Margolis v CAA-GBG USA LLP
2024 NY Slip Op 34040(U)
November 13, 2024
Supreme Court, New York County
Docket Number: Index No. 655348/2020
Judge: Debra A. James
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. DEBRA A. JAMES** **PART 59**

Justice

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JARED MARGOLIS,

Plaintiff,

- v -

CAA-GBG USA LLP,

Defendant.

---X

INDEX NO. 655348/2020

MOTION DATE 11/17/2023

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51

were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER).

ORDER

Upon the foregoing documents, it is hereby

ORDERED that, pursuant to CPLR 3212, the motion of defendant CAA-GBG USA, LLP for summary judgment dismissing the first and second causes of action for breach of contract and breach of the covenant of good faith and fair dealing, respectively, is denied; and it is further

ORDERED that, pursuant to CPLR 3212, the motion of defendant CAA-GBG USA, LLP for summary judgment dismissing the third cause of action for quantum meruit and unjust enrichment is granted, and the third cause of action of the complaint is dismissed; and it is further

ORDERED that, as the note of issue was filed on

May 19, 2023, counsel shall confer with the Clerk of the Trial Assignment Part (TAP) 40 for a mediation and/or trial date.

DECISION

Pursuant to CPLR 3212, defendant CAA-GBG USA, LLP moves for summary judgment against plaintiff Jared Margolis to dismiss the complaint that alleges three causes of action: (1) breach of contract; (2) breach of the covenant of good faith and fair dealing; and (3) quantum meruit/unjust enrichment. For the reasons below, defendant's motion is denied as to the first and second causes of action, but is granted as to the third cause of action.

PROCEDURAL HISTORY

On October 18, 2020, and December 18, 2020, plaintiff commenced this action by filing a summons and complaint, respectively, against defendant (NYSCEF Doc. No. [Doc.] 32 [defendant's exhibit A, summons]; Doc. 33 [defendant's exhibit B, complaint]). The complaint alleges, inter alia, that plaintiff performed his duties under the terms of the contract, which entitle him to his service fees, and that defendant breached the contract by not paying plaintiff such fees (id. at 6-7). The complaint also alleges that defendant breached the covenant of good faith and fair dealing by not compensating plaintiff for his performed work, and that defendant still owes plaintiff the reasonable value of his services via quantum

meruit/unjust enrichment (id. at 7-8). Defendant filed its answer on January 22, 2021 (Doc. 34 [defendant's exhibit C, answer), in which it denied the allegations and asserted seven affirmative defenses to the complaint (id.). Discovery ensued, and a note of issue was filed on May 19, 2023 (Doc. 26). Defendant then moved for summary judgment, which motion plaintiff opposed.

The Underlying Contract

In their papers, each party relies on certain documents and portions of deposition testimony. As of October 1, 2019, plaintiff and defendant executed a contract whereby defendant hired plaintiff, as a consultant (Doc. 37 [defendant's exhibit F, consulting agreement] (the contract)). The contract provided that plaintiff was to: (1) find persons or entities and refer them to defendant as new potential clients; (2) liaise with plaintiff's existing clients to introduce them to new business opportunities with defendant and its affiliates; (3) find persons or entities to enter into license/partnership agreements with defendant; (4) solicit and negotiate proposed business terms on behalf of defendant with licensees/partners for agreements; and (5) liaise with licensees/partners regarding negotiations for definitive license/partnership agreements (id. ¶¶ 1[a]-[e]). Plaintiff would receive a 3% fee on deals he brought to defendant that yielded at least $1 million in

commission revenue for the fiscal year ending on March 31, 2020 (FY2020) (id. ¶ 4[d]). Plaintiff's service fee would be based on, among other things, all commissions or other revenue that defendant received from license/partnership deals that were referred by plaintiff, including proposed projects or deals that were presented or overseen by plaintiff that were "in the pipeline but not yet closed" as of October 1, 2019, that were listed in Schedule A of the contract (id. ¶ 4[a]). Among the proposed projects or deals Schedule A listed a well-known entertainer (Client) (id. Schedule A). The contract provided that if plaintiff disagreed with his service fee calculation, he could dispute the calculation, by way of a Dispute Notice (id. ¶ 4[c]).

Deposition Testimonies

Plaintiff and defendant's CEO, Perry Wolfman, testified at their depositions that plaintiff brought defendant a potential licensing agreement between Client, through her affiliated company BRX DSW, LLC (BRX), and shoe company Designer Shoe Warehouse (DSW) (Doc. 35 [defendant's exhibit D, tr of defendant's CEO Perry Wolfman] at 27, lines 13-18; at 82, lines 8-16; Doc. 36 [defendant's exhibit E, tr of plaintiff] at 57, line 24, through 58, line 5; at 133, lines 15-18). This agreement had the possibility of earning Client $12.5 million over 5 years, of which defendant would receive a 25% commission

of $3.125 million over the 5 years (Doc. 35 at 29, line 22, through 30, line 5; Doc. 42 [defendant's exhibit K, plaintiff's dispute notice] at 2; Doc. 36 at 69, line 3, through 70, line 15; at 98, lines 2-7).

Defendant sent a letter dated October 22, 2019 to BRX that memorialized a prospective agreement (Doc. 38 [defendant's exhibit G, defendant's representation letter] at 1). The letter outlined an agreement between BRX and Client's company as well as DSW to market and distribute footwear, and defendant would provide its brand management services and be compensated by a percentage of the fees received by BRX and Client's company (id.). Appendix A of the representation letter stated that defendant would assist with negotiations with Kohl's Department Stores, Inc. (Kohl's) regarding rights it holds that would conflict with the terms of the BRX/DSW transaction (i.e., a carveout for footwear) (id. at 6). In 2019, Kohl's had exclusive rights to all Client-branded products, including footwear (Doc. 29 [aff of Perry Wolfman] ¶ 14; Doc. 36 at 90, lines 13-20; at 145, lines 9-14).

Client wanted to end the business relationship with defendant and its affiliates (Doc. 35 at 32, lines 5-12; Doc. 36 at 99, line 13, through 100, line 24). In December 2019, GBG USA, an affiliated company of defendant, and MESH, a subsidiary of GBG, entered into an agreement with Kohl's, whereby Kohl's

would pay GBG USA, as the owner of MESH, $9.6 million for ending the licensing agreement (Doc. 30 [defendant's exhibit A, 3rd amendment to trademark license agreement] ¶ 3; Doc. 35 at 59, line 11, through 62, line 2).

Plaintiff requested a breakdown of his deals for FY2020 (Doc. 41 [defendant's exhibit J, email correspondence]). Defendant sent plaintiff the fiscal report showing that plaintiff generated $271,283 in commission revenue and estimated the BRX/DSW deal would have generated $625,000, but payment was not received, for a total of $896,283 (id.). Under the terms of the contract, plaintiff sent his dispute notice asserting that he generated commissions more than $1 million (Doc. 42; Doc. 37 ¶ 4[c]). Defendant sent its response to plaintiff contesting the dispute notice, asserting that plaintiff did not generate $1 million in commission revenue (Doc. 43 [defendant's exhibit L, response to dispute notice]).

Defendant's Motion For Summary Judgment

Defendant moves for summary judgment contending that there was no breach of contract and that the claims of breach of good faith and fair dealing and quantum meruit/unjust enrichment are duplicative of the breach of contract claim (Doc. 28 [defendant's mem of law in support of summary judgment]). Defendant asserts that there was no breach of contract because plaintiff failed to generate $1 million in commission revenue

(id. at 15). Defendant further argues that, even assuming that the BRX/DSW representation deal factored into plaintiff's calculations, plaintiff would have only generated approximately $896,283 (id. at 16). Additionally, defendant argues that plaintiff did not originate or manage the deals pertaining to Client and thus the only new deal pertaining to plaintiff is the BRX/DSW transaction (id. at 16-17). Further, defendant contends that plaintiff was not involved in the Kohl's settlement, that the settlement agreement payment to GBG USA of $9.6 million is not related to the BRX/DSW deal, and that the settlement payment was received by GBG USA and not defendant (id. at 17-19). Defendant also argues that the contract's liability limitation provision allowed it to change the terms of its business agreement with Client and to decline to proceed with the BRX/DSW deal without liability towards plaintiff (id. at 19-21). Defendant also asserts that plaintiff attempted to create inconsistent obligations and independent contractual rights outside of those in the contract (id. at 22). Lastly, defendant argues that the claims of breach of contract and quantum meruit/unjust enrichment are duplicative because they rely on the same alleged facts and seeks the same damages for the breach of contract claim (id. at 22-23).

In opposition, plaintiff argues, inter alia, that there are material factual issues in dispute that preclude summary

dismissal of his claims (Doc. 50 [plaintiff's opp mem of law]). Plaintiff asserts that defendant's commission revenue includes "all commissions or other revenue received under Definitive Agreements" and "commission or other revenue from any project(s) or business deal(s)" listed in Schedule A (Doc. 50 at 5; Doc. 37 ¶ 4[a]). Plaintiff also asserts that he worked on the BRX/DSW transaction and notes that at his deposition, defendant's CEO Wolfman both admitted the plaintiff worked on the BRX deal and equivocated and failed to remember his involvement thereof, or even whether and the dates of the consummation of the BRX/DSW transaction. Accordingly, plaintiff asserts that he is entitled to credit for all deals listed in Schedule A as well as all commission or revenue defendant derived from all deals relating to Client, regardless of the affiliate or entity that received payment (Doc. 50 at 5-7). Plaintiff also argues that the BRX/DSW transaction should be credited towards plaintiff as defendant stood to gain $3.125 million over 5 years in commission (id. at 8, 10). Similarly, plaintiff argues that defendant failed to show that the BRX representation agreement was not executed because correspondence between Perry Wolfman and Robert Smits, defendant's executive vice president, secretary, and general counsel, referenced terminating the BRX representation agreement (id. at 9; Doc. 46 [plaintiff's exhibit 1, email correspondence]). Plaintiff argues that some evidence

of an agreement is that defendant received revenue, which defendant would not have received but for such agreement (Doc. 50 at 10). Plaintiff further asserts he was involved in negotiations with Kohl's (Doc. 48 [plaintiff's exhibit 3, tr of plaintiff] at 90, lines 13-25, at 91, lines 2-9.) Plaintiff argues, that therefore, any monies received by defendant or its affiliates from the settlement agreement when terminating Kohl's license would constitute commission or revenue according to the contract, pointing out that defendant's response to plaintiff's Dispute Notice states that settlement funds were received by MESH (Doc. 50, at 11-13; Doc. 43). Finally, plaintiff contends that his claim for breach of good faith and fair dealing is not duplicative because it is based upon a separate injury that defendant attempted to cover up payments it received to stay below the $1 million commission threshold needed for plaintiff to receive payment for services rendered (id. at 13).

Defendant's reply reasserts many of its arguments and adds a few new ones. First, defendant argues that plaintiff failed to address the contract's liability limitation clause (Doc. 51 [defendant's reply brief] at 7-8). Second, defendant asserts that plaintiff's documents undermine his claims because the draft Termination Agreement is unauthenticated and inadmissible and the email chain demonstrates that BRX/DSW was ending, which could explain why the BRX representation letter was not

countersigned (id. at 8-9). Third, defendant contends that plaintiff misrepresents the facts at issue and relies on unsubstantiated allegations or assertions (id. at 9-12). Finally, defendant argues that plaintiff abandoned his quantum meruit/unjust enrichment claim because he failed to address defendant's arguments (id. at 14).

LEGAL STANDARD

"The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case" (Winegrad v New York Univ. Med. Ctr., 64 NY2d 851, 853 [1985]). Without a *prima facie* showing, the motion must be denied regardless of the sufficiency of the opposing papers (Alvarez v Prospect Hosp., 68 NY2d 320, 324 [1986]). The moving party has a heavy burden as the facts must be viewed in a light most favorable to the non-moving party (William J. Jenack Estate Appraisers and Auctioneers, Inc. v Rabizadeh, 22 NY3d 470, 475 [2013]). If the moving party meets their burden, the opposing party must produce evidentiary proof in admissible form that is sufficient to raise a triable issue of fact (Zuckerman v City of New York, 49 NY2d 557, 562 [1980]). Mere conclusions, expressions of hope, or unsubstantiated allegations or assertions are insufficient to defeat summary

judgment (Gilbert Frank Corp. v Federal Ins. Co., 70 NY2d 966, 967 [1988] [citation omitted]).

DISCUSSION

Breach of Contract Claim

Contracts are interpreted according to the parties' intent (Donohue v Cuomo, 38 NY3d 1, 12 [2022]). Contracts are reviewed in their entirety and interpreted "to give effect to its general purpose" (Matter of Westmoreland Coal Co. v Entech, Inc., 100 NY2d 352, 358 [2003] [internal quotation marks and citation omitted]). The rule of contract interpretation is applied more forcefully for commercial contracts where the terms are negotiated at arm's length by sophisticated persons represented by counsel (Modern Art Servs., LLC v Financial Guar. Ins. Co., 161 AD3d 618, 620 [1st Dept 2018] [citation omitted]). The best evidence of the parties' intent is the text of the contract itself (Greenfield v Philles Records, Inc., 98 NY2d 562, 569 [2002] [citation omitted]). "Thus, a written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms" (id.). Courts should not add, remove, or alter the meaning of words or phrases that would create a new contract under the cloak of interpreting the parties' agreement (Nomura Home Equity Loan, Inc., Series 2006-FM2 v Nomura Credit & Capital, Inc., 30 NY3d 572, 581 [2017]).

"Extrinsic evidence of the parties' intent may be considered only if the agreement is ambiguous, which is an issue of law for the courts to decide" (Greenfield, 98 NY2d at 569). "A contract is ambiguous if on its face it is reasonably susceptible [to] more than one interpretation" (Schulte Roth & Zabel LLP v Metropolitan 919 3rd Ave. LLC, 202 AD3d 641, 641 [1st Dept 2022] [internal quotation marks and citations omitted]).

Finally, "issues of credibility presented on both sides should be left to the trier of facts" (Feivel Funding Assoc. v Bender, 156 AD3d 416, 418 [1st Dept 2017]). Where "credibility determinations are required, summary judgment must be denied" (People ex rel. Cuomo v Greenberg, 95 AD3d 474, 483 [1st Dept 2012], affd 21 NY3d 439 [2013]). Thus, conflicting testimony may entail credibility determinations that is properly resolved at trial and not on a summary judgment motion (DeSario v SL Green Mgt. LLC, 105 AD3d 421, 421-22 [1st Dept 2013]).

Defendant has not met its prima facie burden, as defendant failed to demonstrate that there are no disputed issues of fact with respect to breach of contract, and therefore it is not entitled judgment dismissing such claim. To the extent that defendant met its initial burden of refuting such claim, plaintiff sufficiently demonstrated the existence of disputed issues of fact.

The contract's terms state that plaintiff would receive a 3% service fee for definitive license/partnership agreements and from deals not yet closed in Schedule A, which plaintiff solicited and/or negotiated. Schedule A simply lists Client with no other context, specificity, or limitations, so there are factual issues as to the existence of definitive agreements with Client that would fall thereunder. Further, plaintiff testified that he presented or was involved in the negotiations of the agreement with Kohl's agreement, while defendant asserted that plaintiff was not involved, raisingcredibility, which must be determined at trial.

Breach of Good Faith and Fair Dealing Claim

"A cause of action for breach of a covenant of good faith and fair dealing requires a contractual obligation between the parties" (Duration Mun. Fund, L.P. v J.P. Morgan Sec., Inc., 77 AD3d 474, 474-75 [1st Dept 2010]). This covenant is breached when a party acts in a manner that deprives the other party of the contract's benefits (Parlux Fragrances, LLC v S. Carter Enters., LLC, 204 AD3d 72, 91 [1st Dept 2022] [citation omitted]). The covenant of "good faith and fair dealing cannot create independent contractual rights or nullify express contractual terms" (Bersin Props., LLC v Nomura Credit & Capital, Inc., 213 AD3d 431, 432 [1st Dept 2023] [citation omitted]). A claim of good faith and fair dealing will be

upheld when it "is not duplicative of a breach of contract claim where the complaint alleges conduct that is separate from the conduct constituting the alleged breach of contract and such conduct deprived the other party of the benefit of its bargain" (AEA Middle Mkt. Debt Funding LLC v Marblegate Asset Mgt., LLC, 214 AD3d 111, 133 [1st Dept 2023]).

Defendant did not meet its prima facie burden to dismiss plaintiff's good faith and fair dealing claim. This court disagrees with defendant's assertion that plaintiff attempts to create inconsistent obligations or independent contractual rights. Defendant's reply to plaintiff's Dispute Notice letter admits defendant received commissions from the Kohl's settlement. There are issues of fact whether plaintiff furnished services with respect to defendant's October 22, 2019 representation letter with Client. If so, plaintiff would be entitled to service fees, as such agreement included "assist Client with Negotiations with Kohl's. . .that holds rights which conflict with the contemplated BRX/DSW Transaction." Thus, defendant has not shown that plaintiff's claim is duplicative, and based on the same conduct as the breach of contract. Rather, plaintiff asserts that defendant caused the monies from the Kohl's settlement to be received by defendant's affiliate or subsidiary, so that such funds would not count towards the commissions threshold. In contrast, the conduct upon which

plaintiff founds its breach of contract claim is defendant's alleged failure to compensate plaintiff for his services despite achieving the $1 million commission revenue threshold.

Quantum Meruit/Unjust Enrichment Claim

A cause of action for quantum meruit requires "(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" (Caribbean Direct, Inc. v Dubset, LLC, 100 AD3d 510, 511 [1st Dept 2012]). A cause of action for unjust enrichment requires the plaintiff to show "that (1) the other party was enriched, (2) at [the plaintiff's] expense, and (3) that it is against equity and good conscience to permit [the other party] to retain what is sought to be recovered" (E.J. Brooks Co. v Cambridge Sec. Seals, 31 NY3d 441, 455 [2018] [citation omitted]). However, the existence of a valid and enforceable written contract concerning a particular subject matter prevents a party from recovering under quantum meruit or unjust enrichment (Inspirit Dev. & Constr., LLC v GMF 157 LP, 203 AD3d 430, 431 [1st Dept 2022]). Further, where a plaintiff fails to put forth arguments in opposition to a defendant's motion, the related claims are deemed abandoned (Burgos v Premiere Props., Inc., 145 AD3d 506, 508 [1st Dept 2016]).

Here, defendant has met its prima facie burden, as defendant demonstrated the existence of a valid and enforceable contract. Moreover, the dispute centers around plaintiff's calculation of his service fee that is governed under the expressed provisions of the contract. Finally, in his opposition, plaintiff did not raise any issue of fact with respect to the quantum meruit/unjust enrichment cause of action, as a matter of law.

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11/13/2024
DATE

HON. DEBRA A. JAMES, J.S.C.

CHECK ONE:	[ ] CASE DISPOSED		[X] NON-FINAL DISPOSITION			
	[ ] GRANTED	[ ] DENIED	[X] GRANTED IN PART		[ ] OTHER	
APPLICATION:	[ ] SETTLE ORDER		[ ] SUBMIT ORDER			
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