

Fulbright & Jaworski, LLP v Carucci

2008 NY Slip Op 33637(U)

December 8, 2008

Supreme Court, New York County

Docket Number: 602287/2008

Judge: Walter B. Tolub

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

PRESENT: **WALTER B. TOLIN**

PART _____

Index Number : 602287/2008
FULBRIGHT & JAWORSKI LLP.
VS.
CARUCCI, SAL
SEQUENCE NUMBER : 001
DISMISS ACTION

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

his motion to/for _____

PAPERS NUMBERED

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

IS DECIDED

IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION

FILED
DEC 10 2008
COUNTY CLERK'S OFFICE
NEW YORK

Dated: 12/8/08

WALTER B. TOLIN 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: IAS PART 15

-----x
FULBRIGHT & JAWORSKI, LLP,

Plaintiff,

-against-

SAL CARUCCI and SEASONS CONTRACTING CORP.,

Defendants.
-----x

Index No. 602287/2008
Mtn Seq. 001

FILED
DEC 10 2008
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NEW YORK

WALTER B. TOLUB, J.:

This is Defendant Sal Carucci's motion to dismiss the Complaint against him pursuant to CPLR 3211(a)(1) and (7).

Facts

This is an action for breach of contract and quantum meruit for failure to pay attorneys' fees.

Plaintiff claims it was retained by the Defendants, to represent Seasons Contracting Corp (Seasons) with regard to an action that was commenced against Seasons by Masons Tender Trustees (Mason) in the United States District Court for the Southern District of New York (Mason v. Seasons action). In that action, Mason claimed that Seasons had failed to make appropriate contributions to certain employee trust funds. A successful settlement was reached in that action on December 26, 2006.

Plaintiff also claims that, in addition to providing services in connection with the Mason v. Seasons action for Seasons, Plaintiff provided Mr. Carucci legal services in

connection with a claim made by various unions and trustees of multi-employer trust funds, that an alter ego existed between Seasons and Mr. Carucci. Plaintiff argues that as a result of its representation of Mr. Carucci, the claims of an alter ego status were not pursued against Mr. Carucci and that Plaintiff therefore is entitled to \$57,632.04 in attorneys' fees from Mr. Carucci for those services.

Mr. Carucci argues that the claims against him must be dismissed because: (1) he was not a named defendant in the Mason v. Seasons action; (2) that he never retained Plaintiff to represent him in his individual capacity; and (3) that he never signed a personal guaranty with regard to the personal representations.

Discussion

CPLR 3211(a)(1) and (7) provide that a party may move for judgment dismissing one or more causes of action asserted against him on the ground that a defense is founded upon documentary evidence or that the pleading fails to state a cause of action (CPLR 3211[a][1] and [7]). In determining whether to grant a motion to dismiss on these grounds, courts are to liberally construe the pleadings in the complaint and afford the pleader the benefit of every possible favorable inference (511 West 232 Owners Corp., v. Jennifer Realty Co., 98 NY2d 144 [2002]). If from the four corners of the complaint, factual allegations are

discerned which, taken together, manifest any cause of action cognizable at law, a motion to dismiss will fail (Id.).

In order to make out a claim in quantum meruit, a plaintiff must establish; (1) performance of services in good faith; (2) acceptance of the services by the person to whom they were rendered; (3) an expectation of compensation therefor, and (4) the reasonable value of the services (Freedman v. Pearlman, 271 AD2d 301, 304 [1st Dept 2000]; Heller v. Kurz, 228 AD2d 263 [1st Dept 1996]).

As a general rule, performance and acceptance of services are held to give rise to a legal inference of a promise to pay the reasonable value of such services (Moors v. Hall, 143 AD2d 336 [2d Dept 1988]). The inference, however, does not arise where because of the relationship of the parties it is natural that such services should be rendered without the expectation of pay (Id.; Robinson v. Munn, 238 NY 40 [1924]).

Here, the Complaint pleads the four elements of quantum meruit. Paragraph five of the Complaint states: "plaintiff provided legal services to Sal Carucci in connection with a claim made by various unions and trustees of multi-employer trust funds that an alter ego status existed between and among Seasons Contracting Corp., Carucci, and other corporations and individuals. As a result of the representation of Carucci by plaintiff, the claims of an alter ego status were not pursued

against Carucci."

In the posture of Defendant's motion to dismiss, it is the court's task to determine whether Plaintiff's pleadings state a cause of action (511 West 232 Owners Corp., v. Jennifer Realty Co., 98 NY2d 144 [2002]). "The motion must be denied if from the pleadings' four corners 'factual allegations are discerned which taken together manifest any cause of action cognizable at law'" (Id. at 152, citing Polonetsky v. Better Homes Depot, 97 NY2d 46, 54 [2001] quoting Guggenheimer v. Ginzburg, 43 NY2d 268, 275 [1977]). The Court accepts as true the facts alleged in the Complaint and any submissions in opposition to the dismissal motion (Sokoloff v. Harriman Estates Dev. Corp., 96 NY2d 409, 414 [2001]). Additionally, the Plaintiff is given the benefit of every possible favorable inference (Id.).

Based on the foregoing principles, the fact that Mr. Carucci was not a named Defendant in the Mason v. Trustees action and that he did not enter into a written agreement with Plaintiff individually, does not mean that additional services were not rendered. It follows that Defendant Sal Carucci's motion to dismiss must be and is denied because Plaintiff has stated a valid cause of action for quantum meruit.

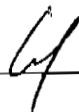
Accordingly, it is

ORDERED that Sal Carucci's motion to dismiss the Complaint as against him is denied.

Counsel for the parties are to appear for a conference on January 30, 2009 at 11AM in room 335 at 60 Centre Street.

This memorandum opinion constitutes the decision and order of the Court.

Dated: 12/8/08



HON. WALTER B. TOLUB, J.S.C.

FILED
DEC 10 2008
COUNTY CLERK'S OFFICE
NEW YORK