

Framan Mech., Inc. v New York City Hous. Auth.

2026 NY Slip Op 31832(U)

April 28, 2026

Supreme Court, New York County

Docket Number: Index No. 654982/2025

Judge: Lyle E. Frank

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LYLE E. FRANK PART 11M

Justice

-----X

FRAMAN MECHANICAL, INC.

Plaintiff,

- v -

NEW YORK CITY HOUSING AUTHORITY,

Defendant.

-----X

INDEX NO. 654982/2025

MOTION DATE 09/10/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, the motion is granted in part.¹

Background

On or about March 20, 2019, Plaintiff Framan Mechanical Inc. (“Plaintiff” or “Framan”) entered into a contract (the “Contract”) with the New York City Housing Authority (“NYCHA”) for the replacement of boilers and hot water heaters at Senator Robert Taft Houses in New York, New York. During the course of performing the Contract, Framan sought, and NYCHA granted, six extensions of time to perform the Contract work. Framan sought these extensions through change orders for costs principally associated with the maintenance and operation of temporary oil storage tanks and mobile boilers required under the Contract, in connection with the extended duration of the Contract. The dispute in this case surrounds NYCHA approving lower additional

¹ The Court would like to thank Special Master to the Court, Jason Lowe, Esq. for his assistance in this matter.

compensation than Framan sought. The complaint alleges a breach of contract between Framan and NYCHA and breach of duty of good faith and fair dealing.

NYCHA brings this motion to dismiss and argues documentary evidence bars Framan's claims. Namely, NYCHA argues, Framan waived any right it may have had to assert its claims by failing to comply with the Contract's notice of claim requirements. NYCHA argues that pursuant to the Contract's Special Conditions, Article ("Art.") III, Section 33 ("Section 33"), Framan cannot recover on its claims because it failed to provide NYCHA written notice stating the nature and amount of extra costs or damages sustained and the basis of the claims within 20 days of when the claims arose.

Framan argues, *inter alia*, that NYCHA's motion must be denied because the documents NYCHA relies on do not qualify as documentary evidence pursuant to CPLR § 3211(a)(1) and the evidence presented by NYCHA is factually inconsistent.

Standard of Review

When considering a motion to dismiss based upon CPLR § 3211(a)(7), the court must accept the alleged facts as true, accord the plaintiff the benefit of every possible favorable inference, and determine whether the facts alleged fit into any cognizable legal theory. *Leon v. Martinez*, 84 NY2d 83, 638 N.E.2d 511, 614 N.Y.S.2d 972 [1994]. On a motion to dismiss the court "merely examines the adequacy of the pleadings", the court "accept as true each and every allegation made by plaintiff and limit our inquiry to the legal sufficiency of plaintiff's claim." *Davis v Boenheim*, 24 NY3d 262, 268, 998 N.Y.S.2d 131, 22 N.E.3d 999 [2014].

Under CPLR Rule 3211(a)(1) documentary evidence provides a basis for dismissing a cause of action "where the documentary evidence utterly refutes plaintiff's factual allegations,

conclusively establishing a defense as a matter of law." *Goshen v. Mutual Life Ins. Co.*, 98 N.Y.2d 314, 326, 774 N.E.2d 1190, 746 N.Y.S.2d 858 [2002].

Discussion

The Court agrees that it is premature to dismiss the complaint on the record before it. Initially, as Framan notes, many facts are included in an affirmation which is not documentary evidence pursuant to CPLR 3211(a)(1). In addition, the documents that are attached are not properly authenticated. For instance, the affirmation is based on "personal knowledge, as well as on information obtained from the employees, books, and records of NYCHA, and the Complaint." However, the affiant does not identify any of the employees, books, and records that he gained knowledge from. Nor does the affirmation authenticate the records attached as business records. Finally, as Framan notes, there are some inconsistencies in the records submitted. For instance, the affirmation references different dates than are on the exhibit discussed. Thus, considering the papers in their entirety the Court finds that Defendant has not met the standard for dismissal pursuant to CPLR 3211(a)(1) for the breach of contract claim.

Defendant also argues that the claim for breach of the duty of good faith and fair dealing should be dismissed as duplicative, because it deals with the same facts and same alleged injuries as the breach of contract claim. Framan argues in opposition that if Defendant's conduct is determined to have not been in breach of the contract, it still deprived Framan of the benefit of the agreement and therefore would be a breach of the duty of good faith. The general rule is that a claim for breach of the duty of good faith and fair dealing should be dismissed as duplicative if it arises from the same facts as a claim for breach of contract and seeks the same damages.

Netologic, Inc. v. Goldman Sachs Group, Inc., 110 A.D.3d 433, 433 – 34 [1st Dept. 2013]. Here,

with the survival of the breach of contract claim, the second cause of action becomes duplicative and should therefore be dismissed. Accordingly, it is hereby

ADJUDGED that Defendant NYCHA’s motion to dismiss is granted as to the second cause of action and denied as to the rest; and it is further

ORDERED that the defendant is directed to serve an answer to the amended complaint within 20 days after service of a copy of this order with notice of entry.


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LYLE E. FRANK, J.S.C.

4/28/2026
DATE

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