

Consortium for Worker Educ. v 1199SEIU/League
2010 NY Slip Op 32115(U)
July 6, 2010
Supreme Court, New County
Docket Number: 103344/2008
Judge: Paul Wooten
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: HON. PAUL WOOTEN
Justice

PART 7

THE CONSORTIUM FOR WORKER EDUCATION,
Plaintiff,

INDEX NO. 103344/2008

-against-

MOTION DATE _____

1199SEIU/LEAGUE and CIVIL SERVICE
EMPLOYEES ASSOCIATION,

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

Defendants.

The following papers, numbered 1 to 2 were read on this Motion by plaintiff(s) for a an Order and Judgement Pursuant to Article 8 of the Civil Practice Law and Rules and defendants motion to add a necessary party per CPLR 1003 .

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits _____ 1

Answering Affidavits — Exhibits (Memo) _____

Replying Affidavits (Reply Memo) _____

Cross-Motion: Yes No

FILED
AUG 11 2010
NEW YORK
COUNTY CLERK'S OFFICE

Motion sequences 001 and 002 are consolidated for the purposes of disposition.
In motion sequence 001, defendant Civil Service Employees Association (CSEA) moves, pursuant to CPLR 3211 (a) (1), (5), and (7), to dismiss the complaint on the grounds that CSEA paid plaintiff, the Consortium for Worker Education, for services rendered, and thus, did not breach the contracts between the two parties. In motion sequence 002, defendant 1199SEIU/League (SEIU) moves, pursuant to CPLR 3211 (a) (1), (5), and (7), to dismiss the complaint on the grounds that SEIU paid plaintiff for services rendered, and thus, did not breach the contracts between the two parties.

Background

Plaintiff is a not-for-profit New York corporation that provides an array of employment,

training, and education services in partnership with different organizations and labor unions, including the defendants. This action arises out defendants' alleged failure to pay plaintiff for classes and training that they provided for defendants' members.

SEIU Contracts

During November 2004 through November 2005, SEIU contracted with plaintiff, whereby plaintiff agreed to provide training classes to certain SEIU members. The contracts provided that plaintiff would invoice SEIU for the amounts owed for providing these classes. Plaintiff provided the classes, and sent SEIU several invoices between November 2004 and July 2005, totaling \$210,588.05. The invoices listed plaintiff's address at the top and stated "[p]lease remit your payment to the Consortium for Worker Education." SEIU's Notice of Motion, Exhibits B - H. SEIU alleges that it sent checks, totaling \$210,588.05, to 275 Seventh Avenue, New York, New York, the address provided on the plaintiff's invoices. See SEIU's Notice of Motion, Affidavit of Louise Bayer. The checks were made payable to the Consortium for Worker Education, as instructed. See SEIU's Notice of Motion, Affidavit of Louise Bayer, Exhibits B-H. SEIU submits copies of the cashed checks made out to Consortium for Worker Education, endorsed by "Consortium for Worker Education," and deposited into a bank account held at North Fork Bank. *Id.*

Plaintiff argues that these checks were intercepted "as it has been admitted to by the persons that did so," and that the proceeds were never received by plaintiff. Andrew Fisher's Affirmation in Opposition to Defendants' Motion to Dismiss, ¶ 31. Therefore, plaintiff argues that SEIU is still responsible for payment under the contracts, and SEIU's failure to pay is a breach.

CSEA Contracts

CSEA also contracted with plaintiff, whereby plaintiff agreed to provide certain training to CSEA members. Plaintiff provided the training, and sent invoices seeking payment for its

services. In a letter from plaintiff's Senior Budget Analyst, Gillian Cameron, and two letters from Osei Boateng, plaintiff's Chief Financial Officer, CSEA was directed to send payments to the attention of Dr. Frank Madera, Assistant Executive Director of the Health Care Institute at the Consortium for Worker Education. See CSEA's Notice of Motion, Exhibit C. CSEA sent checks to Madera's attention. See CSEA's Notice of Motion, Exhibit D. CSEA submits the cashed checks, made payable to the Consortium for Worker Education, endorsed by signature or stamp "Consortium for Worker Education," and deposited into the same North Fork Bank account as the SEIU checks. *Id.* Plaintiff argues that these checks, totaling \$414,339.27, were also intercepted "as it has been admitted to by the persons that did so," and that the proceeds were never received by plaintiff. Andrew Fisher's Affirmation in Opposition to Defendants' Motion to Dismiss, ¶ 31. Therefore, plaintiff argues that CSEA is still responsible for payment under the contracts, and CSEA's failure to pay is a breach.

Alleged Embezzlement

As stated above, plaintiff acknowledges that the checks were intercepted, as such was admitted by the persons who did it, but plaintiff evades naming these persons. The defendants submit undisputed documentary evidence that the Manhattan District Attorney's Office brought an indictment against Madera and Boateng for stealing money from plaintiff by depositing checks intended for plaintiff into a bank account that they set up.

Plaintiff's Action

Plaintiff brings this action against defendants for breach of contract, breach of implied covenant of good faith and fair dealing, and quantum meruit and unjust enrichment. As previously stated, plaintiff alleges that defendants breached their contracts with plaintiff by failing to pay them monies owed under the contracts.

Defendants now move to dismiss the complaint based on documentary evidence, which shows full payment, and for failure to state a claim.

Conclusion

It is well established in New York that "a debtor's liability is discharged when a check payable to the creditor is wrongfully indorsed by the creditor's agent and is paid by the drawee bank, and the proceeds converted by the agent." *Hutzler v Hertz Corp.*, 39 NY2d 209, 214 (1976). Here, defendants submit undisputed documentary evidence that they followed the plaintiff's instructions, as to the method of payment, as set forth on the invoices and letters, made the checks out to plaintiff, and that those checks were cashed and endorsed in the plaintiff's name.

As acknowledged by plaintiff, these checks were wrongfully endorsed and converted. Further, plaintiff does not dispute the checks were converted by Madera and Boateng. In fact, CSEA was instructed to send the checks to Madera's attention, and followed those instructions given by plaintiff.

Therefore, defendants have conclusively shown, through the documentary evidence presented, that they did pay the monies owed to plaintiff, but that these monies were converted by plaintiff's agents. Defendants cannot be liable for their acts.

Similarly, plaintiff's claim for implied covenant of good faith and fair dealing based on defendants' alleged breach must also be dismissed for the foregoing reasons. Nevertheless, this cause of action is duplicative of the breach of contract claims, because they arise from the same facts and seek identical damages. *Amcan Holdings, Inc. v Canadian Imperial Bank of Commerce*, 70 AD3d 423, 426 (1st Dept 2010).

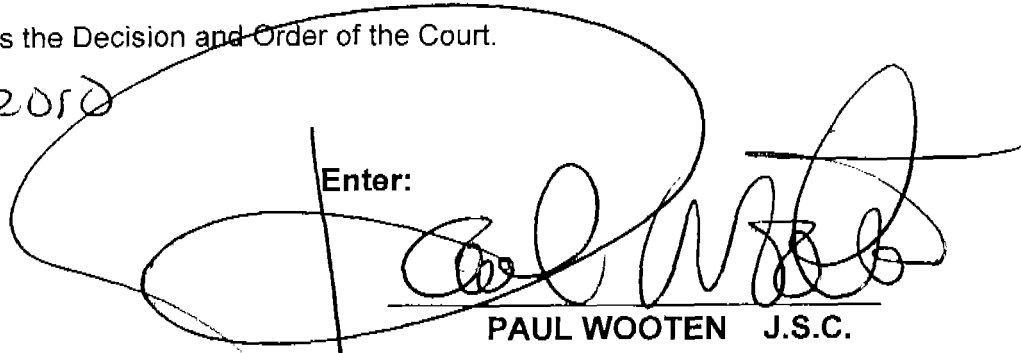
Plaintiff's claims for unjust enrichment and quantum meruit are also dismissed, because defendants have conclusively shown that they were not unjustly enriched, as they paid for the services rendered. Nevertheless, these claims are also duplicative of the breach of contract claims, as plaintiff does not allege a duty independent of the contract. *Hoeffner v Orrick, Herrington & Sutcliffe, LLP*, 61 AD3d 614, 615 (1st Dept 2009).

Accordingly, it is

ORDERED that defendant Civil Service Employees Association and defendant 1199SEIU/League's motions to dismiss the complaint are granted, and the complaint is dismissed in its entirety as against said defendants with costs and disbursements as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendants.

This constitutes the Decision and Order of the Court.

Dated: 7-6-2010

Enter: 
PAUL WOOTEN J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: : DO NOT POST REFERENCE

FILED
AUG 11 2010
NEW YORK
COUNTY CLERK'S OFFICE