Defendant argues that there was no agreement concerning the timing or form of payment, and that Canzoneri’s personal PayPal account was used “as a temporary measure of convenience[,]” as CPH did not yet have payment systems set up. Id.

#### Motion to Change Venue

Defendants argue that pursuant to CPLR 510(3), the instant case should be transferred to Seneca County. Id. Defendants note that the Verbal Agreement was made in Seneca County, the construction work took place in Seneca County, and the majority of non-party witnesses are located either within Seneca County or counties surrounding it. NYSCEF Doc. No. 10. Defendants list the names of eight witnesses willing to testify, four of whom are based in Seneca County, with the other four in nearby counties. Id. Specifically, paragraph 8 of the Canzoneri affidavit states that:

the following witnesses/entities have been contacted and are available and willing to testify:

- a. The Planning & Community Development Department of Seneca County located in Seneca County;
- b. The Village of Waterloo Planning Board located in Seneca County;
- c. Fay Cuson located in Seneca County;
- d. Thomas Hunt located in Seneca County;
- e. Brek Twomey located in Onondaga County;
- f. Al Romano located in Onondaga County;
- g. James Gamble located in Onondaga County; and
- h. Matthew Bell located in Broome County.

Id.

Defendants contend that the non-party witnesses will be inconvenienced by the venue remaining in New York County because they will be “forced to incur significant costs based upon travel and time off of work to appear for depositions and trial.” Id.

In opposition, plaintiffs contend, inter alia, that depositions, witness statements, and if necessary, live testimony can be conducted remotely, which “eliminates any undue burden on witnesses.” NYSCEF Doc. No. 21.

Additionally, plaintiffs argue that defendants “have failed to provide specific evidence showing that any witness would be burdened by appearing in New York County.” Plaintiffs further argue that defendants have simply asserted “that some witnesses, none of whom are key to the claims asserted to Plaintiffs, are located in Seneca County[,]” which “is not enough to justify a transfer under CPLR 510(3).”

## Discussion

### Motion to Dismiss

“An oral agreement may be enforceable as long as the terms are clear and definite and the conduct of the parties evinces mutual assent “sufficiently definite to assure that the parties are truly in agreement with respect to all material terms. However, not all terms of a contract need be fixed with absolute certainty, and courts will not apply the doctrine of indefiniteness to “defeat the reasonable expectations of the parties in entering into the contract.” Kramer v Greene, 142 AD3d 438, 439 (1st Dept 2016) (internal citations omitted). “Generally, quasi-contractual remedies are unavailable where there exists a valid and enforceable agreement governing the particular subject matter.” Id. at 438, 441. However, “where there is a bona fide dispute as to the existence of a contract or the application of a contract in the dispute in issue, a plaintiff may proceed upon a theory of quasi contract as well as breach of contract, and will not be required to elect his or her remedies.” Id. at 442.

Dismissal pursuant to CPLR 3211(a)(7) is warranted when, “afford[ing] the pleadings a liberal construction, tak[ing] the allegations of the complaint as true and provid[ing] plaintiff the benefit of every possible inference,” the complaint fails to assert facts that would make out a cause of action. EBC I, Inc. v Goldman, Sachs & Co., 5 NY3d 11, 19 (2005). Dismissal pursuant to CPLR 3211(a)(1) is warranted where “documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law.” Leon v Martinez, 84 NY2d 83, 87-88 (1994).

Here, defendants motion to dismiss plaintiffs’ complaint against the individual defendants, and to dismiss the claims against CPH aside from breach of contract, must be denied, as this Court finds that plaintiffs have demonstrated that controversies exist as to whether defendants were unjustly enriched by plaintiffs’ work, and if so, whether it would be unfair to plaintiffs for defendants to retain that benefit without payment to plaintiffs. Additionally, there is a bona fide dispute as to whether there was a contract between plaintiffs and the individual defendants and/or CPH. Thus, plaintiffs may proceed upon their quasi contract causes of action and breach of contract cause of action. The Court has considered defendants remaining arguments and finds them to be non-dispositive and/or unavailing.

### Motion to Change Venue

“The court, upon motion, may change place of trial of an action where the convenience of material witnesses and the ends of justice will be promoted by the change.” CPLR 510(3).

“Unless the balance is strongly in favor of the defendant, the plaintiff’s choice of forum should rarely be disturbed[.]” Elmaliach v Bank of China Ltd., 110 AD3d 192, 208 (1st Dept 2013) (internal citations and quotation marks omitted). “A change of venue based on the convenience of witnesses may only be granted after there has been a detailed evidentiary showing that the convenience of nonparty witnesses would in fact be served by the granting of such relief. The affidavit in support of such motion must contain the names, addresses and occupations of the prospective witnesses, must disclose the facts to which the proposed witnesses will testify at the trial, must show that the proposed witnesses are, in fact, willing to testify and must show how the proposed witnesses would be inconvenienced in the event that a change of venue is not granted.” Jacobs v Banks Shapiro Gettinger Waldinger & Brennan, LLP, 9 AD3d 299, 299 (1st Dept 2004) (internal citations omitted). “[T]he convenience of the parties and their experts “is not relevant to a determination of a change of venue under CPLR 510(3).” Mei Ying Wu v Waldbaum, Inc., 284 AD2d 434, 435 (2d Dept 2001) (internal citations omitted).

Defendants motion to the change venue must be denied as defendants have failed to make a detailed evidentiary showing. Canzoneri’s affidavit (NYSCEF Doc. No. 10) includes some of the requisite information, as follows: (1) the names of eight prospective non-party witnesses; (2) their general locations (i.e. which county they reside in); (3) that they “have been contacted and are available and willing” to testify; (4) that the nature of the anticipated testimony includes the scope of work to be performed at” the Waterloo Property “and the overarching goal of the prospective joint venture” between plaintiffs and CPH; and (5) that they would be inconvenienced if New York County remains the venue because they would be “forced to incur significant costs based upon travel and time off of work to appear for depositions and trial.”

However, Canzoneri’s affidavit lists the individual names of only four out of eight of the apparent non-party witnesses, and the occupations and addresses of these individuals are not included. Further, it is not clear whether these individuals are employed by the parties in the instant action; if that were the case, these individuals would be considered parties whose convenience is not a factor. Additionally, the other four names listed are the names of general organizations (e.g. “The Planning & Community Development Department of Seneca County located in Seneca County”); without reference to an individual for each organization, and none of which include an address. In any event, none of the potential witnesses have submitted affidavits of their own.

As Canzoneri’s affidavit failed to contain the addresses and occupations of the prospective witnesses, or to disclose the facts to which the proposed witnesses will testify at the trial, defendants’ motion must be denied as a matter of law. As plaintiffs argued, depositions can be held remotely, which can lessen the costs, travel time, and time off work for any non-party witnesses.

Accordingly, defendants motion to change venue of the instant action from New York County to Seneca County, pursuant to CPLR 510, is denied.

**Conclusion**

Thus, the motion of defendants, CPH-NY01, LLC, D/B/A Commercial Park Holdings, Stephen Canzoneri, Ron Perla, and J.C. Gobins is denied.

The Court also notes that this case appears ripe for settlement. The Court would be happy to preside over settlement discussions. An email to SFC-Part37@nycourts.gov, can get the ball rolling.



**RON. ARTHUR F. ENGORON**  
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 ARTHUR F. ENGORON, J.S.C.

8/19/2025  
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 DATE

CHECK ONE:  CASE DISPOSED  DENIED  NON-FINAL DISPOSITION

APPLICATION:  GRANTED  GRANTED IN PART  OTHER

CHECK IF APPROPRIATE:  SETTLE ORDER  SUBMIT ORDER

INCLUDES TRANSFER/REASSIGN  FIDUCIARY APPOINTMENT  REFERENCE