

Vogel v Armagh Bldrs. LLC

2025 NY Slip Op 35063(U)

December 30, 2025

Supreme Court, New York County

Docket Number: Index No. 653292/2018

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

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JENNIFER VOGEL,

Plaintiff,

- v -

ARMAGH BUILDERS LLC, JAMES E SMITH, WEPLUS
ARCHITECTURE, D.P.C., LT ARCHAUS, INC., CHRISTINA
K. LEE

Defendant.

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INDEX NO. 653292/2018
MOTION DATE N/A
MOTION SEQ. NO. 005

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 005) 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78

were read on this motion to/for JUDGMENT - SUMMARY.

Defendants Weplus Architecture D.P.C., LT Archaus, Inc. and Christina Lee
(collectively, "Moving Defendants")'s motion for summary judgment is denied.

Background

Plaintiff brings this case to recover damages arising out of a renovation of her property. She claims she hired the Moving Defendants to perform architectural services in connection with the renovation of the apartment and that they recommended plaintiff use defendant Armagh Builders to do the job. Plaintiff contends that Armagh Builders never completed the work despite receiving a payment of over \$100,000 and that she must now hire other contractors to finish the job. She blames the Moving Defendants for advising her to make payments to the contractor despite the fact that the work was not being completed.

The Moving Defendants claim that they submitted the renovation drawings to the Department of Buildings and received the necessary permits and approvals. They claim they

performed all of the necessary services for the project and that they did not cause any damages to plaintiff. The Moving Defendants emphasize that they never signed any contract with plaintiff and so the claims against them should be dismissed. They contend that defendant LT Archaus is a subsidiary of We Plus Architecture and there was simply no breach of contract. Moving Defendants argue that the causes of action for professional negligence, professional malpractice and fraudulent misrepresentation should all be dismissed as the facts do not support these claims.

Moving Defendants claim they had nothing to do with Armagh Builders and their purported failures alleged in the pleadings. They dispute the fact that they were responsible for approving the contractor's payment requisitions and contend that not discovery has supported this contention.

In opposition, plaintiff emphasizes that the absence of a written contract is not fatal to her breach of contract claim. She insists that discovery revealed that there was an agreement and blames the Moving Defendants for advising her to issue payments to Armagh Builders when they should have known that the work was not done.

In reply, Moving Defendants claim that the Statute of Frauds requires the Court to dismiss the breach of contract claim as there was no signed writing governing the parties' business relationship.

Discussion

First the Court must acknowledge the elephant in the room: that this motion has been pending for more than five years. Although this case was only transferred to this part in the last few days, that length of time to decide the motion is unacceptable and the Court profusely apologizes for the delay. It also seems that although a note of issue was filed back in 2020, this case has never received a date before the pre-trial part (possibly because of the instant motion).

The Court apologizes, on behalf of the whole court system for this failure as well. There is no excuse, only apologies. And, although it is too small a consolation, we will try to get you to the trial calendar as quickly as possible from here.

On the merits, the Court denies the motion as Moving Defendants did not meet their prima facie burden. For some reason, Moving Defendants failed to include any specific citations to key exhibits, such as deposition transcripts, to support their argument that the case against them should be dismissed. For instance, they include references to entire deposition transcripts or make assertions without any citations at all (*see* NYSCEF Doc. No. 59, ¶ 6). It is not this Court's role to delve into deposition transcripts on its own and find testimony that supports Moving Defendants' arguments. For that reason alone, the Court denies the motion.

Moreover, Moving Defendants' arguments do not establish, as a matter of law, that they are entitled to summary judgment. They appear to claim that there was no contract and, therefore, plaintiff cannot proceed against them. But they admit they drafted the renovation plans and submitted applications for building permits (NYSCEF Doc. No. 71, ¶ aff of defendant Lee). In other words, there is no genuine dispute that they were hired to perform work for this renovation project. The purported lack of a written contract is not necessarily fatal. That Moving Defendants raised a Statute of Frauds argument is without merit as it was raised for the first time in reply (*see Hakim v 65 Eighth Ave., LLC*, 42 AD3d 374, 374 850 NYS2d 323).

The fact is that plaintiff's theory is that the Moving Defendants were tasked with approving payments made to the remaining defendants (Armagh Builders and its principal) and that Moving Defendants improperly approved these payments. Plaintiff insists that she relied upon the Moving Defendants and ended up paying over \$100,000 despite the fact that the work was not done. That raises material issues of fact concerning what, exactly, Moving Defendants'

role was in this project and whether they had a duty to tell plaintiff what was going on and to stop the payments.

Accordingly, it is hereby

ORDERED that the instant motion for summary judgment is denied.

As stated above, this part will attempt to facilitate getting the parties a date in Part 40. If you do not hear from them within ten days, then the parties may wish to reach out to Part 40 so that they can get a pre-trial conference date as soon as possible.

12/30/2025

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