

Fuller & D' Angelo, P.C. v Cornerstone Hospitality

2012 NY Slip Op 32357(U)

May 10, 2012

Supreme Court, New York County

Docket Number: 111607/2009

Judge: Lucy Billings

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

PRESENT: LUCY BILLINGS
J.S.C.
Justice

PART 46

Index Number : 111607/2009
FULLER AND D'ANGELO, P.C.
vs.
CORNERSTONE HOSPITALITY
SEQUENCE NUMBER : 002
AMEND SUPPLEMENT PLEADINGS

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

The following papers, numbered 1 to 3 were read on this motion to/for amend the complaint and to sever claims

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

PAPERS NUMBERED

1
2
3

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered ~~that this motion~~ and adjudged that:

The court denies plaintiff's motion to amend its complaint, but grants plaintiff's motion to sever claims, pursuant to the accompanying decision.

C.P.L.R. §§ 603, 3025(b).

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Dated: 6/20/12

Lucy Billings

LUCY BILLINGS J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUBMIT ORDER/JUDG.

SETTLE ORDER /JUDG.

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46

-----X

FULLER and D'ANGELO, P.C., ARCHITECTS Index No. 111607/2009
and PLANNERS,

Plaintiff

- against -

DECISION AND ORDER

CORNERSTONE HOSPITALITY ADVISORS,
BLACKSTAR DEVELOPMENT, INC., JOSHUA
CASPI, and ARYN SPAHR,

Defendants

-----X

LUCY BILLINGS, J.S.C.:

Plaintiff moves to amend its complaint to add an account stated claim against defendant Caspi and to sever the action against defendant Cornerstone Hospitality Advisors on plaintiff's first claim for breach of contract and against defendant Blackstar Development, Inc., on plaintiff's tenth claim for an account stated. C.P.L.R. §§ 603, 3025(b). In a decision and order dated August 2, 2011, the court granted plaintiff summary judgment on those claims against defendant entities. C.P.L.R. § 3212(b) and (e). Pursuant to the parties stipulation dated May 10, 2012, the court grants plaintiff's motion insofar as it seeks the severance, since the decision and order dated August 2, 2011, provides plaintiff full recovery against those defendants. C.P.L.R. § 603. The Clerk shall enter a judgment on those claims, each for \$28,310.50, with costs and disbursements to be taxed by the Clerk upon submission of a bill of costs. C.P.L.R. §§ 8101, 8201, 8301(a), 8401. Since the first claim, in contrast

to the tenth claim, does not seek interest, interest shall run at 9% per year against Cornerstone Hospitality Advisors from the date this defendant's liability was determined, August 2, 2011. C.P.L.R. § 5002. E.g., Denio v. State of New York, 7 N.Y.3d 159, 167 (2006); Pay v. State of New York, 87 N.Y.2d 1011, 1013 (1996); Rohring v. City of Niagara Falls, 84 N.Y.2d 60, 68-69 (1994); Bermio v. Atakent, 241 A.D.2d 235, 247 (1st Dep't 1998). Interest shall run at 9% per year against Blackstar Development, Inc., from December 8, 2008, when Caspi, on Blackstar Development's behalf, responded to and thus acknowledged receipt of plaintiff's demand for payment of \$28,310.50. C.P.L.R. § 5001(a) and (b). E.g., Richard Friedman Assoc., CPA PC v. Jereski, 26 A.D.3d 296, 297 (1st Dep't 2006). See RPI Professional Alternatives, Inc. v. Citigroup Global Mkts, Inc., 61 A.D.3d 618, 620 (1st Dep't 2009); Eisen v. Feder, 47 A.D.3d 595, 596 (1st Dep't 2008); Tesser v. Allboro Equip. Co., 73 A.D.3d 1023, 1027-28 (2d Dep't 2010); Home Insulation & Supply, Inc. v. Buchheit, 59 A.D.3d 1078, 1079 (4th Dep't 2009).

The court denies plaintiff's motion insofar as it seeks to amend the complaint to add an account stated claim against Caspi. The decision and order dated August 2, 2011, granted summary judgment dismissing all claims against the individual defendants Caspi and Spahr. C.P.L.R. § 3212(b) and (e). Plaintiff presents no evidence to support an account stated claim against Caspi other than the evidence presented in support of plaintiff's prior motion and defendants' prior cross-motion for partial summary

judgment: that he received plaintiff's invoices addressed to him on Blackstar Development's behalf at Blackstar Development at its business address.

This evidence fails to meet plaintiff's burden to demonstrate the proposed claim's merit. Zaid Theatre Corp. v. Sona Realty Co., 18 A.D.3d 352, 355 (1st Dep't 2005); Pacheco v. Fifteen Twenty Seven Assoc., 275 A.D.2d 282, 284 (1st Dep't 2000); Non-Linear Trading Co. v. Braddis Assoc., 243 A.D.2d 107, 116 (1st Dep't 1998). See Sabo v. Alan B. Brill, P.C., 25 A.D.3d 420, 421 (1st Dep't 2006); Thompson v. Cooper, 24 A.D.3d 203, 205 (1st Dep't 2005); Watts v. Wing, 308 A.D.2d 391, 392 (1st Dep't 2003). Absent evidence indicating an underlying relationship or Caspi's acknowledgment of an agreement between plaintiff and Caspi, Unclaimed Prop. Recovery Serv., Inc. v. UBS Paine Webber Inc., 58 A.D.3d 526 (1st Dep't 2009); Ryan Graphics, Inc. v. Bailin, 39 A.D.3d 249, 251 (1st Dep't 2007); see Risk Mgt. Planning Group, Inc. v. Cabrini Med. Ctr., 63 A.D.3d 421 (1st Dep't 2009); Raj Jewelers v. Dialuck Corp., 300 A.D.2d 124, 126 (1st Dep't 2002), or his misuse of the corporation as a vehicle for his own personal business, plaintiff fails to support a claim against him individually. Do Gooder Prods., Inc. v. American Jewish Theatre, Inc., 66 A.D.3d 527, 528 (1st Dep't 2009); Matias v. Mondo Props. LLC, 43 A.D.3d 367, 368-69 (1st Dep't 2007); Shimamoto v. S&F Warehouses, 257 A.D.2d 334, 340 (1st Dep't 1999). See Shisgal v. Brown, 21 A.D.3d 845, 848-49 (1st Dep't 2005); Brito v. DILP Corp., 282 A.D.2d 320, 321 (1st Dep't 2001).

The mere fact that Caspi's name is listed as the contact person or authorized representative for the corporation does not implicate his individual liability. Matias v. Mondo Props. LLC, 43 A.D.3d at 368. Even if Caspi controlled the management of the corporation's business, individual liability on such a basis "would obviate the legal distinction between a corporation and its officers, share owners and employees." Id. at 369 (citation omitted).

In sum, the court denies plaintiff's motion to amend its complaint to add an account stated claim against defendant Caspi, but grants plaintiff's motion to sever the action against defendant Cornerstone Hospitality Advisors on plaintiff's first claim for breach of contract and against defendant Blackstar Development, Inc., on plaintiff's tenth claim for an account stated. C.P.L.R. §§ 603, 3025(b). As set forth above, the Clerk shall enter a judgment:

- (1) against defendant Cornerstone Hospitality Advisors on plaintiff's first claim for \$28,310.50, with interest at 9% per year from August 2, 2011, C.P.L.R. § 5002, and
- (2) against defendant Blackstar Development, Inc., on plaintiff's tenth claim for \$28,310.50, with interest at 9% per year from December 8, 2008, C.P.L.R. § 5001(a) and (b), plus costs and disbursements. C.P.L.R. §§ 8101, 8201, 8301(a), 8401. This decision constitutes the court's order and its judgment on the severed claims.

DATED: June 20, 2012

Lucy Billings

LUCY BILLINGS, J.S.C.

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

Fuller and D'Angelo, P.C. Architects,
and Planners.

v.

Cornerstone Hospitality Advisors, Blackstar
Development, Inc., Joshua Carpi and Arvin
Spain

INDIVIDUAL ASSIGNMENT PART 46

STIPULATION

INDEX NO. 111607/09

MOTION CALENDAR NO.

DATE 5/10/12

IT IS HEREBY STIPULATED AND AGREED by and between the below-named attorney(s) as follows:

Severance of the first cause of action against
Cornerstone Hospitality Advisors for breach of contract and
the tenth cause of action against Blackstar Development, Inc.
for an account stated claim.

Date: 5/10/12

So Ordered.

ENTER:

Lucy Billings

J.S.C.

LUCY BILLINGS
J.S.C.

[Signature]

Attorney for Plaintiff Goodwin, Barnett & O'Neill, LLP

Silverberg Zelenko LLP

[Signature]

Attorney for Defendant

Attorney for Defendant