

CBS Outdoor Inc. v Aguilar

2009 NY Slip Op 32485(U)

October 13, 2009

Supreme Court, New York County

Docket Number: 600035/08

Judge: Emily Jane Goodman

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.

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

PRESENT: EMILY JANE GOODMAN
Justice

PART 17

Index Number : 600035/2008
CBS OUTDOOR INC.,
vs.
AGUILAR, DANNY
SEQUENCE NUMBER : # 001
STRIKE ANSWER

INDEX NO. 600035-08
MOTION DATE _____
MOTION SEQ. NO. #001
MOTION CAL. NO. _____

_____ were read on this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause - Affidavits - Exhibits ...
Answering Affidavits - Exhibits _____
Replying Affidavits _____

Cross-Motion: Yes No

no cross motion

Upon the foregoing papers, It is ordered that this motion *is decided for*

attached

FILED
OCT. 23 2009
COUNTY CLERK'S OFFICE
NEW YORK

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

Dated: 10/13/09

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 17

-----X
CBS OUTDOOR INC., a Delaware
corporation, formerly known as
VIACOM OUTDOOR, INC.,

Plaintiff,

Index No. 600035/08

-against-

DANNY AGUILAR, an individual,
dba WALL STREET LENDING and
WALL ST. LENDING,

Defendant.

FILED
OCT 23 2009
COUNTY CLERK'S OFFICE
NEW YORK

Emily Jane Goodman, J.S.C.:

This is an action for breach of contract by plaintiff CBS Outdoor, Inc. (CBS) arising in connection with twelve contracts for outdoor billboard advertising allegedly provided by CBS to defendant Danny Aguilar. CBS moves, pursuant to 3212, for an order granting summary judgment. Aguilar cross-moves, pursuant to CPLR 3212, for an order granting summary judgment dismissing the complaint. For the reasons stated below, the motion is denied and the cross motion is granted.

According to the complaint, CBS is a Delaware corporation authorized to do business in New York. The complaint states that Aguilar is an individual, doing business as Wall Street Lending and/or Wall St. Lending.

CBS alleges that it entered into twelve contracts with Aguilar

between August 9, 2004 and September 8, 2005, whereby CBS agreed to provide outdoor billboard advertising services. The complaint alleges that defendant breached the contracts by failing to pay CBS, in full, for the agreed upon value of the billboard advertising services. CBS states that, after deducting various payments and credits, defendant is indebted to CBS in the principal amount of \$508,603.38, plus interest from February 21, 2006 through December 28, 2007 in the amount of \$171,653.64, and continuing on the unpaid principal balance at the rate of 18% from December 28, 2007 until the date of judgment.

CBS now moves for summary judgment on its claim against Aguilar. Aguilar cross-moves for summary judgment dismissing the complaint.

A party seeking summary judgment must make a prima facie showing that it is entitled to judgment as a matter of law, by providing sufficient evidence to eliminate any material issues of fact from the case. *Winegrad v New York University Medical Center*, 64 NY2d 851 (1985); *Grob v Kings Realty Associates, LLC*, 4 AD3d 394 (2d Dept 2004). The party opposing must then demonstrate the existence of a factual issue requiring a trial of the action. *Zuckerman v City of New York*, 49 NY2d 557, 560 (1980). Here, the main question is whether Aguilar is personally liable under the various agreements at issue.

It is undisputed that each agreement states that the contracting parties are Viacom Outdoor¹ and Wall Street Lending.² The signature space on each agreement lists Wall Street Lending as the "advertiser". Aguilar's signature appears on each contract under the line on which the name Wall Street Lending appears. One of the contracts lists Aguilar as "President". Each contract contains a billing address in California (4675 MacArthur Court Suite 750 Newport Beach California) which, on several of the contracts, is described as the address of Wall Street Lending.

There is nothing set forth in the contracts which indicates that the services were being provided for Aguilar himself or that it was intended that he be personally liable under the agreements. The undisputed facts indicate only that the services were provided for Wall Street Lending. Therefore, the court finds that Aguilar has made a prima facie showing that he is entitled to summary judgment. *American Media Concepts, Inc. v Atkins Pictures, Inc.*, 179 AD2d 446 (1st Dept 1992) (trial court erred in denying individuals' motion to dismiss a complaint seeking to hold them personally liable for corporate debt, absent explicit evidence that

¹ Viacom is the predecessor to CBS.

² The contracts do not contain the term "LLC" after the words "Wall Street Lending". Aguilar asserts that the contracts were with Wall Street Lending, LLC, a California limited liability company.

the individuals intended to be bound, even though they failed to indicate their corporate titles on the signatory portion of the contracts, and even though plaintiff asserted that the parties understood that the individuals intended to be bound).

CBS argues that Aguilar is personally liable because he allegedly signed the agreements on behalf of a principal which is not a legal entity. Specifically, CBS states that Wall Street Lending is not a legally recognized entity in California. As such, it contends that Aguilar failed to disclose the name of his principal, and is therefore liable in his personal capacity.

CBS's argument is unpersuasive. It is true that the contracts, undisputedly drafted by CBS, list "Wall Street Lending" as the advertiser, rather than "Wall Street Lending, LLC". However, it is also undisputed that over a fourteen month period, CBS accepted payments in the form of fourteen checks drawn on an account belonging to Wall Street Lending, LLC. The checks have the same address (4675 MacArthur Court Suite 750 Newport Beach California) as the Wall Street Lending which is listed on the contracts. Defendant Aguilar also states that shortly before the contracts were signed, he met with Jim Costa, a representative of CBS in the office of Wall Street Lending, LLC, where the entity's name was listed in the lobby directory and on the office entrance door. Although Costa states that he did not recall looking at the

directory or the entrance door, nothing has been submitted by CBS to contradict Aguilar's statement. As is undisputed that Wall Street Lending, LLC. was organized in California in 2004 and is a legally recognized entity there, CBS has not demonstrated that Aguilar failed to disclose his principal or that he should otherwise be liable under the various agreements (including under a d/b/a).

Accordingly, it is

ORDERED that plaintiff's motion for summary judgment is denied; and it is further

ORDERED that defendant's cross motion for summary judgment is granted and the complaint is dismissed with costs and disbursements as taxed by the clerk; and it is further

ORDERED that the clerk is directed to enter judgment accordingly.

This Constitutes the Decision and Order of the Court.

DATED: October 13, 2009

ENTER:

FILED
OCT 23 2009
COUNTY CLERK'S OFFICE
NEW YORK


J. S. C.
EMILY JANE GOODMAN