

**Facility Solutions Group, Inc. v  
U.S. Crane & Rigging, LLC**

2026 NY Slip Op 31833(U)

April 27, 2026

Supreme Court, New York County

Docket Number: Index No. 655422/2023

Judge: Ashlee Crawford

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Plaintiff further alleges that USCR repudiated the contract and utilized the workers and equipment that were slated for plaintiff's project on a separate project for unknown defendant XYZ Corp.; and that XYZ Corp. was aware of the contract between plaintiff and USCR, improperly entered into an agreement with USCR for the same services, and caused plaintiff damage in the form of extra costs and delays. Plaintiff asserts claims for breach of contract against defendant USCR; unjust enrichment against all defendants; and tortious interference with contract against XYZ Corp.

### **DISCUSSION**

“On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction” Leon v Martinez, 84 NY2d 83, 87 [1994], citing CPLR 3026). “We accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory” (id. at 87-88). Allegations consisting of bare legal conclusions with no factual specificity are insufficient to survive a motion to dismiss (Godfrey v Spano, 13 NY3d 358, 373 [2009]). “In assessing a motion under CPLR 3211(a)(7), however, a court may freely consider affidavits submitted by the plaintiff to remedy any defects in the complaint and the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one” (id. [internal citation omitted]). “Under CPLR 3211(a)(1), a dismissal is warranted only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law” (Leon v Martinez, supra at 88).

In support of its motion, USCR relies on the affidavit of its project manager, Daniel Mooney, who explains that after the execution of the contract, he repeatedly emailed plaintiff for the job specifics he needed to proceed with the work, but plaintiff never provided that

information. On May 26 2022, after waiting about seven months from the execution of the contract, and not having received the requested information from plaintiff that was needed to proceed with the work, USCR wrote to plaintiff informing it that the crane was booked on another project and was “not available for this project schedule at this current time” (Mooney Aff. ¶¶ 8-16; Various emails, Ex. A-C to Mooney Aff. [NYSCEF Docs. 9-11]). USCR contends that it did not terminate, repudiate or refuse to carry out its obligations under the contract, because plaintiff never provided USCR with a notice to proceed, a scheduled date for performance, or specific information for the crane picks (*id.* ¶¶ 17-19, 21-22). On July 7, 2022, plaintiff responded to USCR’s May 26th message, which it viewed as an indication of USCR’s inability to perform, and stated that plaintiff would terminate the contract and send USCR formal notice of termination within a week. USCR asserts that plaintiff never sent a notice of termination, in breach of the contract’s termination clause (*id.* ¶¶ 20; Contract § 12.1 [NYSCEF Doc. 2]; *but see* Ex. C to Mooney Aff. [NYSCEF Doc. 11]).

*i. Breach of Contract*

Applying the liberal pleading standard applicable here, the Court finds that plaintiff has sufficiently pled a claim against USCR for breach of the parties’ agreement (*Markov v Katt*, 176 AD3d 401, 401-02 [1st Dept 2019][breach of contract elements]) and USCR has not established its entitlement to dismissal at this stage.

*ii. Unjust Enrichment*

Plaintiff alleges that defendants were unjustly enriched through USCR’s provision of labor and materials to XYZ Corp. and USCR’s receipt of monetary compensation at plaintiff’s expense, which are outside the scope of the contract (see Compl. ¶¶ 51-57; Pl. Memo of Law at 14-15 [NYSCEF Doc. 25]).

“[T]o successfully plead unjust enrichment a plaintiff must allege that (1) the other party was enriched, (2) at that party's expense, and (3) that it is against equity and good conscience to permit the other party to retain what is sought to be recovered” (Philips Intern. Investments, LLC v Pektor, 117 AD3d 1, 7 [1st Dept 2014][internal quotation marks and citations omitted]).

“[T]he existence of a valid contract governing the subject matter generally precludes recovery in quasi contract for events arising out of the same subject matter” (EBC I, Inc. v Goldman, Sachs & Co., 5 NY3d 11, 23 [2005]; see Parrott v Logos Capital Mgt., LLC, 91 AD3d 488, 489 [1st Dept 2012]; cf. Sergeants Benevolent Assn. Annuity Fund v Renck, 19 AD3d 107, 112 [1st Dept 2005]). “Only where the contract does not cover the dispute in issue may a plaintiff proceed upon a quasi-contract theory of unjust enrichment” (Ashwood Capital, Inc. v OTG Mgt., Inc., 99 AD3d 1, 10 [1st Dept 2012]).

The Court finds that the unjust enrichment claim asserted against USCR is foreclosed by the existence of a valid and enforceable contract governing the subject matter (see Norcast S.ar.l. v Castle Harlan, Inc., 147 AD3d 666, 668 [1st Dept 2017]; see also Is. Stars 21 Inc. v Buccaria, 221 AD3d 531, 532 [1st Dept 2023]).

Accordingly, it is hereby

**ORDERED** that the motion by defendant U.S. Crane & Rigging to dismiss the first and second causes of action in the complaint is GRANTED IN PART only as directed to the second cause of action for unjust enrichment, and that claim is DISMISSED as directed to U.S Crane, and the motion is otherwise DENIED; and it is further

**ORDERED** that within 14 days of entry of this order, defendant shall serve a copy of this order with notice of entry on all parties; and it is further

**ORDERED** that all parties shall appear for a preliminary conference on June 24, 2026.

This constitutes the decision and order of the Court.



4/27/26  
DATE

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ASHLEE CRAWFORD, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>
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