

901 Props., LLC v Bear Glass Inc.

2025 NY Slip Op 34671(U)

December 5, 2025

Supreme Court, New York County

Docket Number: Index No. 656798/2021

Judge: Arlene P. Bluth

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

-----X

901 PROPERTIES, LLC

Plaintiff,

- v -

BEAR GLASS INC.,

Defendant.

-----X

INDEX NO. 656798/2021

MOTION DATE N/A

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 75

were read on this motion to/for VACATE - DECISION.

Plaintiff’s motion to vacate this Court’s decision issued after a bench trial, and for this Court to recuse, is denied.

Background

In this breach of contract matter, this Court held a bench trial after which the Court ruled in favor of defendant on its counterclaims in the amount of \$62,400 (NYSCEF Doc. No. 55). The Court concluded that defendant met its burden to show that it was entitled to payment for replacing windows at a property owned by plaintiff in Westchester County.

Plaintiff now moves for a new trial on the ground that this Court improperly refused to permit the introduction of certain evidence that plaintiff claims would have changed the outcome of this case. It insists that the Court should have let plaintiff submit certain invoices that plaintiff argues shows that it hired a different entity (“Osman”) to do work that defendant was supposed to complete. Plaintiff contends that “One would otherwise have to conclude that [plaintiff] would have paid checks to Osman of over \$64,000 for nothing” (NYSCEF Doc. No. 68 at 6).

In opposition, defendant stresses that plaintiff never established the proper foundation for the admission of the documents it now complains were not admitted. It insists that it completed the job and replaced all of the windows in the building, a task for which it is entitled to be paid.

In reply, plaintiff emphasizes that there are two main issues in this motion. The first is whether the business records exception to the rule against hearsay applies to the “Osman invoices” and second, whether the Court should have accepted the uncontested testimony of plaintiff’s witnesses. Plaintiff argues that the Court should answer in the affirmative on both matters and then rule in favor of plaintiff.

Discussion

CPLR 4404(b) provides that “After a trial not triable of right by a jury, upon the motion of any party or on its own initiative, the court may set aside its decision or any judgment entered thereon. It may make new findings of fact or conclusions of law, with or without taking additional testimony, render a new decision and direct entry of judgment, or it may order a new trial of a cause of action or separable issue.”

The central issue in this motion is whether or not the Court properly sustained defendant’s objection to the “Osman invoices.” These documents are uploaded as exhibit 7 to this motion. In the Court’s decision after trial, the Court expressly dealt with plaintiff’s assertion that it paid Osman to correct and perform Bear Glass’ tasks (NYSCEF Doc. No. 55 at 3-5). Specifically, the Court noted that no one from Osman was called to testify to explain exactly what they did, including their scope of work, and the circumstances surrounding their employment. Moreover, a witness from Osman could certainly have authenticated records, such as the aforementioned invoices, discussed their relevance, and help plaintiff establish a proper foundation.

A brief review of exhibit 7 makes it clear that the Court was correct to deny its admission for many reasons. The first is relevance. At trial, Mr. Dweck, plaintiff's owner, testified that plaintiff paid Osman \$53,000 for the work (NYSCEF Doc. No. 57 at 29). However, in this Court's view, plaintiff did not establish a proper foundation at trial to show that this record says anything relevant to this case. The first part is a bill for labor with back up from Osman to Robert Hindman Inc. (not to plaintiff) - two parties, neither of which is a party to this suit and neither of which was called by plaintiff to testify. The first two pages state a "Location" of "Rock Center" – notably, not the subject premises.

Every back up time record also lists the category of "location of work" as "New York City". Nowhere is there any indication that any of that labor was done in Westchester. In the entire document, there is no mention whatsoever of doing any specific or specialized work and certainly there is no reference to window repair at the subject property (NYSCEF Doc. No. 67). In fact, there is no mention whatsoever of any window repair at any location or of Bear Glass (*id.*). The only references to the specific property at issue here are found in the last two pages—a \$10,538.89 bill for unspecified labor and dumpsters from Robert Hindman, Inc. to plaintiff—and a printout of checks for door repairs at the property although the payee is not mentioned (*id.*). Again, plaintiff did not point to a document that adequately links any of these bills to Bear Glass or windows at the subject property.

Moreover, Mr. Dweck did not sufficiently demonstrate his personal knowledge about the genesis of this invoice and how an invoice from Osman to Hindman is relevant to this case which, obviously, is a dispute between plaintiff 901 Properties LLC and defendant Bear Glass Inc.

Mr. Dweck's claim that these records show that plaintiff was paying Osman to fix up Bear Glass' work is not a reasonable interpretation of these records. This Court is not required to simply accept as true any and all statements from each witness; sometimes, testimony just doesn't make sense and isn't facially credible even when there is no one to directly contradict it. Mr. Dweck's claim in this motion that plaintiff's and defendant's relationship was done, largely, through verbal agreements and a "handshake" does not compel the Court to change its conclusion. Rather, the lack of evidence produced at trial when it could have been so easy to produce it made plaintiff's claims even less believable.

Mr. Dweck, a vastly experienced litigator, knows full well that verbal deals are fine until there is a disagreement, like the one here, and a fact finder will be required to sort through competing claims without an adequate paper trail. And so once the relationship broke down, and according to Mr. Dweck it did, then it is curious why Mr. Dweck did not make sure there was better documentation ready to be introduced at trial. It is axiomatic that at the trial, it was plaintiff's burden to prove that Bear Glass did a bad job and that plaintiff had to expend additional money to fix and finish the work. There were, of course, countless ways plaintiff could have done this but, for some reason, plaintiff did not. Plaintiff did not introduce a single photograph of the alleged damage, the shoddy work, or the work purportedly done by Osman. Plaintiff did not show proof of a tenant complaint or rent credits given due to any window issues. Plaintiff did not produce detailed bills showing window repair at the site. Plaintiff did not produce a witness with first-hand knowledge of the work done due to the alleged bad work by Bear Glass.

With regard to the specific invoice supporting this motion, Mr. Dweck did not sufficiently demonstrate his personal knowledge about the genesis of this invoice and how an

invoice from Osman to Hindman is relevant to this case—a dispute between plaintiff 901 Properties LLC and defendant Bear Glass Inc. “[T]he Court of Appeals has held that unless some other hearsay exception is available, admission may only be granted where it is demonstrated that the informant has personal knowledge of the act, event or condition and he [or she] is under a business duty to report it to the entrant” (*Bank of New York Mellon v Gordon*, 171 AD3d 197, 205, 97 NYS3d 286 [2d Dept 2019] [internal quotations and citation omitted]).

It should have been obvious to plaintiff to bring in someone from Osman to testify as to the work done in Westchester arising out of Bear Glass’s failings. Instead, it seems plaintiff expected to win this case by showing that he paid bills based on documents listing unspecified labor performed, apparently, in New York City and \$10,000 showing indeterminate labor and dumpster rentals at the Westchester premises.

Not only did plaintiff decline to call anyone from Osman, no one from Robert Hindman, Inc. testified either. Mr. Dweck claimed that this company was a “client” of his firm and recommended defendant (NYSCEF Doc. No. 57 at 27). Throughout the trial, Mr. Dweck mentioned someone named “Doug” Hindman in relation to this entity although a full explanation of the invoices’ mention of this Hindman entity was never elucidated.

As the Second Department observed in *Gordon*, the actual author of a record need not testify in order for a document to be admitted under the business records exception to the rule against hearsay (*Gordon*, 171 AD3d at 205). But that witness still needs to be familiar with the practices and procedures of the entity and Mr. Dweck was not. Mr. Dweck was not adequately familiar with the practices and procedures of Hindman or the practices and procedures of Osman to be able to establish a foundation for those invoices.

Even if the Court erred in its finding about the admissibility of NYSCEF Doc. No. 67, the admission of these records would not change the Court's decision for the reasons stated above. The substance of the document does not show that Osman was hired by plaintiff to do the work Bear Glass was supposed to complete. It does not even conclusively show Osman worked at the premises in Westchester. Neither Mr. Dweck nor any other witness ever testified that they personally observed the unsatisfactory work performed by Bear Glass and the remedial work allegedly done by Osman.

This brings the Court to plaintiff's second point—that plaintiff's witness accounts were not contradicted. Not only did this Court have the opportunity to observe the demeanor of the witnesses as they testified and determine their credibility, this Court evaluated the evidence – and lack of evidence – presented at this trial. The fact is that neither Mr. Dweck nor Mr. Goh, the property manager, offered any persuasive testimony about the window replacement project. Mr. Dweck was apparently not on site to witness the actions of Bear Glass or Osman. That means that Mr. Dweck's conclusion that he hired Osman to fix up and finish Bear Glass' work was solely based on information he received from others. While Mr. Dweck was entitled to explain his motivation for hiring Osman—that he was told Bear Glass was doing a bad job—that does not require the Court to accept the purported facts underlying that motivation where they were based only on second-hand accounts.

And Mr. Goh, who was the on-site property manager, did not demonstrably help plaintiff's case. This Court did not find him credible. This Court did not believe him when he denied walking through the building with Bear Glass and approving the change of certain windows to openable/ventable ones. Rather, this Court believed Bear Glass's witness on the ground that it made little sense for Bear Glass to have ordered and installed those extra windows

unless they were approved. Mr. Goh could have taken pictures of the site during the pertinent times, but none were produced at trial. He could have documented tenants' complaints and any rent concessions pertaining to window issues, but he did not. Considering that Mr. Goh was plaintiff's only witness with some personal knowledge of the events at the Westchester property, the fact that one of the central themes of his testimony was to emphasize that he had only one thousand dollars of authority instead of opining on Bear Glass and Osman was an inexplicable strategy decision.

In the original decision, this Court concluded that although Mr. Dweck may have been convinced he was paying Osman for window work, the proof presented at trial was not good enough to meet his burden. When taking into account the substance of exhibit 7, it only reinforces the baffling decision not to call someone from Osman to testify. There is little doubt that these records are indisputably vague and only raise more questions than answers about how bills are presented and paid by plaintiff. In the end, it does not matter because plaintiff did not meet its burden to prove that it spent money on Osman to correct problems Bear Glass caused at the Westchester property.

In summary, the invoices are irrelevant, vague and do not indicate that they relate to window work in Westchester. No one with knowledge of the creation of the invoice or who performed the work cited in the documents testified. Even if the invoices were admitted, the decision would be the same. Plaintiff did not satisfy its burden by pointing to unspecified labor for work in New York City and about \$10,000 for labor and dumpsters at the premises, without the submission of any pictures and without any first-hand testimony about why the labor was needed and what was done. Although Mr. Dweck insisted that he paid the bills, this case is not, and never was, about whether those bills were paid.

Accordingly, it is hereby

ORDERED that plaintiff's motion is denied.

12/5/2025

DATE



ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE