

Best Work Holdings (N.Y.) LLC v Ma

2024 NY Slip Op 31449(U)

April 11, 2024

Supreme Court, New York County

Docket Number: Index No. 654826/2022

Judge: Arlene P. Bluth

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

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

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BEST WORK HOLDINGS (NEW YORK) LLC,

Plaintiff,

- v -

JIA IVY MA, YUN TOMMY LI

Defendants.

-----X

INDEX NO. 654826/2022

MOTION DATE 04/10/2024

MOTION SEQ. NO. 005

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 005) 83, 84, 86, 89, 90 were read on this motion to/for DISMISSAL.

Plaintiff’s motion to dismiss defendant Li’s counterclaims is granted.

Background

Plaintiff owns 72 Wall St, a large building, and alleges that defendant Jia Ivy Ma (hereinafter “Ma”) worked for both plaintiff’s parent and plaintiff. It claims that during a renovation project she engaged in fraud by creating fake contracting companies and invoices. Specifically, plaintiff contends that Ma created companies with names similar to contractors who actually did work and that defendant Li (who held himself out as a contractor) submitted fake invoices as part of this scheme.

Plaintiff previously moved to dismiss defendant Li’s counterclaims. Li did not oppose that motion and so the Court granted it without opposition (NYSCEF Doc. No. 75). For some reason, Li uploaded an amended answer with counterclaims the day before the return date of that prior motion but did not actually submit any opposition to the motion and let that motion be marked submitted.

Plaintiff observes that in Li's amended pleading, he removed his breach of contract counterclaim from his initial answer and instead alleged a counterclaim for promissory estoppel and repeated his counterclaim for unjust enrichment. Plaintiff argues that the Court should dismiss plaintiff's promissory estoppel claim on the ground that defendant Li failed to allege a cognizable promise and that he only included a vague assertion that Li would get paid by plaintiff.

Plaintiff argues that the unjust enrichment claim should be dismissed because it was already dismissed in the Court's prior order. Plaintiff also points out that to the extent that Li attempts to seek recovery on behalf of his company (EQ DCM USA, Inc.), that requested relief is improper as Li never moved to add this non-party to the case and cannot slip it in via an answer.

In opposition, Li claims he stated a cognizable claim for promissory estoppel. He insists that he need not include any additional details about the promises in his pleading. Li argues that he reasonably relied on this promise because his company had worked on the project for plaintiff from 2019 to 2021 and so there was no reason to think that he would not get paid. Li insists that the Statute of Frauds does not apply to this counterclaim because the work could be done within one year.

With respect to the unjust enrichment claim, Li argues that he amended his answer the day before the return date of plaintiff's motion to dismiss and so the Court's decision dismissing his counterclaims has no effect on his unjust enrichment claim. He also argues that the unjust enrichment claim alleged here is different from the one he asserted in his initial pleading.

Li also demands that his company be added as a "necessary party."

In reply, plaintiff insists that Li did not provide any details in his amended pleading about the time, place and method of the alleged promise in support of his promissory estoppel claim. It also argues that the unjust enrichment claim is barred by the Statute of Frauds as this counterclaim is merely an attempt to do an “end run” around the Statute of Frauds.

Discussion

“On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction. We accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory. Under CPLR 3211(a)(1), a dismissal is warranted only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law” (*Leon v Martinez*, 84 NY2d 83, 87-88, 614 NYS2d 972 [1994]).

Promissory Estoppel

“The elements of a claim for promissory estoppel are: (1) a promise that is sufficiently clear and unambiguous; (2) reasonable reliance on the promise by a party; and (3) injury caused by the reliance” (*MatlinPatterson ATA Holdings LLC v Fed. Express Corp.*, 87 AD3d 836, 841-42, 929 NYS2d 571 [1st Dept 2011]).

The Court dismisses this counterclaim as plaintiff failed to adequately allege all of the elements cited above. In the amended pleading, Li contends that “Best Work’s promise to reimburse Mr. Li and his company EQ DCM the preparation work for setting up the temporary office, warehouses and elevators is clear and unambiguous” (NYSCEF Doc. No. 74, ¶ 22). Obviously, simply reiterating that the promise needed to be clear and unambiguous is not sufficient. And, here, Li did not sufficiently allege a promise that was clear and unambiguous; simply put, the allegations raise more questions than answers about the nature of this promise,

including the timing of the promise and what exactly Li was to receive in exchange for doing this preparation work or how long he had to complete this work.

Even if the Court found that Li had properly alleged a clear and unambiguous promise, the Court would still dismiss this counterclaim because Li failed to plead facts to show that he reasonably relied on the promise. Li alleges that plaintiff did not want to have a “written general contract” (*id.* ¶ 11) but does not allege why he agreed to such a condition or suggest why it was reasonable to do so. Moreover, Li does not sufficiently allege why it was reasonable to purportedly spend \$200,000 based solely on some unspecified promise that he would be “reimbursed.” In fact, the person at plaintiff who Li says made the promise was a new corporate officer (*id.* ¶ 14).

That is, this is not a situation in which Li alleges he had a long-standing practice and relationship with plaintiff where they simply never reduced his jobs to written agreements. The allegations, when taken as true, suggest that he did an enormous amount of work without receiving any assurances from a new employee for plaintiff about getting reimbursed or paid. Nothing in the amended pleading mentions anything about the timing of payments, how he would get paid, or how to request payments. Simply put, more is required to allege reasonable reliance.

The Court observes that plaintiff correctly noted that the amended pleading from Li does not allege he was paid for previous work by plaintiff. That it might be asserted in the memo of law in opposition does not save this cause of action.

The Court makes no findings about the Statute of Frauds issue with respect to this counterclaim as defendant Li alleged that he did the work in about four months (*id.* ¶ 19). The Court cannot assume, as plaintiff claims, that there is no way in which the work could have been

completed within a year given this allegation (which the Court must take as true on this motion). But, as noted above, the Court finds that Li failed to allege reasonable reliance and the promise was clear and unambiguous.

Unjust Enrichment

The Court already dismissed this counterclaim when Li failed to oppose plaintiff's previous motion to dismiss his counterclaims. Li did not oppose that motion or seek to vacate (or modify) this Court's decision. Instead, he let the motion get submitted without opposition.

Even on the merits, the Court would still dismiss this counterclaim. "Unjust enrichment claims are rooted in the equitable principle that a person shall not be allowed to enrich [themselves] unjustly at the expense of another, and the essential inquiry in any action for unjust enrichment is whether it is against equity and good conscience to permit the defendant to retain what is sought to be recovered" (*Columbia Mem. Hosp. v Hinds*, 38 NY3d 253, 275, 172 NYS3d 649 [2022] [internal quotations and citations omitted]).

Here, the allegations for this counterclaim simply do not address a central question—why did Li agree to do work for plaintiff? The Court agrees with plaintiff that Li simply did not make allegations sufficient to allege that "equity and good conscience" supports Li's cause of action. The amended pleading offers only conclusory assertions that Li did work (without a written contract for some reason) apparently at the request of a brand new corporate officer. Notably, Li contends that plaintiff "was able to induce" him to do the preparation work (NYSCEF Doc. No. 74, ¶ 31) but no details are offered to explain this conclusory and vague assertion as to how plaintiff induced him. The Court also observes that Li did not submit an affidavit in opposition to elaborate on the circumstances surrounding how plaintiff was enriched at his expense.

EQ DCM USA, Inc.

As plaintiff pointed out, the counterclaims appear to seek affirmative damages on behalf of both Li and his company (EQ DCM USA, Inc.). But Li never moved to add this entity as a party to this case, such as with a third-party complaint. Of course, it is axiomatic that “A counterclaim is a cause of action asserted by a *defendant* against a plaintiff” (Patrick M. Connors, *Prac Commentaries*, C3019:1 [emphasis added]). Here, EQ DCM is not a defendant and therefore plaintiff cannot “shoehorn” this party in by including it in an amended answer as an entity seeking affirmative relief. Li’s assertion that this entity is a necessary party misses the point; EQ DCM is not a necessary party for plaintiff’s claims. If Li wanted EQ DCM to pursue claims against plaintiff, then Li should have moved for the proper relief.

Accordingly, it is hereby

ORDERED that plaintiff’s motion to dismiss Li’s counterclaims is granted.

See NYSCEF Doc. No. 79 concerning the next conference.

4/11/2024

DATE



ARLENE P. BLUTH, 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