

**Fire Prevention Tech. Inc. v Edward J. Minskoff
Equities Inc.**

2025 NY Slip Op 33665(U)

September 29, 2025

Supreme Court, New York County

Docket Number: Index No. 650646/2016

Judge: Lori S. Sattler

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 02M

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FIRE PREVENTION TECHNOLOGY INC. AS ASSIGNEE
OF FIREQUENCH INC.,

Plaintiff,

- v -

EDWARD J. MINSKOFF EQUITIES INC. D/B/A/ EDWARD
MINSKOFF PROPERTIES, FIREQUENCH, INC.

Defendant.

INDEX NO. 650646/2016

MOTION DATE 11/04/2024

MOTION SEQ. NO. 005

**DECISION + ORDER ON
MOTION**

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HON. LORI S. SATTLER:

The following e-filed documents, listed by NYSCEF document number (Motion 005) 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 168, 169, 170, 171, 172, 173, 174, 184, 185, 187, 188, 189

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER).

In this action for breach of contract, Defendant Edward J. Minskoff Equities Inc. d/b/a/ Edward Minskoff Properties (“Defendant”) moves for summary judgment seeking dismissal of Plaintiff Fire Prevention Technology Inc.’s (“Plaintiff”) complaint (NYSCEF Doc. No. 131, Complaint). Plaintiff opposes the motion and cross-moves for leave to amend the Complaint to add non-party Firetronics, Inc. (“Firetronics”) as a plaintiff and to correct its own name. Defendant opposes the cross-motion.

The dispute arose in connection with installation of fire alarm systems in the building located at 825 Seventh Avenue in Manhattan (“Building”), owned by Defendant. In June 2007 and 2008, Defendant entered into two contracts with non-party Firetronics for the installation, testing and maintenance of a fire alarm system in the Building (NYSCEF Doc. No. 132, 133). Firetronics subsequently hired several subcontractors including Firequench Inc. (“Firequench”) (Complaint ¶

7; NYSCEF Doc. No. 134, Burke EBT at 40). Defendant did not have a contract with Firequench. Prior to the commencement of this action, Firequench and Plaintiff executed an assignment of claims agreement in which Firequench assigned to Plaintiff its alleged claims against Defendant on work that it did on the project (NYSCEF Doc. No. 136 at 13-14).

The scope of Firequench's work at the Building was outlined in two Purchase Orders issued by Firetronics (NYSCEF Doc. No. 136 at 10-11; Burke EBT 2 at 36-39). Firequench submitted both its work and invoices directly to Firetronics and a representative from Firequench, Desmond Burke, testified that Firequench received payment for some of its services from Firetronics (*id.* at 36-38; NYSCEF Doc. No. 135, Lloyd EBT at 65-66, 76-77). In turn, Firetronics issued its own invoices to Defendant for this work (NYSCEF Doc. No. 138-151).

Plaintiff, as assignee of Firequench's rights, commenced this action in March 2016, alleging Firequench was not paid for all work performed and asserting causes of action for breach of contract, fair and reasonable value of services, and unjust enrichment and quantum meruit. Defendant answered the Complaint and asserted counterclaims against Firequench. Defendant now moves for summary judgment dismissing the Complaint, while Plaintiff cross-moves for leave to amend the Complaint.

On a motion for summary judgment, the moving party "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 from the case" (*Winegrad v New York Univ. Med. Center*, 64 NY2d 851, 853 [1985], citing *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). Should the movant make its prima facie showing, the burden shifts to the opposing party, who must then produce admissible evidentiary proof to establish that material issues of fact exist (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]).

Defendant first moves to dismiss the breach of contract cause of action. “The elements of a cause of action for breach of contract are ‘the existence of a contract, the plaintiff’s performance thereunder, the defendant’s breach thereof, and resulting damages’” (*Noto v Planck, LLC*, 228 AD3d 516, 516 [1st Dept 2024] citing *Harris v Seward Park Hous. Corp.*, 79 AD3d 425, 426 [1st Dept 2010]). A subcontractor hired by a construction manager is not in privity of contract with the property owner (*Superb Gen. Contr. Co. v City of NY*, 70 AD3d 517, 518 [1st Dept 2010]). Here, Defendant furnished evidence showing it had contracts with Firetronics (NYSCEF Doc. No. 132, 133), and maintains it never had a contract with Firequench directly. Plaintiff fails to raise a triable issue of fact as to the existence of a contract between Firequench and Defendant. Therefore, the Court finds Firequench has no claim against Defendant, and accordingly Plaintiff’s cause of action for breach of contract is dismissed.

Defendant’s motion for summary judgment seeking dismissal of the causes of action for fair and reasonable value of services, unjust enrichment, and quantum meruit is also granted. The existence of a contract governing the subject matter of a claim “also bars any quasi-contractual claims against . . . a third-party nonsignatory to the valid and enforceable contract” (*22 Gramercy Park, LLC v Michael Haverland Architect, P.C.*, 170 AD3d 535, 537 [1st Dept 2019] citing *Bellino Schwartz Padob Adv. v Solaris Mktg. Group*, 222 AD2d 313, 313 [1st Dept 1995]). It is undisputed that Firequench executed contracts with Firetronics governing the works it was performing in the Building. As such, Plaintiff cannot pursue quasi-contractual claims against Defendant arising out of those contracts. Accordingly, those causes of action are dismissed.

Plaintiff’s cross-motion for leave to amend the Complaint is denied as Plaintiff failed to file the proposed amended complaint, and, thus, failed to meet the requirements of CPLR 3025(b)

(*Triumph Enters. Corp. v Webster Auto Repair & Serv. Ctr. Inc.*, 216 AD3d 444, 445 [1st Dept 2023]). Accordingly, it is hereby

ORDERED that Defendant’s motion for summary judgment is granted and the Complaint is dismissed.

All further relief sought is denied. This constitutes the Decision and Order of the Court.

9/29/2025

DATE



LORI S. SATTLER, 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

650646/2016 FIRE PREVENTION TECHNOLOGY vs. EDWARD J. MINSKOFF EQUITIES
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