

Genetech Bldg. Sys., Inc. v AMCC Corp.

2026 NY Slip Op 30535(U)

February 11, 2026

Supreme Court, New York County

Docket Number: Index No. 451666/2018

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

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GENETECH BUILDING SYSTEMS, INC.,
Plaintiff,

- v -

AMCC CORP., FEDERAL INSURANCE COMPANY
Defendant.

INDEX NO. 451666/2018
MOTION DATE N/A
MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 212, 213, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 256, 257, 258, 259, 260, 261, 262

were read on this motion to/for PARTIAL SUMMARY JUDGMENT.

Defendants' motion for summary judgment dismissing plaintiff's first cause of action in part, to dismiss plaintiff's second, third and fourth causes of action as well as summary judgment in its favor on the tenth affirmative defense is decided as described below.

Background

The instant dispute arises out of a public improvement project—namely, an addition for a high school located on Staten Island. Defendant AMCC Corp. ("AMCC") acted as the general contractor for the project and, on March 1, 2016, AMCC entered into a subcontract with plaintiff. Plaintiff was tasked with furnishing and installing windows, glass, doors as well as other work at the site. Plaintiff contends that it is owed \$327,242.51 from AMCC and brings four causes of action to seek this amount, including breach of contract, a quasi-contract theory, account stated and a lien cause of action.

The Court observes that this motion was fully briefed in September 2025 and that the prior judge assigned to this case then invited supplemental briefing but, for some reason, did not decide this motion prior to her retirement.

Defendants move for partial summary judgment. They contend that the amount plaintiff seeks is composed of an outstanding contract balance of \$224,192.51 and change orders worth \$103,050.00. Defendants argue that plaintiff identified nine cost categories within the change orders totaling \$96,104.75 that they contend are improper delay damages—damages that are expressly prohibited under the terms of the parties’ subcontract.

Defendants also point out that plaintiff hired another contractor, Pioneer, and that there were many, many issues with Pioneer’s work. They contend that plaintiff eventually assessed backcharges against Pioneer in the amount of \$55,700 and that AMCC was required to pay Pioneer this same amount in order to get time-sensitive materials for the project. Defendants argue that plaintiff improperly seeks entitled to monies that plaintiff did not pay to Pioneer and money that AMCC actually paid to Pioneer. In other words, defendants claim that the inclusion of this money in plaintiff’s demand for recovery is tantamount to a double recovery as plaintiff retained this amount rather than pay it to Pioneer and is now seeking it from defendants.

With respect to the lien cause of action, defendants argue that the lien is willfully exaggerated for the reasons stated above. Defendants maintain that the second cause of action based on a quasi-contract theory of recovery should be dismissed as duplicative of the breach of contract claim. They also claim that the account stated cause of action is duplicative.

In opposition, plaintiff explains that there are exceptions to the no delay damages provisions in contracts under New York law. It observes that it negotiated to have the work

commence 18 weeks after shop drawings were approved and to complete the work within 8 weeks. Plaintiff explains that AMCC was not a cooperative partner at the site and that a portion of the damages it seeks (over \$40,000) was for overtime work approved by the School Construction Authority (the owner of the property). Plaintiff contends that AMCC interfered with Pioneer's work and wrongfully wired the \$55,700 in back charges owed to plaintiff by Pioneer. It explains that it should have been credited by Pioneer for additional work and materials plaintiff had to supply that were supposed to be taken care of by Pioneer.

Plaintiff details what it claims are numerous examples of misconduct by AMCC. It contends that AMCC refused to abide by agreed upon schedules, that AMCC failed to ensure the site was ready for plaintiff to start its work on time, that it withheld approved overtime work and that it failed to process or pay change orders.

Discussion

The parties do not dispute that the relevant subcontract contains a no delay damages clause. The question for this Court is whether that provision bars the specific damages identified by defendants in their moving papers.

“While clauses in construction contracts exculpating parties from damages for delay in performance are generally valid and enforceable, such clauses may not be invoked to bar damages for (1) delays caused by the protected party's bad faith or its willful, malicious or grossly negligent conduct, (2) unanticipated delays, (3) delays so unreasonable that they constitute an intentional abandonment of the contract, and (4) delays resulting from breach of a fundamental obligation of the contract” (*Bovis Lend Lease LMB Inc. v GCT Venture, Inc.*, 6 AD3d 228, 228-29, 775 NYS2d 259 [1st Dept 2004]).

Here, the Court finds that there are issues of fact that compel the Court to deny this part of defendants' motion. For instance, the subcontract states that the work should start no later than 18 weeks from the approval of the shopdrawings (NYSCEF Doc. No. 196) and plaintiff says that happened on May 16, 2016, which means the work was supposed to start on September 18, 2016 and be completed by November 13, 2016 (in keeping with the 8-week timeline). Plaintiff contends that it did not start work until June 2017 and it ended up taking until February 2018 (or nine months) to finish the job. That constitutes an issue of fact with respect to unanticipated delays and compels the Court to deny the branch of defendants' motion based on the no delay damages provision.

Moreover, the issue of the failure to pay for the purportedly approved overtime and the issue with AMCC directly paying Pioneer the back charges are also issues of fact to be determined by a fact finder. This Court cannot conclude as a matter of law that plaintiff is barred from seeking these damages on this record.

For these reasons, the Court denies the branch of defendants' motion that seeks dismissal of the fourth cause of action on the ground that it is a willful exaggeration of the lien.

However, the Court dismisses the second and third causes of action. The second cause of action, based on a quasi-contract theory of recovery, is clearly duplicative of the breach of contract claim especially given that plaintiff admits there was a valid contract.

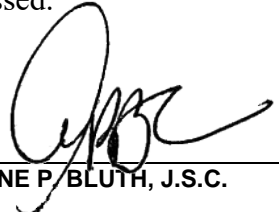
The Court also dismisses the third cause of action for account stated as plaintiff did not offer much of an opposition to this request for relief. In its memorandum of law, plaintiff argues that "Given the validity of the First and Fourth Causes of Action, there is no prejudice to Defendants to allow the Second and Third Causes of Action to continue. In the event Defendants

withdraw their First Affirmative Defense, Genetech would engage in discussions with respect to removing the Second and Third Causes of Action from this Lawsuit” (NYSCEF Doc. No. 243 at 18). That does not raise a material issue of fact with respect to the third cause of action.

Accordingly, it is hereby

ORDERED that defendants’ motion for summary judgment is granted only to the extent that plaintiff’s second and third causes of action are severed and dismissed.

2/11/2026
DATE


ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE