Network of Patrols, Inc. v Waterworks, A Joint Venture
2026 NY Slip Op 32009(U)
May 8, 2026
Supreme Court, New York County
Docket Number: Index No. 656543/2025
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

NETWORK OF PATROLS, INC.

Plaintiff,

- v -

WATERWORKS, A JOINT VENTURE,

Defendant.

---X

INDEX NO. 656543/2025

MOTION DATE 01/29/2026

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18

were read on this motion to/for DISMISS .

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

Background

This motion arises out of a subcontractor payment dispute for a public works water mains construction project. Plaintiff is in the business of providing crossing guards for construction sites and subcontracted with Defendant, the project's general contractor, for security services. Relevant for this motion, the parties' subcontractor agreement (the "Subcontract") contained a specialized statute of limitations provision that limited Plaintiff's ability to bring claims to one year after the subsequent completion of the overall project, unless a shorter statute of limitations applied. The Subcontract also contains a payment provision listing the times and conditions in which payment will come due. In December of 2022, Plaintiff's work was completed and Defendant's work on the project was deemed to be substantially completed. During the project and after completion, Plaintiff sent Defendant a series of invoices for the work. Plaintiff alleges that there is an outstanding balance due for their services in the amount of $347,932.87. Defendant does not dispute the amount owed but claimed in a series of emails between the

parties that it was being withheld as retainage. Plaintiff commenced this proceeding in December of 2025, pleading claims of breach of contract as well as unjust enrichment, quantum meruit, and account stated.

Standard of Review

It is well settled that when considering a motion to dismiss pursuant to CPLR § 3211, the pleading is to be liberally construed and the nonmovant is entitled to every favorable inference. *See, e.g., Granite State Ins. Co. v. Transatlantic Reins. Co.*, 132 A.D.3d 479, 481 [1st Dept. 2015]. Dismissal of the complaint is warranted "if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery." *Connaughton v. Chipotle Mexican Grill, Inc*, 29 N.Y.3d 137, 142 [2017].

CPLR § 3211(a)(1) allows for a complaint to be dismissed if there is a "defense founded upon documentary evidence." Dismissal is only warranted under this provision if "the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law." *Leon v. Martinez,* 84 N.Y.2d 83, 88 [1994]. CPLR § 3211(a)(5) allows for a complaint to be dismissed because of a valid release. While a valid release generally "constitutes a complete bar", for a signed release the burden shifts to the plaintiff to "show that there has been fraud, duress, or some other fact which will be sufficient to void the release." *Centro Empesarial Cempresa S.A. v. América Móvil, S.A.B. de C.V.*, 17 N.Y.3d 269, 276 [2011].

A party may move for a judgment from the court dismissing causes of action asserted against them based on the fact that the pleading fails to state a cause of action. CPLR § 3211(a)(7). For motions to dismiss under this provision, "[i]nitially, the sole criterion is whether the pleading states a cause of action, and if from its four corners factual allegations are

discerned which taken together manifest any cause of action cognizable at law." *Guggenheimer v. Ginzburg*, 43 N.Y. 2d 268, 275 [1977].

Discussion

Defendant brings the present pre-answer motion to dismiss, largely arguing that the Subcontract's statute of limitations provision bars Plaintiff's claims. Defendant also argues that the quasi-contract clams are duplicative and should be dismissed for that reason. Plaintiff opposes the motion, arguing that the shortened statute of limitations provision is not enforceable and that they are permitted to plead quasi-contract claims in the alternative. For the reasons that follow, the second and third causes of action are dismissed as duplicative and the motion is otherwise denied.

The Subcontract Does Not Bar the Complaint as Defendant Had an Obligation to Pay That Was Triggered Upon Final Payment from the City and is Separate from the City's Earlier Failure to Fully Pay Defendant

The first issue is whether the Subcontract bars Plaintiff's claims. Defendant points to the one-year shortened statute of limitations provision in the Subcontract and argues that the present action is barred, as Plaintiff's claims for nonpayment accrued in December of 2022 when Defendant's work was deemed substantially completed. The general rule is that parties are free to contractually agree to shorten the applicable statute of limitations, and courts will enforce such agreements. *See, e.g., Top Quality Wood Work Corp. v. City of N.Y.*, 191 A.D.2d 264, 264 [1st Dept. 1993]. But when a contract also contains a pay-when-paid provision that would cause a condition precedent to be unable to be satisfied before the shortened statute of limitations runs, the statute of limitations provision would be unenforceable as such a Catch-22 situation is "neither fair nor reasonable." *Executive Plaza, LLC v. Peerless Ins. Co.*, 22 N.Y.3d 511, 518

[2014]; *see also Turner Constr. Co. v. Nastasi & Assoc., Inc.*, 192 A.D.3d 103, 106 [1st Dept. 2020] (holding that "if a contract imposes a condition precedent that cannot reasonably be met within the time frame of the limitations period under the available facts, the limitations period is unenforceable"). Therefore, the issue becomes whether the condition precedent created by the pay-when-paid provision could not reasonably be met within the time frame provided by the shortened statute of limitations provision, thus negating the shortened statute of limitations under the *Executive Plaza* line of cases.

The pay-when-paid provision states in part that the amount in controversy here is to be withheld as retainage until Defendant is first paid in full by the City. Plaintiff alleges that the City did not fully pay Defendant until June of 2025, which is well over a year from the date of substantial completion that would start the one-year clock according to the statute of limitations provision. They point to a series of emails between the parties where the Defendant repeatedly told Plaintiff that they were unable to pay the retainage as the City had not yet paid Defendant in full. One email dated June 20, 2025, contains a statement from Defendant that they had finally been paid in full and were "sorting out all the subcontractor retainage to be released." Plaintiff argues that because their claim to the retainage did not come due until years after the substantial completion of the project, the two provisions are in conflict and therefore the shortened statute of limitations is unenforceable.

In reply, Defendant points to another portion of the pay-when-paid provision that states that in the event that the City failed to fully pay Defendant, Defendant was to pay the retainage at issue to Plaintiff "within three months after such payment was due to have been paid by the [City] to [Defendant]." Defendant argues that because the final payment was due to them before June of 2025, Plaintiff had the right to demand payment before June of 2025 and therefore is still

barred from bringing these claims. Essentially, Defendant argues that Plaintiff should have demanded the retainage payment whenever the City's obligation to pay Defendant was triggered by the prime contract between the City and Defendant. Referring to this prime contract, Defendant argues that they were owed final payment for the portion of the project that included Plaintiff's last work in November of 2022, and therefore this would be when Plaintiff's right to demand payment was triggered. The prime contract was incorporated by reference into the Subcontract.

On the standard of a motion to dismiss, Defendant has failed to establish that Plaintiff has not adequately pled a breach of the Subcontract. While Plaintiff could have demanded payment in 2022 under the part of the provision that dealt with the City's failure to pay Defendant, once the Defendant was paid in full by the City then the obligation to pay Plaintiff within 30 days from that final payment was triggered. It has been alleged, and emails have been submitted in support of that contention, that the City's final payment to Defendant came in June of 2025. Thus, the portion of the pay-when-paid provision dealing with a failure to pay by the City was no longer applicable, and the opening line setting a 30-day payment deadline from final payment was triggered. Therefore, the present complaint was timely brought and the shortened statute of limitations does not bar the claim under *Executive Plaza*'s precedent.

The Quasi-Contract Claims Are Properly Dismissed as Duplicative of the Breach of Contract Claims

Because Plaintiff's claims are not time-barred, the issue then becomes whether the quasi-contract claims are duplicative of the breach of contract claim. As a general rule, a quasi-contract claim is "not available where it simply duplicates, or replaces, a conventional contract or tort claim." *Corsello v. Verizon N.Y., Inc.*, 18 N.Y.3d 777, 790 [2012]. For that reason, "[t]he

existence of a valid and enforceable written contract governing a particular subject matter ordinarily precludes recovery in quasi contract for events arising out of the same subject matter." *Clark-Fitzpatrick, Inc. v. Long Island R. Co.*, 70 N.Y.2d 382, 388 [1987]. Plaintiff argues that they are pleading the quasi-contract claims in the alternative to the breach of contract claim. Such alternative pleading is permitted, when "the matter presents a bona fide dispute as to the existence of a valid contract." *Tahari v. Narkis*, 216 A.D.3d 557, 559 [1st Dept. 2023]. Here, while there might be dispute as to the application of the Subcontract, there is no dispute that a valid contract exists. Therefore, the second and third causes of action are properly dismissed as duplicative of the breach of contract claim.

The Account Stated Claim Stands Apart from the Breach of Contract Claim

While the claims for unjust enrichment and quantum meruit are properly dismissed as duplicative of the breach of contract claim, the analysis is different for the account stated claim. The First Department has clarified that an account stated claim is independent of a breach of contract claim and has held plainly that "an account stated claim should not be dismissed as duplicative of a breach of contract claim." *Aronson Mayefsky & Sloan, LLP v. Praeger*, 228 A.D.3d 182, 187 [1st Dept. 2024]. Accordingly, it is hereby

ADJUDGED that the motion is granted in part; and it is further

ORDERED that the second and third causes of action are dismissed as duplicative.

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5/8/2026	LYLE E. FRANK, J.S.C.
DATE	

CHECK ONE:	☐ CASE DISPOSED			X NON-FINAL DISPOSITION		
	☐ GRANTED	☐ DENIED		X GRANTED IN PART	☐ OTHER	
APPLICATION:	☐ SETTLE ORDER			☐ SUBMIT ORDER		
CHECK IF APPROPRIATE:	☐ INCLUDES TRANSFER/REASSIGN			☐ FIDUCIARY APPOINTMENT	☐ REFERENCE	