

**Jerry Lister Custom Upholstering Inc. v Harris
Decorators, Inc.**

2025 NY Slip Op 35617(U)

March 7, 2025

Supreme Court, Nassau County

Docket Number: Index No. 609747/2021

Judge: Christopher T. McGrath

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU
PRESENT: CHRISTOPHER T. McGRATH, J.S.C.**

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**JERRY LISTER CUSTOM UPHOLSTERING INC. d/b/a
MOTORIZED SOLUTIONS,**

Plaintiff,

-against-

**TRIAL PART 25
INDEX NO. 609747/2021
MOT. NOS. 002 & 003
SUBMITTED: 11/15/2024**

**HARRIS DECORATORS, INC., MICHAEL NAJJAR, and
96 DAY LILY LLC,**

Defendants.

DECISION & ORDER

-----X
The following electronically filed documents for Motion Sequences 002 and 003, listed by NYSCEF document numbers “33,” through “67,” have been read and considered on these motions.

Plaintiff moves for an Order pursuant to CPLR §3212 granting summary judgment to Plaintiff and against Defendants Michael Najjar (hereinafter “Defendant Najjar”) and 96 Day Lily LLC (hereinafter “Defendant 96 Day” and collectively, “Moving Defendants”). (Motion Seq. No. 002) Moving Defendants cross move for an Order pursuant to CPLR §3212 granting Moving Defendants summary judgment against Plaintiff. (Motion Seq. No. 003).

Background

Plaintiff commenced this action with the filing of a Summons and Complaint on August 2, 2021 against Defendants, seeking recovery of unpaid balances in the amount of \$29,742.85, for goods including custom motorized shades, work, labor, and services rendered by Plaintiff, as subcontractor, to Defendant Harris, as general contractor, and Moving Defendants, as owners of the premises where the work was completed. Issue was joined on August 26, 2021, when Moving Defendants interposed an Answer. On September 14, 2021, Moving Defendants filed a motion to dismiss Plaintiff’s Complaint, which was denied by the Hon. Christopher G. Quinn on January 27, 2022. Defendant Harris Decorators, Inc. (hereinafter “Defendant Harris”) did not file an answer or otherwise appear in this action, and a default judgment was entered against it on March 31, 2022.

Plaintiff's Contentions

Plaintiff contends that on or about May 1, 2020, Defendant Harris, as general contractor for Moving Defendants, remitted a \$20,000.00 deposit to Plaintiff via wire transfer for Plaintiff to manufacture and install custom motorized shades at a property owned by Defendant 96 Day, located at 96 Day Lane, Bridgehampton, New York 11932 (hereinafter the "Premises"). Subsequently, on or about September 11, 2020, after the work at the Premises had been completed, Plaintiff sent an invoice to Defendant Harris for the remaining balance due and owing to Plaintiff for work performed in the amount of \$29,470.67. Thereafter, on or about October 31, 2020, Melvyn Harris, owner of Defendant Harris, passed away.

Plaintiff contends that between October 28, 2020, and November 9, 2020, Plaintiff contacted a representative for Moving Defendants, Carolyn Rebuffel, requesting payment for the remaining balance, and Ms. Rebuffel stated that the balance due and owing to Defendant Harris had not yet been paid. On or about November 23, 2020, Plaintiff mailed a letter to Melvyn Harris' wife, requesting authorization for Moving Defendants to directly pay Plaintiff as Moving Defendants had yet to fully pay Defendant Harris pursuant to their separate agreement. Plaintiff notes that said letter states the incorrect amount of \$29,742.85, while Plaintiff is seeking relief for damages in the reduced amount of \$29,470.67.

Plaintiff further contends that to date, Defendants have failed to remit payment for the manufacturing and installation of the custom shades provided by Plaintiff and requested by Defendants, although duly demanded. Plaintiff argues that Moving Defendants, though having acknowledged the non-payment of Defendant Harris' final invoice and having been aware of the outstanding amount due and owing to Plaintiff, have failed to remit said payment, and have therefore been unjustly enriched by Plaintiff's work.

Moving Defendants' Contentions

In support of their cross motion, and in opposition to Plaintiff's motion, Moving Defendants submit the affidavit of Defendant Najjar, a trustee of The MEN 2010 Irrevocable Family Trust, which is the owner of Defendant 96 Day. Defendant Najjar contends that Moving Defendants never engaged with Plaintiff nor hired them, and other than allowing Plaintiff access to the Premises to install shades, Moving Defendants never had contact with Plaintiff. Defendant Najjar further contends that on or about February 1, 2020, Ms. Rebuffel was hired as a home

decorator and given limited authority to find contractors and vendors to facilitate improvements to the Premises but was never authorized to sign contracts on behalf of Moving Defendants. Defendant Najjar avers that Ms. Rebuffel selected Defendant Harris and that subsequently, Defendant Harris was paid \$29,900.00 upon placement of the order for motorized shades. Shortly thereafter, Defendant Harris hired Plaintiff as a subcontractor. Defendant Najjar contends that Defendant Harris was not paid the outstanding balance for the work performed because a final invoice was never provided from Defendant Harris. Defendant Najjar maintains that Plaintiff had an agreement with Harris, and not with Moving Defendants, and therefore Moving Defendants do not owe Plaintiff any balance. Furthermore, Defendant Najjar argues that the agreement between Plaintiff and Defendant Harris includes sales tax, which Moving Defendants would not owe as the work being done was a capital improvement not subject to sales tax. Additionally, Defendant Najjar contends that Moving Defendants already paid \$29,900.00 to Defendant Harris, which amounts to a fifty percent (50%) downpayment, and that Plaintiff now seeks more than the remaining fifty percent (50%) owed to Defendant Harris as well as seeking to capture Defendant Harris' profit.

Defendant Najjar also notes that Mrs. Harris' estate has also sued Moving Defendants seeking payment, and that a judgment in favor of Plaintiff would leave Moving Defendants exposed to paying double for the work performed. Furthermore, Moving Defendants argue that Plaintiff has no claim for breach of contract against Moving Defendants because the parties were never in contract together. Moving Defendants further argue that in the absence of a contract between Plaintiff and Moving Defendants, Plaintiff cannot claim unjust enrichment against Moving Defendants, as there exists a contract between Plaintiff and Defendant Harris, and so any claim of unjust enrichment against Moving Defendants is misplaced. Moving Defendants maintain that Plaintiff ignored the protections in its own contract with Defendant Harris by performing work without being paid in full, and that no contract exists between Plaintiff and Moving Defendants; therefore, Moving Defendants have no obligation regarding Plaintiff's remaining balance.

Plaintiff's Reply

In reply, and in opposition to Moving Defendants' cross motion, Plaintiff argues that while Moving Defendants claim that the equitable remedy of unjust enrichment is unavailable to a subcontractor when a valid and enforceable contract exists between the subcontractor and the

general contractor, Moving Defendants have failed to establish that such a contract exists. Plaintiff further argues that Defendant Harris was dissolved as of October 23, 2024, and because of this, no contract exists between Plaintiff and Defendant Harris. Therefore, Plaintiff is entitled to equitable relief against Moving Defendants because they retained the value of the work performed by Plaintiff without fully compensating any party, which was affirmed by Defendant Najjar in his affirmation. Furthermore, Plaintiff contends that although Moving Defendants claim that Plaintiff should have ensured full payment prior to beginning any work, the contract between Plaintiff and Defendant Harris required only partial payment prior to the commencement of the work, which was initiated by Defendant Harris' initial \$20,000.00 payment to Plaintiff; however, an outstanding balance remains in the amount of \$29,470.67, which represents the benefit retained by the Moving Defendants at Plaintiff's expense.

Discussion

The proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact. (*See Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, 508 N.Y.S.2d 923 [1968]). To make a *prima facie* showing, the motion must be supported by affidavit, by a copy of the pleadings and by other available proof, such as depositions and written admissions. (*Id.*). Once a *prima facie* showing has been made, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action. (*Id.*; *see also Zuckerman v. City of New York*, 49 N.Y.2d 557, 427 N.Y.S.2d 595 [1980]).

"The essential elements of a cause of action to recover damages for breach of contract are the existence of a contract, the plaintiff's performance pursuant to the contract, the defendant's breach of its contractual obligations, and damages resulting from the breach." (*A.E. Rosen Electrical Co., Inc. v. Plank, LLC*, 181 A.D.3d 1080, 1081 [3d Dept. 2020] [internal citations omitted]). "To establish an unjust enrichment cause of action, a plaintiff must allege that (1) the other party was enriched, (2) at that party's expense, and (3) it is against equity and good conscience to permit the other party to retain what is sought to be recovered." (*Dee v. Rakower*, 112 A.D.3d 204, 213 [2d. Dept. 2013]).

After a review of the submissions by the parties, this Court finds that questions of fact exist that preclude summary judgment, including whether a valid and enforceable contract exists

between Plaintiff and Defendant Harris following the dissolution of Defendant Harris, the chain of events at issue, the chronological order of events and communications between the parties, and the varying agreements between the parties, which shall be addressed at the time of trial.

Accordingly, it is hereby

ORDERED, that Plaintiff's motion for summary judgment (Motion Seq. No. 002) is **denied**; and it is further

ORDERED, that Moving Defendants' cross motion for summary judgment (Motion Seq. No. 003) is hereby **denied**.

Any relief not addressed herein is **denied**.

This constitutes the Decision and Order of this Court.

Date: March 7, 2025
Mineola, New York

ENTER:



HON. CHRISTOPHER T. McGRATH

ENTERED J.S.C.

Mar 12 2025

NASSAU COUNTY
COUNTY CLERK'S OFFICE