

Irwin Friedman & Son, Inc. v Jongoon Kim

2025 NY Slip Op 34130(U)

October 20, 2025

Supreme Court, Kings County

Docket Number: Index No. 526912/2019

Judge: Consuelo Mallafre Melendez

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**At an IAS Term, Part 4 of the
Supreme Court of the State of NY,
held in and for the County of Kings,
at the Courthouse, at 360 Adams
Street, Brooklyn, New York, on the
20th day of October 2025.**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
IRWIN FRIEDMAN & SON, INC.,

Plaintiff,

-against-

JONGOON KIM and ACKY, INC.

Defendants.

-----X
HON. CONSUELO MALLAFRE MELENDEZ, J.S.C.

**DECISION & JUDGMENT
AFTER TRIAL**

Index No. 526912/2019

Recitation of the papers considered in the review:

Plaintiff’s Exhibits 1 – 9
Defendant’s Exhibits A – KK

A non-jury trial was held before this Court on September 29, 2025 and September 30, 2025. As this was a bench trial, the Court’s role was to make both findings of fact and determinations of law (*see State v Benjamin M.*, 199 AD3d 690 [2d Dept 2021]). The burden of proof for this action is a preponderance of the evidence, or “the greater part of the evidence” (*see NY Pattern Jury Instr.*, Civil 1:23). This means the burden on the party establishing their case is “that the evidence supporting [their] case more nearly represents what actually happened than the evidence that is opposed to it” (*see Kurz v. Doerr*, 180 NY 88, 90 [1904]; *Ausch v St. Paul Fire & Mar. Ins. Co.*, 125 AD2d 43 [2d Dept 1987]). Thus, the Court must be persuaded that the existence of a fact is more probable than the non-existence of that fact, based on the evidence and testimony.

At trial, Jay Friedman (“Mr. Friedman”), the president of Irwin Friedman & Son, Inc., testified and was cross examined by Plaintiff. Defendant Jongoon Kim (“Mr. Kim”) also testified

with the assistance of a Korean language interpreter. Although he occasionally responded to questions directly in English, demonstrating an ability to understand and communicate in both languages, he was reminded by the Court to speak only through the interpreter, as per the request of his counsel, to ensure complete and accurate testimony. The Court considered the evidence and testimony of the witnesses and gave weight to that testimony based on assessment of the witnesses' credibility (*see Lawson-Groome v Smalls*, 144 AD3d 633 [2d Dept 2016]).

This action was commenced on December 11, 2019 by Plaintiff Irwin Friedman & Son, Inc. against Defendants Acky, Inc., a domestic corporation, and its owner and president, Mr. Kim. Plaintiff asserted claims against the Defendants on the basis of breach of contract and account stated, in an amount totaling \$36,490.43, plus interest.

Plaintiff has withdrawn their claims seeking foreclosure of Mechanic's Liens on the property of Defendants.

This action involves an alleged breach of contract and failure to render payment for sprinkler system and gas work performed by Plaintiff on two buildings owned and managed by Defendants. Plaintiff brings their claims against both Acky, Inc. and Mr. Kim individually. Acky, Inc. is a domestic corporation registered with Mr. Kim as CEO, president, and owner. Defendants asserted two counterclaims against Plaintiff for breach of contract, regarding Plaintiff's work on the commercial building and the residential building.

Plaintiff is a plumbing and heating company, which had a long-standing relationship with Defendants performing plumbing and fire suppression/sprinkler work at a warehouse property, 80 North 5th Street ("the commercial building"). This work included performing a hydrostatic pressure pump test every five years and curing defects for the purpose of passing fire department inspections. There had been no prior miscommunications or disputes between the parties.

In January 2019, the commercial building received a FDNY violation (11667670L) for an overdue hydrostatic pressure pump test, i.e., sprinkler system test. Defendants engaged Plaintiff to perform the test. In a letter dated February 5, 2019, Plaintiff set forth a proposal for the initial inspection and five pressure pump tests, which would take place in June 2019, with a cost of \$3,600 “whether test passes or fails, plus any cost of materials needed to avoid additional violations” (Plaintiff’s Exhibit 1; Defendant’s Exhibit C). Defendants paid a deposit of \$1,250 on March 14, 2019 for the tests, along with two other checks for work unrelated to this action (Defendant’s Exhibit D).

It is not disputed that the result of the June 2019 test was that four connections passed and one failed. Following this test, Defendants received another FDNY violation (11667693N) and a planned retest of the failed connection in October 2019. Plaintiff sent a follow-up proposal dated July 10, 2019, with a cost of \$800 for the retest “whether test passes or fails, plus any cost of materials needed to avoid additional violations.” Ultimately, the October 2019 was not performed by Plaintiff due to the parties’ ongoing payment dispute.

Mr. Kim testified that he did not recall the exact amount of money discussed, but in reference to the January 2019 and July 2019 proposals, he testified “whatever it says here, this is how we agreed” (Mr. Kim direct at 139). He further testified, as to his usual agreements with Plaintiff, “initially, they will send me the estimate in the beginning, and after they complete the job, then they will send me the invoice” and “usually I pay them right away” (*i.d.* at 159).

In addition to the invoice for the balance of the \$3,600 cost of the tests, Plaintiff submitted a separate invoice dated July 3, 2019 for “1st payment for corrections on NYCFD violations for replacement of (5) NYCFD hose connections” for \$4,550 (Defendant’s Exhibit P, Q). This \$4,550 deposit was paid (*see* Mr. Friedman direct at 24-25; Mr. Kim direct at 167; Defendant’s Exhibit V).

Plaintiff delivered another invoice to Defendants dated August 14, 2019 for the work completed with respect to the sprinkler system and violation 11677693N. This work was described as “Supplied labor and equipment needed to remove (5) NYCFD hose connections,” “Furnished and installed (5) new NYCFD hose connections complete with new 4” piping where needed,” “Conducted preliminary test,” and “removed improper sprinkler heads and replaced with new as needed.” The total balance owed was \$9,598.31, subtracting the initial deposit of \$4,550 (Plaintiff’s Exhibit 2; Defendant’s Exhibit X). This balance was never paid by Mr. Kim or Acky, Inc.

Mr. Friedman testified that his company completed the hose connection and sprinkler system work on the commercial building outlined in the August 14 invoice, which was done “in between the two New York City Fire Department scheduled inspections” (Mr. Friedman direct at 19-20, cross at 74). He testified that Mr. Kim had paid him the \$4,550 deposit in advance, and he notified him at all stages of the work. Mr. Friedman testified that the hose connection, piping, and sprinkler head work described in the invoice was completed.

Mr. Kim claimed at various times in his testimony that Plaintiff “didn’t do any work at all” as to the hose connections, that he did not know what type of work Plaintiff did, that all the work to cure the FDNY violations was done by Plaintiff prior to July 15, 2019, and that both Plaintiff and a later-hired plumbing company “also did the job” to prepare the commercial building for the sprinkler re-test (Mr. Kim direct at 166-174). Mr. Kim testified that he received the invoice and was surprised by the cost, but did not testify as to any communication or objections he made to Plaintiff.

Generally, “[i]n order for a breach of contract to exist, there must be a meeting of the minds on the agreement said to have been breached. Mutual assent evincing the intention of the parties to form a contract is essential,” in contrast to “an agreement to agree, which leaves material terms of a proposed contract for future negotiation.” (*Miranco Contr., Inc. v Perel*, 29 AD3d 873 [2d Dept 2006] [internal citations and quotation marks omitted].) However, even where there is no formal

written contract establishing the cost of a project, a plaintiff may prove their entitlement to damages by showing “that it had an agreement to provide the defendants with labor and materials to complete a certain job, that the defendants agreed to compensate the plaintiff on a time and materials basis, and that no payment was made” (*Ecoline, Inc. v W.H. Peepels Co., Inc.*, 153 AD3d 786, 787 [2d Dept 2017]). “A cause of action to recover on an account stated sounds in breach of contract and arises from some indebtedness between the parties” (*Racwell Const., LLC v Manfredi*, 61 AD3d 731, 734 [2d Dept 2009] [internal quotation marks and citations omitted]). It may be based upon prior transactions and an express or implied agreement to pay for services. Such agreement may be implied where the indebted party “retains bills without objecting to them within a reasonable period or makes partial payment on the account” (*Branch Services, Inc. v Cooper*, 102 AD3d 645, 646 [2d Dept 2013]).

Based on the evidence submitted to the Court, the testimony of the parties, and the weight afforded that testimony in light of the witnesses’ credibility, the Court finds that Defendants and Plaintiff had a mutual understanding of the work that would be performed in connection to the hydrostatic pressure/sprinkler system tests on the commercial building. Plaintiff had done similar work for Defendants on multiple prior occasions, and there was mutual assent – in the form of the written proposal and verbal agreements to pay on a labor and materials basis – that Plaintiff’s company would prepare the commercial building to pass the sprinkler tests, cure its initial FDNY violation, and avoid additional violations.

Although one connection failed on the June 2019 test, and the second test in October 2019 was not performed as scheduled, Defendants’ contention that the goal of *passing* the pressure test was never achieved does not invalidate the contract or work performed by Plaintiff. Their written agreement expressly stated “whether the test passes or fails.” Despite the self-contradicting testimony of Mr. Kim, the Court finds Plaintiff did complete the work outlined in the August 14,

2019 invoice with respect to the hose connections, preliminary test, and sprinkler heads, which fell under their agreement of any costs “needed to avoid additional violations.” Mr. Kim paid an initial deposit of \$4,550 for this work, labelled “1st payment for corrections” on the July 2019 invoice. Plaintiff later presented Mr. Kim with an invoice setting forth the balance owed, and there is no evidence in the record that he rejected or raised an objection to this invoice, nor that the underlying work and cost was not accurate (*see Stardom Brands, LLC v S.K.I. Wholesale Beer Corp.*, 172 AD3d 1266 [2d Dept 2019]).

For these reasons, the Court holds that Defendants breached their contract to pay Plaintiff for work performed on the commercial building as to the sprinkler/hydrostatic pressure test corrections, and Plaintiff is entitled to the full balance of the August 14, 2019 invoice (\$9,598.31) on the basis of breach of contract and account stated.

During the same period of time, Defendants also engaged Plaintiff to perform work on 88 North 5th Street (“the residential building”), a rental condominium owned and managed by Mr. Kim (*see* Plaintiff’s Exhibit 4). Prior to March 2019, Defendants had used a different contractor in the building’s ground-up construction and gas work. In two Superseding Letters dated March 12, 2019, signed by Mr. Kim and notarized, Plaintiff Irwin Friedman & Son Inc. became the contractor of record replacing Dyckman Plumbing & Heating, Inc. and Tak Plumbing & Heating Co. for this building. During his testimony, Mr. Kim was equivocal when asked why the change occurred and whether the previous contractor had been properly licensed to perform the work needed.

Though there is no written contract as to the scope of work on the residential building, Mr. Friedman testified that “the terms of the agreement was to finish off the job so that he could sell the condos and occupy the building. . . the job was finishing off the gas work that was started by others, finishing off the sprinkler work that was started by others,” which specifically included “connecting the gas service to the gas meter bank, testing all of the risers, testing all of the piping to make sure

that the integrity of the piping was done properly” (Mr. Friedman cross at 79). As to payment, he testified that “it was a time and material basis, because we did not know what had to be done while we were testing and finding all of these leaks” (*i.d.* at 80). In an invoice dated August 9, 2019, Plaintiff charged Defendants \$14,665.46 for the gas work, which included conducting multiple tests on the risers, cutting open sheet rock to locate defective piping, and installing piping to the gas meter bank.

Defendant Mr. Kim disputed this agreement, stating that he never agreed to have any gas work done. He testified that he “ended up hiring another contractor to work on the gas piping,” and that contractor, not Plaintiff, installed the connections from the gas service to the meter bank (Mr. Kim direct at 152, 161). However, he was unable at trial to present or identify any evidence to corroborate that he hired and paid another company for these connections (Mr. Kim direct at 163). The Court assessed Mr. Kim’s testimony on this issue as not credible, in comparison to the testimony of Mr. Friedman and the evidence of their communications.

In addition to his assertions that he did not hire Plaintiff to connect the gas to the meter bank, Mr. Kim claimed he did not agree to allow Plaintiff to make holes in the wall when a preexisting gas leak was discovered. He admitted during direct and cross examination that there was a cracked elbow from an “original pipe in the building,” causing an “air leak” which needed to be found and corrected before the gas could be turned on (Mr. Kim direct at 156-157, cross at 183-185). He stated that he was told by Plaintiff “because gas was leaking, they have to open up the wall, so I told them no, don’t do it” (Mr. Kim direct at 151-152). He also contended at times that he never agreed for Plaintiff to conduct any gas testing, stating “That was a mistake on [Mr. Friedman’s] part . . . I hired him for the sprinkler test, but he did the gas piping test all by himself” (Mr. Kim direct at 149). However, the Court found his testimony on this issue uncertain, contradictory, and called in question by other evidence presented by Plaintiff.

In an email to Mr. Kim dated April 10, 2019, Mr. Friedman noted that gas tests were performed at the residential building and stated that he “might need to open wall and ceilings to expose piping” in order to locate a leak, and requesting to “please let me know” if he should proceed looking for the leak in this manner (Plaintiff’s Exhibit 9; Defendant’s Exhibit F). Mr. Friedman testified that Mr. Kim was notified at each step of the project, and they had a verbal agreement to proceed, stating “verbally, onsite, I met him there, several times” (Mr. Friedman direct at 97). He also testified credibly, as owner and manager of a heating and plumbing company for 40 years, his workers would never “walk into someone’s house or someone’s building and do work without being asked to do it” (Mr. Friedman cross at 78).

During the trial, Plaintiff also sought to introduce multiple screenshots of text messages between Mr. Kim and Mr. Friedman from April 2019 through August 2019, which Defendants objected to on the grounds they had not been provided in discovery. The Court permitted them to be introduced for identification, as the text messages, if authentic, were in possession of both sides prior to trial and thus there was no prejudice from the late disclosure. However, the Court initially allowed the texts only for the purpose of refreshing Mr. Friedman’s recollection and did not admit them into evidence, as they were not sufficiently authenticated by Mr. Friedman.

Later, upon Plaintiff’s cross examination of Mr. Kim, the defendant stated that he sometimes communicated with Plaintiff by text message, and upon presentation of the text message screenshots, he responded:

Plaintiff’s counsel: “Did you ever send any text messages to the Plaintiff?”

Mr. Kim: “Sometimes, yes.”

Plaintiff’s counsel: “Do you recall in those text messages stating or asking the Plaintiff when he was to complete the gas connection?”

Mr. Kim: (in English) “I think so.”

[...]

Plaintiff's counsel: "I'm going to ask you to take a quick look through this document and ask you, is this a text messages [sic] between you and the Plaintiff?"

Mr. Kim: "Yes."

At that time, the Court admitted the text messages into evidence, as Mr. Kim himself affirmed they were authentic messages between himself and Mr. Friedman. The first screenshot depicts a text from Mr. Kim to Mr. Friedman in April 2019 asking, "When can you come to work at 88 N 5?" (the residential building).

On May 24, 2019, Mr. Kim sent a text stating "We fixed leaking gas pipe completely today. You could test again." On June 14, 2019, he sent a message reading "Important. *When connect gas line?* When is DOB inspection of sprinkler?" The same date, Mr. Friedman responded regarding both the sprinkler and gas work, including: "will be back next week at which point I will schedule for a gas inspection for a gas test, I need to contact a Nat Grid Representative who is associated with your job to get a drawing to make sure the service piping from the main inlet control vale to the gas meters is done to there [sic] specifications."

On June 19, Mr. Kim texted "I talked to you in February and you got work permit in March. Now it passed 3 months. How long will it take long [sic] to gas connection & sprinkler inspection?" Mr. Kim followed up with more questions involving the "gas connection" and "gas appointment" on two more occasions in June. A text from Mr. Kim on July 9, 2019 reads in part: "Do you want DOB inspection for plumbing for the gas? I have no objection which is your job. My question is when do you finish both job? Can you finish this month?"

When confronted with the specific texts related to the gas connections and tests, Mr. Kim did not deny he had sent those messages but added "I have to explain." Though Defendants had the opportunity to address the text messages on redirect, they did not, and no further explanation or denial was offered.

Regarding the gas tests and piping on the residential building, Plaintiff delivered an invoice to Defendants dated August 9, 2019 which detailed the work performed: “Conducted gas tests on existing gas risers, Found several leaks, Cut open sheet rock as needed, Located defective piping and repaired, Conducted several more gas tests, Furnished, fabricated and installed new 2” piping from gas service to meter bar bank.” This invoice also included an attached job work order and breakdown of materials, with a total cost of \$14,665.46 (Plaintiff’s Exhibit 7; Defendant’s Exhibit W). Mr. Kim testified to receiving this invoice. Though not stated on the invoice, Plaintiff asserted in a September 2019 Mechanic’s Lien and the Complaint of this action that a credit of \$1,219.40 was paid, and he sought the balance of \$13,446.06 only.

The Court finds the evidence and credibility of the witnesses at trial preponderates in favor of Mr. Friedman that Plaintiff’s company was authorized and contracted to perform gas testing, gas meter connections, and identification of leaks, and they did not receive the balance owed for the work on the August 9, 2019 invoice.

Finally, Plaintiff was engaged to perform sprinkler system work on the residential building. This was not disputed by Mr. Kim, who testified as to the residential building “because it’s a new building, we have to get a sprinkler inspection done” (Mr. Kim at 146). He testified that he hired Plaintiff for that purpose, but they did not discuss how much the work would cost. Plaintiff testified that he was hired to complete the sprinkler work on the building, which included “finishing off the sprinklers so it’s operational and can pass Department of Building codes and requirements.” In terms of payment, he testified there was an oral agreement to pay for labor and materials “due upon receipt, due upon completion” (Mr. Friedman cross at 79-80).

In a third invoice dated August 14, 2019, as to the sprinkler system work on the residential building, Plaintiff summarized the work performed as “Relocated sprinkler heads where needed” and “Furnished and installed all new sprinkler concealer caps on sprinkler heads throughout.” The

attached job order and breakdown of time and materials totaled \$13,446.06 (Plaintiff's Exhibit 5; Defendant's Exhibit Y). Mr. Kim admitted to receiving this invoice, but it was never paid. He testified he was surprised by the "amount of the work that they put in here, there's no way it could be that expensive," but he could not testify as to their price discussions. He also could not testify as to what previous work, if any, had been done on the building's sprinkler system. (Mr. Kim direct at 170.) Furthermore, his testimony that he was unaware of the amount or type of work being done on the sprinklers was contradicted by texts between the parties, as well as Mr. Friedman's emails regarding sprinkler corrections.

Based on all evidence in the record, testimony, and the weight afforded by the Court as to the witnesses' credibility, the Court finds Plaintiff has established there was a mutual agreement between the parties for Plaintiff to overtake completion of the gas work, including investigation of gas leaks, and sprinkler work on the residential building beginning in March 2019 to prepare it for occupancy and building code inspections. This agreement was documented in the March 2019 Superseding Letters and further supported by the testimony, emails, and text messages admitted into evidence. Mr. Kim's claims that he did not agree or authorize any gas work to be performed was belied by evidence and credible testimony to the contrary. The Court finds that the evidence preponderates in favor of Plaintiff that their company was contracted to perform sprinkler and various gas work on a time and materials basis for the residential building, and Defendants failed to tender any payment for that work.

Further, Mr. Kim did not present any credible evidence rebutting or rejecting the account of the work performed or costs of that work as set forth in the August 2019 invoices. Mr. Friedman testified that he never received a response to the August invoices other than "by him not paying me and him ignoring my request for payment" (Mr. Friedman redirect at 106). The text messages

admitted to evidence indicate that Mr. Kim stopped responding to Plaintiff's messages in August 2019 and only communicated his rejection with silence and refusal to pay any of the balance.

For these reasons, the Court finds Plaintiff has established their entitlement to breach of contract damages for the residential building. Based on the August 2019 invoices, subtracting the credits stated in Plaintiff's Complaint, Plaintiff is entitled to \$13,446.06 for the gas work and \$13,446.06 for the sprinkler work. Combined with the remaining balance of \$9,598.31 for the commercial building work, the total amount of damages is \$36,490.43.

On this sum of \$36,490.43, Plaintiff is also entitled to pre-judgment statutory interest for breach of contract at a rate of 9% per annum, pursuant to CPLR 5001. This interest is calculated "as of the earliest ascertainable date the cause of action existed." Where damages "were incurred at various times, interest shall be computed upon each item from the date it was incurred *or* upon all of the damages from a single reasonable intermediate date." (*See* CPLR 5001; *Ecoline, Inc.*, 153 AD3d at 787). With respect to the three unpaid invoices of August 2019, the Court holds that interest shall be calculated from August 14, 2019.

The Court further holds that both Acky, Inc. and Mr. Kim personally are liable for the aforementioned damages. "The general rule is that a corporation exists independently of its owners, who are not personally liable for its obligations, and that individuals may incorporate for the express purpose of limiting their liability. The concept of piercing the corporate veil is an exception to this general rule, permitting, in certain circumstances, the imposition of personal liability on owners for the obligations of their corporation. . . Generally, a plaintiff seeking to pierce the corporate veil must show that (1) the owners exercised complete domination of the corporation in respect to the transaction attacked; and (2) that such domination was used to commit a fraud or wrong against the plaintiff which resulted in plaintiff's injury." (*Sterling Park Developers, LLC v China Perfect*

Constr. Corp., 185 AD3d 1082, 1083-1084 [2d Dept 2020] [internal quotation marks and citations omitted]).

Based on the evidence and testimony at trial, the Court finds that Mr. Kim exercised complete domination of the corporation, generally and with respect to his dealings with Plaintiff, and that he “abused the privilege of doing business in the corporate form to perpetrate a wrong or injustice” to the injured party (*DePetris v Traina*, 211 AD3d 939, 941 [2d Dept 2022]). It was clearly established at trial that Mr. Kim is the sole owner and president of the Acky, Inc. corporation, and when asked if any others are involved in the company, he responded “It’s just myself” (Mr. Kim direct at 143). He further testified that he is also the owner of another company, Pacific Foods, that has “no” legal relationship to Acky, Inc. However, all correspondence and invoices from Plaintiff were directed to Acky, Inc., Pacific Foods, or Mr. Kim interchangeably, and Mr. Friedman testified that Mr. Kim was the only person to ever communicate with him about the properties (Mr. Friedman cross at 75). The Superseding Letters regarding the residential building list Mr. Kim, not Acky, Inc., as the owner and manager of the property.

The Court finds that Mr. Kim not only exercised complete dominion and control over Acky, Inc., but that the breached verbal and written agreements which are the subject of this action were indistinguishable as dealings of Mr. Kim individually or on behalf of Acky, Inc. Thus, the Court finds there is valid reason to pierce the corporate veil and hold Mr. Kim personally liable for the damages incurred.

Defendants have failed to make any showing for their affirmative defense of accord and satisfaction, as they did not show the parties made any agreement to settle this dispute by tendering less than the payment demanded.

Defendants have also failed to support their counterclaims against Plaintiff for breach of contract. Defendants claim that Plaintiff never completed the October 2019 hydrostatic pressure

pump re-test on the commercial building. Plaintiff asserts that he paid a \$400 deposit for this re-test (the subject of the proposal dated July 10, 2019) and it was never completed. In his testimony, Mr. Friedman did not recall if the deposit was paid, but he acknowledged his company did not go through with the retest “because we did not get paid for all of the additional work that was required to remedy the violation, besides all of the work that was done in the other building” (Mr. Friedman direct at 20-21). Mr. Kim did not testify or present evidence as to this \$400 deposit at trial. Furthermore, as previously noted, the agreement between the parties stated “whether test passes or fails” as to both the July 2019 (four passed, one failed) and October 2019 (failed) deadlines. Though Plaintiff was contracted to schedule the tests and correct violations, his payment was expressly not conditional on passing all tests.

Defendants also asserted that the residential building did not pass its sprinkler test, but during trial Mr. Kim was vague on the details of when that test was ultimately performed. Defendants also alleged in their second counterclaim that Plaintiff performed unauthorized gas work on the residential building beyond the scope of their agreement, including opening holes in the wall and causing damage to the building. As discussed, the Court found gaps and credibility issues in Mr. Kim’s testimony as to whether said gas work was authorized.

Additionally, a party asserting a claim for breach of contract bears the burden of proving damages from that breach. “The damages must be reasonably certain and directly traceable to the breach,” not based on speculation (*Five Star Air, Inc. v Kasab*, 58 Misc 3d 156(A) [App Term, 2d Dept 2018]). At trial, Mr. Kim was unable to assert any damages with reasonable certainty from the alleged unauthorized or defective work of Plaintiff. He testified that he never paid any fines from the FDNY violations for the sprinkler tests, because they were ultimately cured and waived. He testified that he paid another company approximately \$1,000 to “finish the job” and identify the source of gas leaks, but he did not deny those leaks were not created by Plaintiff, and he did not present or

properly identify any proof of those payments. As to the work repairing the holes in the wall, he responded in English that he had repaired them himself and could not say how much it cost. (Mr. Kim direct at 163, 173.)

For these reasons, the Court finds Defendants have not established sufficient evidence for their breach of contract counterclaims, and even if they had, they did not establish any damages for those claims with reasonable certainty.

Based on the foregoing, it is:

ORDERED, ADJUDGED AND DECREED that Plaintiff is entitled to damages from Defendants Mr. Kim and Acky, Inc., in the amount of \$36,490.43, plus interest from the date of August 14, 2019, at the statutory rate of 9% per annum; and it is further

ORDERED that the parties shall be responsible for their own attorney fees and costs; and it is further

ORDERED that Defendants' counterclaims against Plaintiff are dismissed.

This constitutes the Order and Judgment of the Court.

ENTER.



Hon. Consuelo Mallafre Melendez

J.S.C.