

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, SECOND DEPARTMENT

Ozkurt v. Hyatt Realty, LLC

117 A.D.3d 926 (2d Dep't 2014) · Decided May 21, 2014

SUMMARY

The Appellate Division affirmed an order denying defendants’ motion to dismiss claims for breach of contract and quantum meruit arising from renovation work. The court held that the complaint could be read to allege that the plaintiff merely managed or supervised the work and was not a licensed home improvement contractor subject to New York City’s licensing requirement.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Second Department
WRITING FOR THE COURT	Eng, P.J.; Skelos, J.; Dillon, J.; Duffy, J.
JURISDICTION	New York
DECIDED	May 21, 2014
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendants appealed, as limited by their brief, from an order denying those branches of their CPLR 3211(a)(7) and 3015(e) motion seeking dismissal of the breach-of-contract and quantum-meruit causes of action.
STANDARD OF REVIEW	On a motion under CPLR 3211(a)(7), the court views the allegations in the complaint in the light most favorable to the plaintiff and determines whether the allegations state a legally cognizable claim.
PRECEDENTIAL VALUE	Published appellate decision
PARTIES	Defendants v. Ozkurt

TOPICS

- breach of contract
- quantum meruit
- motions to dismiss
- construction law
- civil procedure

PRACTICE AREAS

- Contracts
- Construction law
- Civil procedure
- Real estate

QUESTIONS PRESENTED

1. Whether the complaint sufficiently stated breach-of-contract and quantum-meruit claims despite not alleging compliance with the home-improvement licensing requirement.
2. Whether the allegations established that the plaintiff was a home-improvement contractor subject to Administrative Code of the City of New York § 20-387.

HOLDINGS

1. The complaint was not subject to dismissal because, construed in the plaintiff's favor, it alleged that the plaintiff managed or supervised the work rather than operated a home-improvement business, and therefore did not require an allegation of licensing compliance.
2. The Supreme Court properly denied dismissal of the breach-of-contract and quantum-meruit claims for materials and labor used in renovating the subject building.

KEY QUOTATIONS

“Viewing the allegations in the complaint in the light most favorable to the plaintiff, it can be inferred that the plaintiff was simply managing or supervising the work performed at the subject building, and did not at any time hold himself out as operating a home improvement business” (117 A.D.3d at 926)

FACTUAL BACKGROUND

The action arose from materials and labor used in renovating a subject building. The complaint could be read to allege that the plaintiff merely managed or supervised the work and did not hold himself out as operating a home-improvement business. Defendants argued that the claims were subject to dismissal because the plaintiff had not alleged compliance with the applicable home-improvement licensing requirement.

PROCEDURAL HISTORY

The Supreme Court, Kings County, denied defendants' motion to dismiss the causes of action seeking damages for breach of contract and quantum meruit for materials and labor. The Appellate Division affirmed the order insofar as appealed from.

DISPOSITION

affirmed

CASES CITED

- Sokol v. Leader, 74 A.D.3d 1180, 1181 (2010)
- Dickson v. Bonistall, 19 A.D.3d 640 (2005)
- ENKO Constr. Corp. v. Aronshtein, 89 A.D.3d 676, 677 (2011)

OPINION

PER CURIAM.

In an action, inter alia, to recover damages for breach of contract, the defendants appeal, as limited by their brief, from so much of an order of the Supreme Court, Kings County (Pfau, J.), dated July 5, 2012, as denied those branches of their motion which were pursuant to CPLR 3211 (a) (7) and 3015 (e) to dismiss the causes of action to recover damages for breach of contract and in quantum meruit for materials and labor.

Ordered that the order is affirmed insofar as appealed from, with costs. Viewing the allegations in the complaint in the light most favorable to the plaintiff, it can be inferred that the plaintiff was simply managing or supervising the work performed at the subject building, and did not at any time hold himself out as operating a home improvement business (see *Sokol v Leader*, 74 AD3d 1180, 1181 [2010]; *Dickson v Bonistall*, 19 AD3d 640 [2005]).

Therefore, since the complaint can be read as alleging that the plaintiff was not a home improvement contractor subject to licensing within the meaning of Administrative Code of the City of New York § 20-387, he was not required to allege compliance with the licensing requirement (cf. *ENKO Constr. Corp. v Aronshtein*, 89 AD3d 676, 677 [2011]).

Accordingly, the Supreme Court properly denied those branches of the defendants' motion which were to dismiss the causes of action to recover damages for breach of contract and in quantum meruit for materials and labor in renovating the subject building. Eng, PJ., Skelos, Dillon and Duffy, JJ., concur.