

Metropolitan Co., Inc. v Fowora
2008 NY Slip Op 33023(U)
November 7, 2008
Supreme Court, New York County
Docket Number: 603407/2007
Judge: Paul G. Feinman
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. PAUL G. FEINMAN

PART 12

Index Number : 603407/2007

METROPOLITAN COS., INC.

INDEX NO. 603407/200

vs
FOWORA, ANTHONY

MOTION DATE 10-14-08

Sequence Number : 001

MOTION SEQ. NO. 801

SUMMARY JUDGMENT

MOTION CAL. NO. 71

The following papers, numbered 1 to 3 were read on this motion to/for JS

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

PAPERS NUMBERED

Answering Affidavits — Exhibits _____

1
2
3

Replying Affidavits _____

Cross-Motion: Yes No

FILED

Upon the foregoing papers, it is ordered that this motion

NOV 10 2008

COUNTY CLERK'S OFFICE
NEW YORK

MOTION IS DECIDED IN ACCORDANCE WITH THE ANNEXED DECISION AND ORDER.

MOTION IS DECIDED IN ACCORDANCE WITH THE ANNEXED DECISION AND ORDER.

Dated: 11/7/08

[Signature]
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: PART 12

-----X
THE METROPOLITAN COMPANIES, INC.,

Plaintiff,

against

ANTHONY FOWORA and NATALIE FOWORA
a/k/a NATHALIE FOWORA, d/b/a JACKSON
HEWITT TAX SERVICE, SCAN SYSTEMS, INC.,
Defendants.

-----X

Index Number 603407/2007
Submission Date Oct. 14, 2008
Mot. Seq. No. 001
Cal. No. 71

DECISION AND ORDER

For the Plaintiff:
Amos Weinberg, Esq.
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516-829-3900

For the Defendant:
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Papers considered in review of this motion for summary judgment:

Papers	Numbered
Notice of Motion and Affidavits Annexed	1
Answering Affirmation	2
Memo of Law in Reply	3

FILED

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NEW YORK

PAUL G. FEINMAN, J.:

Plaintiff is a temporary employment agency, known as Metropolitan Temporaries, Inc., at the time this action accrued. According to a principal officer of the corporation, between February and April 2007, the company provided several temporary workers to Jackson Hewitt Tax Service in Central Islip, New York, pursuant to an agreement (Not. of Mot. Ex. B, Herfield Aff. ¶¶ 1, 4, 6). The total amount owed to plaintiff, based on the hourly work of the temporary workers, was \$34,642.60, but Jackson Hewitt only partly paid, leaving a balance due of \$34,313.00 (Herfield Aff. ¶¶ 4-9). The bills were never protested or objected to.

Plaintiff commenced its action by serving a summons and complaint on Anthony Fowora and Natalie Fowora, d/b/a Jackson Hewitt Tax Service. Upon learning from defendants' Verified

Answer that Anthony Fowara is president of Scan Systems, Inc., and Natalie Fowora is Vice President, plaintiff served a supplemental summons and Amended Verified Complaint, adding Scan Systems as a defendant (Not. of Mot. Weinberg Aff. ¶ 3; Ex. A. Ver. Ans., verification; Ex. B, Supp. Summ. & Am. Ver. Compl.). Only Scan Systems answered the amended complaint, essentially denying the allegations and asserting the same affirmative defenses as were asserted in the original answer of the Foworas and their franchise, Jackson Hewitt Tax Service (Not. of Mot. Ex. A, F).

Plaintiff seeks summary judgment pursuant to CPLR 3212 and 3016 (f).¹ Plaintiff submits copies of the weekly invoices sent to Jackson Hewitt Tax Services/Attn: Natalie Fowra, and listing each worker, the hours worked, and the amount owed for each, and the weekly time sheets provided by Jackson Hewitt, detailing the hours each worker worked, and signed by “natalie fowra VP”; above her signature is a typed paragraph stating in part, “I certify that the total hours shown are true and correct, and this signature is authorization to bill the named company for these hours.” (Not. of Mot. Ex. B).

Defendants’ opposition does not dispute that money is owed or the amount, but only questions the identity of the defendants. The Foworas argue that their business is Scan Systems, Inc., and point to a print-out from the website of the New York State Department of State Division of Corporations, which indicates Scan Systems is an active domestic corporation, with an address in Central Islip, and that Anthony and Natalie Fowora are respectively chairman and principal executive officer (Fowora Aff. in Opp. Ex. 1). Notably, the website is silent as to any

¹Alternatively or in addition, it seeks a default judgment against the Foworas and Jackson Hewitt for their failure to answer the Amended Verified Complaint.

relationship with the franchise Jackson Hewitt Tax Service. Even though the address for Scan Systems is the same as the Jackson Hewitt office to which plaintiff mailed its invoices, defendants have not provided evidence that even suggests that had plaintiff searched for the Fowora's Jackson Hewitt franchise, it would have found "Scan Systems."² Defendants' suggestion that the correct party should be solely Scan Systems, is thus unpersuasive.

Moreover, there is no indication that plaintiff was made aware or should have been aware of the relationship between Scan Systems and Jackson Hewitt Tax Service, and that any agreement signed by the Foworas was in actuality signed on behalf of Scan Systems, Inc., rather than the Foworas as owners of a Jackson Hewitt franchise. Anthony Fowara states that only defendants "disclosed at the very onset of any dealings with the plaintiffs that they were a corporate entity" (Fowora Aff. in Opp. ¶ 5), but his "proof" is the time sheets which list the client as "Jackson Hewitt" and state that Natalie Fowora is vice president. Accordingly, defendants have not refuted plaintiff's assertion that the Foworas were acting as agents for the undisclosed principal Scan Systems, Inc.

The general rule is that an agent for an undisclosed principal will be held liable for any contracts made on behalf of the principal (*J.P. Endeavors v Dushaj*, 8 AD3d 440, 441 [2d Dept. 2004]). In addition, where a principal was undisclosed, a plaintiff is allowed to proceed against the agent or the principal, or both (CPLR 3002 [b]). Thus, plaintiff may seek damages from all the defendants. Although the Foworas did not answer the Amended Verified Complaint, and are thus in default, the court finds that the second Verified Answer was meant to have been served

²Indeed, plaintiff's attorney sets forth the steps he took to discover the name of the corporate entity and his failure to do so (Not. of Mot. Weinberg Aff. ¶ 2).

on behalf of all the named defendants (Not. of Mot. Weinberg Aff. ¶ 6), and in the interest of judicial economy, the court will not grant a default judgment against the original defendants. Because defendants have not disputed the amount owed, the court grants plaintiff's motion for summary judgment as against all defendants (*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986] [summary judgment is proper when there are no issues of triable fact]). It is therefore

ORDERED that the motion is granted and the Clerk of the Court is directed to enter judgment in favor of plaintiff and against defendants Anthony Fowora and Natalie Fowora a/k/a Nathalie Fowora, d/b/a Jackson Hewitt Tax Service, and Scan Systems, Inc., in the amount of \$34,313, together with interest as prayed for allowable by law, from the date of April 22, 2007, until the date of entry of judgment, as calculated by the Clerk, and thereafter at the statutory rate, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs.

This constitutes the decision and order of the court.

Dated: November 7, 2008
New York, New York



J.S.C.

FILED

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NEW YORK