

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

Velardo v. Tomescu

91 A.D.3d 859 (N.Y. App. Div. 2d Dep't 2012) · Decided January 24, 2012

SUMMARY

The court held that a home improvement contractor who was not individually licensed under the Westchester County Administrative Code could not recover under theories of breach of contract or quantum meruit. Although the contractor was a shareholder and manager of a corporation that held a license, he could not rely on the corporation's license because he alone contracted with the defendants and performed the work. The court affirmed summary judgment dismissing the relevant causes of action.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Second Department
WRITING FOR THE COURT	Florio, J.E.; Dickerson, J.; Chambers, J.; Cohen, J.
JURISDICTION	New York
DECIDED	January 24, 2012
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order granting the defendants summary judgment dismissing causes of action for breach of contract and quantum meruit.
STANDARD OF REVIEW	Whether the defendants established their prima facie entitlement to judgment as a matter of law on summary judgment and whether the plaintiffs raised a triable issue of fact.
PRECEDENTIAL VALUE	published appellate opinion
PARTIES	Mario Velardo, Antonio Velardo, Inc. v. Tomescu

TOPICS

construction law

breach of contract

quantum meruit

remedies

contracts

PRACTICE AREAS

construction law

contracts

remedies

municipal law

QUESTIONS PRESENTED

1. Whether an unlicensed individual home improvement contractor may recover under a home improvement contract.
2. Whether an unlicensed individual home improvement contractor may recover in quantum meruit.
3. Whether Mario Velardo could rely on a home improvement license issued to Antonio Velardo, Inc. because he was allegedly a shareholder and manager of the corporation.
4. Whether the defendants were entitled to summary judgment dismissing the breach-of-contract and quantum-meruit causes of action.

HOLDINGS

1. A home improvement contractor who is not properly licensed in the municipality where the work is performed cannot recover for the work performed either under the contract or on a quantum meruit basis.
2. An individual who contracted with the defendants and performed the home improvement work may not rely on a home improvement license issued to a corporation merely because he is a shareholder and manager of that corporation.
3. The defendants were entitled to summary judgment dismissing the breach-of-contract and quantum-meruit causes of action because they established their prima facie entitlement to judgment as a matter of law and the plaintiffs failed to raise a triable issue of fact.

KEY QUOTATIONS

“Where a home improvement contractor is not properly licensed in the municipality where the work is performed, the contractor cannot recover for the work performed either under the contract or on a quantum meruit basis” (860)

“As such, he was required to possess a home improvement license, and his failure to adhere to this licensing requirement precluded him from collecting amounts allegedly owed by the defendants and entitled the defendants to summary judgment dismissing the first and second causes of action sounding in breach of contract and quantum meruit” (860-61)

FACTUAL BACKGROUND

Mario Velardo alone entered into the home improvement contract with the defendants and alone performed work on the project. Mario acknowledged that no home improvement license had been issued to him individually. Although a license had been issued to Antonio Velardo, Inc., Mario was not entitled to rely on the corporation's license because the evidence showed that he, rather than the corporation, contracted with the defendants and performed the work.

PROCEDURAL HISTORY

The defendants moved for summary judgment dismissing the first and second causes of action in the second amended complaint. The Supreme Court granted that branch of the motion, and the plaintiffs appealed. The

Appellate Division held that the defendants established entitlement to judgment as a matter of law and that the plaintiffs failed to raise a triable issue of fact.

DISPOSITION

affirmed

CASES CITED

- Racwell Constr., LLC v. Manfredi, 61 A.D.3d 731, 732-33 (2009)
- J.G. Cerasuolo Constr., Inc. v. Tyler, 35 A.D.3d 376, 377 (2006)
- Dickson v. Bonistall, 19 A.D.3d 640, 640-41 (2005)
- Hammerman v. Jamco Indus., 119 A.D.2d 544, 545 (1986)
- Vatco Contr., Ltd. v. Kirschenbaum, 73 A.D.3d 1163, 1164 (2010)
- Ellis v. Gold, 204 A.D.2d 261, 261-62 (1994)
- Marraccini v. Ryan, 17 N.Y.3d 83 (2011)
- George Piersa, Inc. v. Rosenthal, 72 A.D.2d 593, 594 (1979)

OPINION

PER CURIAM.

Westchester County Administrative Code § 863.313 provides that “[n]o person shall maintain, conduct... operate or engage *860in a home improvement business within the County of Westchester... unless such person is licensed pursuant to this article” (see Racwell Constr., LLC v Manfredi, 61 AD3d 731, 732 [2009]). “ ‘A contractor’s failure to adhere to this requirement precludes the contractor from collecting fees from a consumer and enables a consumer to move for dismissal of an action commenced by the contractor against the consumer’ ” (Racwell Constr., LLC v Manfredi, 61 AD3d at 732-733, quoting J.G.

Cerasuolo Constr., Inc. v Tyler, 35 AD3d 376, 377 [2006]; see Dickson v Bonistall, 19 AD3d 640, 640-641 [2005]). Where a home improvement contractor is not properly licensed in the municipality where the work is performed, the contractor cannot recover for the work performed either under the contract or on a quantum meruit basis (see Hammerman v Jamco Indus., 119 AD2d 544, 545 [1986]; see also Vatco Contr., Ltd. v Kirschenbaum, 73 AD3d 1163, 1164 [2010]; Ellis v Gold, 204 AD2d 261, 262 [1994]).

Here, the evidence tendered by the defendants in support of that branch of their motion which was for summary judgment dismissing the first and second causes of action set forth in the second amended complaint, which sound in breach of contract and quantum meruit, respectively, clearly established that they entered into a home improvement contract with the plaintiff Mario Velardo

(hereinafter Mario) only, and that Mario was the only plaintiff who performed work on the subject home improvement project.

Moreover, Mario acknowledged that a home improvement license had not been issued to him individually. Accordingly, the defendants established their prima facie entitlement to judgment as a matter of law dismissing the first and second causes of action.

In opposition, the plaintiffs failed to raise a triable issue of fact. Contrary to their contention, Mario was not entitled to rely on a home improvement license that had been issued to the plaintiff Antonio Velardo, Inc. (hereinafter the Corporation), notwithstanding the fact that Mario testified at his deposition that he was a shareholder and manager of the Corporation (see *Ellis v Gold*, 204 AD2d at 261-262; cf. *Marraccini v Ryan*, 17 NY3d 83 [2011]; *Racwell Constr., LLC v Manfredi*, 61 AD3d at 733; *George Piersa, Inc. v Rosenthal*, 72 AD2d 593, 594 [1979]).

As noted above, the evidence established that Mario was the only plaintiff to contract with the defendants and to perform work on the project. As such, he was required to possess a home improvement license, and his failure to adhere to this licensing requirement precluded him from collecting amounts allegedly owed by the defendants and entitled the defendants to summary judgment dismissing the first and second causes of action sounding in breach of contract and quantum meruit (see generally *Vatco Contr., Ltd. v Kirschenbaum*, 73 AD3d at 1164; *Racwell Constr., LLC v Manfredi*, 61 AD3d at 732-733; J.G.

Cerasuolo Constr., Inc. v Tyler, 35 AD3d at 377; *Dickson v Bonistall*, 19 AD3d at 640-641; *Ellis v Gold*, 204 AD2d at 262; *Hammerman v Jamco Indus.*, 119 AD2d at 545). The plaintiffs' remaining contentions are either improperly raised for the first time on appeal or without merit. Florio, J.E., Dickerson, Chambers and Cohen, JJ., concur.