Odeh 26 LLC v Neuffer Fenster (Plus) Turen GMBH
2025 NY Slip Op 34503(U)
November 25, 2025
Supreme Court, New York County
Docket Number: Index No. 650600/2025
Judge: Mary V. Rosado

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. MARY V. ROSADO** **PART** **33M**

Justice

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ODEH 26 LLC

Plaintiff,

- v -

NEUFFER FENSTER (PLUS) TUREN GMBH A.K.A NEUFFER WINDOWS (PLUS) DOORS,

Defendant.

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INDEX NO. 650600/2025

MOTION DATE 07/30/2025

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 24, 25, 26, 27, 28, 30, 31, 32, 33, 34, 35

were read on this motion to/for DISMISS.

Upon the foregoing documents, and after a final submission date of October 8, 2025, Defendant Neuffer Fenster (Plus) Turen GMBH a.k.a. Neuffer Windows (Plus) Doors' ("Defendant") motion to dismiss Plaintiff Odeh 26 LLC's ("Plaintiff") Complaint is granted in part and denied in part.

I. Background

On August 8, 2018, Plaintiff and Defendant entered a sales agreement (the "Contract") wherein Defendant agreed to manufacture, deliver, and install customized windows and doors at a residential home located at 237 Kings Point Road, Kings Point, New York 11024 ("the "Premises"). In the Contract, Defendant agreed to provide the skills and labor necessary to install the windows and doors. As part of the Contract, Plaintiff allegedly paid for Defendant's employees' airline tickets, lodging, and meals as they performed the contracted work. However, according to Plaintiff, Defendant did not provide sufficient manpower to complete the contracted work, which resulted in alleged construction defects and deficiencies that needed to be repaired or

replaced. Plaintiff allegedly notified Defendant of the deficiencies in August of 2019, and although Defendant allegedly represented, they would correct the deficiencies, its workers returned to Europe in February of 2020 with the contracted work left uncompleted. Allegedly, in March of 2020 and August of 2020, Plaintiff requested Defendant complete the work, but they did not. In November of 2020, Plaintiff allegedly notified Defendant of its defaults under the Contract and on November 9, 2020, Defendant sent an inspector to the Premises. Allegedly, the inspector found various leakage and drainage problems and incomplete glass installation, but the issues were allegedly left unaddressed.

In March of 2021, Defendant allegedly sent another representative to the Premises who allegedly installed a few screens, which Plaintiff claims caused further damage. Defendant then allegedly told Plaintiff it would no longer continue work at the Premises. Plaintiff alleges on April 30, 2021, it again notified Defendant of its breaches of the Contract. On February 3, 2025, Plaintiff initiated this action alleging breach of contract, breach of warranty, negligence, and unjust enrichment. Defendant moves pre-answer to dismiss pursuant to CPLR 3211(a)(5) and (a)(7).

II. Discussion

A. Breach of Contract (First and Second Causes of Action)

Defendant's motion to dismiss Plaintiff's breach of contract claims is denied. The parties dispute whether the CPLR's six-year statute of limitations for breach of contract applies, or whether the Uniform Commercial Code's ("UCC") four-year statute of limitations applies. In a mixed transaction contract such as the one in this case, where the parties contracted for both goods and services, the Court must determine whether the transaction is predominantly one for goods or one for services (*Hagman v Swenson*, 149 AD3d 1, 2 [1st Dept 2017]). Courts must look to the nature of the transaction and must not focus solely as to whether the cost of materials sold exceeds

the cost of labor in determining whether a contract is primarily for goods or services (*Hagman, supra* at 7). While the Contract at issue details the delivery of certain doors and windows, it also required Defendant to produce shop-drawings, perform a site inspection, revise shop-drawings post-inspection if needed, and to provide personnel with the requisite expertise and knowledge to install the delivered windows and doors (*see* NYSCEF Doc. 2). The Contract also required Plaintiff to purchase flight tickets, pay for meals, and pay for the cost of accommodation for Defendant's laborers, and Plaintiff was required to purchase any tools, scaffolding, and cranes that may be required for Defendant's workers to complete installation.

Under similar circumstances, the Second and Third Departments have found mixed-transaction contracts to be one primarily for services, where the delivery of goods was incidental to the broader construction services contract (*see Gibraltar Management Co., Inc. v Grand Entrance Gates, Ltd.*, 46 AD3d 747, 747-48 [2d Dept 2007]; *Schenectady Steel Co., Inc. v Bruno Trimpoli General Const. Co., Inc.*, 43 AD2d 234, 237 [3d Dept 1974] *affd.* 34 NY2d 939 [1974]). Likewise, because the contract required Defendant's laborers, engineers, and design professionals to fly from Europe, provide shop drawings, coordinate with Plaintiff's architect, and install windows and doors, the contract can be characterized as one where services provided by individuals with specialized knowledge, craftsmanship, and expertise predominated, with the delivery of the glass and doors being incidental to the overall nature of the Contract (*see also Newport East Inc. v Sviba Floral Decorators, Inc.*, 202 AD3d 482, 483 [1st Dept 2022] [contract for silk and floral display was a service contract based on design drawings, payment for installation of display, and reliance on defendants' "creativity and design" expertise]).

Therefore, based on the Contract and the allegations that the breach of contract flowed from issues with allegedly inadequate manpower or negligent installation, the Court finds the

Contract is predominantly one for services and the six-year statute of limitations under the CPLR applies (*see also Hagman v Swenson*, 149 AD3d 1 [1st Dept 2017]).

B. Breach of Warranty (Third Cause of Action)

The motion to dismiss Plaintiff's breach of warranty claim is granted. As Plaintiff has elected to argue its breach of contract claims are timely because the contract is one predominantly for services rather than one for goods, it does not have a claim for breach of express or implied warranty (*see R. W. Kern, Inc. v Circle Industries Corp.*, 158 AD2d 363 [1st Dept 1990]). Moreover, Plaintiff's reliance on an alleged ten-year warranty is unavailing since the terms of the Contract state the ten-year guarantee does not apply in the United States or Canada. Plaintiff's alternative argument that claims under the Uniform Commercial Code are timely because they could not accrue until installation was complete is without merit – by Plaintiff's own allegations installation remains incomplete and by Plaintiff's theory, based on the alleged facts of this case the statute of limitations under the Uniform Commercial Code would be meaningless. Plaintiff knew of the alleged breach as early as August of 2019, thus, its argument made in the alternative, that its claims under the Uniform Commercial Code are timely based on Defendant's failure to complete installation, is without merit.[1]

C. Negligence and Unjust Enrichment (Fourth and Fifth Causes of Action)

Defendants' motion to dismiss Plaintiff's unjust enrichment and negligence claims is granted. Plaintiff does not oppose dismissal of the unjust enrichment claim, therefore that claim is dismissed. The negligence claim is duplicative of the breach of contract claims and is therefore dismissed (*see Ho v Star Contractors, Inc.*, 226 AD3d 511 [1st Dept 2024] citing *Kordower-Zetlin*

[1] The cases that Plaintiff relies on to argue that the UCC's statute of limitations does not accrue until installation is complete are distinguishable in that in those cases, the breach could not be discovered until the allegedly defective goods were installed. Here, Plaintiff identified allegedly shoddy workmanship as early as August of 2019.

v Home Depot U.S.A., Inc., 134 AD3d 556, 557 [1st Dept 2015]). The negligence claim arises from the same allegations and seeks damages from the same alleged conduct as the breach of contract claims, alleging nothing more than negligent performance of the parties' Contract (*see 99 Wall Dev., Inc., v Consigli & Associates, LLC*, 238 AD3d 502, 503 [1st Dept 2025]). Therefore, the negligence and unjust enrichment claims are dismissed.

Accordingly, it is hereby,

ORDERED that Defendant's motion to dismiss Plaintiff's Complaint is granted to the extent that Plaintiff's third through fifth causes of action alleging breach of warranty, negligence, and unjust enrichment are dismissed, but the remainder of Defendant's motion is denied; and it is further

ORDERED that within twenty days of entry, counsel for Defendant shall serve an Answer to Plaintiff's Complaint, and it is further

ORDERED that the parties shall appear for a preliminary conference on February 9, 2026; and it is further

ORDERED that within ten days of entry, counsel for Plaintiff shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

11/25/2025
DATE

Mary V Rosado JSC
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:		CASE DISPOSED		x	NON-FINAL DISPOSITION		
		GRANTED	DENIED	x	GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE