The Commercial Division

of The State of New York

Law Report - May 2001

COMMERCIAL DIVISION

LAW REPORT

A report on leading decisions recently issued by the Justices of the Commercial Division, Supreme Court of the State of New York

HON. JACQUELINE W. SILBERMANNJUSTICES OF THE COMMERCIAL DIVISION:
ADMINISTRATIVE JUDGE JUSTICE LEONARD AUSTIN (Nass.)
JUSTICE HERMAN CAHN (N.Y.) SUPREME COURT, CIVIL BRANCH
JUSTICE HELEN E. FREEDMAN (N.Y.)
JUSTICE IRA GAMMERMAN (N.Y.) NEW YORK COUNTY
JUSTICE RICHARD B. LOWE III (N.Y.)
JUSTICE KARLA MOSKOWITZ (N.Y.)
JUSTICE CHARLES E. RAMOS (N.Y.)
JUSTICE THOMAS A. STANDER (Mon.)

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The Report and the complete text of all decisions discussed in it are available on the Unified Court System's Internet home page at http://www.courts.state.ny.us and on the home page of the New York State Bar Association's Commercial and Federal Litigation Section at www.nysba.org/sections/comfed. Members of the Commercial and Federal Litigation Section may sign up at the Section's home page to receive copies of the Report by e-mail automatically. The Report is issued by the Commercial Division, not the State Reporter. The decisions as they appear on the home pages have not been edited and may differ from the final text published in the official reports.

At the end of March 2001, the Administrative Judge of New York County, Hon. Stephen G. Crane, and New York County Commercial Division Justice Barry A. Cozier were appointed to the Appellate Division, Second Department. Though their names no longer are listed on the masthead, decisions from them appear in the Report through this issue. The Commercial Division congratulates them and wishes them well in their important new assignments.

Arbitration; waiver as to counterclaims. Action between law firm and former partner, who withdrew to join another firm. The parties disputed rights to documents. The court ruled that, pursuant to the partnership agreement, defendant's counterclaim had to be arbitrated. Though these claims arose out of the partnership agreement at issue on the main claims, plaintiff had not waived its right to seek arbitration of the counterclaims since they were separate. Plaintiff had moved to compel arbitration of the counterclaims rather than participated in litigation of them. Plaintiff

consented to arbitrate its complaint as well. Arbitration ordered. Squadron Ellenoff Plesent & Sheinfeld v. Chin, Index No. 603587/2000, 4/23/01 (Freedman, J.).

Contracts; attorney approval. Real estate contract required approval by the attorneys of the parties. The purchasers' attorney sent a timely letter. Plaintiff argued that the letter was not a written objection because of the language used ("I must advise as follows"). The court ruled, however, that since the letter stated that the purchasers rejected charges and fees, it constituted a disapproval letter. Plaintiff had had a chance to cure, as provided in the contract. It failed to do so. A letter later sent by plaintiff was untimely and ineffective. Defendants were therefore free to cancel the contract as they did. No bad faith had been shown. Summary judgment for defendants. Faber Construction Co. v. Cukalevska, Index No. 13300/1999, April 2001 (Stander, J.).

Contracts; commitment to negotiate a closing on a loan; statute of frauds. Misrepresentation; reliance; disclaimers; sophisticated borrower. Action seeking damages flowing from defendants' denial of a loan application after allegedly having agreed to provide it. Contracts creating a mortgage, as here, must be in writing (GOL 5-703 (1)). Plaintiff argued that defendants should be estopped from asserting the statute of frauds and relied upon the loan application and alleged oral assurance as support for an oral, but enforceable agreement to negotiate a closing. The court did not hold that a binding preliminary commitment would be a valid concept. Assuming that it is, the court stated the present case did not involve such a commitment. There was no statement indicating that the parties had intended to bind themselves to a course of negotiations leading to execution of final loan documents. Rather, the application made clear that the defendants were not obliged to make the loan. Thus, the application and alleged oral representations did not create any binding commitment to negotiate in good faith with plaintiff toward closing the loan. Absent a writing, the statute of frauds applied and plaintiff had failed to allege facts that would establish an estoppel. The court held that plaintiff could not establish reasonable reliance to support misrepresentation claims since plaintiff could not have relied upon oral assurances that a loan would be forthcoming given plaintiff's sophistication, knowledge that a loan committee would have to decide the matter and disclaimer language in the agreement. Case dismissed. River Glen Associates v. Merrill Lynch Credit Corp., Index No. 605631/1998, 4/16/01 (Cahn, J.).

Contracts; duty of good faith and fair dealing; duty not to divert business. Action involving commercial lease. Motions for summary judgment. Plaintiff alleged that defendants, which leased two parking lots from plaintiff, had diverted business away from plaintiff's premises to nearby lots run by defendants, including by means of lower prices, and opened for business later than previously. This was allegedly done to avoid paying plaintiff any rent in excess of a $500,000 minimum. The court ruled that in percentage leases, fair dealing requires that the tenant not unconscionably divert business from the leased premises to others to avoid paying rent. Plaintiff had submitted evidence that defendants had increased business at the lots owned by them at the expense of plaintiff's premises. Defendants submitted proof that revenues at plaintiff's premises had increased greatly under defendants and that plaintiff knew defendants owned other lots. The court held that summary judgment should be denied to both sides. Times Square Garage, Ltd. v. Central Parking System, Index No. 604110/1999, 4/9/01 (Freedman, J.)

Contracts; interpretation; extrinsic evidence; payment deadline. Contract to sell property contained clause requiring plaintiffs to pay purchase price within 10 days, which did not occur. The money was to be paid so the seller could obtain a new mortgage and pay certain contingencies. The court held that the agreement was clear and unambiguous and that no extrinsic evidence of interest could be considered. The court rejected the argument that it was unclear when the ten-day period commenced; the general meaning is a set number of days from the date an agreement is entered into. No other date was specifically provided. The failure to pay terminated the agreement. Summary judgment for defendant. Holmes v. Marszalek, Index No. 11957/1998, 4/5/01 (Stander, J.)

Contracts; interpretation; meaning of "account receivable"; parol evidence. Defendant purchased assets of plaintiffs. In the sale transaction, plaintiffs were to retain ownership of certain accounts receivable. A check sent by a bankruptcy receiver to plaintiffs reached defendant, which deposited it and refused to pay the funds over to plaintiffs. The court stated that "account receivable" is an unambiguous term. As of the time the asset sale occurred, the debt here had been taken as a loss years before. When it was written off, it ceased to be an account receivable. It could not have been pledged as security. Thus, under the asset sale agreement, the debt was not an account receivable retained by plaintiffs in the sale. The parol evidence rule, the court stated, barred extrinsic evidence of intent, since there was

no ambiguity and there was a merger clause. Breach of contract, conversion and unjust enrichment claims failed. Summary judgment for defendant. Windham Futures Corp. v. Fimat USA, Index No. 602469/1999, 3/23/01 (Crane, J.).

Contracts; interpretation; merger clause; extrinsic proof. Assignment. Bonafide purchaser. Action by sellers of commercial real property for breach of contract resulting from resale of part of the property by the assignee. On summary judgment, the court held that all of plaintiff's claims were untenable. The contract applied to a resale of "the premises" but what was actually sold was a small subpart thereof. The court found that the contract defined "the premises" as the entire parcel and all buildings sited thereon and distinguished treatment of "parts" or "a portion" thereof. Thus, the only fair reading was that the obligation to make a payment upon a resale arose only if all, or substantially all, of the property was resold. The contract contained a merger clause and was unambiguous on its face; thus, extrinsic proof about intent could not be considered. A fraud claim failed on the same reasoning. Summary judgment had to be granted to the assignee because the contracting party's rights had been assigned to defendant, but defendant had not assumed its obligations. The purchaser of the small piece of land, not having been alleged to have engaged in any wrongdoing, was a bona fide purchaser. The purchase could not be disturbed absent actual or constructive knowledge of the other defendant's alleged fraud. De Lorenzo v. 36 & 37 Realty, Index No. 603812/1999, 4/3/01 (Freedman, J.)

Conversion of mutual life insurance company to domestic stock corporation (Ins. Law 7312); adequacy of compensation; suit to challenge Superintendent's approval; estoppel. Action alleging improper conversion of a mutual life insurance company to a domestic stock corporation under Ins. Law § 7312. The Superintendent of the Department of Insurance moved to dismiss on the grounds that, as to him, an Article 78 proceeding should have been brought within four months. Section 7312(t) refers to an "action", thus not clearly expanding a policyholder's time to bring suit against the Superintendent to challenge a decision approving demutualization. The court also relied upon legislative history indicating that an Article 78 proceeding had to be brought within four months. Thus, the court ruled, the action was untimely as to the Superintendent. The court rejected an argument that the Superintendent should be estopped from asserting the defense because at the public hearing he had referred to a one-year limitations period. Estoppel is generally unavailable against a government entity to ratify an administrative error. In any event, the court ruled, plaintiffs had not alleged that the Superintendent's determination approving the demutualization plan had been arbitrary, capricious, etc. The court stated that the claims as to the other defendants would not be time-barred insofar as they sought more than indirectly to challenge the Superintendent's decision. However, the court found that defendants' motion to dismiss should be granted based on documentary evidence and for failure to state a cause of action. The court found that the statute did not specify what assets had to be placed in a Closed Block as long as they are reasonably expected to achieve to the Block's objective, which the Superintendent found. Also, the company had agreed to indemnify the Block. Further, the court found, the fact that not all expenses would be paid from the Block did not violate 7312(d) (4) in a Method 4 demutualization. The court further ruled that the statute does not mandate that the policyholders be told the specific value of their consideration. Plaintiffs complained that the plan had improperly and unfairly tied compensation to an IPO price rather than a later market price. But, the court noted, the Superintendent had conditioned approval on adjustments in compensation under various circumstances. The court found that a contract claim failed to state a cause of action in that it had not alleged that policies or contracts contained provisions relating to demutualization nor in what respects provisions had been breached. Plaintiffs also alleged breach of fiduciary duty based on Section 7312. The court held, however, that plaintiffs had not alleged facts to show that demutualization was not in the best interests of the insurer and its policyholders; that the IPO price had been improperly influenced by Goldman Sachs; or that the price had been depressed. Dismissal granted. Chatlos v. MONY Life Ins. Co., Index No. 106569/2000, 4/20/01 (Gammerman, J.)

Declaratory judgment; application of tax statute; interest on overpayments. Action seeking declaratory judgment regarding interest due on tax overpayments. Plaintiff had sent a letter to the Department inquiring whether it was entitled to interest and whether interest would be computed from the date of the overpayments. An attached memorandum argued for interest on that basis pursuant to Tax Law 1088 (a) (2). The Department responded that interest would be paid from the date the claim for a refund was made per Section 1088 (a) (3), which the letter was deemed to be. Defendants argued that plaintiff had failed to exhaust administrative remedies. However, the court held, that is not required where a party seeks an interpretation of a statute and no factual questions are presented. The court also rejected defendants' argument that an Article 78 proceeding should have been brought because a declaratory judgment is an appropriate remedy when no question of fact is presented and the meaning of a statute is in question.

The court in determining the timeliness of the action considered whether an Article 78 statute of limitations should apply, but concluded otherwise. Plaintiff's claim for money damages was not incidental to the primary relief sought and an Article 78 proceeding could not have been brought because plaintiff could have taken an administrative appeal. The action was timely under other statutes that might apply. The court ruled that plaintiff's letter was not an informal claim for a refund because the Department had already determined to refund the overpayments. The proper statute on the basis of which to calculate interest was Section 1088 (a) (2). ABC Radio Network v. State of New York Department of Taxation and Finance, Index No. 108413/2000, 3/21/01 (Cozier, J.).

Defamation; pleading sufficiency. Defamation claim against former employer. The exact defamatory words alleged must be set forth in the complaint, which must also identify the person to whom the comments were made and the time, place and manner of the false statement. The court ruled that the compliant here was deficient. A newspaper article contained a paraphrase of words uttered by an unidentified corporate official or perhaps the words had been gleaned from a pleading. The source was not identified in the article, nor in the complaint, which also failed to assert to whom the statement was made or the time, place or manner of its making. The date of the article did not suffice as to time. Claim dismissed. Economou v. Coutts Bank, Index No. 100476/2000, 4/26/01 (Cahn, J.).

Discovery; striking of answer for noncompliance. Action for damages and accounting with regard to certain investments made by plaintiffs. Defendants were directed in three orders to provide discovery and an accounting. The orders were granted on consent. The defendants failed to comply. On a motion pursuant to CPLR 3126, defendants asserted that various documentation was unavailable due to age, and that plaintiffs could obtain information by EBT, but the court rejected the excuses in view of the fact that the orders had been on consent. The court ruled that the noncompliance was deliberate, contumacious and wilful, in view of the many opportunities to comply given to defendants. Answer stricken. Olmstead Products Corp. Profit Sharing Trust v. Contemporary Mortgage Bankers, Inc., Index No. 5932/2000, 3/27/01 (Austin, J.)

Finder's fee; statute of frauds; series of writings. Procedure; motion to dismiss; discovery (CPLR 3211 (d)). Quantum meruit. Action for breach of business finder's fee agreement. Oral agreements for percentage-based finder's fee are barred (GOL 5-701 (a) (10)). A series of writings, the court stated, may overcome the bar. At least one must bear the signature of the party to be charged, while an unsigned one must on its face refer to the signed one. Neither of the documents relied on by plaintiff had been signed by defendant. The fact that plaintiff had sent an invoice referring to "my agreement" was found to be meaningless since the "agreement" had not been signed. The court denied plaintiff's request for further discovery since plaintiff merely speculated that there might be some memoranda in defendant's files evidencing authorization to pay the finder's fee. Since the alleged agreement was barred by GOL 5-701 (a) (10), plaintiff could not rely on the same promise to pursue a claim sounding in quantum meruit. Case dismissed. Fitz-gerald v. Donaldson, Lufkin & Jenrette, Inc., Index No. 602984/2000, 4/5/01 (Cahn, J.).

Insurance; additional insureds; certificates of insurance; role of agent. An insurer issued a policy to a certain entity which did not name plaintiffs as additional insureds. Another insurer did not even issue a policy to the entity and thus plaintiffs were not additional insureds. Plaintiffs relied upon certificates of insurance issued by defendants naming plaintiffs as additional insureds. The court ruled that this did not raise an issue of fact sufficient to defeat summary judgment. An exception exists where the agent/broker was acting as agent of the insurer. Plaintiffs failed to offer proof to invoke this exception. A broker is deemed to be the agent of the insured, not the insurer. The evidence supported this. Complaint dismissed. Columbus Avenue Housing Systems v. United States Liability Ins. Co., Index No. 122540/1999, 3/15/01 (Cahn, J.).

Insurance; agent; special relationship with insured. Third-party defendant argued that it had been acting as an agent for the insurer, or disclosed principal, and that it thus could not be liable for actions as agent. Third-party plaintiff argued that a special relationship existed so that there could be liability for negligent misrepresentation. Usually, the insurance agent - insured relationship is not one in which continuing obligations to advise might exist. Under exceptional circumstances, agents might assume or acquire duties in addition to those at common law. Here, third-party plaintiff had allegedly asked third-party defendant whether there was coverage under the policy and relied upon the latter's expertise. The facts, the court found, raised a question of fact as to whether a special relationship

existed. Summary judgment denied. Atlantic Mutual Ins. Co. v. Terk Technologies, Index No. 117232/1997, 3/21/01 (Cozier, J.).

I**nsurance; errors and omissions; exclusion for mismanagement.** Excess insurers moved to dismiss or for summary judgment dismissing plaintiffs' action to recover on professional errors and omissions policies on the grounds of insolvency and other exclusions. The court ruled that the insurers' motions had to be granted because an exclusion in very broad language provided that there would be no liability for any claim by an insurer alleging mismanagement of its affairs or based on underwriting results. The suit for which plaintiffs sought coverage had been brought by a state Rehabilitator on behalf of an insolvent insurer against plaintiffs, which had performed underwriting and management services for the defunct insurer, on theories of breach of fiduciary duty, breach of contract, negligence, tortious interference and unjust enrichment. The court ruled that all of the underlying claims had been for mismanagement of the insurer's affairs. The court further determined that it was irrelevant that the case had been brought by the Rehabilitator rather than the insurer. Alexander & Alexander Services v. These Certain Underwriters, Index No. 600427/1999, 4/19/01 (Cahn, J.).

Labor Law; bonus as wages. Conversion; unauthorized administrative expenses. The court ruled that a valid cause of action for wages under the Labor Law had been stated. The court found that the bonus in question was to be paid based on a set formula, which took into account the worker's productivity based on the person's proportional contribution to the overall billing by defendant. The standard was objective, not subject to defendant's discretion. Further, the court ruled that a fund of earnings that remained after certain specified administrative expenses had been paid was sufficiently identified and segregated that it might be the subject of an action in conversion. Further administrative payments had not been specified in the contract. Thus, a defendant's refusal to return said payments to himself would amount to conversion. Motion to dismiss denied. Fiorenti v. Central Emergency Physicians, Index No. 17813/2000, 3/30/01 (Austin, J.).

Liability on notes; mode of signing (UCC 3-403 (2)). Attachment; set off by non-party bank (Debtor & Creditor Law 151). Various motions arising out of the execution of two notes as part of complex financial transactions. The court found that it had jurisdiction over the persons of defendants because of failure to raise an objection /waiver (CPLR 3211 (e)). One defendant argued that he was not liable on the notes because the parties had known that he was not signing personally. Defendant relied on the agreement-of-the-parties exception set forth in UCC 3-403 (2) (b). Although the court noted that there were certain questions present, the threshold requirement was a showing that corporate status or representative capacity appears on the note. Neither was present here. Thus, parol evidence could not be considered. CPLR 3213 motions should be granted. Plaintiff would be entitled to an attachment in one action but for a claim by a non-party bank seeking to vacate a TRO that it had priority to the funds by virtue of Debtor & Creditor Law 151. The bank's set off rested on non-contingent liability (payment had been guaranteed, the obligation was payable on demand and demand had been made). Though the bank was a non-party, it made no sense, the court stated, to require it to commence a special proceeding to vindicate a right of set off if an attachment were to issue, its right of set off being superior to plaintiff's attachment. Plaintiff had questioned whether the bank was holding other assets of the defendant. This question, the court ruled, would best be answered by enforcement of judgments per 3213, with the existing TRO against dissipation or misuse of assets protecting plaintiff until enforcement. Sarfaty vs. Franco, Index 600028/01, 3/23/01 (Crane, J.).

Licensing arrangement; affirmation of license. Accounting; fiduciary relationship. The court held that plaintiff was entitled to recover a substantial sum as royalties under a license agreement. Defendant contended that plaintiff had breached a provision of the agreement that barred it from selling products competitive on the basis of price to those licensed to defendant. The court stated that even if defendant could prove the assertion, it had never surrendered the license, continued to exploit it and even sought to extend it beyond its termination date. Therefore, defendant was obliged to pay and perform its obligations under the agreement whether or not plaintiff had breached as claimed. Defendant had lost its right to terminate because of the alleged breach. A proposed amended answer seeking to assert a new counterclaim was denied for the same reason. The court also ruled that defendant's claim for an accounting of orders allegedly obtained in breach of the agreement had to be dismissed since defendant had failed to establish a fiduciary relationship. Summary judgment for plaintiff. Tricots St. Raphael v. Capitol Mercury Apparel, Ltd., Index No. 600927/2000, 3/20/01 (Freedman, J.).

Preliminary injunction to bar sale of real property; irreparable harm; shareholders agreement; undertaking. On a motion for a preliminary injunction, the court ruled that plaintiff had shown irreparable harm since real property was at issue. As to likelihood of success, the court found that the shareholders agreement was clear and unambiguous in that it permitted any shareholder, such as plaintiff, to block the sale of corporate assets even if the shareholder had had little or no involvement in the business. The equities favored plaintiff since the agreement would otherwise be emasculated. However, since plaintiff's actions might cause the sale of property to be lost, an undertaking of $1.5 million was required. Shapiro v. Shapiro, Index No. 18638/1998, 3/29/01 (Austin, J.).

Procedure; borrowing statute; statute of limitations; fraudulent inducement; accrual. Fraudulent inducement claim arising out of financing of sports stadium. Under the borrowing statute, Florida's statute of limitations controlled. Under Florida law, the claim accrued when plaintiff knew, or should have known, of the alleged fraud and plaintiff's injury. The court ruled that the claim accrued in 1993, as urged by defendants, when plaintiff discovered its alleged injury due to loss of its right to build the arena, and as of when plaintiff knew of defendants' alleged involvement. Case dismissed. Coliseum Holdings v. Thelen Reid & Priest, Index No. 605511 /1999, 4/4/01 (Cahn, J.)

Procedure; estoppel to raise issue due to prior stipulation. Filed rate doctrine. Limitation of liability. Defendant was to provide T-1 services to plaintiff. Defendant installed the lines six months after the contract was signed, in an untimely manner, according to plaintiff, although the contract was silent on the delivery date. Defendant asserted a defense of filed rate doctrine. Defendant had stipulated to an amendment to name the defendant as then shown in the caption. Since that was not the correct name, plaintiff argued that defendant should be estopped from asserting that the named defendant was not the true defendant and that the filed rate doctrine thus did not apply. The court rejected this argument, finding that defendant had acted in the interests of judicial economy and professional courtesy and that plaintiff had not been prejudiced. The tariff, the court found, might provide a defense. The defense could not be dismissed. The court found that another clause relieved defendant of any liability for incidental or consequential damages arising from any services provided or the failure thereof. The agreement defined services as phone facilities and services, thus reaching failure to install T-1 facilities. Summary judgment for defendant. Pro Net, LLC v. ACC Telecom Corp. Index No. 10714/1999, 4/19/01 (Stander, J.).

Procedure; motion to dismiss on documentary evidence. Real party in interest; beneficiary of Keogh account. Action to recover monies allegedly loaned to defendants from a Keogh account of which plaintiff was beneficiary. The court rejected defendants' argument that the alleged loan had to be in writing since this was a demand loan, which could be performed within one year. Defendants submitted documentary evidence that purportedly warranted dismissal but it concerned a different account. Since defendants had failed to present proper evidence, the claimed inadequacy of plaintiff's proof was irrelevant. The court rejected defendants' argument that this action should be brought by a fiduciary/custodian since the account was unlike an ERISA account. Plaintiff was the only real party in interest with respect to the account. A transfer to Surrogate's Court was rejected since assets of an estate were not a issue, only the account, of which plaintiff was beneficiary. Dismissal denied. Mischel v. Tesler, Index No. 600062/1998, 3/22/01 (Cahn, J.).

Procedure; summary judgment; burden of opposing motion. Equipment financing agreement provided that the borrower warranted that each lease financed would, on the date of making, be genuine and valid in all respects. A lease to a school district had been signed by a person not authorized by the Board of Education or the District. The defendant failed to submit proof that the Board had authorized the lease. No discovery was needed, as requested by defendant. Defendant had failed to raise an issue of fact. Summary judgment for plaintiff. Manufacturers & Traders Trust Co. v. Empire National Leasing, Inc. Index No. 3142/2000, April 2001 (Stander, J.).

Stolen check; inability to recall events as defense. Plaintiff alleged that defendant and unknown others had engaged in a scheme to defraud plaintiff by obtaining the proceeds of an initially lost or stolen check and laundering of the proceeds. Defendant claimed to be ill and unable to recall events. The court ruled that this assertion was sufficient to raise a question of fact regarding defendant's competency so as to defeat plaintiff's motion for summary judgment. The court also noted that plaintiff relied on an affidavit from the teller who had accepted the check which did not indicate any basis for the assertion that defendant was the person who deposited the check. Plaintiff also failed to demonstrate conclusively that defendant had ever received the sum claimed. The fact that defendant conceded that endorsement on the check was similar to his was equivocal. Venue transferred to county of the transaction. Chase

Manhattan Bank v. Pinkus, Index No. 604000/1999, 3/19/01 (Cozier, J.).

Tortious interference; claim against principal of a company for inducing breach of the company's contract with a third party. Procedure; statute of limitations. The court stated that a tortious interference claim does not lie against a principal of a company for inducing it to breach its contract with a third party, if the principal acts in good faith and does not commit independent torts. The plaintiff must specify how the principal personally profited; conclusory allegations are insufficient. Plaintiff here alleged that defendant had personally profited because she owns and controls the entities involved. But, the court found, plaintiff offered no grounds for disregarding corporate forms. A person with a financial interest in a company is privileged to interfere with a contract that entity had with a third person if the purpose is to advance personal interest and no improper means are employed. Further, the claims were ruled time-barred. The commission became due when the premises closed, more than three years before the complaint was served. Plaintiff argued that the claims accrued when an invoice was submitted, but that directly contradicted the verified pleadings and thus was insufficient to avoid dismissal. An unjust enrichment claim failed since plaintiff did not work for defendant and no showing had been made to justify disregarding corporate form. Claim under Labor Law 198 also deficient. Case dismissed. Kralic v. Helmsley, Index No. 125789/1999, 3/27/01 (Freedman, J.).

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