

Yellow Book of N.Y., Inc. v Marra

2009 NY Slip Op 33003(U)

December 8, 2009

Supreme Court, Nassau County

Docket Number: 13898-05

Judge: Vito M. De Stefano

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SUPREME COURT - STATE OF NEW YORK

Present:

HON. VITO M. DESTEFANO,

Justice

YELLOW BOOK OF NEW YORK, INC.,
Plaintiff,

TRIAL/IAS, PART 24
NASSAU COUNTY

**Decision and Order
After Trial**

-against-

INDEX NO.: 13898-05

**JOHN MARRA, CHRISTIAN DEMARINIS and
ALLIED/ALL-CITY PLUMBING AND
ENVIRONMENTAL SERVICES, INC.,**

Defendant

The plaintiff, Yellow Book of New York, Inc. ("Yellow Book"), commenced this action to recover damages, *inter alia*, for breach of contract. The complaint contains five causes of action against three defendants, Allied/All-City Plumbing and Environmental Services Inc. ("Allied"), John Marra, a principal of Allied, and Christian Demarinis, a former employee of Allied. Prior to trial, the complaint, insofar as asserted against Christian Demarinis, was discontinued. At trial, Yellow Book's claims against John Marra were settled.

The remaining causes of action allege that: Yellow Book entered into a contract with Allied to provide the latter with advertising in its publication for an agreed-upon price, that the "work, labor, services and materials" were provided, and that Allied failed to pay the balance owed, \$27,920.08, with interest at the rate of 18% per annum, from October 21, 2002 (First Cause of Action in Plaintiff's Complaint); as a result of Allied's breach of contract, Yellow Book is entitled to recover attorneys' fees in the amount of one-third of the amount of the amount owed for services, "\$9305.76, with interest thereon from 10/21/2002" (Second Cause of Action in Plaintiff's Complaint). The third cause of action seeks recovery of \$27,920.08 based on a theory of account stated.¹

¹The amounts demanded by Yellow Book were reduced at trial.

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On September 29, 30 and October 1, 2009, the court conducted a trial of the matter, at which Yellow Book presented the testimony of Christian Demarinis, Jesse Shepard and Shelli Williams. Allied presented the testimony of John Marra.

The court finds that each of the witnesses testified credibly, in part. Where there was disagreement in the testimony, this decision and order will indicate whose testimony was determined to be credible.

The following facts are uncontroverted: On February 3, 2004, John Marra was the sole shareholder and corporate officer of Allied; Christian Demarinis was employed by Allied; Shelli Williams was employed by Yellow Book as a senior sales representative; Williams visited Allied's office and spoke to Demarinis in connection with the placement of advertisements in Yellow Book for Allied. At that meeting, Demarinis signed a contract on behalf of Allied to place advertisements in the Yellow Book publication. Subsequently, Yellow Book placed the advertisement in its publication, fully performing under the contract. No monies were paid by Allied for the advertisements. The amount that would be owed by Allied, excluding attorneys' fees, in the event that judgment is rendered in favor of Yellow Book and against it, is \$23,844; in such event, attorneys' fees in the amount of \$8,655.76, would also be owed to Yellow Book.

What is in dispute are the circumstances under which the contract was signed by Demarinis, as well as whether he had the legal authority to sign a contract on Allied's behalf. In particular, Allied contends through its Vice President² and sole officer, John Marra, that Demarinis was not authorized to enter into any agreement which would bind Allied. In this regard, Allied asserts that Demarinis' job duties were ministerial in nature, that he was neither an officer or director of Allied, nor even an office manager as Demarinis contended, and therefore could not sign a contract on Allied's behalf. Moreover, Allied argues that John Marra did not authorize Demarinis to sign the contract on Allied's behalf. In fact, Marra contended that he had an ongoing dispute with Yellow Book concerning the order of placement of advertisements in the publication which caused him to avoid taking out such advertisements.

Having heard the testimony of the witnesses at trial and after observing their demeanor, the court concludes that Demarinis was not the office manager for Allied; however, the court credits Demarinis' and Williams' testimony to the extent that it finds Demarinis was verbally authorized, via telephone (and witnessed by Williams who heard the conversation between Demarinis and Marra) to sign the contract on Allied's behalf by Marra. In addition, the court notes that Marra testified to being ignorant of the content of the corporate bylaws and charter (which he also did not produce at trial) and that he was unaware of whether they authorized him to delegate responsibilities to act on behalf of the corporation.

Initially, it is noted that the only theories of liability advanced in the complaint are for breach of contract and account stated. To the extent that recovery is sought for the first time in

²Yellow Book's answer to the complaint indicates that Marra was the President of Allied.

3] post-trial memoranda on theories of quantum meruit and unjust enrichment, the court declines to consider same.

Regarding the validity of the contract in issue and the ability of Marra to delegate authority to Demarinis to execute a contract on behalf of Allied, the following is relevant: All actions of corporations, even closely held ones, are accomplished through agents (*see generally* Restatement 3d of Agency § 103(c)). At bar, there is no dispute that John Marra, sole shareholder and officer of Allied, had authority to enter into contracts on behalf of Allied. Having determined that he did in fact authorize Demarinis to enter into the contract with Yellow Book on behalf of Allied, the question is whether that delegation of authority was proper. "A principal may expressly authorize an agent to delegate the authority conferred on him or her. The power to delegate authority may be conferred in the same manner as authority to do other acts and may result from formal writings or informal words. The authority to appoint subagents can be conferred in the same manner as authority to do other acts for the principal" (2A NY Jur 2d § 174, at p.207).

According to the Third Restatement of Agency, § 103(c):

In private-sector organizations, actual authority * * * originates both with the statute through which the organization achieves a legally recognized form and with the organization's constitutional documents. These provide the skeleton or essential architecture for beginning to determine which acts committed by human actors should be attributed to the organization. An organization's charter, certificate of incorporation, articles, and bylaws typically specify, among other basic structural matters, certain key positions within the organization and authority to act on behalf of the organization that is associated with each position. Private-sector organizations formed as corporations have a governing body ordinarily known as a board of directors (sometimes called a board of governors or board of trustees) that, by statute, must take specified types of actions and that also, by statute, is assigned ultimate supervisory responsibility for the corporation's business and affairs. Directors commonly appoint officers for the corporation. Officers hold defined executive positions carrying titles; the nature and scope of each officer's authority may be defined by statute, by the corporation's constitutional documents, by specific resolutions adopted by the directors, and by custom associating specific functions with a particular position.

Albeit of foundational importance, these formal characteristics do not capture either the practical or the legal reality of how most corporations and other business organizations operate. The ability to delegate with a reasonably reliable sense of the legal consequences is

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the essence of corporate management. What is delegated often includes the right to make manifestations to subordinates within the organization or to persons external to it. Delegation does not generally constitute abdication by the corporation's board or its officers. An officer granted broad managerial authority to manage a corporation's affairs impliedly has authority to delegate to subordinate agents acting under the officer's supervisory control * **
In many corporations, additionally, functions are delegated informally through oral instructions from a superior agent to an inferior one. It is not unusual for paperwork documenting a decision by a superior agent to follow rather than accompany the making of the decision. (Emphasis added)

Allied's contention herein that Marra could not, in a close corporation in which he was the sole officer and shareholder, delegate authority to others to enter into contracts on its behalf, is best described as a "red herring" argument. Although it is true that neither party offered the relevant corporate documents into evidence, the fact that Marra believed he could delegate such authority, as evidenced by the express permission he gave to Demarinis to sign the contract in issue, establishes the legitimacy of such action. Even assuming that the court credited Marra's testimony, which it does not, that he could not recall whether the corporate documents permitted him to delegate authority to others to enter into contracts on behalf of the corporation, in practice, he did precisely that. In any event, considering Marra's position with Allied and his sole control of that enterprise, virtually all decision making authority was vested with him. In this regard, since there is no board, no board vote would be required to approve of or ratify contracts, hire employees or conduct any corporate business. It would be ludicrous to conclude that he could not delegate authority to others to enter into contracts.

Inasmuch as Demarinis had actual authority to enter into the contract with Yellow Book, there is no need to consider whether he also had apparent authority as an alternative theory of agency.

The court rejects Allied's argument that the contract was terminated by Yellow Book. While it is true that paragraph three of the contract allowed Yellow Book to "cancel" it if Allied's "credit history prove[d] to be unsatisfactory", the testimony of Williams that she spoke to a secretary of Allied advising that the account needed to "get more current" before the advertisement would be published, and that she believed the "ad was pulled", does not establish that the contract was terminated/cancelled. The court notes that the propositions of law cited by Allied in regard to the unilateral right to terminate a contract are correct, but inapposite, under the circumstances.

Although the amount owing under the contract was stipulated to at trial, the court notes

that Yellow Book would be entitled to recover the amount demanded (excluding attorneys' fees) under the doctrine of account stated given that the invoice for the services provided was retained without objection (see 1 NY Jur2d Accounts and Accounting § 10 ["An account stated is an agreement, independent of the underlying agreement, as to the amount due on past transactions."]).

In accordance with the foregoing, let judgment enter in favor of Yellow Book and against Allied for the amounts stipulated to at trial, with interest, costs and disbursements.

Dated: December 8, 2009


Hon. Vito M. DeStefano

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