Clay Props., LLC v Design 2147, Ltd

2026 NY Slip Op 30544(U)

February 11, 2026

Supreme Court, Kings County

Docket Number: Index No. 528628/2024

Judge: Rupert V. Barry

Index No.: 528628/2024

At an IAS Term, Part 13, of the Supreme Court of the State of New York, held in and for the County of Kings, at the courthouse at 360 Adams Street, Brooklyn, NY on the 11th day of February 2026

P R E S E N T:

HON. RUPERT V. BARRY, J.S.C.

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CLAY PROPERTIES, LLC,
INVESTMATES REAL ESTATE LLC,
Plaintiffs,

-against-

DESIGN 2147, LTD,

Defendant.

Cal No.:41 (MSQ No.:1)
Index No.: 528628/2024

DECISION & ORDER

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Recitation, as required by CPLR 2219 (a), of the papers considered in the review of Defendant's motion to dismiss of the claims in Plaintiffs complaint, pursuant to CPLR 3211(a)(1) and (7): NYSCEF Doc. Nos.: 9- 15; 18- 25.

Upon due consideration of the papers filed in this matter, and after oral argument, this Court finds as follows:

Plaintiffs brought this action for "breach of contract and gross negligence" alleging that that Defendant miscalculated the developable square footage in a zoning analysis connected to Plaintiffs planned development of a site located in Brooklyn, New York (hereinafter "the Site"). On May 4, 2021, Defendant prepared the agreed upon report which advised Plaintiffs that 94,790 square footage could be developed on the site. On or about May 2024, after submitting its project plans to the New York City Department of City Planning, Plaintiffs discovered that only 47,790.16 square footage could be developed on the Site. These events form the basis of Plaintiffs breach of contract and gross negligence claim.

This Court addresses Defendant's most salient claim: that Plaintiffs' claim is barred by a provision in the agreement between the parties that sets a one-year limitation period to bring an action against Defendant.

On a motion to dismiss … the complaint must be construed liberally, the factual allegations in the complaint must be deemed to be true, and the nonmoving party must be given the benefit of all favorable inferences" (*Magee-Boyle v ReliaStar Life Ins. Co. of New York*, 173 AD3d 1157, 1158 [2d Dept 2019]).

Section 213(2) of the CPLR sets a statute of limitation of six years for contractual disputes. However, "[p]arties to a contract may agree to limit the period of time within which an action must be commenced to a shorter period than that provided by the applicable Statute of Limitations" (*Incorporated Village of Saltaire v Zagata*, 280 AD2d 547, 547 [2d Dept 2001]). A court will enforce this contractual limitation "[a]bsent proof that the contract is one of adhesion or the product of overreaching, or …unreasonably short" (*id.)*.

A contract with a one-year limitation provision is "valid and enforceable" (*D'Angelo v Allstate Ins. Co.*, 126 AD3d 931 [2d Dept 2015]). "Where the party against which an abbreviated Statute of Limitations is sought to be enforced does not demonstrate duress, fraud, or misrepresentation in regard to its agreement to the shortened period, it is assumed that the term was voluntarily agreed to" (*Incorporated Village of Saltaire v Zagata*, 280 AD2d at 548).

Plaintiffs asserts that Defendant argument predicated on a one-year limitation period is contained in an unsigned agreement and is therefore without merit. This Court, however, finds that unsigned contracts are enforceable, "provided there is objective evidence establishing that the parties intended to be bound" (*Gallagher v Long Is. Plastic Surgical Group, P.C.*, 113 AD3d 652, 653 [2d Dept 2014]). Objective evidence will include evidence that the parties "negotiated and

agreed upon the major terms" to the contract (*id.*). Also, evidence that the parties had begun performance also pointed to an agreement to be bound by the terms of the unsigned contract (*id.*). This Court finds that Plaintiffs' acts demonstrate their acceptance of the terms under the contract and a willingness to be bound by those terms.

Plaintiffs argue that they discovered the breach in May 2024, and therefore the filing of their complaint was timely. Generally, the statute of limitations begins to run when a cause of action arises, meaning "when all of the facts necessary to the cause of action have occurred so that the party would be entitled to obtain relief in court" (*Hahn Automotive Warehouse, Inc. v Am. Zurich Ins. Co.*, 18 NY3d 765, 770 [2012]). This occurs when the party claiming breach, first had the "opportunity to enforce or …actually recover from the defendants" (*Aetna Life & Cas. Co. v Nelson*, 67 NY2d 169, 175 [1986]). In New York, however, the "discovery" rule does not apply to statutes of limitations in contract actions (*ACE Sec. Corp. v DB Structured Products, Inc.*, 25 NY3d 581, 594 [2015]). Instead, in contract actions, the "statutory period of limitations begins to run from the time when liability for wrong has arisen even though the injured party may be ignorant of the existence of the wrong or injury" (*Ely-Cruikshank Co., Inc. v Bank of Montreal*, 81 NY2d 399, 403 [1993]). Therefore, the statute of limitations began to run when Plaintiffs had the right to demand enforcement, not years later when they actually made the demand.

Here, this Court finds that the one-year contractual limitation set by the parties is enforceable. The parties entered into a contractual agreement in May 2021. Within the agreement, the parties contractually agreed that "no claim may be brought …by Client in contract or tort more than one (1) year after the cause of action arose." (NYSCEF Doc. No.: 11 at ¶ 5). Plaintiffs brought this claim on October 22, 2024, over three years later. Plaintiffs have not provided any facts to prove the invalidity of the one-year contractual limitation. More specifically, Plaintiffs have not

alleged any facts that would give rise to the conclusion that there was fraud, duress or undue influence as would render this agreement invalid. Nor do Plaintiffs allege facts to demonstrate that the contractual limitation set was unreasonable. For these reasons, this Court finds that the contractual limitation is valid.

Next, this Court considered when the cause of action arose for the purpose of commencing the clock on the statute of limitations. The cause of action arises when Plaintiffs had the opportunity to enforce or recover from Defendant. Here, Plaintiffs first opportunity to recover from Defendant occurred when Defendant completed performance by providing the zoning analysis in May 2021. Therefore, Plaintiffs had until May 2022 to file an action against Defendant for breach of the agreement. Plaintiffs filed their action on October 22, 2024. Therefore, Plaintiffs failed to timely file an action against Defendant as they waited over three years to commence the action.[1]

Accordingly, for the aforementioned reasons, it is

ORDERED that, Defendant's motion to dismiss the complaint against it is **GRANTED,** and the complaint is dismissed. It is further

ORDERED that, all applications not specifically addressed herein are denied.

This constitutes the decision and order of this Court.

R. V. BARRY

HON. RUPERT V. BARRY, J.S.C.

[1] As to Plaintiffs' claim for gross negligence. That cause of action, if at all viable, is only viable under a theory that the contract created a duty from Defendant to Plaintiffs. When the contract cause of action fails so does the negligence claim. Moreover, a breach of contract is not to be considered a tort unless a legal duty independent of the contract itself has been violated (*see Dormitory Auth. Of the State of N.Y. v Samson Constr. Co.*, 30 NY3d 704 [2018] ; *Rosner v Bankers Std. Ins. Co.*, 172 AD3d 1257, 1259 [2d Dept 2019]).