

First Natl. Credit, Inc. v Christie's Cleaning, Inc.

2023 NY Slip Op 34749(U)

June 13, 2023

Supreme Court, Erie County

Docket Number: Index No. 815744/2022

Judge: Emilio Colaiacovo

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

STATE OF NEW YORK
SUPREME COURT: COMMERCIAL DIVISION
COUNTY OF ERIE

FIRST NATIONAL CREDIT, INC.,

Plaintiff

Decision & Order
Index No.: 815744/2022

vs.

CHRISTIE'S CLEANING, INC. and
CHRISTIE A. JOHNSON,

Defendants.

GIOIA & NEUROHR, PLLC
Alex M. Neurohr, Esq.
Attorneys for Plaintiff

ROBERTS LAW, PLLC
D. Charles Roberts, Jr., Esq.
Attorneys for Defendants

Colaiacovo, J.

Defendants Christie's Cleaning and Christie Johnson seek to dismiss Plaintiff's, First National Credit's (Joseph LaJudice being its sole shareholder), complaint in its entirety pursuant to CPLR 3211(a)(7) for failure to state a claim. Plaintiffs oppose the motion and cross-move pursuant to CPLR 3025(b) for leave to amend their complaint.

This action stems from a complaint asserting "[i]n or around January 2021, the parties agreed that LaJudice would continue operating as a consultant (as he had been for some time), but would be compensated for his services as if he was an owner of Christie's Cleaning." Complaint at par. 25. Plaintiffs maintain that "[p]er this arrangement, LaJudice would receive the same compensation as Johnson, plus

fifty percent (50%) of the net profits of Christie's Cleaning and, in the event of a sale of all or any part of Christie's Cleaning, fifty percent (50%) of the net sale proceeds, without holding any equity interest in the Company (the "50/50 Split")." Id. at par. 26. This arrangement was never reduced to a written agreement. Furthermore, the parties never specified how long LaJustice would continue to serve as a consultant for the business. See Id. at par. 44.

It is alleged that "on or about November 22, 2022, Johnson told LaJustice that she was cancelling that part of the 50/50 Split providing LaJustice with fifty percent (50%) of the net proceeds from any sale of the Company. Complaint at par. 60. It is also alleged that as of the filing of the Complaint, Ms. Johnson was actively trying to sell the company.

Regarding its first cause of action for declaratory judgment, Plaintiff asserts that it "cannot prove that the Defendants breached the 50/50 Split unless it is first declared, as a matter of law, that the 50/50 Split was a binding and enforceable contract." Neurohr Affirmation at par. 22.

In its second cause of action for breach of contract against Defendants, Plaintiff alleges that "[o]n or about November 22, 2022, Johnson told LaJustice that she was cancelling that part of the 50/50 Split providing LaJustice with fifty percent (50%) of the net proceeds from the sale of all or any part of the Company." Complaint at par. 88. However, in a strangely circular argument, Plaintiff further

alleges that “Johnson has breached the 50/50 Split by attempting to terminate the 50/50 Split.” Id. at par. 95.

In its third cause of action for fraud against Defendants, Plaintiffs allege that Johnson “induced LaJudice to perform hiring and consulting services for the Company by holding herself out as an honest person and representing to him, by and through First National, that she would never renege on the 50/50 Split.” Id. at par. 103.

In its fourth cause of action for a constructive trust, Plaintiff asserts that because “the Company, Johnson and/or the Company have improperly received and/or retained its compensation and share of the net profits” since LaJudice was last paid, it “is entitled to a lien against all compensation received by Johnson from the Company, all profits netted by the Company, and all proceeds netted from any sale of all or any part of the Company, since the last date Plaintiff was paid by the Company, as security for any and all losses sustained by Plaintiff as a result of Johnson’s fraud and breached obligations under the 50/50 Split, together with the costs and disbursements of this action, including reasonable attorneys’ fees.” Id. at par. 113 & 115.

The Court’s decision is as follows.

LEGAL STANDARD

Generally, on a CPLR §3211 motion to dismiss, "[w]e accept the facts as alleged in the complaint as true, accord plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory." Leon v. Martinez, 84 N.Y.2d 83 (1994). "At the same time, however, allegations consisting of bare legal conclusions . . . are not entitled to any such consideration." Simkin v. Blank, 19 N.Y.3d 46 (2012).

The Court may grant a CPLR 3211(a)(7) motion if the Defendants have identified a cognizable cause of action but failed to assert a material allegation necessary to support the cause of action." Connaughton v. Chipotle Mexican Grill, Inc., 29 N.Y.3d 137 (2017); Guggenheimer v. Ginzburg, 43 N.Y.2d 268 (1977); Christ the Rock World Restoration Church Intl., Inc. v. Evangelical Christian Credit Union, 153 A.D.3d 1226 (2nd Dept. 2017). "Where evidentiary material is submitted and considered on a motion to dismiss a complaint pursuant to CPLR 3211 (a) (7), and the motion is not converted into one for summary judgment, the question becomes whether the plaintiff [or defendant] has a cause of action, not whether the plaintiff [or defendant] has stated one, and unless it has been shown that a material fact as claimed by the plaintiff to be one is not a fact at all and unless it can be said that no significant dispute exists regarding it, dismissal should not eventuate." Rabos v. R&R Bagels & Bakery, Inc., 100 A.D.3d 849 (2d Dept. 2012).

DECISION

First and Second Causes of Action

Declaratory Judgment and Breach of Contract

Given the relief requested in the first cause of action for declaratory judgment, and that the crux of this action is for breach of contract, the Court will address both issues simultaneously.

“The elements of a cause of action for breach of contract include the existence of a contract, plaintiff’s performance or excuse for non-performance, defendants’ breach, and resulting damages to plaintiff (*Citation omitted*).” ADE Systems, Inc. v. Energy Labs, Inc., 183 A.D.3d 791, 792 (2d Dept. 2020).

“Under long-standing rules of contract interpretation, ‘[w]here the terms of a contract are clear and unambiguous, the intent of the parties must be found within the four corners of the contract, giving a practical interpretation to the language employed and reading the contract as a whole’ (*Citation omitted*).” Arista Development, LLC v. Clearmind Holdings, LLC, 207 A.D.3d 1127, 1128 (4th Dept. 2022). Furthermore, “The words and phrases used by the parties must, as in all cases involving contract interpretation, be given their plain meaning (*Citation omitted*). ” Id.

Unlike most of the contract disputes litigated before this Court, this dispute arises out of alleged breach of an oral agreement, not a written one. Yet the basic principles underlying this “contract” dispute are the same. “As with any contract, an oral agreement is not enforceable unless there is ‘a manifestation of mutual

assent sufficiently definite to assure that the parties are truly in agreement with respect to all material terms' (citations omitted)." Kelly v. Bensen, 151 A.D.3d 1312, 1313 (3d Dept. 2017). "In determining whether an agreement has been reached the court looks not to the parties' after-the-fact professed subjective intent, but rather at their objective intent as manifested by their expressed words and conduct at the time of the agreement" (citation omitted)." Winkler v. Kingston Housing Authority, 259 A.D.2d 819, 823 (3d Dept. 1999). Furthermore, the burden rests on the Plaintiff to establish that the agreement was "sufficiently specific to be enforceable." Kelly v. Benson, 151 A.D.3d at 1313. More particularly, "the proponent must establish that a contract was made and that its terms are definite (citation omitted)." Muhlstock v. Cole, 245 A.D.2d 55, 58 (1st Dept. 1997).

The Court agrees with Plaintiff's general contention that "to state a cause of action for breach of contract, a contract must exist. Plaintiff cannot prove that the Defendants breached the 50/50 Split unless it is first declared, as a matter of law, that the 50/50 Split was a binding and enforceable contract." Neurohr Memorandum of Law in Opposition at p. 7. However, there is nothing in the record before the Court, other than Plaintiff's self-serving statements regarding the "agreement" that leads this Court to conclude that there was a mutual assent sufficiently definite to assure the parties that they were in agreement regarding all material terms.

After a review of the recordings included with Plaintiff's submissions, it is apparent that Ms. Johnson was rather confused regarding what was being proposed and, at most, expressed optimism regarding the process working out. Even when

Ms. Johnson answers Mr. LaJudice's question about her understanding of the agreement on May 19, 2021, she never agrees to anything. In fact, during that conversation it is Mr. LaJudice who vacillates on whether he should continue with the working arrangement as it stands, and Ms. Johnson makes it clear that she needs to speak with her husband one more time, never actually assenting to the proposal. There was also no specific discussion regarding the terms of the "arrangement" as detailed in paragraph 26 of the Complaint. As there was no agreement, there can be no breach.

As noted above, in the context of a motion to dismiss, the salient issue is not whether First National has properly pled a cause of action, but instead if it actually has a cause of action. Based on a review of the telephone conversations between the parties, Plaintiff clearly does not.

Based on the foregoing, Defendants' motion to dismiss Plaintiff's first and second causes of action is hereby GRANTED.

Third Cause of Action - Fraud

"A fraudulent inducement cause of action requires proof that the defendant made a misrepresentation that was known to be false and made with the purpose of inducing the plaintiff to enter a contract, justifiable reliance on the false representation and related damages (citations omitted)." Luckow v. RBG Design-Build, Inc., 156 A.D.3d 1289, 1293 (3d Dept. 2017). Furthermore, the alleged misrepresentation must be stated with particularity and "must be misstatements of

material fact or promises made with a present but undisclosed intent not to perform, rather than a mere statement of future intent (citations omitted).” Id. at 1294.

Plaintiff relies on statements attributed to Ms. Johnson in support of this premise. In particular, it is alleged that Johnson told LaJustice that “I am an honest person . . . a handshake is fine with me because I am not that person.” Complaint at par. 99. Plaintiff asserts that “Johnson induced LaJustice to perform hiring and consulting services for the Company by holding herself out as an honest person and representing to him, by and through First National, that she would never renege on the 50/50 Split.” Id. at par. 103.

This Court finds that the statements Plaintiff categorizes “fraud, misrepresentations and deceit” (Id. at par. 108) are matters of credibility, not fact. “While credibility is always an issue, it is not a material fact to be proven; rather, it is a matter collateral to the issues involved in the trial (citation omitted).” People v. Bellamy, 97 A.D.2d 654 (3d Dept. 1983). This Court can think of nothing that goes more to the heart of credibility, as opposed to fact, than someone’s assertion that they are an honest person.

Based on the foregoing, Defendants’ motion to dismiss Plaintiff’s third cause of action is hereby GRANTED.

Fourth Cause of Action - Constructive Trust

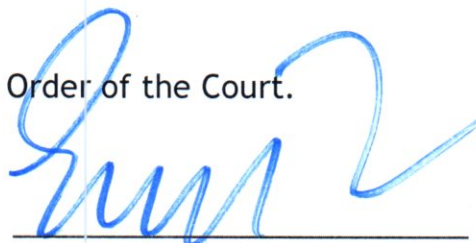
Given the Court’s decision regarding the first, second, and third causes of action, the Court finds that Plaintiff’s fourth cause of action for a constructive trust is rendered moot and, as such, Defendants’ motion to dismiss Plaintiff’s fourth cause of action is hereby GRANTED.

Leave to Amend Complaint

The statute and the case law have established a liberal standard with respect to amending complaints. In addition to the liberal standard, Plaintiff has not articulated any prejudice or surprise it would be confronted with if the Court granted Plaintiffs’ Leave to Amend. Plaintiff has also, as required by statute, attached a proposed amended complaint to its cross-motion. However, given its rulings above, the Court finds that the proposed amended complaint remains “palpably insufficient . . . [and] is patently devoid of merit.” Town of Southampton v. Chiodi, 75 A.D.3d 604, 606 (2d Dept. 2010). The Court agrees with Defendants that the proposed amended complaint adds nothing material or substantial.

Based on the foregoing, Plaintiffs’ Motion to Amend the Complaint is hereby DENIED.

This shall constitute the Decision and Order of the Court.



Hon. Emilio Colaiacovo, J.S.C.

Enter: 13
June 13, 2023
Buffalo, NY