

Winkler v Jenkin

2025 NY Slip Op 34556(U)

November 21, 2025

Supreme Court, Kings County

Docket Number: Index No. 521881/2025

Judge: Reginald A. Boddie

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At an IAS Commercial Part 12 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Borough of Brooklyn, City and State of New York on the 21st day of November 2025.

P R E S E N T:
Honorable Reginald A. Boddie
Justice, Supreme Court

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THOMAS WINKLER and ALISON WINKLER,

Plaintiffs,

Index No. 521881/2025

-against-

Cal. 10 MS 1

JAMES A.B. JENKIN,

Decision and Order

Defendant.

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The following e-filed papers read herein:

NYSCEF Doc Nos.

MS 1

15-42

Defendant’s motion to dismiss is decided as follows:

Background

This action arises out of the defendant’s alleged misrepresentations and active concealments of numerous material defects in a Brooklyn townhouse, ranging from HVAC, plumbing, waterproofing, electrical systems and appliances, to induce plaintiffs to enter into a \$3.4 million contract of sale to purchase the real property located at 283 Decatur Street, Brooklyn, New York 11223 (the “Property”), and then breached multiple contractual warranties and obligations requiring that all systems, appliances, and structural elements be in proper working order and free of leaks at closing. Plaintiffs claim they later discovered extensive hidden defects requiring hundreds of thousands of dollars in repairs, assert causes of action for breach of contract, breach

of the implied covenant of good faith and fair dealing, fraudulent inducement, and unjust enrichment, and seek damages exceeding \$3.4 million.

Defendant moves under CPLR 3211(a)(1) and (a)(7) to dismiss all causes of action with prejudice and seeks fees and sanctions under 22 NYCRR 130-1.1. Defendant argues that the contract documents and pre-closing inspection report conclusively refute plaintiffs' claims: the Property was sold "as is"; plaintiffs conducted multiple inspections, including by a professional inspector; and the contract contains a merger clause and acceptance of deed/full performance clause extinguishing all non-surviving warranties. Defendant contends that no contractual warranty survived closing, the implied covenant claim is duplicative, the fraud claim is insufficiently pled and barred by caveat emptor, and the unjust enrichment claim is not viable since a valid contract governs the transaction.

In opposition, plaintiffs argue that defendant's alleged documentary evidence does not refute their detailed allegations that defendant knowingly concealed latent, non-visible defects, including defective HVAC, plumbing, waterproofing, bathrooms, doors, and appliances, that violated NYC code and could not have been detected without destructive testing. Plaintiffs emphasize that defendant is an experienced home flipper who used cosmetic measures to hide deficiencies and that their claims are supported by expert affirmations. They contend the complaint adequately alleges fraudulent inducement under the special-facts and active-concealment doctrines, and that they have otherwise stated viable claims for breach of contract and related relief.

In reply, defendant reasserts that the contract of sale and pre-closing inspection materials constitute complete documentary evidence barring all claims through the "as is" clause, merger clause, and full-performance provision. He argues plaintiffs identify no surviving warranty, no actionable misrepresentation, no active concealment, and no exception to caveat emptor,

particularly given plaintiffs' multiple inspections and their claimed sophistication. Defendant reiterates that Paragraph 16(e) of the contract was merely a pre-closing condition, not a post-closing warranty, that the fraud allegations rely on hindsight rather than justifiable reliance, and that the implied-covenant and unjust-enrichment claims are duplicative. Defendant contends that the suit was instituted as a result of buyer's remorse.

Discussion

"A motion to dismiss pursuant to CPLR 3211(a)(1) will be granted only if the documentary evidence resolves all factual issues as a matter of law, and conclusively disposes of the plaintiff's claim" (*Fontanetta v Doe*, 73 AD3d 78, 83 [2d Dept 2010] [citation and internal quotation marks omitted]). Such documentary evidence must be "of undisputed authenticity" (*id.*). Indeed, "[t]o constitute documentary evidence, the evidence must be unambiguous, authentic, and undeniable" (*Xu v Van Zwiennen*, 212 AD3d 872, 874 [2d Dept 2023] [citation and internal quotation marks omitted]).

"On a motion to dismiss a complaint pursuant to CPLR 3211(a)(7), the court must afford the complaint a liberal construction, accept the facts as alleged in the complaint as true, accord the plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (*USCHAG Corp. v Flagstar Bank, FSB*, 220 AD3d 823, 823-24 [2d Dept 2023] [citation omitted]). "Although a court may consider materials submitted by the defendant in support of its motion, the materials must establish conclusively that the plaintiff has no cause of action" (*id.*). Moreover, "a court may freely consider affidavits submitted by the plaintiff to remedy any defects in the complaint and the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one" (*Leon v Martinez*, 84 NY2d 83, 88 [1994] [citation and internal quotation marks omitted]). "The pleading will be deemed to allege whatever may be implied from its statements by reasonable intendment and the

court must give the pleader the benefit of all favorable inferences that may be drawn from the complaint” (*Dunn v Gelardi*, 59 AD3d 385, 386 [2d Dept 2009] [citation omitted]).

Breach of Contract

“[T]o plead a cause of action for breach of contract, a plaintiff usually must allege that: (1) a contract exists; (2) plaintiff performed in accordance with the contract; (3) defendant breached its contractual obligations; and (4) defendant's breach resulted in damages” (*34-06 73, LLC v Seneca Ins. Co.*, 39 NY3d 44, 52 [2022] [citations omitted]).

Accepting the facts as alleged in the complaint as true and according plaintiff the benefit of every possible favorable inference as the Court must, plaintiffs have sufficiently alleged a cause of action for breach of contract. It is undisputed that the parties entered into a written contract of sale, together with a rider agreement, dated May 15, 2023. It is further undisputed that plaintiffs fully performed their obligations by proceeding to closing and paying the purchase price.

Plaintiffs adequately allege that, after closing and upon further investigation, they discovered breaches of specific contractual provisions that were required to be true as of the date of closing. These include Paragraph 16(a) and (e), which require that (a) “all representations and warranties of Seller made in this contract” be true and accurate “as of the date of Closing” and (e) that “[a]ll plumbing..., heating and air conditioning..., electrical and mechanical systems... and all appliances... [be] in working order as of the date of Closing” (*see* NYSCEF Doc No. 2). Paragraph 3 of the rider agreement likewise provides that the “electrical, plumbing, air conditioning, heating and other mechanical systems ... and all appliances ... are now, and will at Closing be in working order and condition,” and that “the roof, walls, windows and foundations ... will be free of leaks,” and that “all alterations or additions made to the Premises by Seller were made in full compliance with laws, rules, and regulations.”

The complaint then sets forth detailed factual allegations that, at the time of closing, the HVAC systems, kitchen doors, third and second-floor bathrooms, garden-level toilet, and refrigerators were not in working order, were defective or installed in a non-code-compliant manner, and were subject to concealed leaks and structural deficiencies, resulting in substantial post-closing remediation costs. These allegations, taken as true, sufficiently plead the third and fourth elements of the breach of contract claim.

Defendant's argument that the documentary evidence, principally the contract of sale and the pre-purchase inspection reports, "utterly refutes" any allegation of breach is unavailing. Plaintiffs invoke the "special facts" doctrine, under which "a duty to disclose arises where one party's superior knowledge of essential facts renders a transaction without disclosure inherently unfair" (*P.T. Bank Cent. Asia v ABN AMRO Bank N.V.*, 301 AD2d 373, 378 [1st Dept 2003] [citations and internal quotation marks omitted]). Whether the defects identified, such as the allegedly concealed defective kitchen doors, the painted-over rotting baseboards associated with exterior leaks, and the plumbing and HVAC systems that were allegedly not in good working order at the time of closing and "not compliant with New York City plumbing code", were latent, concealed, or known to defendant cannot be resolved from the face of the contract or pre-closing inspection report alone at this pre-answer, pre-discovery stage. The contract documents do not "utterly refute" plaintiffs' allegations, nor do they conclusively establish a defense as a matter of law under CPLR 3211(a)(1).

Accordingly, the branch of defendant's motion seeking dismissal of the first cause of action for breach of contract is denied.

Breach of Implied Covenant of Good Faith and Fair Dealing

"Implicit in every contract is a covenant of good faith and fair dealing which encompasses any promise that a reasonable promisee would understand to be included" (*Elmhurst Dairy, Inc. v*

Bartlett Dairy, Inc., 97 AD3d 781, 784 [2d Dept 2012] [citations omitted]). “Even if a party is not in breach of its express contractual obligations, it may be in breach of the implied duty of good faith and fair dealing ... when it exercises a contractual right as part of a scheme to realize gains that the contract implicitly denies or to deprive the other party of the fruit (or benefit) of its bargain” (*id.*) However, “a separate cause of action for breach of the covenant cannot be maintained where ... it is premised on the same conduct that underlies the breach of contract cause of action and is intrinsically tied to the damages allegedly resulting from a breach of the contract” (*Parlux Fragrances, LLC v S. Carter Enterprises, LLC*, 204 AD3d 72, 92 [1st Dept 2022] [citations and internal quotation marks omitted]).

Here, plaintiffs’ implied-covenant claim is duplicative of their breach of contract claim. Both causes of action rest on the same core allegations that defendant misrepresented the condition of the building systems and appliances as of the date of closing, as well as concealed latent defects. Plaintiffs do not identify any conduct by defendant that is separate from, or independent of, the contractual obligations they allege were breached. Nor do they allege any damages arising from a breach of the implied covenant that are distinct from the damages they seek under the first cause of action. Instead, plaintiffs assert in conclusory fashion that “[i]n the unlikely event that Defendant can avoid liability on the breach of contract claim, given the bad faith exhibited by Defendant at all relevant times, equity necessitates that the Defendant should forfeit the benefit of its bargain, which both parties valued at three million, four hundred thousand dollars (\$3,400,000),” without specifying any distinct factual conduct or separate harm that would support a standalone implied-covenant theory.

Accordingly, the branch of defendant’s motion seeking dismissal of the second cause of action for breach of the implied covenant of good faith and fair dealing is granted.

Fraudulent Inducement

“To state a [cause of action to recover damages] for fraudulent inducement, there must be a knowing misrepresentation of material present fact, which is intended to deceive another party and induce that party to act on it, resulting in injury” (*Feldman v Byrne*, 210 AD3d 646, 648-49 [2d Dept 2022] [citations and internal quotation marks omitted]). “Where a cause of action is based upon fraud, the circumstances constituting the wrong shall be stated in detail” (*id.* at 649). Furthermore, “[i]f ... some conduct (i.e., more than mere silence) on the part of the seller rises to the level of active concealment, a seller may have a duty to disclose information concerning the property” (*Bethka v Jensen*, 250 AD2d 887, 888 [3d Dept 1998] [citations and internal quotation marks omitted]).

Here, plaintiffs sufficiently allege specific conduct on the part of defendants, beyond mere silence, that deceived them. Plaintiffs allege, among other things, that defendant actively concealed extensive rotting and leaks by applying cosmetic paint, concealed non-code-compliant plumbing conditions such as the absence of traps and improper venting, and concealed HVAC defects that were hidden behind walls, including cross-wiring and lack of intake vents. Plaintiffs further allege that defendant affirmatively represented at closing that the HVAC system had been inspected and was in working order, despite the alleged existence of concealed defects, and that these actions prevented plaintiffs and their inspector from discovering the true condition of the property without destructive testing.

These allegations are sufficiently particularized to satisfy CPLR 3016(b) and, taken as true, they state a legally cognizable claim that defendant engaged in affirmative acts of concealment. Whether plaintiffs will ultimately be able to demonstrate intentional concealment or justifiable reliance is a factual matter to be resolved after discovery, not on a motion to dismiss under CPLR 3211(a).

Accordingly, the branch of defendant's motion seeking dismissal of the third cause of action for fraudulent inducement is denied.

Unjust Enrichment

The elements of a cause of action to recover for unjust enrichment are "(1) the defendant was enriched, (2) at the plaintiff's expense, and (3) that it is against equity and good conscience to permit the defendant to retain what is sought to be recovered" (*GFRE, Inc. v U.S. Bank, N.A.*, 130 AD3d 569, 570 [2d Dept 2015] [citation omitted]). "[T]o recover under theory of quasi contract, plaintiff must be able to prove that performance was rendered for defendants resulting in their unjust enrichment; it is not enough to show that defendants consented to improvements or received benefit from plaintiff's activities" (*Outrigger Const. Co., Inc. v Bank Leumi Tr. Co. of New York*, 240 AD2d 382 [2d Dept 1997] [citation omitted]). "An unjust enrichment claim is not available where it simply duplicates, or replaces, a conventional contract or tort claim" (*Corsello v Verizon New York, Inc.*, 18 NY3d 777, 790 [2012] [citation omitted]).

Here, it is undisputed that the parties entered into a binding written contract of sale governing the transaction at issue. Additionally, plaintiffs' unjust enrichment claim rests on the same factual allegations underlying their breach of contract and fraudulent inducement claims. Inasmuch as the existence of a valid and enforceable contract bars recovery in quasi contract, and since the unjust enrichment claim merely duplicates plaintiffs' contract-based theory, it cannot be maintained as a matter of law.

Accordingly, the branch of defendant's motion seeking dismissal of the fourth cause of action for unjust enrichment is granted.

Conclusion

Based on the foregoing, defendant's motion is granted to the extent that plaintiffs' second cause of action alleging breach of implied covenant of good faith and fair dealing and fourth cause

of action alleging unjust enrichment are hereby dismissed. The remainder of defendant's motion is denied.

Any argument not explicitly addressed herein was considered and deemed to be without merit or unnecessary to address given the court's determination.

ENTER:



Honorable Reginald A. Boddie
Justice, Supreme Court

HON. REGINALD A. BODDIE
J.S.C.