

**Cathedral Consulting Group, LLC v C.S. Bioscience,
Inc.**

2013 NY Slip Op 30429(U)

January 22, 2013

Sup Ct, New York County

Docket Number: 112798/2010

Judge: Shlomo S. Hagler

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

SHLOMO HAGLER

~~EMILY JANE GOODMAN~~

PRESENT:

Justice

PART 17

Index Number : 112798/2010
CATHEDRAL CONSULTING GROUP
vs.
C.S. BIOSCIENCE, INC.
SEQUENCE NUMBER : 002
SUMMARY JUDGMENT

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

The following papers, numbered 1 to 3, were read on this motion ^{and cross-motion} to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s) 1

Answering Affidavits — Exhibits & cross-motion _____ | No(s) 2

Replying Affidavits _____ | No(s) 3

Upon the foregoing papers, it is ordered that this motion ~~is~~ ^{and cross-motion} ~~are~~ ^{are} decided in accordance with the attached order.

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

FILED
MAR 04 2013
COUNTY CLERKS OFFICE
NEW YORK

SHLOMO HAGLER
J.S.C.

Dated: 1/22/13

~~EMILY JANE GOODMAN~~
_____, J.S.C.

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

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

-----X
CATHEDRAL CONSULTING GROUP, LLC,

Plaintiff,

-against-

C.S. BIOSCIENCE, INC., GERALD CURATOLA,
DAVID SHUCH, and 231 ROBERT NORDQUIST
individually and as agents of C.S. BIOSCIENCE, INC.

Defendants.

Index No. 112798/2010

FILED

MAR 04 2013

**COUNTY CLERKS OFFICE
NEW YORK**

DECISION/ORDER

-----X
HON. SHLOMO S. HAGLER, J.S.C.:

Defendants move for an order pursuant to CPLR § 3212 granting them summary judgment dismissing this action. Plaintiff Cathedral Consulting Group, LLC, (“Cathedral” or “plaintiff”) opposes the motion and cross-moves for an order pursuant to CPLR § 3212 granting it summary judgment on this action. Defendants oppose the cross-motion. Both the motion and cross-motion are consolidated herein for disposition.

Background

On or about October 28, 2008, defendant C.S. Bioscience, Inc. (“CS Bio”) retained plaintiff to provide it consulting services. Cathedral immediately commenced providing consulting services to CS Bio and Cathedral eventually sought to formalize the terms of the services in a letter sent to CS Bio dated December 23, 2008 (“Letter Agreement”). (See Exhibit “C” to the cross-motion). CS Bio did not countersign the Letter Agreement. Nevertheless, Cathedral continued to perform consulting services and billed for them. CS Bio continued its relationship with plaintiff and made partial payments on the invoices. This relationship continued until CS Bio eventually terminated its relationship with Cathedral on or about November 30, 2009. (See Complaint at ¶ 7 and ¶ 14 attached as Exhibit “A” to the motion). Cathedral claims that there remains an outstanding balance of

\$119,312.50 owed to them. Cathedral commenced this action alleging three causes of action for (1) unjust enrichment in the amount of \$119,312.50; (2) breach of contract in the amount of \$119,312.50; and (3) to pierce the corporate veil and enter judgment against the individual defendants. Defendants interposed an answer to the complaint. (See Exhibit "B" to the motion).

Summary Judgment

The movant under CPLR § 3212 has the initial burden of proving entitlement to summary judgment. (Winegrad v New York Univ. Med. Ctr., 64 NY2d 851 [1985].) Once such proof has been offered, in order to defend the summary judgment motion, the opposing party must "show facts sufficient to require a trial of any issue of fact." (CPLR § 3212[b]; Zuckerman v City of New York, 49 NY2d 557 [1980]; Friends of Animals v Associated Fur Mfrs., 46 NY2d 1065 [1979]; Freedman v Chemical Construction Corp., 43 NY2d 260 [1977]; Spearmon v Times Square Stores Corp., 96 AD2d 552 [2d Dept 1983].) "It is incumbent upon a [litigant] who opposes a motion for summary judgment to assemble, lay bare and reveal [his, her, or its] proof, in order to show that the matters set up in [the] answer are real and are capable of being established upon a trial." Spearmon, 96 AD2d at 553 (quoting Di Sabato v Soffes, 9 AD2d 297, 301 [1st Dept 1959].) If the opposing party fails to submit evidentiary facts to controvert the facts set forth in the movant's papers, the movant's facts may be deemed admitted and summary judgment granted since no triable issue of fact exists. (Kuchne & Nagel, Inc. v F.W. Baiden, 36 NY2d 539 [1975].)

Arguments

Cathedral maintains that the Letter Agreement is a valid contract which CS Bio accepted by continuing its relationship with Cathedral and making payments for the services even after they received the contract. Cathedral alleges that CS Bio breached this contract when it failed to pay for

the services. CS Bio argues that no contract ever existed as they never agreed to the terms of the Letter Agreement.

Cathedral further argues that CS Bio is required to pay for its services performed even in the absence of a formal contract to prevent the unjust enrichment of CS Bio. In conclusion, Cathedral claims that defendants Curratola, Nordquist, and Shuch (“Individual Defendants”) “individually retained and dismissed Cathedral in order to further their personal capacity to benefit from CS Bio” (See Complaint at ¶ 32 attached as Exhibit “A” to the motion) and therefore the Court should pierce the corporate veil and enter judgment against the Individual Defendants.

Breach of Contract

In order to establish the existence of an enforceable contract, a plaintiff must establish an offer, acceptance of the offer, consideration, mutual assent, and an intent to be bound. *Kowalchuk v Stroup*, 61 Ad3d 118 (1st Dept. 2009). Cathedral avers that the Letter Agreement constitutes an enforceable contract which CS Bio accepted by continuing to receive the consulting services and making payments. CS Bio’s failure to pay the balance owed is therefore a breach of contract. CS Bio argues that it never agreed to the terms of the Letter Agreement, which it did not countersign.

The question of whether CS Bio accepted this contract by performance is a factual one best left to the finder of fact. Therefore, the branch of the defendants’ motion for summary judgment on the breach of contract claim and plaintiff’s cross-motion are both denied.

Unjust Enrichment

The theory of unjust enrichment is a quasi contract claim. *Goldman v Metropolitan Life Ins. Co.*, 5 NY3d 561 (2005). It is an obligation imposed by equity to prevent injustice in the absence of an actual contract between the parties. *IDT Corp. v Morgan Stanley Dean Witter & Co.*, 12 NY3d

132 (2009). The existence of a valid and enforceable contract precludes recovery on a unjust enrichment claim for events arising out of the same subject matter. *Clark-Fitzpatrick, Inc. v Long Is. R.R. Co.*, 70 NY2d 382 (1987). Since it is a question of fact whether or not there is a valid contract in this case, it is premature for this Court to rule on the quasi contract claim of unjust enrichment. Therefore, the branch of defendants' motion for summary judgment on the unjust enrichment claim and plaintiff's cross-motion are both denied as being premature.

Pierce the Corporate Veil

New York law disfavors the disregard of the corporate form. *Cobalt Partners, L.P. v GSC Capital Corp.*, 97 AD3d 35 (1st Dept 2012). "[P]iercing the corporate veil requires a showing that: (1) the owners exercised complete domination of the corporation in respect to the transaction attacked; and (2) that such domination was used to commit a fraud or wrong against the plaintiff which resulted in plaintiff's injury. *Matter of Morris v New York State Dept. of Taxation & Fin.*, 82 NY2d 135, 141 (1993).

Cathedral's cause of action to recover for breach of contract or, in the alternative, for unjust enrichment is based on the fact that there is an outstanding balance for services rendered. There is nothing in the complaint or the cross-motion which shows that the Individual Defendants contracted for or received any services from plaintiff. The complaint merely alleges that the individual defendants "individually retained Cathedral and dismissed Cathedral in order to further their personal capacity to benefit from CS Bio." (See Complaint at ¶ 32, attached as Exhibit "A" to the motion). The plaintiff's cross-motion merely repeats the same allegation. (See cross-motion at ¶ 17). The Letter Agreement, which is the basis of plaintiff's claim for breach of contract is addressed to CS Bio and not to the individual defendants. (See Letter Agreement, attached as Exhibit "C" to the

[* 6]
cross-motion). “[A] plaintiff must do more than merely allege that the individual engaged in improper acts or acted in ‘bad faith’ while representing the corporation.” *East Hampton Union Free School Dist. v Sandpebble Bldrs., Inc.*, 16 NY3d 775, 776 (2011). Therefore, the branch of defendants’ motion for summary judgment on the claim to pierce the corporate veil is granted and plaintiff’s cross-motion is denied.

Conclusion


Accordingly, it is

ORDERED that the defendants’ motion for summary judgment is granted solely to the extent of dismissing the claim to pierce the corporate veil and dismissing the action against the individual defendants; it is further

ORDERED that the plaintiff’s cross-motion for summary judgment is denied.

The foregoing constitutes the decision and order of the Court.

Dated: January 22, 2013
New York, New York



Hon. Shlomo S. Hagler, J. S. C.

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