

**Barbarelo v Oxford Mgt. Servs., Inc.**

2007 NY Slip Op 30181(U)

March 9, 2007

Supreme Court, Suffolk County

Docket Number: 0006674

Judge: Elizabeth H. Emerson

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SUPREME COURT - STATE OF NEW YORK  
**COMMERCIAL DIVISION**  
**TRIAL TERM, PART 44 SUFFOLK COUNTY**

PRESENT: Hon. Elizabeth Hazlitt Emerson

\_\_\_\_\_  
ROBERT J. BARBARELLO,

Plaintiff,

-against-

OXFORD MANAGEMENT SERVICES, INC., OXFORD  
COLLECTION AGENCY, INC., OXFORD  
MANAGEMENT PENNSYLVANIA, INC., FLORIDA'S  
OXFORD COLLECTION SERVICES, INC., RICHARD  
PINTO, PETER PINTO and JOHN FIUMANO,

Defendants.

MOTION DATE: 11-22-06  
SUBMITTED: 12-20-06  
MOTION NO.: 004-MOT D

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Upon the following papers numbered 1 to 13 read on this motion for partial summary judgment; Notice of Motion and supporting papers 1-10; Notice of Cross Motion and supporting papers   ; Answering Affidavits and supporting papers 11-12; Repeating Affidavits and supporting papers 13; it is,

**ORDERED** that this motion by the plaintiff for partial summary judgment in his favor is granted to the extent indicated below; and it is further

**ORDERED** that the plaintiff is awarded damages on his first cause of action insofar as it is asserted against the defendant Oxford Management Services, Inc., in the amount of \$25,453.81 with interest from February 28, 2004; and it is further

**ORDERED** that the plaintiff is awarded damages on his third cause of action against the defendant Oxford Management Services, Inc., in the amount of \$1,982.47 with interest from February 28, 2005; and it is further

**ORDERED** that the plaintiff is awarded damages on his fourth cause of action against the defendants Oxford Management Services, Inc., and Oxford Collection Agency, Inc., in the amount of \$5,585.10 with interest from November 29, 2004; and it is further

**ORDERED** that the plaintiff is awarded damages on his fifth cause of action insofar as it is asserted against the defendant Florida's Oxford Collection Services, Inc., in the amount of \$12,547.12 with interest from the date of this order; and it is further

**ORDERED** that, on the court's own motion, the defendant Richard Pinto is granted summary judgment dismissing the first cause of action insofar as it is asserted against him; and it is further

**ORDERED** that, on the court's own motion, the defendants Richard Pinto, Peter Pinto, Oxford Management Services, Inc., and Oxford Collection Agency, Inc., are granted summary judgment dismissing the fifth cause of action insofar as it is asserted against them.

Summary judgment is warranted when there are no issues of fact to be resolved by the trier of fact (*see*, **Hartford Accident & Indemnity Co. v Wesolowski**, 33 NY2d 169, 172; **Sillman v Twentieth Century Fox Film Corp.**, 3 NY2d 395, 404). 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 demonstrate the absence of any material issue of fact (*see*, **Winegrad v New York Univ. Med. Center**, 64 NY2d 851, 853; **Zuckerman v City of New York**, 49 NY2d 557, 562; **Sillman v Twentieth Century Fox Film Corp.**, *supra* at 404). To defeat the motion, the opponent must present evidentiary facts sufficient to raise a triable issue of fact (*see*, **Freedman v Chemical Constr. Co.**, 43 NY2d 260, 264). Mere conclusions, expressions of hope, or unsupported allegations or assertions are insufficient to defeat a motion for summary judgment (*see*, **Zuckerman v City of New York**, *supra* at 562).

The plaintiff has established, prima facie, his entitlement to judgment as a matter of law on his third and fourth causes of action. In opposition, the defendants have submitted only the bare affirmation of their attorney, who has no personal knowledge of the facts. Such an affirmation by counsel is without evidentiary value and, thus, insufficient to defeat the plaintiff's motion (*see*, **Zuckerman v City of New York**, *supra* at 563). Accordingly, the motion is granted as to the third and fourth causes of action.

The plaintiff has established, prima facie, his entitlement to judgment as a matter of law on his first cause of action insofar as it alleges that the defendant Oxford Management Services breached its employment contract with him, and the affidavit of the defendants' counsel submitted in opposition thereto is insufficient to defeat the plaintiff's prima facie showing. However, the court finds that the plaintiff's claim of fraudulent inducement lacks specificity (*see*, CPLR 3016[b]; **Phillips v Cioffi**, 204 AD2d 94, 95). Moreover, the only fraud alleged is based on the same facts as underlie the breach-of-contract claim, is not collateral to the contract, and no damages are alleged that would not be recoverable under a contract measure of damages (*see*, **J.E. Morgan Knitting Mills v Reeves Bros.**, 243 AD2d 422, 423). Thus, the plaintiff's claim of fraudulent inducement is duplicative of his breach-of-contract claim (*Id.* at 423). A motion for summary judgment, irrespective of by whom it is made, empowers the court to search the record and award judgment where appropriate (*see*, CPLR 3212[b]; **Grimaldi v Pagan**, 135 AD2d 496).

Accordingly, the plaintiff's motion is granted as to the first cause of action insofar as it is asserted against the defendant Oxford Management Services, and the court, upon searching the record, dismisses the first cause of action insofar as it is asserted against the defendant Richard Pinto.

The plaintiff has established, *prima facie*, his entitlement to judgment as a matter of law on his fifth cause of action insofar as it alleges that the defendant Florida's Oxford Collection Services failed to make payments in the amount of \$12,547.12 on a promissory note executed by its President, the defendant Peter Pinto. The defendants concede that the plaintiff is entitled to partial summary judgment on his fifth cause of action insofar as it is asserted against the defendant Florida's Oxford Collection Services and that the plaintiff's damages are \$12,547.12. There is no evidence in the record that the defendants Oxford Management Services, Oxford Collection Agency, Peter Pinto, or Richard Pinto guaranteed the note or that they are otherwise liable to the plaintiff for the defendant Florida's Oxford Collection Services' default thereon. Moreover, the allegations of fraud lack specificity (*see*, CPLR 3016 [b]; **Phillips v Cioffi**, *supra* at 95) and are duplicative of the plaintiff's breach-of-contract claim (*see*, **J.E. Morgan Knitting Mills v Reeves Bros.**, *supra* at 423). Accordingly, the plaintiff's motion is granted as to the fifth cause of action insofar as it is asserted against the defendant Florida's Oxford Collection Services, and the court, upon searching the record, dismisses the fifth cause of action insofar as it is asserted against the defendants Oxford Management Services, Oxford Collection Agency, Peter Pinto, and Richard Pinto.

DATED: March 9, 2007

**HON. ELIZABETH HAZLITT EMERSON**

J. S.C.