Nagori Contr. Corp. v City of New York
2025 NY Slip Op 34111(U)
October 27, 2025
Supreme Court, New York County
Docket Number: Index No. 651813/2022
Judge: Nancy M. Bannon
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. NANCY M. BANNON** **PART** **61M**

Justice

---X

NAGORI CONTRACTING CORPORATION

Plaintiff,

- v -

CITY OF NEW YORK,

Defendant.

---X

INDEX NO. 651813/2022

MOTION DATE 10-23-25

MOTION SEQ. NO. 001 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 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, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177

were read on this motion to/for SUMMARY JUDGMENT.

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were read on this motion to/for SUMMARY JUDGMENT.

In this breach of contract action arising from a public improvement contract for a composting facility in Staten Island, the plaintiff contractor seeks delay damages from the defendant in the amount of $1,502,902.53 citing increased costs for labor, materials and insurance. The plaintiff maintains that delays were primarily caused by the defendant's 15-month delay in issuing a Notice to Proceed. The defendant moves for summary judgment dismissing the complaint pursuant to CPLR 3212, disclaiming any liability for delay damages. The plaintiff opposes the motion. The motion is denied.

On a motion for summary judgment, the moving party must make a *prima facie* showing of its entitlement to judgment as a matter of law by submitting evidentiary proof in admissible form sufficient to establish the absence of any material, triable issues of fact. See CPLR 3212(b); Jacobsen v New York City Health & Hosps. Corp., 22 NY3d 824 (2014); Alvarez v Prospect Hosp., 68 NY2d 320 (1986); Zuckerman v City of New York, 49 NY2d 557 (1980).

Once the movant meets this burden, it becomes incumbent upon the party opposing the motion to come forward with proof in admissible form sufficient to raise a triable issue of fact. See Alvarez v Prospect Hospital, supra; Zuckerman v City of New York, supra. However, if the initial burden is not met by the movant, summary judgment must be denied regardless of the sufficiency of the opposing papers. See Winegrad v New York University Medical Center, 64 NY2d 851; Giaquinto v Town of Hempstead, 106 AD3d 1049 (2nd Dept. 2013); O'Halloran v City of New York, 78 AD3d 536 (1st Dept. 2010). This is because "summary judgment is a drastic remedy, the procedural equivalent of a trial. It should not be granted if there is any doubt about the issue.'" Bronx-Lebanon Hosp. Ctr. v Mount Eden Ctr., 161 AD2nd at 480 (1st Dept. 1990) *quoting* Nesbitt v Nimmich, 34 AD2nd 958, 959 (2nd Dept.1970); see Aguilar v City of New York, 162 AD3d 601 (1st Dept. 2018) *citing* Andre v Pomeroy, 2 NY2d 361 (1974).

In seeking to dismiss the sole cause of action of the amended complaint, breach of contract, the defendant submits, among other things, a portion of the subject contract, a brief affidavit of Vaughn Arnold, Administrative Project Manager for the Department of Sanitation and several communications and notices exchanged by the parties. Arnold merely recounts that the plaintiff submitted several permit applications to the City's Department of Buildings during April and May of 2021, which were rejected as incomplete, and asserts that no documentation from the City was required for the plaintiff to complete the permit application.

Contrary to the defendant's contention, the express terms of the contract do not, without more, warrant summary judgment in its favor. Indeed, the defendant identifies no such provision and includes only the first 21 pages of an 86-page "Standard Construction Contract" dated March 2017. While the defendant discusses section 11.4.1 of the contract, that provision as represented does not limit "compensable delays" to delays occurring after issuance of the Notice of Proceed. Nor would any such provision likely be included in such a contract. The parties agree that the contract did not provide a timeframe for the defendant to issue a Notice to Proceed. However, the defendant's reading of the contract would allow it to delay issuance of the notice indefinitely, without liability for any resulting damages, an unreasonable and practically unworkable interpretation. The defendant accurately observes that there is no decisional authority supporting that interpretation. In any event, even broadly worded clauses "which purport to preclude damages for all delays resulting from any cause whatsoever are not read literally" are "generally held to encompass only those delays which are reasonably foreseeable, arise from the contractor's work during performance, or which are mentioned in the

contract." Corinno Civetta Constr. Corp. v City of New York, 67 NY2d 297, 309-310 (1986). As such, "even with such a clause, damages may be recovered for: (1) delays caused by the contractee's bad faith or its willful, malicious, or grossly negligent conduct, (2) uncontemplated delays, (3) delays so unreasonable that they constitute an intentional abandonment of the contract by the contractee, and (4) delays resulting from the contractee's breach of a fundamental obligation of the contract." Id at 309. The defendant's breach of a fundamental obligation of the contract and the existence of uncontemplated delays are at issue.

Even assuming that the defendant met its burden in the first instance, the plaintiff raised triable issues of fact in opposition.

Among the plaintiff's submissions is the affidavit of Ishaque Nagori, President of the plaintiff, in which he proffers a detailed account of events that materially differs from that presented by the Arnold. Nagori states that his small company bid on and was awarded the contract in December 2019, passing up opportunities to bid on other projects. The project term was to be 485 days from commencement but the defendant did not issue a Notice to Proceed until March 15, 2021, giving a commencement date of April 19, 2021. Nagori further alleges that beyond the unavoidable delays occasioned by the Covid-19 pandemic, he later discovered that the defendant suspended work on the project awaiting authorization from its Department of Sanitation, which did not come through until November of 2020. Nagori alleges that condition or contingency was not made part of the contract and he was never informed of this prior to this litigation. According to Nagori, the delayed and revised project schedule increased the plaintiff's costs to complete the project. The project was completed in late 2023 and the plaintiff was paid the full contract price of $17.2 million but represents that it has since closed the business.

In addition to Nagori's affidavit, the plaintiff submits the complete transcripts of Vaughan Arnold, who stated, among other things, that he did not become involved in the project until February of 2021, and was unaware of when the funding came though as he left the project by that time, and Ian Twine, who oversaw the contracts for all three composting sites managed by the Department of Sanitation and co-managed the subject project with Arnold. Twine testified, among other things, that while the project could have started in June 2020, it was thereafter delayed because the defendant's Office of Management and Budget had not released the funds. Twine also testified that the Department of Sanitation is required to confirm that funding is in place before issuing a Notice top Proceed but that it does not typically take 15 months for

the Notice to Proceed to be issued. Twine believed that Nagori was told that the delay was due to lack of funding but he did not know who told Nagori or when he was told. Twine also testified that some delay was caused by problems with the subsurface conditions at the site which required consultation with subcontracted engineers after the work had commenced. Twine attributed that delay to Nagori's failure to do a walk through prior to commencing the work.

In reply, the defendant proffers no further proof in admissible form, just a memorandum of law, which includes no argument or authority warranting a different result.

The defendant's reliance upon Worth Constr. Co., Inc. v TRC Engineers, Inc., 55 AD3d 388 (1st Dept. 2008) to argue otherwise is wholly misplaced as that case concerns a different contract and subcontract and does not preclude compensation for any pre-notice delay damages. Indeed, the parties' contract there expressly excluded damages for delays occasioned by a third-party's failure to deliver the subject property or comply with other conditions necessary for the project to commence and expressly limited the plaintiff's delay damages to mobilization or remobilization damages. As alleged by the plaintiff, it never contemplated that the 485-day project would not commence until more than two years after the contract was awarded. Compare Gamma USA, Inc. v Pavarini McGovern, LLC, 239 AD3d 441 (1st Dept. 2025) [parties' private contract expressly included a broad "no damages for delay" clause which exculpated defendant from damages for one-year delay in commencement and subsequent delays in the work]; Five Star Elec. Corp. v Metro. Transit Auth., 210 AD3d 471 (1st Dept 2022) [defendant's delays caused by diversion of assets after Superstorm Sandy were contemplated by the parties and mentioned in the contract and thus not compensable in damages as an exception to the rule]; Dart Mech. Corp. v City of New York, 68 AD3d 664 (1st Dept. 2009) citing Corinno Civetta Constr. Corp. v City of New York, supra [32-month delay in construction project primarily caused by another contractor, not the defendant and plaintiff failed to show any breach of a "fundamental affirmative obligation" by the defendant City]. To be sure, "the length of a delay does not transform a delay of a type specifically contemplated in a no-damages-for-delay clause into an uncontemplated delay." Gamma USA, Inc. v Pavarini McGovern, LLC, supra at 442 citing LoDuca Assoc., Inc. v PMS Constr. Mgt. Corp., 91 AD3d at 485 (1st Dept. 2012). While the failure of the defendant's own Office of Management and Budget to fund the project may have been contemplated by the defendant City, it was not an express provision in the contract and the plaintiff's proof establishes that Nagori did not contemplate that possibility. It cannot be disputed that no one contemplated the pandemic and

attendant closures and delays. However, here, only three months of the delay can be attributed to the pandemic as the defendant's own employee confirmed that the general hold on construction projects was lifted in June 2020. Furthermore, the defendant's focus on the several permit applications submitted to the Department of Buildings is specious since the plaintiff revised and re-submitted the application, without the assistance of the defendant, within a short period of time in 2021, once work promptly once the Notice to Proceed was issued, and promptly commenced the work thereafter.

As stated above, the triable issues include whether the defendant breached a fundamental obligation of the contract in delaying the issuance of the Notice to Proceed, whether that delay was an uncontemplated delay, and the foreseeability and reasonableness of the delay under the circumstances. The defendant's remaining contentions, including those concerning untimely notices and waiver, are unavailing.

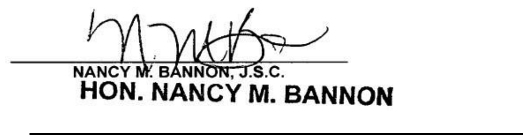
Therefore, while the plaintiff may not ultimately succeed at trial in whole or part, the defendant has not demonstrated entitlement to the drastic remedy of summary judgment on the papers submitted. In that regard, the court notes that the defendant's Notice of Motion appears to seek declaratory relief even though this is an action for money damages and the defendant did not counterclaim for declaratory or any other relief.

The parties are encouraged to explore settlement.

Accordingly, upon the foregoing papers and after oral argument, it is

ORDERED that the defendant's motion for summary judgment is denied.

This constitutes the Decision and Order of the court.



HON. NANCY M. BANNON

10/27/2025
DATE

CHECK ONE:	[ ] **CASE DISPOSED**		[X] **NON-FINAL DISPOSITION**	
	[ ] **GRANTED**	[X] **DENIED**	[ ] **GRANTED IN PART**	[ ] **OTHER**