First Ins. Funding v Manda Intl. Corp.
2025 NY Slip Op 35401(U)
May 14, 2025
Supreme Court, Suffolk County
Docket Number: Index No. 613022/2022
Judge: Joseph Farneti
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SHORT FORM ORDER **INDEX NO. 613022/2022**

SUPREME COURT - STATE OF NEW YORK
I.A.S. TERM, PART 37 - SUFFOLK COUNTY

PRESENT:
HON. JOSEPH FARNETI
Acting Justice Supreme Court

FIRST INSURANCE FUNDING, A DIVISION OF LAKE FOREST BANK & TRUST COMPANY, N.A.,

Plaintiff,

-against-

MANDA INTERNATIONAL CORP.,

Defendant.

ORIG. RETURN DATE: 05/02/24
FINAL SUBMISSION DATE: 05/02/24
MTN. SEQ. #: 001 - MD

PLAINTIFF'S ATTORNEYS:
Timothy J. Murtha, Esq.
Roach & Murtha, PC
500 Bi County Boulevad, Suite #120
Farmingdale, NY 11735
(516) 346-5400

DEFENDANT'S ATTORNEYS:
Michael J. Mauro, Esq.
Kyle F. Monaghan, Esq.
3000 Marcus Avenue, Suite 3W8
Lake Success, NY 11042
(516) 328-8899

Upon the e-filed documents numbered 12 through 31, it is

ORDERED that the motion by the plaintiff First Insurance Funding, a Division of Lake Forest Bank & Trust Company, N.A. for, *inter alia*, an order granting summary judgment in its favor on the complaint is denied; it is further

ORDERED that, upon searching the record (*see* CPLR 3212 [b]), the Court awards summary judgment in the defendant's favor dismissing the causes of action to recover in quantum meruit and on an account stated; it is further

ORDERED that a preliminary conference in this matter is hereby scheduled for **Tuesday June 17, 2025 at 9:30am**, before which the parties shall confer, complete, and execute a proposed preliminary conference (PC) order, which must be uploaded to the New York State Courts Electronic Filing system (NYSCEF) no less than one business day prior to the conference date; and it is further

ORDERED that, if **no proposed preliminary conference (PC) order** is submitted on accordance with this directive, an **in-person appearance by all parties' counsel is required on the PC date at 1 Court Street, Room 216, Riverhead, New York.**

This is an action to recover damages allegedly sustained by the plaintiff as a result of the defendant's breach of contract, as well as to recover on an account stated and in quantum meruit. By its verified complaint, the plaintiff alleges, among other things, that the parties entered into a written commercial premium finance agreement for funding of certain insurance policies, that the defendant breach this agreement by failing to make payment thereunder, the plaintiff rendered services to the defendant pursuant to this agreement, and that the plaintiff rendered to the defendant full, just, and true accounts of the indebtedness due and owing, and that such statements were delivered to, received, accepted, and retained by the defendant without objection. By its verified answer, the defendant generally denies the material allegations as set forth in the complaint, and it asserts several affirmative defenses.

The plaintiff now moves for an order granting summary judgment in its favor on the complaint. In support, the plaintiff submits, among other things, an affidavit of Janice West, its account resource manager; a copy of a commercial finance agreement, executed by the defendant and the plaintiff on July 17, 2019 and September 24, 2019, respectively; copies of payments made by the defendant on the subject account; copies of correspondence from the plaintiff to the defendant, dated August 11, 2021, October 11, 2021, and March 17, 2022; copies of correspondence from the defendant to the plaintiff, dated August 24, 2021 and October 18, 2021; and an affirmation of its attorney. In opposition, the defendant submits several documents, including an affidavit of Angel Corrao, its president, and an affirmation of its attorney.

The subject commercial finance agreement states, in relevant part, that the plaintiff loaned the defendant a total of $139,719.24, and that the defendant was responsible for paying $7,762.I8 for 18 months, beginning on August 16, 2019. In addition, the subject policy states:

> "[I]f this policy is a project specific policy as designated in a Limitation Of Coverage To Designated Premises Or Project endorsement, or other similar endorsement attached to this policy, regardless of who initiates policy cancellation, the policy premium will be deemed fully earned:
> 1. after 75% of the policy period has passed:
> 2. on the Fully Earned Premium Date as shown in the SCHEDULE above; or
> 3. once the project, or portion thereof, has reached a level of 'substantial completion'
> following construction or renovation;
>
> whichever occurs first."

The copies of the plaintiff's ledger indicate that the defendant last made a payment on the subject loan agreement on July 31, 2020, and ceased making payments thereafter, and the plaintiff alleges that the balance due and owing on the defendant's account is $51,909.59, as of September 2022.

The plaintiff sent two demand letters to the defendant in August 2021 and October 2021, and the defendant responded in writing to such correspondence disputing the amount owed, as the project for which the insurance policy was purchased had been cancelled on October 14, 2020, that the subject project was not substantially completed, that it had not surpassed the fully earned premium date of the subject policy, and that the contract had terminated. On March 17, 2022, the plaintiff sent a final demand letter to the defendant before initiating the instant action.

The proponent of a summary judgment motion must tender evidentiary proof in admissible form eliminating any material issues of fact from the case (*see* ***Alvarez v Prospect Hosp.***, 68 NY2d 320, 508 NYS2d 923 [1986]). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*see* ***Winegrad v New York Univ. Med. Ctr.***, 64 NY2d 851, 853, 487 NYS2d 316 [1985]).

The essential elements of a cause of action to recover damages for breach of contract are: (1) the existence of a contract; (2) the plaintiff's performance pursuant to the contract; (3) the defendant's breach of its contractual obligations; (3) and damages resulting from the breach (*see* ***223 SAM, LLC v 223 15th St., LLC***, 210 AD3d 733, 734-735, 178 NYS3d 133 [2d Dept 2022] [internal citations omitted]).

Although where the existence of a contract is in dispute, the plaintiff may allege a cause of action to recover in quantum meruit as an alternative to a cause of action alleging breach of contract (*see* ***Thompson v Horowitz***, 141 AD3d 642, 643-644, 37 NYS3d 266 [2d Dept 2016] [internal citations omitted]), the existence of a valid contract governing the subject matter generally precludes recovery in quantum meruit for events arising out of the same subject matter (*see* ***Saadia v National Socy. of Hebrew Day Schs., Inc.***, 225 AD3d 806, 809-810, 208 NYS3d 628 [2d Dept 2024] [internal citations and quotations omitted]).

An account stated is an agreement, express or implied, between the parties to an account based upon prior transactions between them with respect to the correctness of account items and a specific balance due on them, which is independent of the original obligation (*see* ***Caring Professionals, Inc. v Landa***, 152 AD3d 738, 739, 60 NYS3d 193 [2d Dept 2017] [internal citations omitted]). An essential element of an account stated is that the parties came to an agreement with respect to the amount due, and has been described as an alternative theory of liability to recover the same damages allegedly sustained as a result of the breach of contract (*see* ***Episcopal Health Servs., Inc. v POM Recoveries, Inc.***, 138 AD3d 917, 919, 31 NYS3d 113 [2d Dept 2016] [internal citations and quotations omitted]).

As the plaintiff's claim for breach of contract, although its submissions establish that there is a valid contract governing the subject matter of the instant action, its submissions fail to eliminate all triable issues of fact as to the defendant breach of the 2019 contract (*see* ***Alvarez v Prospect Hosp.***, *supra*; ***223 SAM, LLC v 223 15th St., LLC***, *supra*). As the August 2021 and October 2021 correspondence from the defendant included with the plaintiff's business records indicates that the defendant believed the contract to be terminated as of October 14, 2020, the plaintiff's submissions fail to eliminate triable issues of fact as to whether the 2019 contract was breached, and if so, when any such breach occurred. As such, this portion of the motion is denied, regardless of the sufficiency of the opposing papers (*see* ***Winegrad v New York Univ. Med. Ctr.***, *supra*)

Nevertheless, as the plaintiff's submissions demonstrate the existence of a valid contract between the parties, the plaintiff is precluded from recovering in quantum meruit as an alternative to a cause of action alleging breach of contract (*see* ***Saadia v National Socy. of Hebrew Day Schs., Inc.***, *supra*). Accordingly, the Court will search the record (*see* CPLR 3212 [b]) and award summary judgment to the defendant dismissing this cause of action.

Moreover, the plaintiff's submissions fail to demonstrate that it is entitled to summary judgment on its claim to recover on an account stated (*see* ***Alvarez v Prospect Hosp.***, *supra*; ***Caring Professionals, Inc. v Landa***, *supra*). These submissions fail to eliminate triable issues of fact as to whether the parties came to an agreement with respect to the amount due, as they indicate that the defendant objected to the amount owed in writing in August 2021 and October 2021 (*see* ***Episcopal Health Servs., Inc. v POM Recoveries, Inc.***, *supra*). Further, as a cause of action to recover on an account stated is an alternative theory of liability to recover the same damages allegedly sustained as a result of the breach of contract, the Court again searches the record and awards the defendant summary judgment dismissing this cause of action (*see* CPLR 3212 [b]; ***Episcopal Health Servs., Inc. v POM Recoveries, Inc.***, *supra*).

Accordingly, the motion is denied in its entirety, and the causes of action to recover in quantum meruit and to recover on an account stated are dismissed.

Dated: May 14, 2025

HON. JOSEPH FARNETI
Acting Justice Supreme Court

____ FINAL DISPOSITION **_X_ NON-FINAL DISPOSITION**

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