

Ocean Pac. Interiors, Inc. v Fahrenheit Mech. LLC

2026 NY Slip Op 30611(U)

February 18, 2026

Supreme Court, New York County

Docket Number: Index No. 655263/2024

Judge: Phaedra F. Perry-Bond

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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. PHAEDRA F. PERRY-BOND PART 35

Justice

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INDEX NO. 655263/2024

OCEAN PACIFIC INTERIORS, INC. D/B/A OPI
CONSTRUCTION,

MOTION DATE 12/23/2024

Plaintiff,

MOTION SEQ. NO. 001

- v -

FAHRENHEIT MECHANICAL LLC, and UNITED STATES
FIRE INSURANCE COMPANY

DECISION + ORDER ON
MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 12, 13, 14, 15,
16, 20, 21, 22, 23, 24

were read on this motion to/for DISMISS

Upon the foregoing documents, Defendant United States Fire Insurance Company's
("United") motion to dismiss Plaintiff Ocean Pacific Interiors, Inc. d/b/a OPI Construction's
("Plaintiff") Complaint as asserted against it is granted.

I. Background

As alleged in the Complaint, non-party ARC Electrical & Mechanical Contractors Corp.
("ARC") served as the general contractor on a construction project known as the CDBG-DR
Restoration (the "Project") at Hammel Houses in Queens, New York. On May 10, 2018, ARC
retained Defendant Fahrenheit Mechanical LLC ("Fahrenheit") to perform the boiler and
mechanical scope of work on the Project for \$4,150,000.

To secure its payment obligations at the Project, Fahrenheit obtained a payment bond from
United (the "United Bond"). Allegedly, Fahrenheit abandoned the project leaving approximately
\$3,310,409.30 worth of work unperformed. Subsequently, Plaintiff submitted a bid to ARC to
complete the unperformed work. ARC accepted Plaintiff's bid and on March 4, 2022, ARC entered

a subcontract with Plaintiff. On March 7, 2022, Fahrenheit purportedly assigned its subcontract to Plaintiff and allegedly agreed that it would be required to pay Plaintiff the amount of \$3,310,409.30.¹

Plaintiff began work on the project and invoiced Fahrenheit in the amount of \$2,408,638.83, but Fahrenheit allegedly has ignored the invoices and left them unpaid. Plaintiff claims Fahrenheit is now liable to Plaintiff in the amount of \$2,979,368.30. On January 30, 2024, Plaintiff submitted a notice of payment bond claim and demand for payment to United based on the United Bond seeking to recover payment for the amount Fahrenheit owes Plaintiff, but United allegedly did not respond. Now, Plaintiff sues Fahrenheit for breach of contract, account stated, unjust enrichment, quantum meruit. Plaintiff also asserts a cause of action against United alleging United breached its obligations under the United Bond. In response, United filed this pre-answer motion to dismiss pursuant to CPLR 3211(a)(7) arguing that Plaintiff is not a proper claimant under the United Bond, that Plaintiff was not provided with rights under the payment bond by virtue of Fahrenheit's purported assignment, and that even if Plaintiff was a proper claimant and assigned rights, the claim asserted here is untimely pursuant to the terms of the United Bond.

II. Discussion

United's motion is granted because according to the terms of the United Bond, the lawsuit against it was not timely commenced. It is a bedrock principle of contract law that "when parties set down their agreement in a clear, complete document, their writing should ... be enforced according to its terms" (*Vermont Teddy Bear Co., Inc. v 538 Madison Realty Co.*, 1 NY3d 470, 475 [2004] quoting *W.W.W. Assoc. v Giancontieri*, 77 NY2d 157, 162 [1990]). Here, the plain and

¹ The contract regarding payment between Fahrenheit and Plaintiff was not annexed to the Complaint, although all other contracts were.

unambiguous terms of the interrelated agreements show Plaintiff's claim against United pursuant to the United Bond is untimely. Specifically, § 12 of the United Bond reads as follows:

“No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs.”

The “Construction Contract” referred to in § 12 of the United Bond is defined as the May 10, 2018 contract between ARC and Fahrenheit (*see* NYSCEF Doc. 3 at p. 1). Thus, for Plaintiff's claim against United to be timely, it must have been brought within one year of the last labor or service was performed by anyone under the ARC and Fahrenheit contract, or within one year of a claim being submitted to United, whichever of the two situations occurred first.

The subcontract entered between Plaintiff and ARC, annexed to Plaintiff's Complaint as an exhibit and dated March 4, 2022, explicitly states it was being entered because the subcontract ARC entered with Fahrenheit was terminated by ARC for cause (*see* NYSCEF Doc. 4). The Plaintiff and ARC subcontract also stated that contract “constitutes the entire agreement between the parties hereto and cannot be amended, modified or changed except as herein provided” (NYSCEF Doc. 4 at § 31). Although the terms of Fahrenheit subcontract were incorporated into the new subcontract entered between Plaintiff and ARC, this does not change the fact that this was a wholly new completion contract that was separate from the terminated Fahrenheit and ARC subcontract, making it separate and apart from the “Construction Contract” referenced in the United Bond.

This is buttressed by the terms of the assignment executed between Fahrenheit and Plaintiff. After the Fahrenheit contract's termination, Plaintiff claims Fahrenheit assigned its rights

under the terminated Fahrenheit contract to it. But the assignment, which is dated March 7, 2022 and also annexed to Plaintiff's Complaint as an exhibit, states specifically "ARC terminated the Fahrenheit Subcontract Agreement for cause and [Plaintiff] agreed to the assignment of the Agreement" (NYSCEF Doc. 5).²

Pursuant to the assignment and the subcontract entered between Plaintiff and ARC, the "Construction Agreement" referred to in the United Bond terminated at the latest on March 4, 2022, meaning the last labor or service performed by anyone under the "Construction Agreement" occurred at the latest on March 4, 2022. The United Bond was never amended or modified to revise the term "Construction Contract" to mean the new subcontract entered between Plaintiff and ARC. Therefore, pursuant to § 12 of the United Bond, any lawsuit seeking to enforce the United bond would have to be brought at the latest by March 4, 2023. But this lawsuit was not commenced until October 4, 2024, making the claim against United Bond untimely pursuant to the plain meaning of the parties' contracts (*see also J & A Concrete Corp. v St. Paul Mercury Ins. Co.*, 48 AD3d 334, 334-335 [1st Dept 2008] [claim submitted more than one year after work was ceased under contract backed by performance bond untimely]; *see also Sea Crest Const. Corp. v Amwest Sur. Ins. Co.*, 263 AD2d 433, 433-434 [1st Dept 1999]).

Plaintiff is not without recourse as its multiple other claims against Fahrenheit survive. However, based on the facts alleged and the plain meaning of the terms set out in the United Bond and various contracts, United's motion to dismiss is granted. Because the Court grants the motion

² Aside from the cause of action against United being untimely, it is axiomatic that an assignee acquires no greater rights than its assignor" (*see Bridgeton 396 Broadway Fee, LLC v HiRise Engineering P.C.*, 238 AD3d 507, 507 [1st Dept 2025] citing *American States Ins. Co. v Huff*, 119 AD3d 478, 479 [1st Dept 2014]). Because at the time of assignment Fahrenheit's contract with ARC was terminated for cause, the only contract Plaintiff was assigned was a terminated and null contract. This is precisely why Plaintiff executed its own contract with ARC to complete the work on the Project. Therefore, to the extent Plaintiff relies at all on the assignment, that is misplaced because Plaintiff was assigned a contract which was terminated.

to dismiss based on untimeliness, the Court does not address United’s other arguments for dismissal.


Accordingly, it is hereby,

ORDERED that Defendant United States Fire Insurance Company’s motion to dismiss Plaintiff Ocean Pacific Interiors, Inc. d/b/a OPI Construction’s Complaint as asserted against it is granted, and the fifth cause of action asserted against United States Fire Insurance Company is hereby dismissed; and it is further

ORDERED that the remaining parties shall meet and confer immediately and submit a proposed preliminary conference order to the Court via e-mail, but in no event shall the proposed preliminary conference order be submitted any later than March 24, 2026. If the parties have a serious discovery dispute requiring an in-person conference, they shall notify the Court so that an in-person conference may be scheduled; and it is further

ORDERED that within ten days of entry, counsel for Defendant United States Fire Insurance Company shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

2/18/26
DATE

HON. PHAEDRA F. PERRY-BOND, J.S.C.

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION

APPLICATION: GRANTED GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER

INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE