

Block v Chester
2014 NY Slip Op 30928(U)
April 8, 2014
Supreme Court, New York County
Docket Number: 654006/2013
Judge: Eileen A. Rakower
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 15

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JEREMY BLOCK

Plaintiff,

Index No.:
654006/2013

Decision and
Order

- against -

Mot. Seq.: 01

JACK CHESTER and Winegeist LLC
d/b/a FREE RANGE WINE SPIRITS,

Defendants.

-----X
HON. EILEEN A. RAKOWER, J.S.C.

This action is based on, *inter alia*, a sole proprietor's alleged failure to hold an offer of equal equity partnership in his wine selling business open to a would-be joint venturer, pursuant to the terms of a purported option contract for the same. Plaintiff, Jeremy Block ("Plaintiff"), claims to have entered into a written agreement (the "Contract") with defendants, Jack Chester ("Chester") and Winegeist LLC d/b/a Free Range Wine Spirits ("Free Range Wine") (collectively, "Defendants"), whereby in exchange for certain contributions that Plaintiff allegedly made to Defendants' wine selling business, Free Range Wine, Defendants promised to give Plaintiff an equal partnership interest in this venture whenever Plaintiff was ready, willing, and able to make a \$150,000.00 capital investment in, and work full time for, Free Range Wine. Plaintiff claims that Defendants failed to provide Plaintiff with an equal stake in the business, despite having been advised that Plaintiff was ready, willing, and able to fulfill his obligations under the Contract. Plaintiff asserts causes of action for breach of contract, work labor and services, and unjust enrichment against Defendants, and seeks to preclude Defendants from using the name 'Free Range Wine'.

Defendant moves for an Order, pursuant to CPLR 3211(a)(3), (a)(7), (a)(1), and 3211(c), dismissing Plaintiff's complaint for lack of capacity, failure to state a claim upon which relief may be granted, on the basis of documentary evidence, and treating this motion as one for summary judgment.

Plaintiff opposes, and cross moves for summary judgment on liability and for sanctions.

CPLR § 3211 provides, in relevant part:

(a) a party may move for judgment dismissing one or more causes of action asserted against him on the ground that:

(1) a defense is founded upon documentary evidence;

(3) the party asserting the cause of action has not legal capacity to sue;

(7) the pleading fails to state a cause of action.

On a motion to dismiss pursuant to CPLR §3211(a)(1), "the court may grant dismissal when documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law." (*Beal Sav. Bank v. Sommer*, 8 NY3d 318, 324 [2007]) (internal citations omitted). A movant is entitled to dismissal under CPLR § 3211 when his or her evidentiary submissions flatly contradict the legal conclusions and factual allegations of the complaint. (*Rivietz v. Wolohojian*, 38 A.D.3d 301 [1st Dept. 2007]) (citation omitted). "When evidentiary material is considered, the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one." (*Guggenheimer v. Ginzburg*, 43 N.Y.2d 268, 275 [1977]).

In determining whether dismissal is warranted for failure to state a cause of action, the court must "accept the facts alleged as true ... and determine simply whether the facts alleged fit within any cognizable legal theory." (*People ex rel. Spitzer v. Sturm, Ruger & Co., Inc.*, 309 AD2d 91 [1st Dept. 2003]) (internal citations omitted) (*see* CPLR §3211[a][7]).

"The elements of a breach of contract claim are formation of a contract between

the parties, performance by the plaintiff, the defendant's failure to perform, and resulting damage.” (*Flomenbaum v New York Univ.*, 2009 NY Slip Op 8975, *9 [1st Dept. 2009]).

Defendants argue that the Contract itself constitutes documentary evidence that flatly contradicts Plaintiff’s breach of contract claim, because the writing at issue constitutes “a mere agreement to agree,” with the “broadest sketch of obligations,” and is not enforceable as a contract. Defendants also argue that the writing is not enforceable as a contract because it is not signed by both parties, and because there is no manifestation of mutual assent to its terms. To this end, Defendants point to an email containing “partnership deal points” which Chester sent to Plaintiff on September 12, 2013 (the “September Email”), and argue that this email constitutes documentary evidence establishing that Plaintiff and Defendants continued to dispute material terms of alleged Contract more than three months after this Contract, which is dated June 18, 2013, was signed.

In addition, Defendants argue that even if the Contract is enforceable, Plaintiff’s amended complaint fails to adequately plead a breach of contract claim because Plaintiff failed to satisfy the condition precedent to the alleged partnership arrangement, i.e. that Plaintiff was “ready, willing, and able” to make a \$150,000.00 cash contribution to the business venture and work for Free Range Wine full time, since Plaintiff makes no showing with respect to available funds or any other indicia of “readiness”. Defendants also argue that Plaintiff, having made no capital investment in Free Range Wine, has suffered no damages, and therefore fails to plead this element of a breach of contract claim.

Here, Plaintiff’s complaint alleges, “Sometime in 2012, Block had become aware of a wine store for sale in Brooklyn, New York, known as Donna Devine, located at 355 Atlantic Avenue.” Plaintiff’s amended complaint further alleges, “Block advised Chester of the availability of this store for sale” and, “At the time Block advised Chester of the availability of Donna Devine, they discussed a joint venture to purchase and operate Donna Devine as equal partners . . . Pursuant to those discussions, Block and Chester would eventually make an equal cash contribution to the business, they would be equal partners and receive equal compensation.” Plaintiff’s amended complaint also asserts:

In order to memorialize the understanding between Block and Chester, Chester signed a contract on June 18, 2013,

which recognized Block's contribution to the business as consideration for the contract and promised that, when he was ready, able, and willing to do so, Block would make an equal \$150,000.00 capital investment in the business, work full time, and receive equal equity ownership and equal salary and bonuses going forward. A copy of that contract is annexed hereto and incorporated herein.

Plaintiff's amended complaint further alleges, "Block advised Chester that he was ready, willing, and able to make the \$150,000.00 investment and begin to devote a full time effort to the business," that "Upon being advised that Block was ready, willing, and able, Chester reneged on the contract and insisted on different terms, including unequal profit distribution, unequal workload, adding a new part owner to the business and insisting on having the unilateral right to terminate Block's relationship with the business without notice or compensation," and that "Block attempted to come to terms with Chester, but it became clear that Chester had no intention that Block would have an equal stake in this business." Plaintiff's amended complaint asserts, "Chester's attempt to change the terms of the written contract and refusal to honor those terms constitutes an anticipatory breach of that contract" and claims that, "As a result . . . [Plaintiff] suffered damages including lost future profits and loss of earnings, as well as lost opportunity to enter into a business relationship with someone else."

Accepting Plaintiff's allegations as true, Plaintiff's amended complaint adequately pleads the formation of a contract between the parties, a copy of which is annexed to Plaintiff's amended complaint and signed by the party against whom enforcement is sought. The amended complaint adequately pleads Plaintiff's performance under the purported Contract, in that Plaintiff allegedly was ready, willing, and able to satisfy its obligations thereunder and Defendants were so apprised. Plaintiff's amended complaint sufficiently alleges Defendants' failure to perform, and the subsequent emails do not flatly contradict Plaintiff's claims. Accordingly, accepting Plaintiff's allegations as true and drawing all inferences in favor of the non-moving party, the four corners of Plaintiff's amended complaint are sufficient to state a claim for breach of contract, for purposes of surviving a motion to dismiss at this early stage of litigation.

As for Plaintiff's second cause of action for work, labor, and services rendered, "To state such a cause of action, plaintiff must allege (1) the performance

of services in good faith, (2) the acceptance of the services by the person to whom they are rendered, (3) an expectation of compensation therefor, and (4) the reasonable value of the services. (*Soumayah v. Minnelli*, 41 A.D.3d 390, 391 [1st Dep't 2007]).

Plaintiff's amended complaint alleges that Plaintiff made various contributions to Defendants' business venture. Specifically, the amended complaint alleges that Plaintiff "advised Chester of the availability of this [wine] store for sale," that Defendants purchased the subject wine store "with Block's assistance," that Plaintiff provided "ongoing technical assistance and guidance" respecting wine store operations, and that Plaintiff "provided the name Free Range Wine and Spirits," and "worked in the store on Saturdays to assist Chester in Developing the business." Plaintiff's amended complaint further alleges that Plaintiff's services were "recognized as consideration" for Defendants' alleged promise of partnership, and that, "Plaintiff has performed at least 500 hours of work labor and services for defendants, which has not been compensated," for which "defendants owe Block \$50,000.00."

Here, accepting Plaintiff's allegations as true, Plaintiff's complaint adequately sets forth the elements of a claim for work, labor, and services, or *quantum meruit*, including the element of expectation of compensation, in that Plaintiff's amended complaint pleads that Plaintiff performed various services for Defendants, and that Plaintiff expected compensation as an equity partner therefor. Accordingly, accepting Plaintiff's allegations as true and drawing all favorable inferences in favor of the non-moving party, the four corners of Plaintiff's amended complaint adequately plead a cause of action for *quantum meruit*, for purposes of surviving a motion to dismiss at this early stage of litigation.

As for Plaintiff's third cause of action, to prevail on a claim for unjust enrichment, the "plaintiff must show that the other party was enriched, at plaintiff's expense, and that it is against equity and good conscience to permit [the other party] to retain what is sought to be recovered." (*Georgia Malone & Co., Inc. v. Rieder*, 86 A.D.3d 406 [1st Dep't 2011]).

"[T]he existence of a valid and enforceable written contract governing a particular subject matter ordinarily precludes recovery in quasi contract for events arising out of the same subject matter." (*Clark- Fitzpatrick, Inc. v. Long Island R.R. Co.*, 70 N.Y. 2d 382, 399 [1987]). However, "where there is a bona fide dispute as to the existence of a contract or the application of a contract in the dispute in issue,

a plaintiff may proceed upon a theory of quasi contract as well as breach of contract, and will not be required to elect his or her remedies.” *Sabre Intl. Sec., Ltd. v. Vulcan Capital Mgt., Inc.*, 95 A.D.3d 434, 438-439 (1st Dep’t 2012); *Loheac v. Children’s Corner Learning Ctr.*, 51 A.D. 3d 476, 476 [1st Dep’t 2008]).

Plaintiff’s amended complaint alleges that Plaintiff made various contributions to Defendants’ business venture, as discussed above. Plaintiff’s complaint further alleges, “Defendants have been unjustly enriched by the work performed by Block, including his provision of the name Free Range Wine and Spirits,” and that, in addition to damages “defendants should be required to relinquish the name Free Range Wine and Spirits to Block.”

Defendants argue that Plaintiff lacks standing to assert any rights or claims to the trade name “Free Range Wine” because Plaintiff does not own the intellectual property in question. Defendants also argue that Plaintiff is estopped from objecting to Defendants’ use of the trade name “Free Range Wine,” because Plaintiff has acquiesced to such use.

Here, Plaintiff’s allegations, if taken to be true, are sufficient to support a claim for unjust enrichment, at this early stage of litigation. Thus, insofar as there appears to be a question concerning the scope or applicability of the purported Contract, Plaintiffs may, at least at this stage, proceed based on an alternative quasi-contract theory. However, to the extent that Plaintiff seeks this Court’s equitable intervention enjoining Defendants’ use of the trade name “Free Range Wine”, such relief is inappropriate to remedy Plaintiff’s claim that Defendants were unjustly enriched by their alleged failure to compensate Plaintiff for his coming up with the trade name at issue.

Furthermore, “a claim for unjust enrichment may stand alongside a breach of contract cause of action at the pleading stage.” (*Shilkoff, Inc. v. 885 Third Ave. Corp.*, 299 A.D.2d 253 [1st Dep’t 2002]). Thus, Defendants’ contention that Plaintiff’s unjust enrichment claim cannot stand in light of Plaintiffs’ breach of contract action is premature at this stage. Accordingly, at this stage of the proceedings, Plaintiff’s amended complaint adequately states a claim for unjust enrichment upon which relief may be granted.

The Court declines to convert Defendants’ motion to dismiss to one for summary judgment.

Wherefore it is hereby,

ORDERED that Defendants' motion to dismiss is denied; and it is further,

ORDERED that Defendants are directed to answer Plaintiff's amended complaint within 20 days of service of this order with notice of entry; and it is further,

ORDERED that Plaintiff's cross motion for summary judgment is denied as premature.

This constitutes the decision and order of the Court. All other relief requested is denied.

Dated: April 8, 2014

A handwritten signature in black ink, appearing to read 'ER', is written over a horizontal line.

Eileen A. Rakower, J.S.C.