

Icon III, LLC v Joonbug Prods. Inc.

2024 NY Slip Op 33904(U)

August 15, 2024

Supreme Court, New York County

Docket Number: Index No. 650151/2024

Judge: Gerald Lebovits

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. GERALD LEBOVITS PART 07

Justice

-----X

ICON III, LLC,

Plaintiff,

- v -

JOONBUG PRODUCTIONS INC., D/B/A SKYNET MEDIA
LLC, SKYNET MEDIA LLC, and JON GABEL,

Defendants.

-----X

INDEX NO. 650151/2024

MOTION DATE 06/24/2024

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31

were read on this motion to/for DISMISS.

Plaintiff, Icon III, LLC, entered into a contract with defendant Joonbug Productions, LLC, to rent an event space for \$217,750.00. Co-defendant Jon Gabel signed the contract on Joonbug’s behalf. (NYSCEF No. 6 at 1 [contract].) Joonbug further agreed to pay for table-service liquor at cost. (*Id.* at 4.) Plaintiff claims that Joonbug owes \$67,750.00 of the rental fee and the cost of 33 bottles of Grey Goose Vodka and 67 bottles Moet Champagne. (NYSCEF No. 5 at ¶¶ 9-10.) Plaintiff also raises a fraud claim against Gabel and seeks to hold him personally liable.

Gabel moves to dismiss the first amended complaint against him.¹ Plaintiff cross-moves for leave to amend its first amended complaint. Gabel’s motion to dismiss is denied. Plaintiff’s cross-motion is granted.

DISCUSSION

I. CPLR 3025 (b)

Plaintiff argues that its CPLR 3025 cross motion for leave to amend its complaint should be granted, because the proposed second amended complaint includes sufficient allegations of fraud and clarifies the basis for including Gabel as defendant in this case. (*See* NYSCEF No. 21 at ¶ 29.) Gabel argues that the proposed amendments do not cure the defects. (*See* NYSCEF No. 28 at ¶¶ 15-16.)

This court agrees with plaintiff. On a motion for leave to amend, plaintiff “need not establish the merit of its proposed new allegations . . . but [must] simply show that the proffered

¹ Plaintiff amended its original complaint as of right. (*See* CPLR 3025 [a].)

amendment is not palpably insufficient or clearly devoid of merits.” (*MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499, 500 [1st Dept 2010].) In its proposed pleading, plaintiff adds new allegations that Gabel used his control over Joonbug, in addition to shell companies like defendant SkyNet, to perpetrate fraud; admitted committing fraud; and misrepresented that JoonBug was an active corporation. (See NYSCEF No. 24 at 10-14.) Plaintiff’s proposed second amended complaint is not devoid of merit. Defendants do not argue that they would be prejudiced. (See NYSCEF No. 28 at 5-6.)

Plaintiff’s motion for leave to amend its complaint is granted. The second proposed amended complaint is the operative pleading.

II. CPLR 3211 and CPLR 3016 (b)

A. CPLR 3211 (a) (1)

Gabel argues that plaintiff’s claims against him should be dismissed under CPLR 3211 (a) (1). He argues that the contract he signed on Joonbug’s behalf conclusively shields him from personal responsibility.

This court disagrees. The parties’ dispute whether Gabel fraudulently misrepresented the active status of Joonbug to induce plaintiff to sign the contract. The contract, which shows that Gabel signed on Joonbug’s behalf, does not “conclusively establish[] a defense to the asserted claim[] as a matter of law.” (*Leon v Martinez*, 84 NY2d 83, 88 [1994].)

B. CPLR 3016

CPLR 3016 (b) requires that for claims of fraud and misrepresentation, “the circumstances constituting the wrong [must] be stated in detail.” The pleading standard is satisfied when the facts “permit a reasonable inference of alleged conduct.” (*Pludeman v N. Leasing Sys., Inc.*, 10 NY3d 486, 491 [2008].) CPLR 3016 (b) is designed to inform a defendant of the complained-of conduct. Therefore, at the pleading stage, a complaint need only “allege the basic facts to establish the elements of the cause of action.” (*Id.* at 492.)

Gabel first argues that plaintiff’s pleading lacks specificity because it effects improper group pleading. (See NYSCEF No. 19 at 3.) The court disagrees. In the second amended complaint, plaintiff makes allegations against all three separate defendants—Joonbug, SkyNet, and Gabel—thereby giving all defendants notice of the “material elements” of the claims against them. (See *Aetna Cas. & Sur. Co. v Merchants Mut. Ins. Co.*, 84 AD2d 736, 736 [1st Dept 1981], quoting CPLR 3013.)

On the merits, plaintiff contends that it has pleaded a cause of action for fraud against Gabel personally, because it alleges that he misrepresented Joonbug’s status as an active entity when he signed the contract with plaintiff. Gabel contends that even if Joonbug was inactive, SkyNet—the purported party in interest—was in good standing and therefore that there was no fraudulent misrepresentation. (NYSCEF No. 28 at 4.)

The court agrees with plaintiff. Notwithstanding Joonbug or SkyNet’s statuses, plaintiff has adequately *pleaded* that Gabel made fraudulent misrepresentations about Joonbug’s status. Indeed “a person who ‘purport[s] to act on behalf of a corporation which [has] neither a de jure a de facto existence [is] personally responsible for the obligations which he incur[s].’” (*Lodato v Greyhawk N. Am., LLC*, 39 AD3d 496, 497 [2d Dept 2007], quoting *Brandes Meat Corp. v Cromer*, 146 AD2d 666, 666 [2d Dept 1989].)

This branch of Gabel’s motion to dismiss the fraud claim is denied.

C. Duplication

Gabel argues that plaintiff’s fraud claim should be dismissed as duplicating its breach-of-contract claim. (*See* NYSCEF No. 19.) Gabel points out that in its first amended complaint, plaintiff did not allege that Gabel’s misrepresentation *induced* plaintiff to sign the contract. In its second amended complaint, plaintiff alleges that Gabel knowingly misrepresented Joonbug’s status to perpetrate fraud against plaintiff. (*See* NYSCEF No. 24 at ¶¶ 70-74.) Plaintiff argues that its fraud claim—concerning misrepresentations and use of shell corporations—is distinct from its breach-of-contract claim. (*See* NYSCEF No. 31 at ¶ 17.)

A fraud claim is not duplicative of a breach-of-contract claim when it is “a misrepresentation of present facts [which] is collateral to the contract” and not “a misrepresentation of future intent to perform.” (*IS Chrystie Mgt. LLC v ADP, LLC*, 205 AD3d 418, 418 [1st Dept 2022] [internal quotation marks omitted].) Plaintiff’s allegations that Gabel knowingly misrepresented Joonbug’s status as an active company, induced plaintiff to enter the contract, is therefore not duplicative. But the portion of plaintiff’s allegations that Gabel signed the contract knowing he would never perform in full (*see* NYSCEF No. 24 at ¶ 74) is dismissed as duplicative.

D. Piercing the Corporate Veil

Plaintiff further seeks to hold Gabel personally liable through piercing the corporate veil. An injured party may seek damages under the piercing-the-corporate-veil doctrine to “circumvent the limited liability of the owners and to hold them liable for some underlying corporate obligation[s].” (*Courlandt St. Recovery Corp. v Bonderman* 31 NY3d 30, 47 [2018] [internal quotation marks omitted].) To survive dismissal, plaintiff must “allege the existence of a corporate obligation and that defendant exercised complete domination and control over the corporation and abused the privilege of doing business in the corporate form to perpetrate a wrong or injustice.” (*Id.* at 47-48 [internal quotation marks omitted].)

In plaintiff’s second amended complaint, plaintiff alleges that Gabel used one email, Jon@joonbughq.com, to operate Joonbug and SkyNet. It also alleges that Gabel used the same email to sign contracts on behalf of other companies (not parties here), and that all the entities are intertwined and under Gabel’s control. (*See* NYSCEF No. 24 at ¶¶ 12-16.) Plaintiff has provided more than conclusory allegations. It has met the pleading requirement to survive a motion to dismiss on this issue.

E. 22 NYCRR 130-1.1 (c) Sanctions

Gabel seeks costs incurred in moving for sanctions under 22 NYCRR 130-1.1 (c). He argues that the complaint is without merit and was filed to prolong the litigation process and harass Gabel. (See NYSCEF No. 19.) For the reasons above, plaintiff's claims are not devoid of merit. This branch of Gabel's motion is denied.

Accordingly, it is

ORDERED that Gabel's motion to dismiss the complaint against him is denied, and it is further

ORDERED that plaintiff's cross-motion to amend its first amended complaint is granted; and the proposed second amended complaint is deemed the operative pleading; and it is further

ORDERED that plaintiff serve a copy of this order with notice of its entry on all defendants.

8/15/2024
DATE


HON. GERALD LEBOVITS
J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE