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Majority Opinion >

SUPREME COURT OF NEW YORK, NEW YORK COUNTY

CORPORATE ELECTRICAL TECHNOLOGIES, INC., Plaintiff, - v - STRUCTURE TONE, INC., MACY'S, INC., MACY'S EAST, INC., TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, PYRAMID FLOOR COVERING INC., COOPERFRIEDMAN ELECTRIC SUPPLY CO., INC., Defendants. INDEX NO. 651444/2015

651444/2015

January 6, 2020, Decided
THIS OPINION IS UNCORRECTED AND WILL NOT BE PUBLISHED IN THE PRINTED OFFICIAL REPORTS.

PRESENT: HON. ANDREA MASLEY, J.S.C.

ANDREA MASLEY

DECISION + ORDER ON MOTION

Masley, J.:

Background

Before the holiday shopping season of 2014, defendants Macy's Inc., and Macy's East Inc., (collectively, Macy's) performed multi-million-dollar renovations in Macy's flagship store at Herald Square. (NYSCEF Doc. No. [NYSCEF] 139, STI Gambardella Aff. 12/21/18 at ¶¶ 3, 10; NYSCEF 198, CET COO McQuillan Aff. 2/12/19, at ¶¶ 1, 3.) The program of renovations included the transformation of the basement into a retail space for men's high-end clothing and merchandise (the Project). (NYSCEF 198, CET COO McQuillan Aff. 2/12/19, at ¶ 3.) To complete the Project, Macy's entered into a contract with defendant Structure Tone, Inc. (STI). (NYSCEF 139, STI Gambardella Aff. 12/21/18, at ¶ 1.) STI engaged a number of subcontractors, one of which was plaintiff Corporate Electrical Technologies, Inc. (CET). (*Id.* at ¶ 3.) It is undisputed that the original lump sum price of CET's performance on the Project was $1,028,388. (*Id.* at ¶ 7; NYSCEF 198, CET COO McQuillan Aff. 2/12/19, at ¶ 16.) Between the start of CET's performance in June 2014 to substantial completion in October 2014, the Project was delayed such that Macy's became more proactive through its project manager, Erik Carlson. (NYSCEF 139, STI Gambardella Aff. 12/21/18, at ¶ 10; NYSCEF 198, CET COO McQuillan. Aff. 2/12/19, at ¶¶ 28, 33, 37, 48, 91, 92.) Because of these delays, and alleged requests to perform work, the price of CET's performance on the Project increased. (*see* NYSCEF 198, CET COO McQuillan Aff. 2/12/19, ¶¶ 37, 38, 48, 49.) CET submitted at least 23 change orders and two requests for payment. (NYSCEF 158-177, Change Orders; NYSCEF 151, Requisition 1; NYSCEF 152, Requisition 2; NYSCEF 198, CET COO McQuillan Aff. 2/12/19, at ¶ 51.) It is undisputed that CET received payment pursuant to these two requests in the amount of $379,337. (NYSCEF 198, CET COO McQuillan Aff. 2/12/19, at ¶ 8; NYSCEF 139, STI Gambardella Aff. 12/21/18, at ¶¶ 28, 38.) However, CET maintains that it is still owed $1.85 million as a result of all of the work it performed on the Project. (NYSCEF 198, CET COO McQuillan Aff. 2/12/19, at ¶ 3.) Accordingly, CET commenced this action alleging breach of contract, quantum meruit, account stated and violations of the Prompt Payment Act against STI and Macy's. (*See generally* NYSCEF 187, Complaint.) Discovery is now complete, and motion sequence numbers 002 and 003 are consolidated here for disposition.

Motion Sequence Number 003

In motion sequence number 003, STI moves pursuant to CPLR 3212 (e) for summary judgment dismissing CET's second cause of action under the Prompt Payment Act, CET's fourth cause of action for quantum meruit, CET's sixth cause of action for account stated, and partial summary judgement on CET's first cause of action for breach of contract. **[*2]** 1 Macy's moves to dismiss CET's fifth cause of action for quantum meruit.

To obtain summary judgment, the movant must establish its cause of action or defense sufficiently to warrant the court as a matter of law in directing judgment in its favor. (CPLR 3212 [b] .) This standard requires the movant to make a *prima facie* showing of

entitlement to judgment as a matter of law, by advancing sufficient "evidentiary proof in admissible form" to demonstrate the absence of any material issues of fact. (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 , 853 , 476 N.E.2d 642 , 487 N.Y.S.2d 316 [1985].) The court views this evidence in the light most favorable to the non-moving party opposing summary judgment and draws all reasonable inferences in that party's favor. (*see Flomenbaum v New York Univ.*, 71 AD3d 80 , 91 , 890 N.Y.S.2d 493 [1st Dept 2009].) Should the movant make a *prima facie* showing of entitlement to summary judgment, the burden shifts to the non-moving party to demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action. (*see Vermette v Kenworth Truck Co.*, 68 NY2d 714 , 717 , 497 N.E.2d 680 , 506 N.Y.S.2d 313 [1986].)

Here, STI advances sufficient "evidentiary proof in admissible form" to demonstrate the absence of any material issues of fact as to its defense of CET's quantum meruit claim. STI submits the affidavit of its Senior Account Executive, Nikles Gambardella. (NYSCEF 139, STI Gambardella Aff. 12/21/18.) Gambardella states that STI "felt constrained to proceed under the amended terms" of the subcontract that CET signed and tendered. (*Id.* at ¶ 23.) According to STI, this subcontract "was the only written contract that CET had signed", of which STI submits a copy. (*Id.*; NYSCEF 140, Subcontract). The approved amount of the subcontract is $1,028,388.00, and Raymond B. McQuillan signed on behalf of CET on September 7, 2014. (NYSCEF 140, Subcontract, at 3.) In light of these submissions, and others in the record including CET's 23 submitted change orders, the last of which is dated and signed by CET on April 24, 2015, STI demonstrates that it intended to be bound by the subcontract along with CET. (NYSCEF 158-176, Change Orders; NYSCEF 177, Change Order, at 1.) "[P]rovided there is objective evidence establishing that the parties intended to be bound", such as these submissions, "an unsigned contract may be enforceable." (*Flores v Lower E. Side Serv. Ctr., Inc.*, 4 NY3d 363 , 369 , 828 N.E.2d 593 , 795 N.Y.S.2d 491 [2005].) STI's showing of an enforceable written subcontract is a sufficient defense to CET's quantum meruit claim, insofar as that claim is premised on STI's failure to pay CET in its entirety for the work CET provided on the Project. (NYSCEF 187, Complaint, ¶¶ 34-37.) Indeed, quasi contractual remedies such as quantum meruit are generally "unavailable where there exists a valid and enforceable agreement governing the particular subject matter." (*Kramer v Greene*, 142 AD3d 438 , 441-442 , 36 N.Y.S.3d 448 [1st Dept 2016][internal citations and quotation marks omitted].) Accordingly, the burden shifts to CET.

CET submits the affidavit of its Chief Operating Officer, Raymond McQuillan, who states that CET never entered into a formal written subcontract with STI (NYSCEF 198, CET COO McQuillan Aff. 2/12/19, at ¶¶ 4, 41), and objects to the one submitted by STI on this motion. McQuillan states **[*3]** that he made extensive revisions to a draft subcontract he received from STI, and sent it back with his signature. (*Id.* at ¶ 20.) However, "STI never agreed to [his] deletions and additions" and "always acted as if they had rejected [his] version." (*Id.* at ¶¶ 21-22.) In support, CET submits an email that it received from STI on June 5, 2015 where STI states, "Payments cannot and will not be processed for non-Executed Subcontracts", indicating that the parties were not adhering to the subcontract submitted by STI that bears CET's signature. (NYSCEF 244, CET Email 2/12/19.) Instead, McQuillan asserts that CET and STI reached a different agreement (Agreement), "only on the scope and price of CET's work." (*Id.* at ¶ 15.) Pursuant to this Agreement, CET promised to perform the work listed in three documents for $1,028,388. (NYSCEF 200, Agreement.) But as the Project became delayed "because other trades were not performing their work according to the schedule", Macy's directed CET to perform extra work, not in the Agreement, for vendor pads and extra fire alarm work for which it promised that CET would be paid. (*Id.* at ¶¶ 28, 41, 44, 65; *see also* NYSCEF 200, Agreement, at 3 ["Fire Alarm System: Not in Scope"].) In support, CET submits an email from Macy's project manager, Erik Carlson, who wrote on August 27, 2014,

> "We need a plan of action to get the west side and east side back on track with each individual crew ... I want a calculated schedule showing where your manpower is going to be focused and on what days to get these items completed in an ORGANIZED fashion, not this shotgun approach that it seems everybody is taking and getting no where. ***Everyone is at fault here, not just CET, but we need to reign this thing in as a team (CET, STI, Macy's)... Anything you need from please consider an open line of communication***

> ***at all times ... If there is costs associated with making this happen, let us know We will not let you get hurt here and do not want that to be the concern in taking any aggressive course of action [sic]***."

(NYSCEF 218, CET Email 2/12/19 [emphasis added].) CET also notes that in Gambardella's affidavit submitted on behalf of STI, STI admits that "[m]ost of the change orders ... were for work outside the original scope of CET's subcontract on so-called 'vendor pads'." (NYSCEF 139, STI Gambardella Aff. 12/21/18, at ¶ 34.) Despite rendering this work, and submitting about 23 change orders to STI (see NYSCEF 158-177, Change Orders), of which Macy's was aware (*see* NYSCEF 207, CET Email 9/26/14, ["How much are you billing on this next invoice"]), CET only received two payments totaling $379,337. (NYSCEF 198, CET COO McQuillan Aff. 2/12/19, at ¶ 69.) CET maintains that it is still owed about $1,851,880.52 for the Project.

Here, CET demonstrates by admissible evidence the existence of numerous factual issues requiring a trial. (*See* Vermette, 68 NY2d at 717 .) Issues of fact exist as to the existence of a contract for the work performed by CET, as well as the application of that contract in this action. For instance, the subcontract submitted by STI provides that the scope of work includes "all ... fire alarm work" whereas the supporting documents submitted by CET state "Fire Alarm System: Not in Scope". (*Compare* NYSCEF **[*4]** 140, Subcontract, and NYSCEF 200, CET Agreement, at 3.) "Where there is a bona fide dispute as to the existence of a contract or the application of a contract in the dispute in issue, a plaintiff may proceed upon a theory of quasi contract as well as breach of contract, and will not be required to elect his or her remedies." (*Kramer v Greene*, 142 AD3d 438 , 441-442 , 36 N.Y.S.3d 448 [1st Dept 2016][internal citations and quotation marks omitted].) STI's motion to dismiss is denied.

Next, Macy's and STI move to dismiss CET's claims for quantum meruit. The elements of the quasi contractual claim of quantum meruit are "(1) the performance of services in good faith, (2) the acceptance of the services by the person to whom they are rendered, (3) an expectation of compensation therefor, and (4) the reasonable value of the services." (*Soumayah v Minnelli* 41 AD3d 390 , 391 , 839 N.Y.S.2d 79 [1st Dept 2007].) CET has demonstrated all of these elements as to STI, and therefore CET's quantum meruit claim is preserved.

Even if there were no issues of fact as to the contract that governed CET's work on the Project, the quantum meruit claim would be preserved against STI because STI, by its own admission, stated that CET performed work "outside the original scope of CET's subcontract." (NYSCEF 139, STI Gambardella Aff. 12/21/18, at ¶ 34.) A reward in quantum meruit is appropriate for services rendered outside of a contract. (*Leroy Callender, P.C. v Fieldman*, 252 AD2d 468 , 468 , 676 N.Y.S.2d 152 [1st Dept 1998]; *see also Armand Cerrone, Inc. v Sicoli & Massaro*, 214 AD2d 968 , 969 , 626 N.Y.S.2d 639 [4th Dept 1995] [subcontractor entitled to compensation on quantum meruit for "extra work"]; *La Rose v Backer*, 11 AD2d 314 , 319 , 203 N.Y.S.2d 740 [3d Dept 1960]["as to any items not covered by the contracts, which should prove to be extras explicitly ordered outside of the scope of the contract, a recovery might be had on the basis of quantum meruit."].) Accordingly, STI's motion for summary judgment dismissing CET's quantum meruit claim is denied.

Issues of fact also exist as to CET's quantum meruit claim against Macy's. It is true that where a property owner, who contracts with a general contractor, does not expressly consent to pay for a subcontractor's performance, quasi contract claims of the subcontractor against the property owner are precluded. (*DL Marble & Granite Inc. v Madison Park Owner, LLC*, 105 AD3d 479 , 479 , 963 N.Y.S.2d 94 [1st Dept 2013].) But here, CET submitted admissible evidence showing that Macy's may have expressly consented to pay for CET's performance. Indeed, an owner may expressly consent to pay for a subcontractor's performance by words or actions. (*Davis v CEC, Inc.*, 135 AD3d 1049 , 1051 , 22 N.Y.S.3d 687 [3d Dept 2016].) Macy's stated through Carlson, "[i]f there is costs associated with making this happen, let us know. We will not let you get hurt here and do not want that to be the concern in taking aggressive course of action [sic]." (NYSCEF 218, CET Email 2/12/19.) The implication is that Macy's assured CET that Macy's would pay for any costs that CET might incur as a means of incentivizing CET's performance in time for the holiday

shopping season. There are cases "[w]here it was held that when the owner knowingly receives and accepts the benefits of extra work orally directed by himself and his agents, the owner is equitably bound to pay the reasonable **[*5]** value thereof, notwithstanding the provisions of his contract that any extra work must be supported by a written authorization signed by the owner, such conduct working a waiver of that requirement." (*La Rose v Backer*, 11 AD2d 314 , 319 , 203 N.Y.S.2d 740 [3d Dept 1960].) Accordingly, this question of fact as to whether Macy's expressly consented to pay for CET's performance precludes summary judgment. (*See e.g. Shapira v United Med. Serv.*, 15 NY2d 200 , 210 , 205 N.E.2d 293 , 257 N.Y.S.2d 150 [1965]["existence of an implied contract is a question of fact"].) Macy's motion for summary judgment dismissing CET's quantum meruit claim is denied.

Issues of fact also exist concerning CET's breach of contract claim insofar as STI seeks to dismiss the portion of the claim for delay damages. As previously noted, issues of fact exist as to the existence of a contract for the work performed by CET and the application of that contract in this action. These issues of fact also concern what the parties agreed to, if anything, on the matter of delay damages. For instance, the supporting documents submitted by CET are silent as to delay damages. (*see* NYSCEF 200, Agreement.) But the subcontract submitted by STI, which STI did not sign, provides that

> "In the event Subcontractor is delayed in the performance of the Work, Subcontractor shall be entitled only to extension of time ... The contractor, in this case construction manager is responsible to coordinate with other trades and make sure work is completed in accordance with the April 2, 2014 construction schedule. In the Event CET is delayed in the performance of its work and the Construction Manager does not grant additional time, any additional overtime other than what was included in the base bid and or labor required will be additional in the form of a Contract Change Notice/Order."

(NYSCEF 140, Subcontract, at § 1.5.) Accordingly, any determination at this time on the matter of delay damages is premature, and inappropriate on this motion for summary judgment.

Nevertheless, issues of fact exist concerning CET's breach of contract claim insofar as STI seeks to dismiss the portion of the claim for "delay damages" and "additional compensation." (NYSCEF 150, STI Gramarossa Affirmation, at ¶¶ 20, 23.) STI argues that CET waived its right to delay damages and additional compensation because it signed written change orders indicating that the compensation was "for all direct and indirect costs associated with each agreed upon change." (*Id.* at ¶ 23; *see e.g.*, NYSCEF 158, Change Order, at 1.) However, "[t]he intent to waive a right must be unmistakably manifested, and is not to be inferred from a doubtful or equivocal act." (*West End Interiors v Aim Constr. & Contr. Corp.*, 286 AD2d 250 , 253 , 729 N.Y.S.2d 112 [1st Dept 2001].) Here, the change orders do not even state the words waiver, or reference "delay damages" and "additional compensation." Therefore, CET's intent to waive its right to seek these forms of remuneration is not "unmistakably manifested." The court declines to assume, as STI argues, that delay damages and additional compensation are somehow embraced within the ambit of the undefined phrase "direct and indirect costs", in the signed change orders, because **[*6]** that would be, by definition, inferring waiver from doubtful or equivocal acts. In any event, where there is ambiguity in the terminology used, and determination of intent of the parties depends on choosing among reasonable inferences to be drawn from extrinsic evidence, such determination is to be made by a jury. (*Navillus Tile v Turner Constr. Co.*, 2 AD3d 209 , 211 , 770 N.Y.S.2d 3 [1st Dept 2003] citing *Hartford Acc. & Indem. Co. v Wesolowski*, 33 NY2d 169 , 172 , 305 N.E.2d 907 , 350 N.Y.S.2d 895 [1973].)

STI also argues that CET waived its right to delay damages because it signed the two requests for payment - Requisitions 1 and 2 - which contain more explicit language waiving delays and additional compensation. (NYSCEF 138 at 14-16; *see* NYSCEF 152, Requisition 1; NYSCEF 153, Requisition 2.) "[W]here a waiver form purports to acknowledge that no further payments are owed, but the parties' conduct indicates otherwise, the instrument will not be construed as a release." (*West End Interiors v Aim Constr. & Contr. Corp.*, 286 AD2d 250 , 252 , 729 N.Y.S.2d 112 [1st Dept 2001].) Here, there are issues of fact as to whether the parties' conduct indicates that they did not construe these payment and certificates as general releases. For instance, CET provided an affidavit where McQuillan states, "[t]he forms for the

requisitions were provided to me by STI, and I was told at the time by STI that CET would have to sign all documents to be paid." (NYSCEF 198, CET COO McQuillan Aff. 2/12/19, at ¶ 100.) McQuillan adds, "I did not intend that CET was waiving any claims ... I was simply signing paperwork that STI required in order for CET to get paid." (*Id.* at ¶ 101.) Subcontractors in the construction context are sometimes placed in this tenuous position of knowing "that in the absence of [signing a] waiver, the payment will not be made" even when there are "outstanding claims for completed work not covered by the payment." (*United States ex rel. F&G Mech. Corp. v Manshul Constr. Corp.*, 94 Civ 2436[CLP], *1998 U.S. Dist LEXIS 17890* , *1998 WL 849327* [E.D.N.Y.].) Nevertheless, the parties' course of conduct may indicate their true intent concerning the waiver (*Id.*; *see also Orange Steel Erectors v Newburgh Steel Prods.*, 225 AD2d 1010 , 640 N.Y.S.2d 283 [1996]), and here, McQuillan states, "When I signed Requisition No. 2, I had already made an arrangement with STI and Macy's concerning CET's extra work claim." (NYSCEF 198, CET COO McQuillan Aff. 2/12/19, at ¶ 102.) This position is supported by other documents in the record because Requisition 2, or the second application and certificate for payment covering the period from August 1, 2014 to August 31, 2014, was "collected 9/12/15", months after Macy's August 27, 2014 email admitting that "everyone is at fault" and assuring CET, "[w]e will not let you get hurt here." (NYSCEF 153, Requisition 2; NYSCEF 218, CET Email 2/12/19.) Despite Requisition 2, purportedly covering work done in August 2014, CET also submitted an email that it sent on October 13, 2014 to Carlson and Ken Capra of Macy's, stating "I'm not sure what to request, Last time it was just done? I put in a Pencil Copy For August, they approved the pencil copy ... I don't even know how we figure the delta of what I can get paid. Balance of August, $184,917.87 plus 50% of September $180,647.10 = $365,564.97." (NYSCEF 224, CET Email 2/12/19.) Carlson **[*7]** responded, "You need to submit a formal request to [STI] ... We then need to review and confirm with our accounting team." (*Id.*) Should a subcontractor be required to sign waivers whenever it receives partial payment, as demonstrated by the general contractor's payments made after waivers were given for work performed before the waivers, it is apparent that "the parties treated the waivers as mere receipts of the amounts stated in the waivers, not as complete waivers of all claims to that point." (*Penava Mech. Corp. v Afgo Mech. Servs., Inc.*, 71 AD3d 493 , 495 , 896 N.Y.S.2d 349 [1st Dept 2010].) Accordingly, summary judgment dismissing the portion of the claim for delay damages and additional compensation is denied.

The court has carefully considered the remaining arguments of the parties, and to the extent that they are properly before the court, they do not yield an alternative result on this motion.

Motion Sequence Number 002

In motion sequence number 002, CET moves pursuant to CPLR 3126 (1) for spoliation sanctions against Macy's in the form of a negative inference, attorney's fees, and costs. CET argues that Macy's wrongfully destroyed all internal emails from 2014 that would have supported CET's theory that STI's poor management caused numerous issues that affected CET's work on the Project. CET contends that Macy's should have reasonably anticipated litigation with CET in the Fall of 2014 based on its requests to CET to complete additional work, and the need to engage another subcontractor. In support, CET relies largely on an email it sent to Ken Capra of Macy's on September 12, 2014. The email provides,

> "This is going way too fast [sic]. I have agreed to certain things but again, It's not an open check book ... The way this is being handled is a disaster in the making ... There is no way this is fair and I cannot except [sic] an open ticket, especially when I have been complaining from the beginning we were working out of sequence. There is a lot of this I didn't have in my Proposal . . . I am not absorbing the lost productivity from the shotgun approach.

(NYSCEF 106, CET Email 12/21/18.) Macy's opposes.

A party that seeks sanctions for spoliation of evidence must show [1] that the party having control over the evidence possessed an obligation to preserve it at the time of its destruction, [2] that the evidence was destroyed with a 'culpable state of mind,' and [3] 'that the destroyed evidence was relevant to the party's claim or defense such that the trier of fact could find that the evidence would support the claim or defense.'" (*Pegasus Aviation I, Inc. v Varig Logistica S.A.*, 26 NY3d 543 , 547 , 26 N.Y.S.3d 218 , 46 N.E.3d 601 [2015][citations omitted]). As to the first prong, an obligation to preserve relevant evidence

arises when a party reasonably anticipates litigation. (*VOOM HD Holdings LLC v EchoStar Satellite LLC*, 93 AD3d 33 , 43 , 939 N.Y.S.2d 321 [1st Dept 2012]). Generally, "[a] reasonable anticipation of litigation arises when an organization is on notice of a credible probability that it will become involved in litigation, seriously contemplates initiating litigation, or when it takes specific actions to commence litigation." (*Id* .)

Here, CET has failed to establish the first prong because it has not **[*8]** demonstrated that Macy's had an obligation to preserve the 2014 emails in the Fall of 2014. In the commercial context, notice of a credible probability of litigation has been found where a party repeatedly threatens to terminate an agreement, transmits numerous breach letters, and formally terminates an agreement. (*see VOOM*, 93 AD3d at 43-44 .) The delays on the Project, engagement of another subcontractor, and email that CET sent to Ken Capra of Macy's are insufficient to establish that Macy's was on notice of a credible probability that it would become involved in litigation. Clearly CET was frustrated and concerned with certain developments on the Project, but without more, this court cannot uphold the email as the type of communication that establishes a credible probability of litigation. It is a far cry from the type of notice articulated in *VOOM HD Holdings LLC v EchoStar Satellite LLC* (93 AD3d 33 , 43, 939 N.Y.S.2d 321 [1st Dept 2012]). Additionally, holding that Macy's was on notice because of this email would eviscerate the standard such that courts would be hard pressed to find a communication, in the construction context, that would not be a harbinger of litigation. Because CET has failed to establish the first prong, the court declines to consider the other two prongs.2 The motion for sanctions is denied.

Accordingly, it is

ORDERED that motion sequence number 003 is denied; and it is further

ORDERED that motion sequence number 002 is denied; and it is further

ORDERED that the parties are directed to appear for a pre-trial conference on January 23, 2020 at 12:30 PM.

January 6, 2020

DATE

/s/ Andrea Masley

ANDREA MASLEY, J.S.C.

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fn 1

CET withdrew its second cause of action under the Prompt Payment Act and its sixth cause of action for account stated. (NYSCEF 197 at 12.) These causes of action are dismissed.

fn 2

Although not dispositive for the discussion of the first prong, the court notes that CET submits an affirmation from its counsel who states that CET located 230 emails from 2014 in Macy's production. (NYSCEF 94, CET Cramer Affirmation, at ¶ 14.)

General Information

Judge(s)	Andrea Masley
Related Docket(s)	651444/2015 (N.Y. Sup.);
Topic(s)	Contracts; Civil Procedure; Damages & Remedies
Industries	Construction & Engineering
Court	New York Supreme Court
Parties	CORPORATE ELECTRICAL TECHNOLOGIES, INC., Plaintiff, - v - STRUCTURE TONE, INC., MACY'S, INC., MACY'S EAST, INC., TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, PYRAMID FLOOR COVERING INC., COOPERFRIEDMAN ELECTRIC SUPPLY CO., INC., Defendants. INDEX NO. 651444/2015