

## SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK  
 CIVIL TERM - IAS PART 34 - QUEENS COUNTY  
 25-10 COURT SQUARE, LONG ISLAND CITY, N.Y. 11101

P R E S E N T : HON. ROBERT J. MCDONALD  
Justice

- - - - - x

NICHOLAS CONSTANTINE, Index No.: 708502/2016

Plaintiff, Motion Date: 11/7/16

- against - Motion No.: 33

FOUR STAR AIR CONDITIONING CO., LLC Motion Seq.: 2  
 AND CHRISTINA IRAKLEOUS,

Defendants.

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The following electronically filed documents read on this motion by defendants for an order pursuant to CPLR 3211(a)(5) and (a)(7), dismissing this action, and granting defendants costs and disbursements with respect to this motion:

	<u>Papers</u>
	<u>Numbered</u>
Notice of Motion-Affidavits-Exhibits-Memo. of Law.....	EF 17 - 24
Affirmation in Opposition-Exhibits.....	EF 25 - 31
Affirmation in Reply.....	EF 32 - 33

Plaintiff commenced this action by filing a summons and complaint on July 20, 2016. The complaint alleges that defendants entered into an agreement with plaintiff for the sale of plaintiff's interest in defendant Four Star Air Conditioning Co., LLC for an unspecified payment to be made in full no later than February 5, 2013. The verified complaint further alleges that defendants failed to make the payment and owe the sum of \$40,551. Plaintiff also seeks interest legal fees, and court costs for a total sum of \$72,651.

Defendants move to dismiss the complaint on the grounds that the complaint fails to state a cause of action as it lacks sufficient detail. Additionally, defendants submit the affidavit of Tasos Miltiadou, the owner of defendant Four Star Air Conditioning Co., LLC, who affirms that he bought plaintiff's shares and paid him accordingly. Mr. Miltiadou also annexes a

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 COUNTY CLERK  
 QUEENS COUNTY

record of payments made to plaintiff and a record of payments for defendant Four Star Air Conditioning Co., LLC's trade debts.

In opposition, plaintiff contends that the documentary proof submitted with defendants' motion is unrelated to the contract sued upon herein. Plaintiff does not refute the payments, but claims that such payments were for an unrelated debt. Plaintiff also annexes an e-mail exchange and a balance dated February 15, 2011. Plaintiff fails to provide the contract upon which the complaint rests.

It is well settled that in considering a motion to dismiss for failure to state a cause of action pursuant to CPLR 3211[a][7]), the pleadings must be liberally construed. The sole criterion is whether, from the complaint's four corners, factual allegations are discerned which taken together manifest any cause of action cognizable at law (Leon v Martinez, 84 NY2d 83 [1994]; Guggenheimer v Ginzburg, 43 NY2d 268 [1977]; Rochdale Vil. v Zimmerman, 2 AD3d 827 [2d Dept. 2003]). The facts pleaded are to be presumed to be true and are to be accorded every favorable inference, although bare legal conclusions as well as factual claims flatly contradicted by the record are not entitled to any such consideration (see Morone v Morone, 50 NY2d 481 [1980]; Gertler v Goodgold, 107 AD2d 481 [1st Dept. 1985], affirmed 66 NY2d 946, [1985]). The Court's role is limited to determining whether the pleading states a cause of action, not whether there is evidentiary support to establish a meritorious cause of action (see EBC I, Inc. v Goldman, Sachs & Co., 5 NY3d 11[2005]; Guggenheimer v Ginzburg, 43 NY2d 268 [1977]; Sokol v Leader, 74 AD3d 1180 [2d Dept. 2010]).

Where a complaint sets forth a cause of action for breach of contract, the provisions of the contract upon which the claim is based must be alleged (see Stabulas v Brooks Piece Dye Works Corp., 111 AD2d 803 [2d Dept. 1985]; Shields v School of Law, Hofstra University, 77 AD2d 867 [2d Dept. 1980]). Here, no copy of the contract is annexed to the complaint, nor is the contract pleaded by alleging any of its terms. Moreover, in opposition, plaintiff merely contends that defendants' proof of payment is unrelated to the contract sued upon herein.

To plead a cause of action for unjust enrichment, the plaintiff must demonstrate that the defendant was enriched, at the plaintiff's expense, and that it is against equity and good conscience to permit the defendant to retain what is sought to be recovered (see Mandarin Trading Ltd. v Wildenstein, 16 NY3d 173 [2011]). Here, plaintiff has failed to demonstrate that defendants were enriched at his own expense.

Accordingly, and for the above stated reasons, it is hereby

ORDERED, that defendants FOUR STAR AIR CONDITIONING CO., LLC AND CHRISTINA IRAKLEOUS' motion to dismiss is granted, the complaint is dismissed, and the Clerk of the Court is authorized to enter judgment accordingly.

Dated: November 28, 2016  
Long Island City, N.Y.



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ROBERT J. MCDONALD  
J.S.C.

**FILED**  
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