

Lamb v Cool Breeze A/C, Inc.
2026 NY Slip Op 30431(U)
February 3, 2026
Supreme Court, New York County
Docket Number: Index No. 654294/2020
Judge: Arlene P. Bluth
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

-----X

DAVID LAMB, LINDSAY LAMB,
Plaintiffs,

- v -

COOL BREEZE A/C, INC.,
Defendant.

-----X

INDEX NO. 654294/2020

MOTION DATE 01/15/2026¹

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 99

were read on this motion to/for SUMMARY JUDGMENT.

Defendant’s motion for summary judgment is granted.

Background

Plaintiffs own a property in Brooklyn and set out to substantially renovate that property. They hired non-party Tech Construction, LLC (“Tech”) to do certain renovation work and Tech then advised plaintiffs that defendant could do the HVAC work. Plaintiffs allege that Tech submitted an application for the project that included a request for just over \$32,000 to cover the initial cost of the HVAC installation. Plaintiffs say they turned over these funds to Tech and then eventually terminated Tech for cause which also terminated defendant. Plaintiffs maintain that defendant never did any work and so it should have returned the deposit for the HVAC work.

Defendant moves for summary judgment on the ground that it issued Tech a credit memo reflecting the work it performed and returned the remaining balance to Tech. It argues that it

¹ The Court apologizes for the delay in the issuance of this decision. It seems that the judge previously assigned to this case held oral argument on this motion way back in March 2025 and, for some unknown reason, failed to issue a decision prior to her retirement in December 2025. The undersigned was horrified to see that this motion remained pending upon this case’s reassignment to this part. Clearly, the parties deserved a decision sooner.

spent \$5,000 to do a preliminary design and shop drawings for the project and that it remitted the rest to Tech. Defendant argues that it did not have a contract with plaintiff and that, apparently, Tech's offer to return the remaining amount was not accepted. It emphasizes that it never received any money directly from plaintiffs and only dealt with Tech.

In opposition, plaintiffs argue that defendant did not offer any evidence that it was entitled to keep \$5,000. They argue that the agreement does not contain any provision that permitted defendant to keep this money. Plaintiff also argue that its attorney sent a letter in March 2020 (NYSCEF Doc. No. 90) which demanded the entire deposit be returned. They contend that defendant returned a portion of the HVAC deposit to Tech in order to avoid liability to plaintiffs. They also argue that discovery is outstanding and point to unanswered demands from June 2023 and that there have not yet been any depositions.

In reply, defendant discounts plaintiffs' references to a "trust" and emphasize that they never pleaded a cause of action based on a trust. It stresses that plaintiffs admitted that any payments for the project were remitted to Tech, not defendant. Defendant also denies plaintiffs' apparent argument that Tech was their agent. It stresses that the shop drawings it completed for the HVAC system are part of the record and plaintiffs do not deny that this work was performed. With respect to discovery, defendant insists that plaintiffs have never pursued any discovery in this case and have ignored defendant's demands (including a demand for a deposition from December 2022).

Discussion

The Court's analysis begins with the causes of action alleged in the complaint. Plaintiffs seek relief under a money had and received, conversion, and unjust enrichment.

“The elements of money had and received are (1) the defendant received money belonging to the plaintiff, (2) the defendant benefitted from receipt of the money, and (3) under principles of equity and good conscience, the defendant should not be permitted to keep the money” (*Cordaro v AdvantageCare Physicians, P.C.*, 208 AD3d 1090, 1094, 176 NYS3d 1 [1st Dept 2022] [internal quotations and citations omitted]).

The Court grants defendant summary judgment on this cause of action as plaintiff cannot satisfy the first or third element. It is undisputed that defendant received money from Tech to complete an HVAC project and so it is unclear how plaintiff could claim the money belonged to it. And, clearly, the principles of equity and good conscience do not compel the conclusion that plaintiff can recover from defendant.

The record on this motion shows that plaintiffs only dealt with Tech and that defendant, pursuant to its separate contract with Tech (NYSCEF Doc. No. 73), completed the shop drawings (NYSCEF Doc. No. 74). And defendant showed that it returned the remaining amount to Tech (NYSCEF Doc. Nos. 75 and 76). The Court is unable to find that there is a viable money had and received claim on this record.

A cause of action for conversion involves “(1) plaintiff's possessory right or interest in the property and (2) defendant's dominion over the property or interference with it, in derogation of plaintiff's rights. Even where possession of the property is originally lawful, a conversion occurs when the defendant refuses to return the property after a demand” (*Core Dev. Group LLC v Spaho*, 199 AD3d 447, 157 NYS3d 416 [1st Dept 2021] [internal quotations and citations omitted]).

This claim also fails. As noted above, defendant received money from Tech and then returned nearly all of that money to Tech. Defendant did not covert money belonging to plaintiffs—it collected payment for its work from Tech and then returned the balance to Tech.

Plaintiffs' final claim for unjust enrichment is also without merit. "A plaintiff must show that (1) the other party was enriched, (2) at that party's expense, and (3) that it is against equity and good conscience to permit [the other party] to retain what is sought to be recovered" (*Mandarin Trading Ltd. v Wildenstein*, 16 NY3d 173, 182, 919 NYS2d 465 [2011]).

Defendant received money from Tech to perform tasks pursuant to a contract and, when Tech was fired, it returned the balance of that money. That does not state a viable claim for unjust enrichment. To the extent that the opposition from plaintiffs mention "trust funds," that reference is inapposite as plaintiffs did not allege a cause of action under the Lien Law based on a trust account.

Summary

The Court finds that on this record, defendant met its prima facie burden for summary judgment through the affirmation of its CEO (NYSCEF Doc. No. 72) and the various documents it uploaded showing that it performed the shop drawings for the project and returned the balance of the initial payment it received from Tech back to Tech. And it contends that plaintiffs simply refused to accept that balance when it was offered by Tech.

Plaintiffs did not raise an issue of fact in opposition. They did not attach an affirmation from either plaintiff or any other witness (such as someone from Tech) to offer a competing version of events. For instance, plaintiffs do not dispute that defendant completed work for the project prior to their termination of Tech from the project or that defendant was entitled to

recover for that work it did. Plaintiffs also don't explain why they refused to accept the balance and then litigate the amount defendant contends it was entitled to keep for the work it did.

Instead, plaintiffs appear to cite, in part, the fact that there has not been much discovery and no depositions have been held. That excuse is without merit. Plaintiffs commenced this case more than five years ago. They have had ample opportunity to seek discovery and, as evidenced by the fact that apparently no depositions have been held, they were seemingly uninterested in pursuing that discovery. Not a single discovery motion has been filed in this case.

And, on the merits, plaintiffs simply did not state a valid basis to recover against defendant. Defendant never contracted with plaintiffs and, although it did not retain the entire amount (it sent it to Tech), plaintiffs still demand that it pay back the entire original amount. No sufficient basis was cited for that relief.

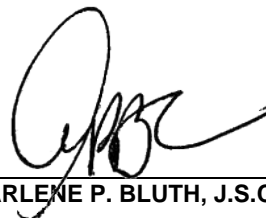
The Court denies the branch of defendant's motion for sanctions. In this Court's view, sanctions are reserved for horrendous conduct. Bringing an unsuccessful lawsuit is not, by itself, grounds for sanctions.

Accordingly, it is hereby

ORDERED that defendant's motion for summary judgment is granted only to the extent that the complaint is dismissed and the Clerk is directed to enter judgment accordingly in favor of defendant and against plaintiff along with costs and disbursements upon presentation of proper papers therefor.

2/3/2026

DATE



ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
 REFERENCE