Trinchese Constr. Inc. v Mesia
2025 NY Slip Op 34119(U)
October 23, 2025
Supreme Court, New York County
Docket Number: Index No. 150440/2022
Judge: Ashlee Crawford
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ASHLEE CRAWFORD** **PART 38**

Justice

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TRINCHESE CONSTRUCTION INC.,

Plaintiff,

- v -

LIA LILIA MESIA,

Defendant.

---X

INDEX NO. 150440/2022

MOTION DATE 07/18/2023

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 51, 54 were read on this motion to/for JUDGMENT – SUMMARY.

This action arises out of construction services plaintiff Trinchese Construction Inc. performed for defendant Lia Lilia Mesia, at defendant's property located at 97-50 80th Street, Ozone Park, New York, following a fire loss to the premises. Plaintiff alleges that it substantially performed the construction services pursuant to a Construction Agreement ("Agreement"), and that defendant received proceeds from defendant's insurer and failed to pay them to plaintiff, as required under the Agreement. Plaintiff asserts claims for breach of contract, unjust enrichment, conversion, and quantum meruit to recover about $330,704.89 from defendant. Defendant asserts counterclaims for breach of contract and for judgment declaring that the Agreement is an unenforceable contract of adhesion.

Plaintiff now moves pursuant to CPLR 3212 for summary judgment on its claims, or in the alternative for partial summary judgment as to liability and an inquest on damages. Defendant opposes and cross-moves pursuant to CPLR 3215 for default judgment on defendant's counterclaims.

Plaintiff's Motion for Summary Judgment

A party seeking summary judgment "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. Ctr., 64 NY2d 851, 853 [1985]). Once this showing is made, the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of triable issues of fact (Zuckerman v City of New York, 49 NY2d 557, 562 [1980]). "[M]ere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient" to defeat summary judgment (id.). Summary judgment is a drastic remedy and must be denied if there is any doubt as to the existence of a triable issue of material fact (Rotuba Extruders, Inc. v Ceppos, 46 NY2d 223, 231 [1978]).

According to plaintiff, it substantially completed the agreed-to work by September 2021 and a Department of Buildings (DOB) inspection was scheduled for September 23, 2021. However, on the morning of the scheduled inspection, plaintiff's principal discovered that defendant had made numerous cut-outs in the walls and ceiling of the premises, frustrating DOB approval of plaintiff's work and resulting in the cancellation of the inspection. Plaintiff maintains that a September 30, 2021 report from defendant's architect, citing numerous construction defects at the premises, is exaggerated and inaccurate; and plaintiff submits the report of its own forensic engineer refuting the findings in defendant's architect's report. Moreover, plaintiff contends, defendant wrongfully refused to endorse the checks issued by her insurer, which were assigned to plaintiff under the Agreement in payment for plaintiff's work. Rather, defendant instructed that the public adjuster send the checks to her counsel, and plaintiff has not been paid for any of its work.

Plaintiff argues that defendant materially breached the Agreement by frustrating the purpose of the Agreement and by converting the payment that was assigned to plaintiff as compensation for

its work. Plaintiff further argues that the insurance proceeds are "trust funds" under the Lien Law, of which plaintiff is the lawful owner and which defendant has illegally diverted. Plaintiff contends that defendant is further required by the Lien Law to maintain records of the trust funds, but has refused to disclose any such records to plaintiff, the beneficiary thereof, and that such refusal is presumptive evidence of misapplied trust funds.

Defendant asserts that she became concerned that plaintiff had not performed all of the work required in the insurance estimate, which was incorporated in the Agreement. In particular, defendant suspected that plaintiff had not replaced the fire-damaged studs, beams and joists, leading her to hire an architect, which, as set forth in its report, found substantial deficiencies in plaintiff's work. Defendant also cites that the work was required to be completed in 2020, but was never completed, and the premises remains in an uninhabitable state. Defendant is in possession of the insurance proceeds, but states that she will not pay plaintiff until the work is completed in compliance with the DOB building code, as required under the Agreement.

The Court finds there are issues of fact concerning the substantial completion of the work under the parties' Agreement, which preclude summary judgment on plaintiff's claims. Plaintiff, relying on the self-serving affidavit of its principal, Luigi Trinchese, asserts that the work was substantially completed in or about September 2021 (Trinchese Aff. ¶ 8 [NYSCEF Doc. 21]), whereas defendant disputes the substantial completion of the work, as set forth in the affidavits and reports by engineer Saaed Ainechi and architect Sharon Lobo (Mesia Aff. ¶ 9 [NYSCEF Doc. 37]; Ainechi Aff. ¶¶ 4-6 [NYSCEF Doc. 40]; Ainechi Report at 2-3 [NYSCEF Doc. 47]; Lobo Aff. ¶¶ 6-19 [NYSCEF Doc. 39]; Lobo Report at 1-5 [NYSCEF Doc. 43]).[1] The conflicting statements in the parties' affidavits and the expert affidavits about the scope of the work completed calls for the

[1] Plaintiff submits the affidavit of engineer Adam Cassel for the first time in reply (NYSCEF Doc. 49).

Court to weigh the witness' credibility, which may not be determined on summary judgment (see Romano v New York City Tr. Auth., 213 AD3d 506, 508 [1st Dept 2023] [denying summary judgment where the testimony raised factual and credibility issues]; see also Shillingford v. New York City Tr. Auth., 147 AD3d 465 [1st Dept 2017][battle of experts presents issue of fact for the jury to resolve]; Erdogan v Toothsavers Dental Servs., P.C., 57 AD3d 314, 315-316 [1st Dept 2008] [same]).

Additionally, the parties have not appeared for a preliminary conference or exchanged discovery, rendering plaintiff's motion premature (see Contreras v MDG Design & Constr. LLC, 210 AD3d 407, 407-408 [1st Dept 2022]; Reid v City of New York, 168 AD3d 447, 448 [1st Dept 2019]). Based on the foregoing, plaintiff's motion for summary judgment is denied.

Defendant's Cross-Motion for Default Judgment

CPLR 3215 (a) provides that a party may obtain a default judgment when the responsive party has failed to appear or plead. In this action, the answer with counterclaims was electronically filed on June 30, 2022 (NYSCEF Doc. 6), and plaintiff defaulted in replying to defendant's counterclaims by failing to serve a reply within twenty days; rather, plaintiff served its reply several months later, on March 16, 2023 (Reply to Counterclaims [NYSCEF Doc. 15]; CPLR §§ 3012[a], 2103[b][2]). In opposing defendant's motion, plaintiff avers that it has a reasonable excuse for its failure to timely reply to the counterclaims on the grounds of law office failure, which it does not explain or detail (Aboulafia Affirm. ¶ 11 [NYSCEF Doc. 48]; see CPLR 5015[a][1][excusable default]). While law office failure may amount to a reasonable excuse (see Heijung Park v Nam Yong Kim, 205 AD3d 429, 429 [1st Dept 2022]), conclusory references to "law office failure," without detail or evidentiary support, do not rise to the level of a reasonable excuse for a default (see Urban D.C. Inc. v 29 Green St. LLC, 205 AD3d 634, 634 [1st Dept 2022]). None of the affidavits submitted by plaintiff are from

an individual addressing law office failure. Notwithstanding, New York courts have a strong public policy of resolving cases on their merits and, although plaintiff's excuse is "hardly overwhelming," it is adequate given that plaintiff's eight-month delay was minimal, not willful, and did not prejudice defendant (see Matter of Thomas Anthony Holdings LLC v Goodbody, 210 AD3d 547, 547 [1st Dept 2022]; see also Francis Affirm. ¶¶ 24-28 [NYSCEF Doc. 38]). Moreover, plaintiff has demonstrated potentially meritorious defenses to the counterclaims (id.), and discovery has not been exchanged.

Accordingly, it is hereby

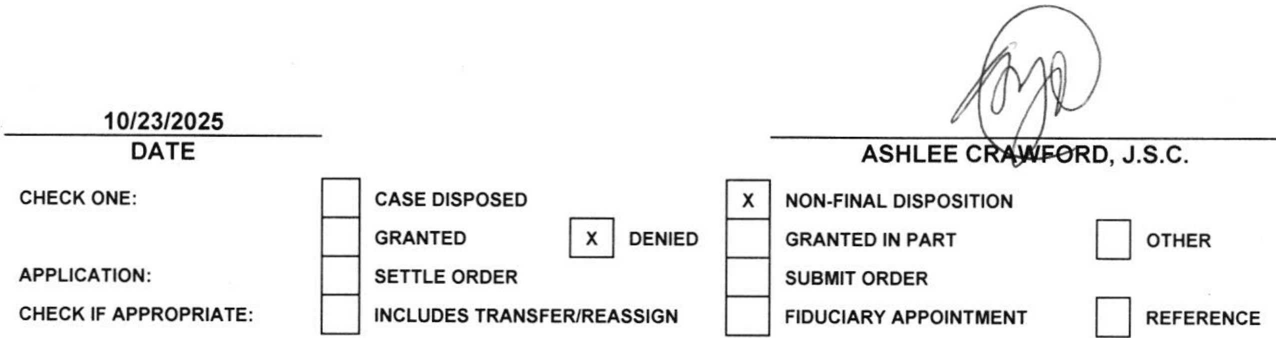
ORDERED that the motion by plaintiff Trinchese Construction Inc. for summary judgment on its claims is DENIED; and it is further

ORDERED that the cross-motion by defendant Lia Lilia Mesia for default judgment is DENIED; and it is further

ORDERED that within 20 days of entry of this order, plaintiff shall serve a copy of this order with notice of entry on defendant via NYSCEF; and it is further

ORDERED that the parties shall appear for a preliminary conference on December 3, 2025, at 10:00 AM, in room 1166 at 111 Centre Street, New York, New York.

This constitutes the decision and order of the Court.


10/23/2025
DATE

ASHLEE CRAWFORD, J.S.C.

CHECK ONE:	[ ] CASE DISPOSED		[X] NON-FINAL DISPOSITION	
	[ ] GRANTED	[X] DENIED	[ ] GRANTED IN PART	[ ] OTHER
APPLICATION:	[ ] SETTLE ORDER		[ ] SUBMIT ORDER	
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