

Bruce Supply Corp. v C & J Mech., LLC

2026 NY Slip Op 30319(U)

January 27, 2026

Supreme Court, New York County

Docket Number: Index No. 157284/2017

Judge: Sabrina Kraus

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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. SABRINA KRAUS PART 57M

Justice

-----X

BRUCE SUPPLY CORP.,

Plaintiff,

- v -

C & J MECHANICAL, LLC, AABCO SHEET METAL CO.,
INC. TA ASM MECHANICAL SYSTEMS, LIBERTY
MUTUAL INSURANCE COMPANY, RICHMOND KANU
ASAMOAH AKA JOHN KANU, DECLAN A POWER, JOHN
DOE ONE THROUGH, JOHN DOE TEN,

Defendants.

-----X

AABCO SHEET METAL CO., INC. TA ASM MECHANICAL
SYSTEMS, LIBERTY MUTUAL INSURANCE COMPANY

Plaintiff,

-against-

PHOENIX MECHANICAL PIPING, LLC, C & J MECHANICAL
SERVICES, LLC, WILLIAM MCMORROW, TIMOTHY
MCMORROW, RUTH SANCHEZ

Defendants.

-----X

C & J MECHANICAL, LLC, C & J MECHANICAL SERVICES,
LLC

Plaintiff,

-against-

RIVERSIDE CENTER SHELL HOLDINGS, LLC, AABCO
SHEET METAL CO., INC. T/A ASM MECHANICAL SYSTEMS,
PHOENIX MECHANICAL PIPING, LLC, WILLIAM
MCMORROW, TIMOTHY MCMORROW

Defendant.

-----X

INDEX NO. 157284/2017
MOTION DATE 01/08/2026
MOTION SEQ. NO. 008

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595863/2017

Second Third-Party
Index No. 595394/2018

The following e-filed documents, listed by NYSCEF document number (Motion 008) 293, 294, 295, 296, 297, 298, 299, 324, 325, 326, 327, 328, 329, 330, 332

were read on this motion to/for

DISMISS

PENDING MOTION

In this action pending since 2017, Aabco Sheet Metal Inc. Aabco files an eve of trial motion to dismiss the first and third counterclaims asserted by Phoenix Mechanical Piping, LLC (“Phoenix”) against it, based on its allegation that the claims as asserted fail to state a cause of action pursuant to CPLR 3211(a)(7).

Aabco also moves for *in limine* relief. The motion seeking *in limine* relief is denied without prejudice to renewal before the trial judge.

The motion to dismiss the counterclaims for failure to state a cause of action is denied for the reasons set forth below.

DISCUSSION

The Court Will Only Consider the Four Corners of the Pleading

Aabco argues that despite the fact that this dispositive motion is filed years after the note of issue and well after this Court’s Part rules allow, and impermissibly on the eve of trial, it is not seeking summary judgment and dismissal of the counterclaims but simply dismissal based on failure to state a cause of action.

In arguing that its motion is timely Aabco cites *M & E 73-75, LLC v. 57 Fusion LLC*, 189 A.D.3d 1, 5 (1st Dept., 2020). In *M&E* the Court held such a post note motion must be limited to the four corners of a complaint and no evidence not attached to the pleadings will be considered. The Court will limit its consideration of the motion then to whether the four corners of the pleadings set forth a cause of action, as any further request to consider evidence in connection with said motion would essentially be a time barred dispositive motion.

Standard

The principle is well settled that on a CPLR 3211 (a) (7) motion the allegations in the complaint are to be afforded liberal construction, and the facts alleged therein are to be accepted as true, according a plaintiff the benefit of every possible favorable inference and determining only whether the facts alleged fit within any cognizable legal theory (*see Leon v Martinez*, 84 NY2d 83, 87-88 [1994]; *Jericho Group, Ltd. v Midtown Dev., L.P.*, 32 AD3d 294, 298 [1st Dept 2006]). A motion to dismiss under CPLR 3211 (a) (7) for failure to state a cause of action must be denied if the factual allegations contained within the four corners of the pleading manifest any cause of action cognizable at law (*see 511 W. 232nd Owners Corp. v Jennifer Realty Co.*, 98 NY2d 144, 151-152 [2002]). While factual allegations set forth in a complaint should be accorded every favorable inference, bare legal conclusions and inherently incredible facts are not entitled to preferential consideration (*see Matter of Sud v Sud*, 211 AD2d 423, 424 [1st Dept 1995]). To withstand dismissal, a plaintiff may submit opposing affidavits which can be considered to amplify the pleadings (*see Rovello v Orofino Realty Co.*, 40 NY2d 633, 635-636 [1976]). Unlike a summary judgment motion pursuant to CPLR 3212, a CPLR 3211 (a) (7) motion can be made at any time (*see CPLR 3211 [e]*; *Goldberg v Torim*, 181 AD3d 443, 444 [1st Dept 2020]).

M & E 73-75, LLC v. 57 Fusion LLC, 189 A.D.3d 1, 5, 128 N.Y.S.3d 200 (2020).

Movant fails to show a Failure to State a Cause of Action

The elements of a cause of action for breach of contract are the existence of a contract, the plaintiff's performance thereunder, the defendant's breach thereof, and resulting damages *Noto v. Planck, LLC*, 228 A.D.3d 516 (1st Dept., 2024).

The first counterclaim asserted clearly incorporates these elements and provides that on or about July 6, 2016, Phoenix and Aabco entered into a purchase order/subcontract whereby Phoenix agreed to perform certain work at the project, known as IS/PS 342-M-Riverside Center School. A copy of the Subcontract is attached to the pleading. The pleading further asserts that Phoenix has fully performed all of the work and fulfilled all of its obligations under the Subcontract, including the performance of extra work above and beyond the original Subcontract scope of work, that an unpaid balance due for base contract and extra work remains due and that

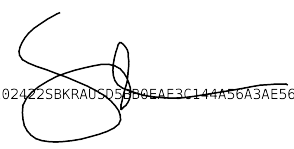
payment has been duly demanded for the labor and materials furnished to ASM and ASM has failed and refused to make payment resulting in damage to Phoenix.

As the four corners of the pleading clearly set forth the required elements of a breach of contract claim the 3211(a)(7) motion is denied as to that claim.

The notice of motion further seeks dismissal of the "Third" counterclaim. The third counterclaim is not asserted against Aabco but is a claim on a Payment Bond asserted against Liberty Mutual.

Assuming *arguendo* that Aabco has standing to move to dismiss a counterclaim asserted against Liberty Mutual, the motion is denied because the moving papers fail to even articulate the elements of a cause of action for the claim, let alone show what elements are purportedly missing from the claim asserted.

Based on the foregoing, the motion is denied in its entirety.



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1/27/2026
DATE

SABRINA KRAUS, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	
<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/> DENIED

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER

APPLICATION:

<input type="checkbox"/>	SETTLE ORDER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN

<input type="checkbox"/>	SUBMIT ORDER
<input type="checkbox"/>	FIDUCIARY APPOINTMENT
<input type="checkbox"/>	REFERENCE

CHECK IF APPROPRIATE: