

Blake v Hartford

2005 NY Slip Op 30451(U)

December 12, 2005

Supreme Court, New York County

Docket Number: 111602/04

Judge: Karla Moskowitz

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

PRESENT: Hon. KARLA MOSKOWITZ
Justice

PART 03

LINDA DONOGHUE BLAKE and URBAN SOLUTIONS,
INC.,

Plaintiffs,

-against-

GEORGE HUNTINGTON HARTFORD, II a/k/a HUNTINGTON
HARTFORD; JULIET C. HARTFORD; TRUST AGREEMENT
Dated February 14, 1959, created by GEORGE HUNTINGTON
HARTFORD, II with Agnes E. Hardecker And David Sher As Trustees
And The Subsequent Amendments Thereto, THE HUNGTINGON
HARTFORD FAMILY FUND INC.; and ARTHUR LANE in his capacity
as Director of THE HUNTINGTON HARTFORD FAMILY FUND INC.,
and ELLIOTT SPITZER as the New York State Attorney General,

Defendants.

INDEX NO. 111602/2004

MOTION DATE _____

MOTION SEQ. NO. 002

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 _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is

ORDERED that this motion is decided in accordance with the accompanying
Decision and Order.

FILED
DEC 21 2005
NEW YORK
COUNTY CLERK'S OFFICE

Dated: December 12, 2005

KARLA MOSKOWITZ

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

12-21-05
(2)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 3

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KARLA MOSKOWITZ, J.:

Plaintiffs Linda Donoghue Blake ("Blake") and Urban Solutions, Inc. ("Solutions") commenced this action against defendants, George Huntington Hartford et al., alleging breach of contract, tortious interference with contract and fraud. By this motion (sequence number 002), defendants move to dismiss all causes of action pursuant to CPLR 3211 (5) and (7) because: (1) the complaint fails to state a cause of action; (2) the Statute of Frauds and (3) statute of limitations bar these claims. Defendants withdrew that part of their motion based on CPLR 3211(a)(8) and 308 at oral argument on July 14, 2005. (See Transcript of hearing, pg. 2).

Plaintiffs cross move to amend the summons and complaint. The court deems plaintiffs' Proposed Second Amended Summons and Complaint amended and served. This decision

addresses both the cross motion and the motion to dismiss the causes of action in the Proposed Second Amended Summons and Complaint.

FACTS

The following facts are from the Second Amended Complaint and other documents that the parties submitted.

In February 1986, defendant George Huntington Hartford, II (“Hartford”) retained plaintiff Blake, an attorney licensed to practice law in New York, for legal advice and to perform certain administration services. In March 1987, Hartford executed a power of attorney appointing Blake as his attorney-in-fact. Blake asserts that Hartford hired her as an attorney to exclude her other clients and that she minimized her engagement in the private practice of law to others. Plaintiff Blake worked for Hartford until around January 14, 2004.

In February 1959, Hartford had established a trust for his care during his lifetime. Hartford was the grantor of the original Trust Agreement (the “Trust”). Agnes E. Hardecker and David Sher were the original trustees. At this time, the sole appointed Trustee of the Trust is JPMorgan Chase & Co. The Trust has a corpus of approximately \$11,000,000.00.

The Huntington Hartford Family Fund, Inc. (“Hartford Family Fund”) is another named defendant in this action. The Hartford Family Fund is a not-for-profit entity and a remainderman of the Trust. Hartford is the President of the Hartford Family Fund. Co-defendant Arthur Lane (“Lane”) is the Director of the Hartford Family Fund. Farleigh Dickinson University is another remainderman under the Trust.

According to Blake, Hartford orally promised her that in return for her agreement to limit her private law practice and provide him with legal and administrative services “at the exclusion

of other clients and to otherwise minimize her engagement in the private practice of law,” Hartford would amend the Trust to add as an additional remainderman a not-for-profit organization that Blake was to name under an amendment to the Trust. (Second Amended Complaint, ¶ 13). That organization, plaintiff Solutions, would then provide for Blake’s care during her lifetime. After Blake’s death, Solutions would disburse or maintain the corpus at its discretion.

Subsequently, Blake named Solutions as the not-for-profit remainderman pursuant to her agreement with Hartford. Around December 19, 2003, Hartford executed a Trust Amendment to add Solutions as the remainderman. Blake then presented the Trust Amendment to defendant Lane (as Director of Hartford Family Fund) and to Farleigh Dickinson University requesting their written acknowledgment, because, as remaindermen, their consent was necessary to any amendments. Blake also presented the Trust Amendment to Trustee J.P. Morgan Chase. Farleigh Dickinson University executed its consent to amend the Trust on December 23, 2003. However, plaintiffs allege that Lane, despite Hartford’s direction, refused to execute the consent to the Trust Amendment.

Plaintiffs further allege that Lane scheduled a meeting with Hartford to discuss the execution of the Trust Amendment. They also allege that Hartford’s daughter, co-defendant Juliet Hartford (“Ms. Hartford”), knew about the scheduled meeting and “did intentionally and recklessly, and with malice or other wrongful intent at a time while being otherwise negligent in the premises, wrongfully interfered in the foregoing meeting.” (Second Amended Complaint, ¶ 25). Plaintiffs contend that Ms. Hartford convinced her father, Hartford, to withdraw his consent to the Trust Amendment. In their complaint, plaintiffs also allege that Ms. Hartford

prevented Hartford from communicating with Lane in order to stop the execution of the corporate resolutions and the Trust Amendment. (Second Amended Complaint, ¶¶ 23-26).

In the first and second causes of action, plaintiffs allege that Hartford breached the contract to amend the Trust Agreement. The first cause of action as against Hartford seeks damages for Blake. The second cause of action as against Hartford seeks damages for Solutions as a third-party intended beneficiary.

In the third cause of action plaintiffs allege that Ms. Hartford tortiously interfered with the contract between Blake, Solutions as a third-party intended beneficiary, and Hartford.

In the fourth cause of action, plaintiffs seek a declaration from the court to direct Lane to execute and then file the necessary corporate resolutions in the books and records of the Hartford Family Fund.

In the fifth cause of action, plaintiff Blake claims there was a net-net lease between Blake and Hartford for the use and occupancy of the ground floor of a building located at One Galloway Heights Road, Warwick, New York that Blake co-owned. The lease commenced on or about August 1, 2000 and was to continue through July 31, 2015. Blake contends that on January 12, 2004, Ms. Hartford “intentionally, willfully and/or negligently caused Hartford to desert or otherwise abandon said premises” without making any payments under the lease. (Second Amended Complaint, ¶ 42). However, Blake has not submitted any written lease agreement to the court.

In the sixth cause of action, Blake seeks salary increases she claims she forbore for the years from 1987 through 1993 and arrears of \$127,000.00 from Hartford.

In the seventh cause of action, plaintiffs allege that Hartford knowingly engaged in a

fraudulent scheme to induce Blake to provide legal services as an attorney and administrator of Hartford's affairs.

DISCUSSION

I. First and Second Causes of Action: Breach of Contract

Defendant Hartford seeks to dismiss plaintiffs' claim for breach of contract because the agreement to amend the Trust fails to satisfy the Statute of Frauds.

An enforceable agreement in the nature of a bequest must be in writing. (*Dombrowski v Somers*, 41 NY2d 858 [1977]). As a trust involves a bequest, an agreement to establish or amend a trust must comply with the Statute of Frauds. (EPTL 13-2.1[a]; *Blackmon v Estate of Battcock*, 78 NY2d 735 [1991]). Under New York General Obligations Law, "every agreement, promise or undertaking is void, unless it or some note or memorandum thereof be in writing, and subscribed by the party to be charged therewith, or by his lawful agent." (NY Gen Oblig 5-701[a]). This provision applies to those agreements that by their terms are "not to be performed within one year from the making thereof or the performance of which is not to be completed before the end of a lifetime." (NY Gen Oblig 5-701[a][1]). General Obligations Law § 5-701(b)(3)(d) allows memoranda, notes or other documentation establishing the agreement's existence to satisfy the writing requirement. (*Nausch v Aon Corp.*, 2 AD3d 101, 102 [1st Dept 2003]).

However, in order to prove the existence of an agreement making a testamentary provision, case law interpreting the Statute of Frauds is even stricter. The cases require a writing to set forth the specific terms of the agreement. (*O'Keefe v Bry*, 456 F Supp 822, 830 [SDNY 1978]; *Hunt v Hunt*, 66 NYS 957 [4th Dept 1900], *aff'd* 171 NY 396 [1902]). When a party offers the trust agreement itself to satisfy the Statute of Frauds, the trust agreement must contain

“more than a beneficial provision such as is alleged to have been agreed to orally; it must clearly recite the contract, including words of promise or agreement.” *Id.* The evidence to prove such a contract must be clear and convincing. (*See In the Matter of Estate of Thoens*, 392 NYS2d 774, 776 [Surr Ct 1975], *affd* 41 NY2d 823 [1977] [“whether or not a will itself is sufficient evidence to satisfy the statute of frauds for testamentary dispositions will depend on whether or not the contract is clearly recited in the will, thereby leaving nothing for extraneous evidence.”]).

The Statute of Frauds applies to the Trust Agreement because it is an agreement in the nature of a bequest. (*See* EPTL 13-2.1[a]; *Blackmon*, 78 NY2d at 735). Further, the Trust expressly states that distributions will occur at the death of Hartford, i.e., performance not to be completed before the end of a lifetime. (*See* NY Gen Oblig 5-701[a][1]). Plaintiffs argue that the Trust Amendment and the letter that Hartford wrote to Lane requesting his written acknowledgment of the Amendment satisfy the Statute of Frauds. Taken together, however, these writings do not comply with the requirements that relate to testamentary provisions. The Trust Amendment only adds Solutions as a remainderman. It states,

“Article SECOND of the Trust Agreement shall be distributed as follows: one million dollars to The Huntington Hartford Family Fund, Inc., and the remainder of the principal of this trust to Urban Solutions, Inc., which said name is presently being changed to Solutions for the Environment and the Arts, Inc. (or to a similar name), (hereinafter “Solutions”) . . .” (Affirm. in Opposition to the Motion and in Support of the Cross-Motion, Exh. D).

The Trust Amendment also states,

“During the trust term, the income of this trust shall be paid to Huntington Hartford, during his life. From and after the death of Huntington Hartford, the income of this trust shall be divided into two shares of two-fifteenths, and thirteen-fifteenths and the two-fifteenths share shall be paid to The Huntington Hartford Family Fund, Inc., and the thirteenth-fifteenths share shall be paid to Solutions for the Environment and for the Arts, Inc.” (Affirm. in Opposition to

the Motion and in Support of the Cross-Motion, Exh. D).

The Trust Amendment does not mention any oral agreement between Blake and Hartford and is thus not a sufficient memorandum to satisfy the Statute of Frauds. There is no recitation of a contract or words of promise or agreement. (*O'Keefe*, 456 F Supp at 830; *Hunt*, 66 NYS at 957 [4th Dept 1900], *affd* 171 NY 396 [1902]; *see also In the Matter of Estate of Thoens*, 392 NYS2d at 776, *affd* 41 NY2d 823).

Similarly, the letter that Hartford wrote to Lane is insufficient to satisfy the Statute of Frauds. It merely directs Lane to execute the necessary corporate resolution to validate Hartford's signature to the Trust Amendment. It states,

"This will inform you of my intention, already expressed by my signature on an amendment to my Charitable Remainder Trust, to add to that trust as an additional remainderman the not-for-profit corporation, Solutions for the Environment and for the Arts, Inc. . ." (Affirm. in Opposition to the Motion and in Support of the Cross-Motion, Exh. E).

Similar to the Trust Amendment, the letter contains no recitation of a contract, or words of promise or agreement. (*O'Keefe*, 456 F Supp at 830; *Hunt*, 66 NYS at 957 [4th Dept 1900], *affd* 171 NY 396 [1902]; *see also In the Matter of Estate of Thoens*, 392 NYS2d at 776, *affd* 41 NY2d 823).

Plaintiffs also rely on Blake's performance of legal services to Hartford from 1987 to around January 14, 2004 to satisfy the Statute of Frauds. However, the part performance exception to the Statute of Frauds applies only to real state transactions. The courts have not extended this exception to agreements to make testamentary provisions. (*See Pevner v Ensler*, 309 AD2d 722, 722 [1st Dept 2003]; *In re Griffin's Estate*, 220 NYS2d 957, 959 [NY Sur Ct Queens County 1961]; *In re Albin's Estate*, 230 NYS2d 750, 753-54 [NY Sur Ct Suffolk County

[* 9]

1962]).

Even if the performance exception applied, “mere action without reference to the alleged oral agreement is in most instances not that performance required to take the agreement out of the operation of the statute.” (*In the Matter of Estate of Thoens*, 392 NYS2d at 776 [citing *Burns v. McCormick*, 233 NY 230]). Moreover, the actions of the plaintiff must be “unequivocally referable” to the alleged agreement in order for the partial performance exception to apply. (*Panetta v Kelly*, 17 AD3d 163, 165 [1st Dept 2005] [citations omitted]; *Anostario v Vicinanza*, 59 NY 2d 662, 664 [1983]).

Blake’s claim for salary increases for her legal services during the period from 1987 through 1993 is evidence that she received compensation for her services. Therefore, the partial performance exception is inapplicable because her performance was not “unequivocally referable” to the alleged agreement to amend the Trust. (*See Anostario*, 59 NY 2d at 664 [“while the alleged agreement provided a possible motivation for plaintiff’s actions, the performance is equivocal, for it is as reasonably explained by the possibility of other expectations, such as the receipt of compensation . . .”])

Lastly, plaintiffs argue that promissory estoppel takes the agreement out of the Statute of Frauds. However, “the legal insufficiency of [a] breach of contract cause of action requires the dismissal of [a] promissory estoppel claim as well.” (*Prospect Street Ventures I, LLC v Eclipsys Solutions Corp.*, 2005 WL 3006036 [1st Dept 2005]). In addition, plaintiffs’ claim of promissory estoppel does not circumvent the Statute of Frauds because there is no allegation or proof of an “unconscionable injury” to Blake. (*Melwani v Jain*, 281 AD2d 276, 277 [1st Dept 2001]). Accordingly, the court dismisses the first two causes of action.

II. Third Cause of Action: Tortious Interference with a Contract

Plaintiffs claim that Ms. Hartford tortiously interfered with the contract between Blake and Hartford with Solutions as the third party intended beneficiary. Elements of a tortious interference claim are: (1) the existence of a valid contract; (2) defendant's knowledge of that contract; (3) defendant's intentional interference with the contract; (4) resulting breach; and (5) damages. (*Loftus Inc. v White*, 150 AD2d 857, 859 [3rd Dept 1989]). To the extent that plaintiffs purport to plead a cause of action for tortious interference with prospective business relations, they have failed to allege that malice solely motivated Ms. Hartford's conduct or that she inflicted injury using unlawful means beyond mere self interest or other economic considerations. (*See Shared Communications Services of ESR, Inc. v Goldman Sachs & Co.*, 2005 WL 2850292 [1st Dept 2005]).

In their amended complaint, plaintiffs contend that Ms. Hartford "wrongly, recklessly and/or negligently interfered" in the meeting between Hartford and Lane and the contractual relationship between plaintiffs and Hartford. However, plaintiffs fail to demonstrate the existence of a valid contract between Blake and Hartford. Without a valid contract, plaintiffs cannot satisfy the first element of their cause of action for tortious interference with a business contract. Moreover, plaintiffs have not alleged any facts to support the contention that Ms. Hartford wrongly, recklessly or negligently interfered with the alleged contract. Therefore, the court dismisses the third cause of action.

III. Fourth Cause of Action: Declaratory Relief Sought as Against Lane

The fourth cause of action seeks a declaration directing Lane "to execute and file all necessary corporate resolutions" in order to make Solutions a remainderman of the Trust.

However, because plaintiffs are unable to establish the existence of a valid agreement, there is no basis to order Lane to make Solutions a remainderman of the Trust. Accordingly, the court *sua sponte* dismisses the fourth cause of action.

IV. Fifth Cause of Action: Tortious Interference with a Contract

Plaintiffs also claim that on January 12, 2004 Ms. Hartford tortiously interfered with a net-net lease between Blake and Hartford. Blake claims damages based upon Hartford's alleged abandonment of the Warwick, New York premises.

This cause of action cannot survive the motion to dismiss for similar reasons to those the court dismissed in plaintiffs' third cause of action for, namely, failure to allege an enforceable written contract. A contract for a lease of real property to last longer than a period of one year must be in writing. (NY Gen Oblig Law § 5-703). Plaintiffs do not attach a copy of the alleged lease to the amended complaint; nor do they provide any writing on this motion. Accordingly, the court dismisses the fifth cause of action.

V. Sixth Cause of Action: Arrears in Salary and Other Compensation

The complaint alleges that Hartford owes Blake salary increases that she forbore for the years 1987 through 1993 and arrears in compensation in excess of \$127,000.00. New York has a six year statute of limitations for breach of contract claims. Plaintiff did not commence this action until August 11, 2004. Thus, the latest year to sue on this cause of action was 1999. (CPLR 213). Accordingly, plaintiff Blake's claims for salary increases is untimely.

Plaintiff's claim for arrears in salary and compensation from August 11, 1998 through July 14, 2004 is not time barred. More importantly, however, Blake never alleges in the complaint that Hartford ever agreed to pay a salary or other compensation to her. Further,

plaintiff makes no attempt in her Reply Memorandum of Law in Opposition to Defendant's Motion to Dismiss even to respond to the shortcomings of her sixth cause of action that defendants discuss in their Memorandum of Law. Accordingly, the court dismisses the sixth cause of action.

VI. Seventh Cause of Action: Fraud

In the seventh cause of action, plaintiffs contend that Hartford fraudulently induced Blake to provide him with legal services.

A fraud claim that only restates a breach of contract claim is not viable, especially when the plaintiff does not plead fraud with the requisite particularity. (*Orix Credit Alliance, Inc. v R.E. Hable Co.*, 256 AD2d 114, 115 [1st Dept 1998]; CPLR 3016[b]). Similarly, a party may not circumvent the writing requirement by recasting the cause of action as one seeking damages in tort. (*Brown v Brown*, 12 AD3d 176, 177 [1st Dept 2004]). Moreover, "a viable claim of fraud concerning a contract must allege misrepresentations of present facts that [are] collateral to the contract." (*Orix Credit Alliance, Inc. v R.E. Hable Co.*, 256 AD2d at 115; see also *Deerfield Communications Corp. v Chesebrough-Ponds Inc.*, 68 NY2d 954, 955-56 [1986]).

Here, plaintiffs argue that Hartford promised to amend the Trust to induce Blake to provide legal services. (Second Amended Complaint, ¶¶ 23-26). However, the fraud that plaintiffs allege relies upon the alleged contract, i.e., that Hartford would provide for Blake through an amendment to his Trust in exchange for legal services rendered. This is not "collateral to the contract," nor does this claim arise out of circumstances extraneous to the contract itself. (*Brown*, 12 AD3d at 176-177).

Further, plaintiffs' fraud claim lacks the requisite particularity. Bare allegations of a

“fraudulent scheme,” or that Hartford deliberately mislead Blake to rely on a promise he never intended to perform are insufficient to support a fraudulent inducement cause of action. (*See Boone Assoc. v Oaster*, 257 AD2d 370, 371 [1st Dept 1999]; *New York Univ. v Cont. Ins. Co.*, 87 NY2d 308, 318-319 [1995]).

VII. Causes of Action as Against Other Named Defendants

The court *sua sponte* dismisses the complaint as against defendant Hartford Family Fund because there are no causes of action asserted against it.

VIII. Plaintiffs’ Cross-Motion to Amend the Summons and Complaint

As stated previously, plaintiffs’ Proposed Second Amended Summons and Complaint is deemed amended and served. However, the complaint is deficient, even as amended, and does not contain sufficient allegations under the law to survive defendants’ motion to dismiss.

Accordingly, it is

ORDERED that plaintiffs’ cross-motion to amend the summons and complaint is granted and the Second Amended Summons and Complaint is deemed amended and served; and it is further

ORDERED that the motion of defendants George Huntington Hartford, II a/k/a Huntington Hartford and Juliet C. Hartford to dismiss is granted as to the First and Second Amended complaints; and it is further

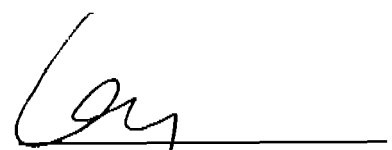
ORDERED that plaintiffs’ claim against defendant Arthur Lane is *sua sponte* dismissed; and it is ORDERED, ADJUDGED and DECLARED that Arthur Lane is not required to execute and file all necessary corporate resolutions; and it is further

ORDERED that plaintiffs' claims against defendant The Huntington Hartford Family Fund Inc. are *sua sponte* dismissed; and it is further

ORDERED that the Clerk is directed to enter judgment dismissing the action as to all defendants accordingly.

Dated: December 12, 2005

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