

Belfor USA Group, Inc. v Northgate Elec. Corp.

2025 NY Slip Op 35355(U)

January 24, 2025

Supreme Court, Suffolk County

Docket Number: Index No. 600232/2022

Judge: John J. Andrews

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SHORT FORM ORDER

INDEX NO. 600232/2022

**SUPREME COURT - STATE OF NEW YORK
IAS PART 44 - SUFFOLK COUNTY**

MOTION DATE: 11/14/24

ADJ. DATE: 1/23/25

Mot. Seq. # 01/Motd 02/Motd RRH

**PRESENT: Hon. JOHN J. ANDREWS
Supreme Court Justice**

**BELFOR USA GROUP, INC. and BELFOR LONG
ISLAND, LLC,**

Plaintiffs,

-against-

NORTHGATE ELECTRIC CORP.,

Defendant.

North Babylon UFSC,

Additional Counterclaim Defendant
_____x

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Upon the papers submitted (notice of motion with supporting papers, notice of motion with supporting papers, two oppositions to the motions and two replies) it is

ORDERED that the motions for summary judgment are granted to the extent that an immediate trial on damages is directed, and it is further

ORDERED that the parties shall complete any discover on the issue of damages and appear for a conference on March 11, 2025 at 10:30 am.

This contract action involves a master service agreement between plaintiffs¹ as general contractor involving electrical renovations and materials that were to be performed and provided by the defendant for work at the North Babylon High School owned by the additional counterclaim defendant. Specifically, plaintiffs were to act as the general contractor for a large renovation project throughout the schools within the North Babylon District. In response to a bid request, the defendant's bid for electrical work at the North Babylon High School was accepted on June 23, 2021 in the amount of \$1,190,000.00. The parties entered into a formal contract and plaintiffs issued a purchase order to defendant and provide a first payment in the amount of \$96,520.00. The defendant is a union electrical subcontractor and the proposal indicated that work is to be performed by Local 25 "A Rate" labor.

The plaintiffs allege that the defendant understood that the work was time sensitive requiring completion prior to the initiation, as indicated in the project scheduling, of the new school year on August 30, 2021. The plaintiffs alleged that the defendant failed to comply with the timing due to the failure to have sufficient electricians performing the required work. Specifically, that the weekend prior to the commencement of classes, only 20% was completed, which resulted in the plaintiff hiring other electricians, who were not union members, triggering defendant's employees to leave the job site. The plaintiffs sent a notice of default and the defendant failed to cure within the contractual time. However, prior to the transmission of the termination notice, defendant sent a notice terminating the contract claiming that the plaintiffs' use of non-union electricians created "labor trouble" that invoked the "force majeure" clause. The plaintiffs commenced this action sounding in breach of contract, breach of warrant, unjust enrichment and contribution. The defendant answered and counterclaimed sounding in breach of contract, quantum merit, unjust enrichment, and foreclosure of mechanics lien, naming additional defendant on the counterclaim.

Presently, the plaintiff has moved for summary judgment claiming that the evidences establishes, as a matter of law, the breach of contract. The defendant has moved for summary judgment dismissing the complaint, claiming that the plaintiff did not suffer any damages and that its work was not defective, negating any warrant claim.

¹ Belfor Long Island, LLC is a wholly owned subsidiary of Belfor USA Group, Inc.

Specifically, the defendant claims that the amount of completion of the uncompleted work was \$28,150.00 less than the remaining value of Northgate's contractual scope of work. The plaintiff replies that the defendant does not include the total amount it had to pay to complete the work.

"The essential elements of a breach of contract cause of action are 'the existence of a contract, the plaintiff's performance pursuant to the contract, the defendant's breach of his or her contractual obligations, and damages resulting from the breach' " (Canzona v. Atanasio, 118 A.D.3d 837, 838 [2nd Dept. 2014]). "Generally, a party alleging a breach of contract must 'demonstrate the existence of a ... contract reflecting the terms and conditions of their ... purported agreement'" (Mandarin Trading Ltd. v. Wildenstein, 16 N.Y.3d 173, 181-82 [2011])(cites omitted). Damages for breach of a construction contract are measured as "the cost to either repair the defective construction or complete the contemplated construction"(LaPenna Contr., Ltd. v. Mullen, 187 A.D.3d 1451, 1453 [3rd Dept. 2020])(cites omitted). Here, the plaintiff has establish a prima facie case of the breach of contract the only issue is damages, if any. In opposition the defendant claims that the plaintiff was in breach for using non-union workers to complete the project in a timely manner. However, it is clear, as a matter of law, that the defendant was in breach of contract prior to the use of non-union labor. Moreover, to come within the meaning of the force majeure clause, the labor dispute would have to be an event beyond the defendant's control (see Bouchard Transp. Co., Inc. v. N.Y. Islanders Hockey Club, LP, 40 A.D.3d 897 [2nd Dept 2007]). Here, the plaintiff has established that the needed workers were due to defendant's failure to provide sufficient union workers.² Consequently, an immediate trial on that issue is directed on the issue of damages, if any (CPLR 3212(c)).³

². Similarly, the defendant has not established that the plaintiff did not act in good faith and made their completion of the contract impossible, as it established that the defendant failed to provide sufficient workers to timely complete the contract. "To establish the defense of impossibility in this case, [a party] must therefore show 'that [they] took virtually every action within its power to perform its duties under the contract,' " (Zero Carbon Holdings, LLC v. Aspiration Partners, Inc., 732 F.Supp.3d 326 [S.D.N.Y. 2024](cite omitted)). Here, the plaintiff established that defendant failed to provide sufficient union workers to timely complete the project. project manager, Craig Zeunges.

³. The defendant does establish that there was no breach of warrant, that a cause of action for unjust enrichment is not viable where there is a contract action and no indication that contribution would be needed. As noted, the evidence has established, as a matter of law the breach of contract by defendant, the counterclaims

The foregoing constitutes the decision and order of the Court.

Dated: 1/24/2025



Hon. JOHN J. ANDREWS, J.S.C.

 FINAL DISPOSITION X NON-FINAL DISPOSITION

_____ are dismissed. However, if the defendant establishes that the plaintiff is not entitled to any damages, then that part of its motion for summary judgment dismissing the action would be granted.