

**C4 Pest Control v Vernon Manor Co-Operative Apts.,
Section I, Inc.**

2025 NY Slip Op 33246(U)

August 27, 2025

Supreme Court, New York County

Docket Number: Index No. 654616/2024

Judge: Leslie A. Stroth

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LESLIE A. STROTH PART 12M

Justice

INDEX NO. 654616/2024
MOTION DATE 06/30/2025, N/A
MOTION SEQ. NO. 001 002

C4 PEST CONTROL

Plaintiff,

- v -

VERNON MANOR CO-OPERATIVE APARTMENTS, SECTION I, INC.,

Defendant.

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18

were read on this motion to/for JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 002) 19, 20, 21, 22, 23, 24, 25, 26

were read on this motion to/for EXTEND - TIME

FACTUAL BACKGROUND

This action arises out of an agreement for pest control services between Plaintiff, C4 Pest Control ("Plaintiff"), a sole proprietorship owned by Baker Laconde Lovelace, and Defendant, Vernon Manor Co-operative Apartments, Section I, Inc. ("Defendant"). On or about November 1, 2021, the parties executed a written agreement for Plaintiff to provide bi-monthly pest control services across four of Defendant's properties.

Plaintiff alleges that it performed the required services throughout 2022 and into early 2023, issuing invoices which were received and retained by Defendant without objection. Plaintiff further alleges that in November 2022, Defendant issued checks covering the March-November 2022 invoices, but following the replacement of its board of directors, Defendant cancelled those checks. Plaintiff alleges that thereafter submitted additional invoices covering

December 2022 through February 2023, which Defendant also retained without objection but did not pay.

Plaintiff commenced this action asserting causes of action sounding in account stated and breach of contract.

In Motion Sequence 001, Plaintiff moves for summary judgment, asserting that Defendant's cancellation of the checks constitutes breach of contract as a matter of law. Plaintiff relies on the affirmation of Mr. Lovelace, invoices, and the affidavit of former board president Sylvia Gadson.

In Motion Sequence 002, Defendant moves to extend the time to oppose Motion Sequence 001, citing scheduling conflicts and difficulty obtaining records allegedly in the possession of Ms. Gadson.

LEGAL STANDARD

The proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 323 [1986]). Once a party has submitted competent proof demonstrating that there is no substance to its opponent's claims and no disputed issues of fact, the opponent, in turn, is required to "lay bare [its] proof and come forward with some admissible proof that would require a trial of the material questions of fact on which [its] claims rest" (*Ferber v Sterndent Corp.*, 51 NY2d 782, 783 [1980]). The party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted (*See Dauman Displays, Inc. v Masturzo*, 168 AD2d 204, [1st Dept 1990]).

Pursuant to CPLR 2004, the Court may extend the time fixed by statute, rule, or order “upon such terms as may be just and upon good cause shown.” “In exercising its discretion, a court may consider such factors as ‘the length of the delay, whether the opposing party has been prejudiced by the delay, [and] the reason given for the delay ...’ (*Bank of New York Mellon v Adam P10tch, LLC*, 226 AD3d 497 [1st Dept 2024], *lv to appeal dismissed sub nom. Bank of New York Mellon v Adam P10tch LLC*, 42 NY3d 1046 [2024] quoting *Tewari v. Tsoutsouras*, 75 N.Y.2d 1, 12, 550 N.Y.S.2d 572, 549 N.E.2d 1143 [1989]).

DISCUSSION

Plaintiff's Motion for Summary Judgment (Motion Sequence 001)

Plaintiff has not met its prima facie burden entitling it to summary judgment. The affirmation of Plaintiff's principal alleges that Defendant cancelled the checks after initially issuing them, but Plaintiff has not produced documentary evidence demonstrating the status of the checks. Although invoices and copies of checks are annexed, there is no proof from banking institutions or other admissible records establishing that cancellation occurred. Plaintiff therefore has not conclusively shown the absence of triable issues regarding payment.

Further, even assuming Plaintiff had produced stronger proof, the motion is premature. Discovery has not yet been completed, and critical questions remain in dispute, including whether Defendant lawfully cancelled the checks, whether the invoices were properly objected to, and whether Plaintiff's claimed damages are accurate. Summary judgment should be denied where issues of fact exist or where further discovery may reveal evidence material to the claims (*see Aubrey Equities, Inc. v SMZH 73rd Assoc.*, 212 AD2d 397, 398 [1st Dept 1995]). Here, outstanding factual questions remain regarding whether Defendant's checks were in fact cancelled, the circumstances of the alleged cancellation, and whether Defendant raised any

timely objections to the invoices. Plaintiff has offered no bank records, stop-payment notices, or testimony from financial institutions to confirm cancellation. These unresolved matters go to the heart of Plaintiff's claims for account stated and breach of contract.

Accordingly, Plaintiff's motion for summary judgment (Motion 001) is denied.

Defendant's Motion for Extension of Time (Motion Sequence 002)

Defendant separately moves for an extension of time to oppose Motion 001 under CPLR 2004. Defendant argues that its counsel required additional time to obtain records allegedly held by former board president Sylvia Gadson and that scheduling conflicts delayed preparation of opposition papers.

The Court notes that Defendant had already received multiple extensions and adjournments. Despite this, Defendant failed to submit opposition within the agreed deadlines and waited until the eve of the return date to file the instant application.

Nevertheless, because Plaintiff's summary judgment motion has been denied, Defendant's motion for additional time has been rendered academic as there is no longer any pending dispositive motion requiring opposition.

Accordingly, Motion 002 is denied as moot.

The court has considered the remaining arguments of the parties and finds such unavailing.

Accordingly; it is hereby

ORDERED that Plaintiff's motion for Summary Judgment (Motion Sequence 001) is denied in its entirety; and it is further

ORDERED that Defendant's motion to extend time to oppose Motion Sequence 001 is denied as moot; and it is further

ORDERED that the pending oral argument set for October 28, 2025 on Motion Sequence 002 is cancelled in light of this decision.

The foregoing constitutes the decision and order of the court.

[Handwritten Signature]

HON. LESLIE A. STROTH
J.S.C.

8/27/2025
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