Saxon Tech., LLC v Wesley Clover Solutions-N. Am., Inc.
2014 NY Slip Op 31056(U)
April 23, 2014
Supreme Court, New York County
Docket Number: 652169/2013
Judge: Shirley Werner Kornreich
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[* 1]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 54

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SAXON TECHNOLOGIES, LLC,

Index No.: 652169/2013

Plaintiff,

DECISION & ORDER

-against-

WESLEY CLOVER SOLUTIONS – NORTH AMERICA, INC., and THE SEAPORT GROUP LLC,

Defendants.

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SHIRLEY WERNER KORNREICH, J.:

Defendant Wesley Clover Solutions – North America, Inc. (WCS) moves for summary judgment and dismissal of the allegations in the Complaint asserted against it. CPLR 3212. Defendant's motion is granted in part and denied in part for the reasons that follow.

I. Factual Background & Procedural History

Plaintiff Saxon Technologies, LLC (Saxon) commenced this action on June 19, 2013. The allegations in the Complaint are set forth in an order dated January 2, 2014 (the January Order), which was a decision on defendant The Seaport Group, LLC's (Seaport) motion to dismiss. *See* Dkt. 65. In short:

> [Saxon] is a communications consulting firm [that] advises businesses on how to set up their communications systems, such as telephone and internet networks, and connects them with vendors, [such as WCS], to install, provide, and maintain such systems. Saxon's clients pay Saxon directly, and Saxon remits payment to the vendors … Saxon structures its relationship with it clients and vendors in this way to avoid being cut out of the process, which would deprive Saxon of its revenue stream. To guard against this possibility, Saxon includes language in its client and vendor contracts to protect its rights.

January Order at 1-2, citing Complaint ¶¶ 8-11. The January Order discussed Saxon's contract with Seaport (the Seaport Agreement) and dismissed Saxon's breach of contract claim against

Seaport because Seaport's absolute right not to renew the Seaport Agreement rendered any damages unduly speculative. *Id.* at 4. The court did not dismiss the claim against Seaport alleging it tortiously interfered with the contract between Saxon and WCS (the WCS Agreement). *See id.* at 7. Two issues precluded dismissal of this claim: (1) the question of fact about whether WCS continued to provide services to Seaport after their contract with Saxon expired; and (2) the interpretation of the WCS Agreement, on which the court expressly reserved pending the instant motion, which, at the time, was in the process of being briefed.

The WCS Agreement is dated October 1, 2011 and expired on September 30, 2012. The provision in dispute, Section 11, provides:

> NON-SOLICITATION; NON-CIRCUMVENTION
>
> At all times during the term of this Agreement (including any renewal thereof) and for a period of one year after termination, for any reason, WCS will not, directly or indirectly, (i) solicit … any employee of [Saxon] to leave the employ of [Saxon] or any of its subsidiaries; (ii) solicit for employment … any person who was employed by [Saxon] at any time during the term of WCS's engagement with [Saxon] or any of its subsidiaries; or (iii) solicit business or employees from or perform services for any customer … or business relation of [Saxon, or induce or attempt to induce] any such entity to cease doing business with [Saxon]; or in any way interfere with the relationship between any such entity and [Saxon].

Dkt. 72 at 5. In other words, between October 1, 2011 and September 30, 2013, WCS was prohibited from poaching Saxon's employees or inducing any of Saxon's customers, such as Seaport, to "cease doing business with [Saxon]." Saxon claims that WCS breached Section 11(iii) by inducing Seaport not to renew the Seaport Agreement, and, instead, to contract directly with WCS. This, indeed, would be a breach. However, as discussed below, even assuming WCS is liable, damages are either non-existent, de minimus, or speculative.

WCS concedes that it provided a minimal amount of maintenance to Seaport for approximately two months after the expiration of the Seaport Agreement, for which Seaport was billed $2,651.11. During the prior two year period when the Seaport Agreement was in effect, WCS's billings for servicing Seaport totaled $233,944. WCS contends that it continued to provide services to Seaport to maintain its professional reputation (i.e., if WCS did not, Seaport would be faced with serious problems with its communications systems until it could procure a new vendor, which takes time), but stopped doing so when Saxon objected. WCS is willing to settle this action by paying Saxon its cut under the Seaport Agreement (approximately 52%) of the $2,651.11.

Saxon, instead, seeks millions of dollars in damages from WCS based on its belief that it is entitled to all future revenue that would have arisen from the WCS-Seaport relationship had WCS and Seaport decided to renew their contracts with Saxon. Saxon is wrong.

II. Discussion

On a motion to dismiss, the court must accept as true the facts alleged in the complaint as well as all reasonable inferences that may be gleaned from those facts. *Amaro v Gani Realty Corp.*, 60 AD3d 491 (1st Dept 2009); *Skillgames, L.L.C. v Brody*, 1 AD3d 247, 250 (1st Dept 2003), citing *McGill v Parker*, 179 AD2d 98, 105 (1992); *see also Cron v Harago Fabrics*, 91 NY2d 362, 366 (1998). The court is not permitted to assess the merits of the complaint or any of its factual allegations, but may only determine if, assuming the truth of the facts alleged, the complaint states the elements of a legally cognizable cause of action. *Skillgames, id.*, citing *Guggenheimer v Ginzburg*, 43 NY2d 268, 275 (1977). Deficiencies in the complaint may be remedied by affidavits submitted by the plaintiff. *Amaro*, 60 NY3d at 491. "However, factual

allegations that do not state a viable cause of action, that consist of bare legal conclusions, or that are inherently incredible or clearly contradicted by documentary evidence are not entitled to such consideration." *Skillgames*, 1 AD3d at 250, citing *Caniglia v Chicago Tribune-New York News Syndicate*, 204 AD2d 233 (1st Dept 1994). Further, where the defendant seeks to dismiss the complaint based upon documentary evidence, the motion will succeed if "the documentary evidence utterly refutes plaintiff's factual allegations, conclusively establishing a defense as a matter of law." *Goshen v Mutual Life Ins. Co. of N.Y.*, 98 NY2d 314, 326 (2002) (citation omitted); *Leon v Martinez*, 84 NY2d 83, 88 (1994).

Clearly, Saxon may recover its fee on the $2,651.11. But, Saxon has no entitlement to any money arising from business between Seaport and WCS after September 30, 2013, since WCS had sole discretion not to renew the WCS Agreement, and Section 11(iii) prohibits contracting with Seaport *only* for one year. Ergo, Saxon's perpetual damages claim fails.[1] Summary judgment is granted except as to the limited issue of whether WCS provided any services to Seaport between October 1, 2011 and September 30, 2013 other than the discussed $2,651.11 amount.

As a result, the court will not address Saxon's tort claims, because they are duplicative and effectively seek to broaden its rights under the WCS Agreement. No matter the name of the wrong, all Saxon can recover against WCS is business it performed for Seaport through September 30, 2013. WCS's unrebutted evidence shows that such business was limited to the de minimis amount of $2,651.11. Saxon, nonetheless, contends that summary judgment should be denied because discovery, which has only just begun, is needed to vet the truthfulness of WCS's

[1] Such claim might also implicate the statute of frauds.

claim that it no longer does business with Seaport. Saxon has no basis for contending that WCS does such business. This discovery, which would include depositions and perhaps e-discovery, is expensive. The resources expended by the parties and this court will greatly exceed the amount in controversy, which currently appears well below both the Commercial Division and Supreme Court monetary thresholds. At best, this is a Civil Court matter. The action, thus, is transferred to Civil Court pursuant to CPLR 325(d) and 22 NYCRR 202.13(a). *See Chiu v 1-9 Bond St. Realty, Inc.*, 79 AD3d 416 (1st Dept 2010) (Supreme Court may transfer action to Civil Court based on "reasonable inference that plaintiff's damages may be substantially less than [alleged] in complaint").[2] Accordingly, it is

ORDERED that the motion for summary judgment by defendant Wesley Clover Solutions – North America, Inc. (WCS) is granted in part as follows: (1) all claims against WCS are dismissed except for breach of contract; (2) such claim is limited to breach of Section 11(iii) of the WCS Agreement discussed herein; (3) damages on this claim are limited to any business between WCS and defendant The Seaport Group, LLC (Seaport) conducted between October 1, 2011 and September 30, 2013; and (4) Seaport's liability, which is limited to its surviving tortious interference claim, is likewise subject to the same limitation on damages as WCS; and it is further

[2] Since this action was commenced in the Supreme Court, Saxon may still recover damages in excess of the normal Civil Court monetary threshold if such damages are proven. *See Genson v Sixty Sutton Corp.*, 74 AD3d 560 (1st Dept 2010).

ORDERED that the Clerk is directed to transfer this action to the Civil Court of the City of New York in New York County.

Dated: April 23, 2014

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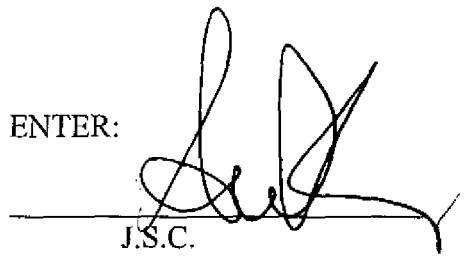

J.S.C.