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

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MICHAEL NAUGHTON,

Index No.: 600593/2010

Plaintiff,

DECISION & ORDER

-against-

WEST SIDE ADVISORS, LLC,

Defendant.

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SHIRLEY WERNER KORNREICH, J.:

Defendant West Side Advisors, LLC (WSA) moves for summary judgment against plaintiff Michael Naughton pursuant to CPLR 3212. Defendant's motion is granted in part and denied in part for the reasons that follow.

I. Procedural History & Factual Background

The following facts are undisputed.

WSA is an investment management firm. Naughton worked as a trader for WSA between March 2002 and May 6, 2009. Beginning in 2005, Naughton and WSA executed annual written compensation agreements, pursuant to which Naughton received a base salary of $200,000 plus a quarterly bonus. Like most traders, such bonus comprised the majority of Naughton's compensation. Naughton made approximately $3.7 million in 2005, $3 million in 2006, and $2.6 million in 2007.

Naughton's compensation agreements from 2005 through 2007 are virtually identical, with the only material difference being the percentage of WSA's gross revenue used to calculate

Naughton's bonus. At issue in this action is the 2007 compensation agreement (the 2007 Agreement), section 2(b) of which provides:

> In addition to a base salary, [Naughton] will receive a quarterly bonus. The first bonus is for the period January 2007 through March 2007, payable by April 15, 2007 ... The bonus in each period is equal to 22.5% times "Net Revenue" for the period, less $50,000. "Gross Revenue" is defined as all fees earned, whether paid or accrued or allocated, by [WSA]. This presently includes fees from West Side Master both on shore and off shore funds, West Side 7, but does not include fees from West Side 5 [hereinafter, WS5].

See Dkt. 40 at 29. Section 6 provides that if Naughton resigns, he forfeits "any further payments under this Agreement," but if he is terminated "not for cause," he is entitled to his base salary and bonus through the end of the quarter.

In January 2008, Naughton confronted WSA's president, non-party Gary Lieberman, about the fact that he was not given a new written compensation agreement for 2008. Lieberman and Naughton orally agreed that the terms of the 2007 Agreement would be extended "going forward." Naughton's compensation in 2008 totaled approximately $960,000. This amount, which was substantially less than Naughton received in prior years, was due to the financial crisis.

During the fourth quarter of 2008, WSA began the liquidation of WS5. Up to that point, Naughton's bonus never included WS5, which generated no fees. The reason why WS5 did not generate fees is not clear, but the evidence suggests that untoward actions by Naughton's predecessor was the reason. *See* Dkt. 31 at 129. Naughton agreed to work on the WS5 liquidation to maximize the investors' returns. *See id.* Naughton's efforts in liquidating WS5

proved fruitful, resulting in its investors getting more than expected from the fund, and, for the first time, WS5 generated fees.

The parties' relationship deteriorated in early 2009 when Naughton was not given a new written compensation agreement, was not paid a first quarter bonus, and was told that he was not entitled to fees from WS5. On May 6, 2009, after it became clear that Naughton would not be guaranteed a bonus for 2009, he resigned.

Naughton commenced this action on March 8, 2010. The Complaint lists six causes of action: (1) breach of contract; (2) breach of implied contract; (3) breach of the covenant of good faith and fair dealing; (4) "quantum meruit – unjust enrichment"; (5) promissory estoppel; and (6) violation of the New York Labor Law. In an order dated June 30, 2011, the court dismissed all claims except for breach of contract and quantum meruit. *See* Dkt. 12. On July 6, 2011, Naughton filed an Amended Complaint, limited to breach of contract and quantum meruit.[1] The Note of Issue was filed on June 13, 2013, and this motion followed.

II. Discussion

Summary judgment may be granted only when it is clear that no triable issue of fact exists. *Alvarez v Prospect Hosp.*, 68 NY2d 320, 325 (1986). The burden is upon the moving party to make a *prima facie* showing of entitlement to summary judgment as a matter of law. *Zuckerman v City of New York*, 49 NY2d 557, 562 (1980); *Friends of Animals, Inc. v Associated Fur Mfrs., Inc.*, 46 NY2d 1065, 1067 (1979). A failure to make such a *prima facie* showing requires a denial of the motion, regardless of the sufficiency of the opposing papers. *Ayotte v*

[1] The Amended Complaint includes a demand for attorneys' fees, which was originally sought under the previously dismissed Labor Law Claim. Attorneys' fees, however, are ordinarily not recoverable on a breach of contract claim.

Gervasio, 81 NY2d 1062, 1063 (1993). If a *prima facie* showing has been made, the burden shifts to the opposing party to produce evidence sufficient to establish the existence of material issues of fact. *Alvarez,* 68 NY2d at 324; *Zuckerman,* 49 NY2d at 562. The papers submitted in support of and in opposition to a summary judgment motion are examined in the light most favorable to the party opposing the motion. *Martin v Briggs*, 235 AD2d 192, 196 (1st Dept 1997). Mere conclusions, unsubstantiated allegations, or expressions of hope are insufficient to defeat a summary judgment motion. *Zuckerman,* 49 NY2d at 562. Upon the completion of the court's examination of all the documents submitted in connection with a summary judgment motion, the motion must be denied if there is any doubt as to the existence of a triable issue of fact. *Rotuba Extruders, Inc. v Ceppos*, 46 NY2d 223, 231 (1978).

In support of its motion, WSA argues that: (1) the parties never entered into a binding oral agreement entitling Naughton to a bonus in 2009; (2) the oral agreement governing Naughton's 2008 bonus does not include fees WS5 generated in the fourth quarter of 2008; (3) Naughton is not entitled to compensation between May 6, 2009 and the end of the second quarter of 2009 because Naughton resigned; and (4) Naughton's quasi-contract claim is duplicative. WSA also argued that Naughton's claims are barred by the statute of frauds, but, as explained at oral argument, this defense was rejected on the motion to dismiss. *See* Dkt. 46 (3/13/14 Tr.) at 5; Dkt. 12 at 6-7.

Though only WSA moves for summary judgment, in searching the record, the court finds it appropriate to grant partial summary judgment to Naughton. It is undisputed that the parties agreed that Naughton would be compensated "going forward" under the terms of the 2007 Agreement. In other words, for the time Naughton worked without a written contract – January 1, 2008 through May 6, 2009 – he was entitled to a base salary of $200,000 plus a bonus at the

22.5% rate on all fees earned by WSA. Summary judgment is granted to Naughton on his entitlement to compensation for this period at this rate. The *only* point of dispute is whether the fees generated by WS5 at the end of 2008 are included. This is a question of fact that cannot be resolved on summary judgment.

Although the parties' agreement governing Naughton's 2008 and 2009 compensation was oral, the terms of their agreement are governed by the 2007 Agreement, a written contract. Ergo, the usual rules governing contract interpretation apply.

It is well established that contracts "are construed in accord with the parties' intent." *Greenfield v Philles Records, Inc.*, 98 NY2d 562, 569 (2002). "The best evidence of what parties to a written agreement intend is what they say in their writing. Therefore, a written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms." *Id.* (citations omitted). "A contract is unambiguous if the language it uses has 'a definite and precise meaning, unattended by danger of misconception in the purport of the [agreement] itself, and concerning which there is no reasonable basis for a difference of opinion." *Id.*, quoting *Breed v Ins. Co. of N. Am.*, 46 NY2d 351, 355 (1978). "Thus, if the agreement on its face is reasonably susceptible of only one meaning, a court is not free to alter the contract to reflect its personal notions of fairness and equity." *Greenfield*, 98 NY2d at 569-70.

The issue of whether a contract is ambiguous "is a question of law to be resolved by the courts." *W.W.W. Assocs., Inc. v Giancontieri*, 77 NY2d 157, 162 (1990). "Parol evidence – evidence outside the four corners of the document – is admissible only if a court finds an ambiguity in the contract." *Schron v Troutman Sanders LLP*, 20 NY3d 430, 436 (2013). Consequently, a contract's meaning is not a question for trial unless it is held by the court to be

reasonably interpretable in more than one way and the extrinsic evidence fails to conclusively resolve the matter.

Section 2(b) of the 2007 Agreement is ambiguous. It states that WSA's fees "presently include[] fees from West Side Master both on shore and off shore funds, West Side 7, but does not include fees from [WS5]." Naughton avers that the 2007 Agreement's recitation of the fact that WS5 was not generating fees does not abrogate the preceding sentence's explicit statement that Naughton's bonus includes "all fees" generated by WSA. He observes that the subsequent sentence is written in the passive voice and merely describes the status quo; it does not purport to define the term "Gross Revenue", which is defined in the previous sentence "as all fees earned ... by [WSA]." Naughton argues that words such as "this **presently** includes" cannot be reasonably read to alter this definition – they merely clarify the present reality.

WSA counters that the explicit language that WSA's fees do not include "fees from WS5" unambiguously precludes Naughton's bonus including WS5 fees. WSA's interpretation fails to address why temporal language ("presently includes") is used in lieu of a more precise definition. Nonetheless, neither parties' interpretation is patently unreasonable. Hence, an ambiguity exists.

Turning to the extrinsic evidence, it is undisputed that, prior to 2008, WS5 did not generate fees. Indeed, at the beginning of 2008, WS5 was still not generating fees. Such reality changed in the fourth quarter of 2008. Though Naughton later admitted he did not necessarily expect that WS5 would generate fees from the liquidation, when it did, he expected to be compensated since such fees were actually generated via his efforts. Naughton, therefore, maintains that such fees must be included in his bonus. This inquiry, however, is inherently factual and cannot be resolved on a motion for summary judgment. A trial is needed to

determine if the parties intended for WS5 fees to be included in Naughton's bonus if WS5 generated fees.

However, summary judgment is granted to WSA on the issue of Naughton not being entitled to either his base salary or bonus after he resigned on May 6, 2009. It is undisputed that Naughton voluntarily ceased working for WSA. He did so due to the disputes at issue in this action. Nonetheless, he was not fired, so under section 6, he has no entitlement to compensation for the balance of the second quarter of 2009.

Finally, Naughton cannot maintain a quasi-contract claim. Since the parties' express compensation agreement governs, the law does not permit further recovery under a quasi-contract claim. *See Tierney v Capricorn Investors, L.P.*, 189 AD2d 629, 632 (1st Dept 1993) ("The Employment Agreement expressly covers the subject matter of the plaintiff's bonus ... Thus, recovery under a quantum meruit theory seeking to recover that bonus is precluded"), accord *Clark-Fitzpatrick, Inc. v Long Island R.R. Co.*, 70 NY2d 382, 388 (1987). Accordingly, it is

ORDERED the motion for summary judgment by defendant West Side Advisors, LLC (WSA) is granted in part against plaintiff Michael Naughton as follows: (1) Naughton may not recover base salary or bonus payments after May 6, 2009; (2) Naughton's quantum meruit claim is dismissed; (3) Naughton's demand for attorneys' fees is stricken; and (4) WSA's motion is otherwise denied; and it is further

ORDERED that, in searching the record, the court grants summary judgment to Naughton on his entitlement to a bonus at the 22.5% rate for the period January 1, 2008 to May 6, 2009; and it is further

ORDERED that the parties are to appear in Part 54, Supreme Court, New York County, 60 Centre Street, Room 228, New York, NY, for a pre-trial conference on on June 10, 2014 at 11:00 in the forenoon; and it is further

ORDERED that if an appeal is noticed, the pre-trial conference shall be adjourned until after such appeal is decided.

Dated: April 30, 2014

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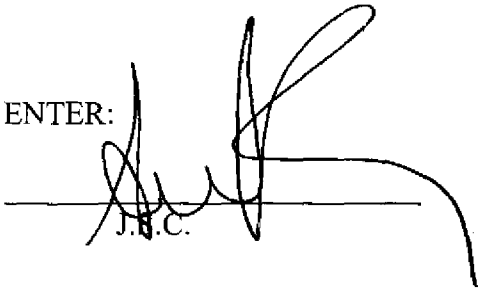

J.S.C.