

Schorr v Steiner

2003 NY Slip Op 30164(U)

January 3, 2003

Supreme Court, New York County

Docket Number: 0605647/2000

Judge: Joan A. Madden

Republished from New York State Unified Court System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

[* 1]

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

HON. JOAN A. MADDEN

PRESENT: _____ J.S.C. Justice

PART 11

Schorz, Peter

INDEX NO. 605647100

- v -

MOTION DATE 10-31-02

Steiner, Stuart

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

SCANNED
 PAPERS SUBMITTED
 JAN 10 2003

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the annexed memorandum Decision and Order.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

Dated: January 3, 2003

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 11

-----X
PETER SCHORR, ALLEGRA SCHORR FITCH and
ANDREW SCHORR, as assignee of certain
interests of the shareholders of
HARMOUR MANAGEMENT CORP. and STAR METH
CORP.,

Index No. 605647/00

Plaintiffs,

-against-

STUART STEINER,

Defendant.

-----X
Joan A. Madden, J.

Plaintiffs move pursuant to CPLR 3025(b) to amend their complaint to add causes of action for breach of fiduciary duty and unjust enrichment. Defendant opposes the motion, which is granted for the reasons below.

Background

Plaintiffs, and their assignors directly, and through various management companies, owned and operated methadone maintenance treatment programs in Manhattan ("the Clinics"). Defendant was an employee of plaintiffs or the Assignors and their management companies from in or about 1973 through in or about August 1997. During his employment, defendant allegedly oversaw the operation of the Clinics, and from 1987 until 1993, he allegedly served as Administrative Director of the Clinics and received an annual salary of \$2 million a year.

In this action, which was commenced on December 27, 2000,

plaintiffs allege that defendant while an employee of plaintiffs' assignors and their management companies in the 1980s and early 1990s engaged in a scheme to defraud plaintiffs through the use of fictitious employees. Specifically, it is alleged that defendant falsely represented to plaintiffs that various individuals were employed by the Clinic and then would receive the fictitious employees paychecks and cash them for himself.

Plaintiffs now seek to amend the complaint to add claims alleging (i) that defendant breached his fiduciary duty to its employer by, inter alia, engaging in the fictitious employee scheme, paying one or more employees not to disclose the scheme, and retaining his salary and compensation during the periods that he was engaged in the scheme, and (ii) that as a result of the fictitious employee scheme defendant was unjustly enriched at the expense of plaintiffs.

In opposition, defendant asserts that the relationship between defendant and plaintiffs did not give rise to a fiduciary relationship. In particular, defendant asserts that in the absence of specific language in an employment contract, an employer and employee relationship does not give rise to any fiduciary duty owed to the employer. Defendant further argues that, where, as here, there is no fiduciary or confidential relationship between the parties, an unjust enrichment claim cannot be stated.

Defendant also asserts that plaintiffs' assignors knew about plaintiffs' fictitious employee scheme in 1993, but nonetheless continued his employment. Thus, defendant asserts that the purpose of the amendment is to circumvent the six year statute of limitations for fraud,¹

Discussion

In the absence of either prejudice or unfair surprise resulting from delay, Murray v City of New York, 43 NY2d 400, 404-405, reargument dismissed, 45 NY2d 966 (1977), requests for leave to amend should be freely granted (CPLR 3026(b)), unless the proposed amendment is plainly lacking in merit. Thomas Crimmins Contracting Co., Inc. v City of New York, 74 NY2d 166 (1989).

Under this standard, plaintiffs' motion should be granted. Defendant does not claim prejudice or unfair surprise resulting from the delay. Moreover, it cannot be said that the proposed amendment is plainly lacking in merit. Contrary to defendant's argument, under certain circumstances, a relationship between an employer and employee can give rise to a fiduciary duty, despite the absence of specific agreement to that effect. See Wiener v Lazard Freres & Co., 241 AD2d 114, 122 (1st Dept 1998) ("it is not necessary that a fiduciary duty relationship be formalized in

¹Plaintiff does not assert that the proposed claims are time-barred, and as defendant did not resign until 1997, the timeliness of his claims cannot be resolved on this motion.

writing, and any inquiry into whether such an obligation exists is necessarily fact-specific to a particular case"); Mandelblatt v Devon Stores, Inc., 132 AD2d 162, 167-168 (1st Dept 1987) ("A fiduciary duty exists between two persons when one of them is under a duty to act for or to give advice for the benefit of another upon matters within the scope of the relation(citation omitted)); see also, American Map Corp v Stone, 264 AD2d 492 (2d Dept 1999) (plaintiff-employer entitled to summary judgment as to liability on breach of fiduciary duty claim based on the defendant-employee's admissions that he used fictitious buyers so as to retain for his own account proceeds due to his plaintiff-employer).

Likewise, the unjust enrichment claim is of sufficient merit to permit the amendment. "A cause for unjust enrichment is stated where 'plaintiffs have properly asserted that a benefit was bestowed ... by plaintiffs and that defendants will obtain such benefit without adequately compensating plaintiffs therefor.'" Wiener v Lazard Freres & Co., Inc., 241 AD2d, at 119, quoting, Tarrytown House Condominiums, Inc. v Hainje, 161 AD2d 310, 313 (1st Dept 1990). Thus, allegations that defendant, without compensating plaintiffs, received the proceeds of payroll checks made payable to fictitious employees adequately states a claim for unjust enrichment. In addition, contrary to defendant's argument, a fiduciary relationship between the

parties is not a necessary element to plaintiffs' unjust enrichment claim to the extent that plaintiffs seek compensatory damages rather than to impose a constructive trust. Compare Dalton v Union Bank of Switzerland, 134 AD2d 174, 177 (1st Dept 1987).

Conclusion

In view of the above, it is

ORDERED that the motion for leave to amend **is** granted and the amended complaint in the proposed form annexed to the moving papers shall be deemed served upon service of a copy of this decision and order with notice of entry thereof; and it is further

ORDERED that defendant shall serve an answer to the amended complaint within 20 days of said service.

DATED: January 3, 2003



A handwritten signature in black ink is written over a horizontal line. Below the line, the initials "L.S.C." are printed in a serif font.