

Baring Indus., Inc. v Citizens Manhattan W., LLC

2026 NY Slip Op 31604(U)

April 9, 2026

Supreme Court, New York County

Docket Number: Index No. 654096/2023

Judge: Ashlee Crawford

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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. ASHLEE CRAWFORD PART 38
Justice
INDEX NO. 654096/2023
MOTION DATE 10/16/2024, 10/14/2025
MOTION SEQ. NO. 002 005
DECISION + ORDER ON MOTION
Plaintiff,
- v -
Defendant.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 42, 44

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER)

The following e-filed documents, listed by NYSCEF document number (Motion 005) 64, 65, 66, 67

were read on this motion to/for JUDGMENT - DEFAULT

Plaintiff Baring Industries, Inc. asserts claims for breach of contract and quantum meruit against defendant Citizens Manhattan West, LLC, alleging that defendant failed to pay plaintiff pursuant to the parties' 2020 subcontract for the provision of labor, equipment, and materials for a commercial kitchen at the Hudson Yards.

Under motion seq. 002, plaintiff seeks summary judgment on its first cause of action for breach of contract in the sum of \$327,466.34, plus pre-judgment interest, and to strike and dismiss defendant's affirmative defenses.¹ Defendant opposes.

During the pendency of motion seq. 002, the Court granted defense counsel's order to show cause to withdraw as counsel, stayed the action for 60 days for defendant to obtain new counsel, and calendared an appearance for October 16, 2025 (7/23/25 Order [NYSCEF Doc. 59]). Prior to October 16, 2025, the status conference was marked off the Part 38 calendar for the Court to decide the pending motion.

¹ Plaintiff also seeks to strike defendant's counterclaims, but none are asserted.

On October 13, 2025, plaintiff filed an unopposed motion for default judgment against defendant based on the lack of appearance from any new counsel for defendant (mot. seq. 005).

DISCUSSION

A party seeking summary judgment “must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case” (Winegrad v New York Univ. Med. Ctr., 64 NY2d 851, 853 [1985]). Once this showing is made, the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of triable issues of fact (Zuckerman v City of New York, 49 NY2d 557, 562 [1980]). “[M]ere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient” to defeat summary judgment (*id.*). Summary judgment is a drastic remedy and must be denied if there is any doubt as to the existence of a triable issue of material fact (Rotuba Extruders v Ceppos, 46 NY2d 223, 231 [1978]).

To prevail on a claim for breach of contract, plaintiff must establish the existence of a contract, plaintiff’s performance thereunder, defendant’s breach thereof, and resulting damages (Noto v Planck, LLC, 228 AD3d 516, 516 [1st Dept 2024]; Markov v Katt, 176 AD3d 401, 401-02 [1st Dept 2019]).

Plaintiff submits an Owner and Contractor Agreement dated August 19, 2020, signed by a representative of both parties (“agreement”) (NYSCEF Doc. 32). The agreement provides that plaintiff was to furnish “all labor materials, services and equipment, [and] to perform completely” all of the work on the Citizens Manhattan West project (Agreement at 1 [Scope of Work]). In exchange, plaintiff was to receive the contract price of \$1,945,888.00 (*id.* at 2 [Contract Price], ¶ 4 [Contract Price and Payments]).

Plaintiff further submits affidavits of its Executive Vice President, Michael Fitzgibbon, its Senior Project Manager, Ed Temmel, its Assistant Project Manager, William Toledo, and its Accounting Generalist, Maria Alonso, who collectively state that plaintiff performed under the agreement, defendant never objected to plaintiff’s work or demands for payment, and defendant has failed to pay plaintiff \$327,466.34 (Fitzgibbon Affid. ¶¶ 3-7 [NYSCEF Doc. 31]; Temmel Affid. ¶¶ 3-6 [NYSCEF Doc. 34]; Toledo Affid. ¶¶ 2-5 [NYSCEF Doc. 35]; Alonso Affid. ¶¶ 3-7 [NYSCEF Doc. 36]). Plaintiff also submits detailed applications for payment for its work under the agreement (Invoices [NYSCEF Doc. 33]), as well as emails between the parties in

which defendant sought confirmation of the unpaid balance (Emails re: balance [NYSCEF Doc. 37]).

In opposition, defendant submits only a memorandum of law by defense counsel, and proffers no sworn statement by a person with personal knowledge or any evidentiary support. Defendant argues that plaintiff's motion must be denied as this matter is still in the initial stages of discovery, with no preliminary conference having yet been held, and that plaintiff is in exclusive possession of material documents and information necessary to oppose the motion.

Defendant notably does not address plaintiff's assertion that defendant never responded to plaintiff's February 23, 2024 request for production of documents; and plaintiff, in its reply, further contends that defendant has not served any discovery demands on plaintiff nor requested the deposition of any witnesses.

The Court finds that plaintiff has met its prima facie burden for judgment as a matter of law on its breach of contract claim. Defendant has failed to raise a triable issue of fact to overcome summary judgment (see Johannsen v Rudolph, 34 AD3d 338, 339 [1st Dept 2006][attorney affirmation submitted in opposition to summary judgment insufficient to defeat summary judgment]; Diaz v New York City Tr. Auth., 12 AD3d 316 [1st Dept 2004][affirmation of attorney who had no personal knowledge of the facts insufficient to raise a triable issue]; cf. Wilson v Yemen Realty Corp., 74 AD3d 544, 545 [1st Dept 2010][affidavit from principal of defendant raised material issues of fact warranting denial of summary judgment]).

The Court further finds that plaintiff has met its burden for dismissal of defendant's boilerplate affirmative defenses (see Alpha Capital Anstalt v. General Biotechnology Corp., 191 AD3d 515, 516 [1st Dept 2021]; Granite State Ins. Co. v. Transatlantic Reins. Co., 132 AD3d 479, 481 [1st Dept 2015]; 534 E. 11th St. Hous. Dev. Fund Corp. v Hendrick, 90 AD3d 541, 541-542 [1st Dept 2011]).

Accordingly, it is hereby

ORDERED that the motion by plaintiff Baring Industries, Inc. for summary judgment is GRANTED, such that (a) summary judgement is GRANTED for plaintiff on its first cause of action for breach of contract; and (b) the affirmative defenses asserted by defendant Citizens Manhattan West, LLC are DISMISSED (mot. seq. 002); and it is further

ORDERED that plaintiff's motion for default judgment is DENIED as moot (mot. seq. 005); and it is further

ORDERED that plaintiff shall serve a copy of this order with notice of entry on the Clerk of the Court, who shall enter judgment for plaintiff Baring Industries, Inc. and against defendant Citizens Manhattan West, LLC in the sum of \$327,466.34, together with pre-judgment interest at the statutory rate running from August 1, 2021, and costs and disbursements upon presentation of proper papers therefor; and it is further

ORDERED that plaintiff shall, within 20 days of entry of this order, serve a copy of this order with notice of entry on defendant; and it is further

ORDERED that plaintiff's remaining claim for quantum meruit is severed and continued; and it is further

ORDERED that all parties shall appear for a status conference on June 10, 2026, at 10:00 AM, unless plaintiff discontinues its remaining claim before that date.

This constitutes the decision and order of the Court.



4/9/26
DATE

ASHLEE CRAWFORD, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED
SETTLE ORDER

DENIED

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER

APPLICATION:

CHECK IF APPROPRIATE:

REFERENCE