

**Consolidated Edison Co. of N.Y., Inc. v 20 Exch.  
Master Retail Lease, LLC**

2025 NY Slip Op 33829(U)

October 7, 2025

Supreme Court, New York County

Docket Number: Index No. 654988/2024

Judge: Leslie A. Stroth

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LESLIE A. STROTH PART 12M

Justice

-----X

INDEX NO. 654988/2024

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.,

MOTION DATE N/A

Plaintiff,

MOTION SEQ. NO. 001

- v -

20 EXCHANGE MASTER RETAIL LEASE, LLC, DTH CAPITAL INC., EASTBRIDGE GROUP, LLC, EASTBRIDGE GROUP

DECISION + ORDER ON MOTION

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24

were read on this motion to/for DISMISS

FACTUAL BACKGROUND

This action arises over a dispute for third-party services allegedly performed at 20 Exchange Place, New York, NY 10005. Defendants 20 Exchange Master Retail Lease, LLC ("20 Exchange") and DTH Capital Inc. ("DTH") (collectively, "Defendants"), own, develop, and/or manage a 57-story residential high-rise building located at 20 Exchange Place, New York, New York 10005 ("20 Exchange" or the subject premises). Defendant Eastbridge Group, "an unregistered company with a place of business at 80 Pine Street, New York, New York, 10005 is a majority shareholder of DTH and owns 20 Exchange." (NY St Cts Elec Filing [NYSCEF] Doc. No. 6 ¶ 14-16). Plaintiff Consolidated Edison Co. of New York, Inc. ("Con Edison") is an energy utility that provides gas, electric, and steam services in New York City.

This motion arises out of Defendants claim that they experienced repeated elevator failures in the subject premises. Defendants allege the elevator failures were due to an issue with electrical service and that Con Edison was responsible for resolving the problem. (NYSCEF Doc. No. 6 ¶ 19). Con Edison claims that Defendant 20 Exchange requested that Con Edison investigate the cause of the elevator failures and that they subsequently spent several months troubleshooting the elevator failures and determined that the cause was not electrical. (*Id.* ¶ 20–21). Regardless of this fact, Defendants stated to the media and government officials that the problems were electrical and Con Edison was responsible. (*Id.* ¶ 22).

Con Edison engaged a third-party expert, Electric Power Research Institute (“EPRI”), to determine Con Edison’s possible culpability. Con Edison alleges that Defendants offered to pay for the services. (NYSCEF Doc. No. 13 at 7). According to Con Edison, EPRI found that Con Edison was not responsible for the elevator failures and that the cause was unsecure infrastructure, specifically the unlocked maintenance rooms. (NYSCEF Doc. No. 6 at ¶ 25–26). A consultant for EPRI reported that they observed a tenant entering a maintenance room and EPRI’s equipment was subsequently damaged. The Defendants installed locks on the maintenance room doors and the elevator failures stopped. The Defendants refused to reimburse Con Edison for the payments to EPRI, and Con Edison thereafter commenced this action. (*Id.* at ¶ 33).

Plaintiff seeks to recover damages for expenses paid to EPRI and costs of the investigation of elevator failures pursuant to causes of action sounding in quantum meruit, unjust enrichment, and breach of contract.

In Motion Sequence 001, Defendants move to dismiss Plaintiff's first and second quasi-contractual causes of action against them pursuant to CPLR 3211(a)(7) and to dismiss all claims against Defendant Eastbridge Group pursuant to CPLR 3211(a)(8).

### DISCUSSION

#### *Defendants' Motion to Dismiss Plaintiff's First and Second Causes of Action*

Defendants move to dismiss Plaintiff's first and second causes of action pursuant to CPLR 3211(a)(7) for failing to state a cause of action on Plaintiff's claims for quantum meruit and unjust enrichment.

Pursuant to CPLR 3211 (a)(7), a party may move to dismiss a claim on the ground that the pleading fails to state a cause of action. Upon such a motion, the Court must accept the facts alleged as true and determine simply whether plaintiff's facts fit within any cognizable legal theory. (See CPLR 3026; *Morone v Morone*, 50 NY2d 481 (1980)). The complaint shall be liberally construed, and the allegations are given the benefit of every possible favorable inference. (See *Leon v Martinez*, 84 NY2d 83, 87 (1994)).

In a claim for quantum meruit, "a claimant must establish (1) the performance of the services in good faith, (2) the acceptance of the services by the person to whom they are rendered, (3) an expectation of compensation therefor, and (4) the reasonable value of the services." (*Moors v. Hall*, 143 AD2d 336, 337-38, [1988]).

In a claim for unjust enrichment, a plaintiff must show that "(1) defendant was enriched (2) at plaintiff's expense, and (3) that 'it is against equity and good conscience to permit . . . defendant to retain what is sought to be recovered.'" (*Lake Minnewaska Mountain Houses Inc. v.*

*Rekis*, 259 AD2d 797, [1999] citing *Paramount Film Distrib. Corp. v. State of New York*, 30 NY2d 415, 421, *cert denied* 414 US 829).

The Amended Complaint states that “Con Edison’s Electric Tariff, approved by the Public Service Commission, governs the relationship between Con Edison and its customers.” (NYSCEF Doc. No. 6 ¶ 40). Rule 17.2 of the Electric Tariff provides for special services that Con Edison performs at cost and states in pertinent part:

Upon the request of a Customer or agent of the Customer, the Company will perform the following special services and charge the Customer or the Customer’s agent upon the basis of cost to the Company as defined in General Rule 17.3 . . .

(NYSCEF Doc. No. 24 at 144).

Rule 17.3 states in pertinent part:

The cost to be charged for the furnishing of the special services listed in General Rule 17.2 and General Rule 17.7 consists of the following elements of cost where applicable . . .

(*Id.* at 145).

Defendants assert that the provision in Rule 17.3 stating “[c]ontract work and sundry vendors’ bills at invoice cost, including any taxes contained therein,” defines cost and constitutes the application of the Tariff in this dispute. (NYSEFC Doc. Nos. 22 at 10–11; 24 at 146). Rule 17.2 clearly delineates which special services Con Edison as an electric utility is required to perform at cost for a customer when requested at cost. Rule 17.3 sets forth what a cost is in relation to the listed special services under Rule 17.2. The disputed services here do not fall under the list of services in Rule 17.2 and therefore, Rule 17.3 cannot apply to them.

Defendants rely on *Yenrab, Inc. v 794 Linden Realty, LLC* (68 AD3d 755, 758 [2d Dept 2009]); *Goldstein v CIBC World Mkts. Corp.* (6 AD3d 295, 296 [1st Dept 2004]); and *Sheiffer v.*

*Shenkman Capital Mgt.* (291 AD2d 295, 295 [1st Dept 2002]) for the proposition that the Tariff bars any quasi-contractual claims. However, this case is distinguishable from all three.

In *Yenrab*, the Plaintiff, a party supply company, alleged that the Defendant misrepresented that repairs would be made to induce the signing of the lease, and that during Plaintiff's tenancy further promised repairs were not made. The Court dismissed one of Plaintiff's causes of action, for unjust enrichment, stating "[a]s a general rule, the existence of a valid and enforceable written contract governing a particular subject matter precludes recovery in quasi-contract on theories of quantum meruit and unjust enrichment for events arising out of the same subject matter" (*Yenrab, Inc.* 68 AD3d 755 at 758 [citing *Marc Contr., Inc. v. 39 Winfield Assoc., LLC*, 63 A.D.3d 693, 695] [emphasis added]). There, the existence of a valid and enforceable contract was a commercial lease which governed the requirements for repairs. The lease at issue contained specific provisions regarding requirements for repairs of water leakage and structural damage. (*Yenrab* at 757). Here, the dispute arises from Con Edison's Electric Tariff and is categorically different from a commercial lease. Not only is the Tariff publicly filed and approved by the New York Public Service Commission rather than a private contract, as previously stated, the Tariff is silent on the subject matter of the services allegedly performed by EPRI.

In *Goldstein*, the Court held that "[a] claim for unjust enrichment, or quasi contract, may not be maintained where a contract exists between the parties covering the same subject matter. Here, plaintiff's claim is 'indistinguishable from the breach of contract claim.'" (*Goldstein* at 296 [citing *Clark-Fitzpatrick, Inc. v. Long Is. R.R. Co.*, 70 NY2d 382, 388, *Andrews v. Cerberus Partners*, 271 AD2d 348] [internal citations omitted and emphasis added]). Here, Plaintiff's first

and second causes of action bring quasi contractual claims for EPRI's investigation and costs, separate from the third cause of action for breach of contract stemming from Con Edison allegedly testing the electricity supply relating to the elevator failures, a service that is delineated under Rule 17.2 of the Tariff.

In *Sheiffer*, the Court affirmed summary judgement over a dispute regarding a contract governing client referral fees, noting that the written contract *governing the disputed subject matter* precluded recovery under quantum meruit. As stated above, the Tariff does not cover the disputed subject matter.

Further, “[w]here... there is a bona fide dispute as to the existence of a contract, or where the contract does not cover the dispute in issue, a plaintiff may proceed upon a theory of quasi-contract as well as breach of contract.” (*Hochman v. LaRea*, 14 A.D.3d 653, 654–55, [2005]).

The Court does not find that the Electric Tariff precludes Plaintiff's quasi contractual claims at this juncture. Defendants do not adequately show that the services provided were within the scope of the Tariff or that Con Edison had no right to payment. Defendants argue that investigative services performed by EPRI are within the Tariff. However, the Court does not find that Defendants have made a conclusive showing, given that the language of Rules 17.2 and 17.3 of the Tariff. Rules 17.2 and 17.3 are not sufficiently clear, nor has Defendant sufficiently proved that those ruled clearly encompass the services rendered by EPRI. The Court therefore finds that dismissal is premature as to the first and second causes of action, and as such, Defendants' motion to dismiss as to same is denied.

*Defendants' Motion to Dismiss All Claims Against Eastbridge Group*

Defendants move to dismiss all claims against Eastbridge Group pursuant to CPLR

3211(a)(8). CPLR 3211(d) states:

(d) Facts unavailable to opposing party. Should it appear from affidavits submitted in opposition to a motion made under subdivision (a) or (b) that facts essential to justify opposition may exist but cannot then be stated, the court may deny the motion, allowing the moving party to assert the objection in his responsive pleading, if any, or may order a continuance to permit further affidavits to be obtained or disclosure to be had and may make such other order as may be just.

This subsection “protects the party to whom essential jurisdictional facts are not presently known . . . The opposing party need only demonstrate that facts ‘may exist’ whereby to defeat the motion. It need not be demonstrated that they do exist.” (*Peterson v. Spartan Indus., Inc.*, 33 NY2d 463, 466 [1974]). Here, Eastbridge Group has a New York office and general counsel. (NYSCEF Doc. No. 17 at 2). Additionally, Eastbridge Group accepted service of summons and amended complaint at the New York Office. (NYSCEF Doc. No. 19 at 2). Further, Eastbridge Group’s website states that it “is the majority shareholder in New York City real estate company DTH Capital.” (NYSCEF Doc. No. 20 at 2).

The Court notes that “in opposing a motion pursuant to CPLR 3211(a)(8) to dismiss based on lack of personal jurisdiction, a party need only make a prima facie showing that personal jurisdiction exists.” (*Aybar v. US Tires & Wheels of Queens, LLC*, 211 AD3d 40, 49 [2022]). Plaintiff has demonstrated that personal jurisdiction may exist, and the Court finds that dismissal of all claims against Eastbridge Group at this juncture before discovery would be premature. Parties are free to move to amend their pleadings based on information found in discovery if appropriate. Accordingly, Defendants’ motion to dismiss Plaintiff’s claims as against Eastbridge Group are denied.

The Court has considered the remaining arguments and finds such unavailing.

Accordingly; it is hereby

ORDERED that Defendants' motion to dismiss Plaintiff's first and second causes of action is denied; and it is further

ORDERED that Defendant's motion to dismiss all claims against Eastbridge Group is denied.

The foregoing constitutes the decision and order of the Court.

10/7/2025  
DATE

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

CHECK ONE:

CASE DISPOSED  
GRANTED  
SETTLE ORDER  
INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION  
GRANTED IN PART  
SUBMIT ORDER  
FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: