Borough Constr. Group LLC v Citigrant Funding Corp.
2026 NY Slip Op 30581(U)
February 17, 2026
Supreme Court, New York County
Docket Number: Index No. 154230/2021
Judge: Hasa A. Kingo
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. HASA A. KINGO **PART** 65M

Justice

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BOROUGH CONSTRUCTION GROUP LLC, BOROUGH EQUITIES LLC

Plaintiffs,

- v -

CITIGRANT FUNDING CORP., VEIL LLC, EDEN BALLROOM LLC, FYM MILLBROOK LLC

Defendants.

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INDEX NO. 154230/2021

MOTION DATE 11/26/2025

MOTION SEQ. NO. 007

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 007) 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 171, 172, 173, 174, 175, 176, 177

were read on this motion for SUMMARY JUDGMENT.

Defendant Citigrant Funding Corp. ("Citigrant") moves, pursuant to CPLR § 3212, for summary judgment dismissing the complaint in its entirety as against it and discharging plaintiffs' mechanic's lien to the extent that it encumbers Citigrant's fee interest in the subject property. Specifically, Citigrant seeks an order: (1) granting summary judgment dismissing plaintiffs' claims against it, including the quasi-contract causes of action for unjust enrichment and *quantum meruit*; (2) discharging the mechanic's lien as against its fee interest on the ground that any alleged improvements were performed pursuant to a contract with a tenant and without Citigrant's consent within the meaning of Lien Law § 3; and (3) awarding such other and further relief as the court deems just and proper.

For the reasons set forth below, the motion is denied.

BACKGROUND AND PROCEDURAL HISTORY

Plaintiffs allege that they performed substantial construction work and services at 637 West 50th Street, New York, New York (the Property), and that they were not paid the balance allegedly due for that work. Plaintiffs filed a mechanic's lien for $1,500,000, later extended, and commenced this action in April 2021, asserting causes of action that include lien foreclosure and unjust enrichment against Citigrant, the Property owner.

In the course of the litigation, plaintiffs obtained a default judgment in the amount of $1,500,000 against defendants Veil LLC and Eden Ballroom LLC, jointly and severally, arising from plaintiffs' alleged agreement with those entities.

On July 11, 2024, plaintiffs filed a note of issue. By court order, dispositive motions were required to be filed within 60 days of the note of issue; thus, any timely summary judgment motion was due on or before September 9, 2024. Citigrant did not file this summary judgment motion until November 26, 2025.

Separately, on January 8, 2025, the court decided Citigrant's discovery motion. As relevant here, the court's order provided that the motion was "granted only to the extent that plaintiffs are precluded from introducing into evidence any documents requested by defendants but not produced prior to filing the note of issue."

ARGUMENTS

Citigrant advances three principal arguments. First, Citigrant contends plaintiffs may not maintain quasi-contract claims against it because plaintiffs' services were performed at the behest of Veil and Eden (not Citigrant), and plaintiffs already hold a default judgment against Veil and Eden, which Citigrant argues provides an adequate remedy at law. Citigrant relies on the general proposition that quasi-contract is unavailable where services were performed at the request of another, and where a contractual remedy exists (*see, e.g., Clark-Fitzpatrick, Inc. v Long Is. R.R. Co.*, 70 NY2d 382, 388-389 [1987]).

Second, Citigrant argues that, even if quasi-contract theories were theoretically available, plaintiffs cannot prove enrichment at Citigrant's expense, and, in any event, plaintiffs have been precluded from offering proof of claimed project expenses because of the January 8, 2025 order.

Third, Citigrant argues that the lien must be discharged as against the fee interest because plaintiffs' alleged agreement was with a tenant and Citigrant did not consent to the improvement within the meaning of Lien Law § 3, relying on *Ferrara v Peaches Café LLC*, 32 NY3d 348 (2018), and *Interior Bldg. Servs., Inc. v Broadway 1384 LLC*, 73 AD3d 529 (1st Dept 2010), among other authorities.

Citigrant acknowledges the motion is filed out of time, but suggests its timing is justified, in substance, by plaintiffs' asserted inability to prove their claims and by the discovery-preclusion ruling.

Plaintiffs oppose on both procedural and merits grounds. Procedurally, plaintiffs argue the motion is untimely under the court-ordered deadline and must be denied absent "good cause" for the late filing, which plaintiffs contend Citigrant has not shown. Plaintiffs emphasize that the January 8, 2025 order issued ten months before Citigrant moved for summary judgment, and Citigrant offers no explanation for waiting an additional ten months, on the eve of trial.

On the merits, plaintiffs argue the January 8, 2025 order does not preclude plaintiffs from offering their previously produced documents at trial, but only bars documents requested yet not produced before the note of issue. Plaintiffs further contend that Citigrant received a substantial benefit from plaintiffs' work, including securing a long-term, high-value commercial lease with a prominent tenant (Cipriani) for the very space improved by plaintiffs, with the lease reflecting no work to be performed by the landlord.

Plaintiffs also argue that Citigrant consented to and affirmatively participated in the improvement, including through email communications and by signing Department of Buildings applications and related submissions necessary to perform the work.

DISCUSSION

Summary judgment is a "drastic remedy" that may be granted only where the movant establishes, through evidence in admissible form, entitlement to judgment as a matter of law, eliminating all material issues of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985].) If the movant meets its prima facie burden, the burden shifts to the opposing party to demonstrate, also by admissible evidence, the existence of triable issues of fact. (*Alvarez*, 68 NY2d at 324). The evidence must be viewed in the light most favorable to the nonmovant, and the Court's function is issue finding, not issue determination (*see generally Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]).

As a threshold matter, Citigrant's motion is plainly untimely. Plaintiffs filed their note of issue on July 11, 2024. Under the court's order, dispositive motions were due within 60 days, by September 9, 2024. Citigrant filed this motion on November 26, 2025, more than fourteen months after the deadline. Under controlling Court of Appeals precedent, a court may not entertain an untimely summary judgment motion absent "good cause" for the delay, and "good cause" requires a satisfactory explanation for the untimeliness, not merely the alleged merit of the motion (*Brill v City of New York*, 2 NY3d 648, 652 [2004].) Put differently, a litigant may not cure lateness by arguing that its motion is strong, or that considering it would be efficient; the "good cause" inquiry focuses on why the motion was not made on time (*id.*)

Citigrant's papers do not demonstrate good cause. To the extent Citigrant suggests it awaited the court's ruling on its discovery motion, that explanation does not account for the ten-month gap after the January 8, 2025 order.

The record thus reflects precisely what *Brill* forbids: a belated, eve-of-trial summary judgment application that, without adequate explanation, would undercut the purpose of court-ordered deadlines and consume finite judicial resources in a case long since certified trial-ready (*see Brill*, 2 NY3d at 652).

On this basis alone, the motion is denied.

Nevertheless, even if the court were to reach the merits, Citigrant has not carried its prima facie burden, and, in any event, the record presents material issues of fact that require trial. Citigrant's merits presentation rests heavily on the premise that plaintiffs have been broadly "precluded" from proving their claimed expenditures, rendering plaintiffs unable to establish enrichment or lien damages. That premise overreads the January 8, 2025 order.

The order states, in relevant part, that plaintiffs are precluded only from introducing "any documents requested by defendants but not produced prior to filing the note of issue."

The order does not purport to strike claims, deem facts established, or bar plaintiffs from introducing documents that were produced in discovery before the note of issue.

Accordingly, whatever the ultimate evidentiary consequences at trial, the January 8 order does not itself establish that plaintiffs cannot prove their case as a matter of law. At most, it frames the universe of documents plaintiffs may use at trial, a determination that does not eliminate factual disputes concerning what work was performed, what Citigrant knew and did, whether Citigrant benefitted, and whether Citigrant consented within the meaning of the Lien Law.

To recover for unjust enrichment, a plaintiff must show that (1) the defendant was enriched, (2) at the plaintiff's expense, and (3) it would be against equity and good conscience to permit the defendant to retain what is sought to be recovered (*Mandarin Trading Ltd. v Wildenstein*, 16 NY3d 173, 182 [2011]). The doctrine is not a "catchall cause of action," and it requires a relationship or connection between the parties that is not too attenuated (*id.* at 182-183.)

Quantum meruit similarly requires proof that (1) services were performed in good faith, (2) the services were accepted by the person to be charged, (3) the plaintiff expected compensation, and (4) the reasonable value of the services (*see generally Mid-Hudson Catskill Rural Migrant Ministry, Inc. v Fine Host Corp.*, 418 F3d 168, 175 [2d Cir 2005] [applying NY law]; *Clark-Fitzpatrick*, 70 NY2d at 388-389 [quasi-contract principles]).

In addition, where services were performed at the behest of someone other than the defendant, quasi-contract relief against the defendant is typically unavailable absent proof that the defendant induced the performance or otherwise unjustly retained a benefit at the plaintiff's expense (*see, e.g., Kagan v K-Tel Entertainment*, 172 AD2d 375, 376 [1st Dept 1991]).

Citigrant's argument that plaintiffs' default judgment against Veil and Eden categorically bars quasi-contract claims against Citigrant is overbroad on this record.

To be sure, quasi-contract is unavailable where a valid, enforceable contract governs the subject matter of the dispute between the plaintiff and the defendant (*Clark-Fitzpatrick*, 70 NY2d at 388-389.) But plaintiffs do not allege a contract with Citigrant; the thrust of plaintiffs' quasi-contract theory is that Citigrant, as property owner, accepted and retained the benefit of improvements and later monetized those improvements through a long-term commercial lease, while plaintiffs remained unpaid.

On this motion, Citigrant was required to show, prima facie, either that it was not enriched, or that any enrichment was not at plaintiffs' expense, or that equity and good conscience do not require restitution as a matter of law (*Mandarin Trading*, 16 NY3d at 182). Citigrant has not made that showing.

Plaintiffs adduce evidence that Citigrant entered into a 15-year lease with Cipriani after the work, and that the lease reflects no work to be performed by the landlord, permitting an inference that Citigrant retained the buildout and used it to secure substantial rent.

Plaintiffs further adduce evidence that Citigrant's principal communicated directly with plaintiffs regarding the project and signed DOB applications, conduct that, if credited, supports an inference of knowing acceptance and participation in the improvement, not mere passive landlordship.

Even if Citigrant ultimately persuades the factfinder that plaintiffs' relationship was solely with the tenant entities, that plaintiffs were investors rather than contractors, or that plaintiffs' claimed damages are inflated, those are classic credibility and fact issues not resolvable on summary judgment (*Sillman*, 3 NY2d at 404).

At a minimum, the present record reveals the existence of multiple triable issues of fact that must be resolved by a factfinder at trial. These include, first, whether Citigrant, acting through its principal, affirmatively participated in, authorized, or approved the subject improvements, including by signing Department of Buildings submissions and engaging in direct correspondence with plaintiffs concerning the scope and progress of the work.

Second, the record raises a factual question as to whether Citigrant retained and utilized plaintiffs' work in substantially unchanged form in connection with the subsequent leasing of the premises to Cipriani, thereby potentially deriving a concrete and measurable benefit from the improvements.

Third, there exists a triable issue as to whether any benefit conferred upon Citigrant was sufficiently direct and immediate to sustain a claim for restitution under the principles articulated in *Mandarin Trading Ltd. v Wildenstein*, 16 NY3d 173 (2011), or whether such benefit was instead too attenuated in light of the intervening tenant relationship.

Finally, material factual disputes remain concerning the nature and extent of plaintiffs' performance and damages, including the reasonable value of any labor, materials, and management services, to the extent such proof is established at trial through admissible evidence consistent with the court's January 8, 2025 order.

Because these factual disputes go to the core elements of plaintiffs' unjust enrichment and *quantum meruit* claims, they preclude dismissal of those causes of action as a matter of law.

Lien Law § 3 permits a mechanic's lien for labor or materials furnished for the improvement of real property "with the consent or at the request of the owner." Where the work is performed under an agreement with a tenant, a lien does not attach to the owner's fee interest unless the owner consented to the improvement within the meaning of the statute.

The Court of Appeals has made clear that "consent" requires more than mere knowledge of a tenant's work; it requires affirmative conduct or circumstances demonstrating that the owner "consented" to the improvement in a manner that permits the owner's interest to be liened (*Ferrara v Peaches Café LLC*, 32 NY3d 348, 353-355 [2018]) The Appellate Division, First Department, has likewise emphasized that an owner's limited involvement aimed at protecting the building or

other tenants, without more, does not constitute statutory consent (*Interior Bldg. Servs., Inc. v Broadway 1384 LLC*, 73 AD3d 529, 530 [1st Dept 2010]).

Citigrant argues that it neither requested nor consented to the improvements and that any lien can attach only to the tenant's leasehold interest. On this record, however, Citigrant has not eliminated triable questions concerning statutory consent.

Plaintiffs proffer evidence that Citigrant's principal signed DOB applications and engaged in communications concerning the work.

A factfinder could conclude that such conduct goes beyond passive acquiescence and constitutes affirmative consent to the improvement within the meaning of *Ferrara*. Conversely, Citigrant's evidence suggests a different narrative. The court cannot resolve that conflict on summary judgment.

Moreover, plaintiffs present evidence supporting an inference that Citigrant expected to benefit from the improvement by leasing the space as a lounge or nightclub to a subsequent tenant on favorable terms, without itself undertaking additional work.

Whether that benefit expectation existed at the time of the improvement, and whether it was sufficiently connected to Citigrant's conduct to amount to consent under the Lien Law, are fact-intensive questions not determinable as a matter of law on this motion.

Accordingly, Citigrant has not made the requisite prima facie showing to discharge the lien as against the fee interest at this stage.

For the foregoing reasons, it is hereby:

ORDERED that defendant Citigrant Funding Corp.'s motion for summary judgment is denied in its entirety as untimely; and it is further

ORDERED that, even if considered on the merits, the motion would be denied because defendant has not established entitlement to judgment as a matter of law and material issues of fact remain, including, without limitation, issues concerning statutory consent under Lien Law § 3, the existence and extent of any enrichment at plaintiffs' expense, and the admissible proof of damages consistent with the court's January 8, 2025 order; and it is further

ORDERED that the parties are directed to appear for trial on March 2, 2026, at 9:30 a.m., in Room 308 of the courthouse located at 80 Centre Street, New York, New York 10013.

This constitutes the decision and order of the court.

02/17/2026
DATE

HASA A. KINGO, 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