

Armendariz v Luna

2014 NY Slip Op 31561(U)

June 16, 2014

Supreme Court, New York County

Docket Number: 154625/2014

Judge: Cynthia S. Kern

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

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MARIA ARMENDARIZ, LORENZO AND
MARIA'S KITCHEN CO., AND NICODEMUS PEDRAZA,

Index No. 154625/2014

Plaintiffs,

-against-

DECISION/ORDER

ENRIQUETA LUNA, INELIA GABRIELA ORTEGA,
CUTI HECKER WANG LLP AND MFY LEGAL
SERVICES, INC.,

Defendants.

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HON. CYNTHIA S. KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion
for : _____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Affidavits in Opposition.....	<u>2</u>
Affidavits in Reply.....	<u>3</u>
Exhibits.....	<u> </u>

Plaintiffs have brought the present motion for a preliminary injunction enjoining and restraining the defendants in this action from obtaining or receiving any further payments under a stipulation of settlement entered into between the parties settling a federal court action commenced by defendants against plaintiffs. They also request that this court enjoin the escrow agent appointed under the terms of the settlement of stipulation from paying out or dispensing any funds to any defendants in this action and enjoining the defendants in this action from filing the confession of judgment signed in connection with the settlement. Defendants have brought a

cross-motion to dismiss the action. As will be explained more fully below, plaintiffs' motion for a preliminary injunction is denied in its entirety and the cross-motion to dismiss is granted in part and denied in part.

The relevant background is as follows. The plaintiffs in this action are a catering company, its principal and its chef. Defendants are former employees of the catering company who sued plaintiffs in federal court for wage and hour violations and discrimination and the legal services organization and law firm that represented them in federal court. The defendant employees sued plaintiffs in federal court in 2013. Several news organizations reported about the initial filing of the federal complaint and defendant MFY Legal Services, Inc. ("MFY") described the case on its website and provided a link to the complaint, which was and remains publically available in the federal court file and federal website.

After the federal action was commenced, the parties entered in a Confidential Settlement and General Release Agreement (the "Settlement Agreement") whereby the plaintiffs in this action agreed to pay the defendant employees in this action \$225,000 over time. The amount of \$10,000 was due upon signing, \$50,000 was due on March 14, 2014 and three more payments of \$55,000 each was due on June 10, September 10 and December 10, 2014. The Agreement further provided that after the first two payments were made, plaintiffs were allowed to dismiss the federal action with prejudice, which they have now done.

Plaintiffs have now brought the present action for a preliminary injunction enjoining their obligation to make the remaining payments due under the Settlement Agreement on the ground that defendants have breached paragraph 9(A) of the Settlement Agreement, which is entitled "Non-Disparagement: Confidentiality". Paragraph 9(A) of the Settlement Agreement provides

as follows: “Plaintiffs, and Defendants agree not (I) to make, directly or indirectly, any false, negative, defamatory, or derogatory statements, remarks, references, allegations or claims, whether written or oral, concerning the other Party or Parties or (ii) to engage in actions that would denigrate or disparage the other Party or Parties....For the avoidance of doubt and for the purposes of this Section 9(A), any written statements include postings or other communications made on the internet, including but not limited to Facebook, Twitter, Myspace, Wechat blogs, Instagram or any other form of social media. The parties further agree that they shall promptly remove or delete or cause to remove or delete any written disparaging statements already made, posted, or published on the internet, including but not limited to any social media outlet. MFY Legal Services agrees to remove all references to any named defendant on its website, and to the extent that there is a generic description of this case with a link to the Complaint, MFY Legal Services agrees to explore in good faith whether/how it might redact any and all defendants’ names from such Complaint.”

Plaintiffs allege that defendants breached paragraph 9 of the Settlement Agreement in two ways. They initially claim that Ms. Luna and Ms. Ortega breached the agreement by not causing three news organizations to remove from their internet website news articles that were published about the dispute between the parties before the settlement agreement was executed. They also claim that the defendants breached the settlement agreement based on defendant MFY’s failure to redact the plaintiffs’ names from the complaint which could be accessed through a link on MFY’s website. Plaintiffs seek a preliminary injunction enjoining their obligation to make the remaining payments due under the Settlement Agreement based on defendants’ alleged breaches of the Settlement Agreement.

A party seeking a preliminary injunction must demonstrate a likelihood of success on the merits, irreparable injury absent the granting of the preliminary injunction and a balancing of the equities in the movant's favor. *Nobu Next door, LLC v. Fine Arts House, Inc.*, 4 N.Y.3d 839 (2005). As will be amplified below, the court finds that plaintiffs are not entitled to a preliminary injunction as they have failed to demonstrate a likelihood of success on the merits of their claim that defendants breached paragraph 9 of the Settlement Agreement. Moreover, the court finds that plaintiffs' allegations regarding MFY's alleged breach of the Settlement Agreement must be dismissed as insufficient as a matter of law.

Initially, the court finds that plaintiffs have failed to establish a likelihood of success on the merits of their claim that the individual defendants breached paragraph 9 of the Settlement Agreement by not persuading independent news organizations to remove articles published about the lawsuit before the lawsuit was settled. It is well settled law in New York "that a contract should not be interpreted to produce an absurd result, one that is commercially unreasonable, or one that is contrary to the intent of the parties." *Cole v. Macklowe*, 99 A.D.3d 595, 596 (1st Dept 2012). *See also ERC 16 W Ltd. Partnership v. Zanadu Mezz Holdings LLC*, 95 A.D.3d 498, 503 (1st Dept 2012). Moreover, a construction of a contract that would give one party an unfair and unreasonable advantage over the other, or that would place one party at the mercy of the other, should, if at all possible, be avoided. *Id.* In the present case, it would be absurd and commercially unreasonable to read the Settlement Agreement to require the defendants to cause independent news organizations to delete their pre-settlement news coverage of the dispute between the parties as a condition to defendants receiving the amounts they were promised as part of the Settlement Agreement between the parties. Moreover, the plaintiffs would clearly

have an unfair and unreasonable advantage over the defendants if they could be excused from making the promised payments under the Settlement Agreement based on defendant's failure to cause these news organizations to remove the articles from the internet since such actions would not be in the control of the defendants. The only reasonable interpretation of the third sentence of paragraph 9 (A) of the settlement agreement is that it requires any party who previously posted a disparaging statement about another party on the internet to delete or remove the statement that the party previously posted.

This interpretation of the Settlement Agreement is consistent with the entire language contained in Section 9 of the Agreement. In the first portion of paragraph 9, where the parties are discussing their agreement not to make any disparaging statements about each other in the future, they describe written statements as "including postings or other communications made on the internet, including but not limited to Facebook, Twitter, Myspace, Wechat blogs, Instagram, or any other form of social media." These are all statements over which an individual party would have some control with respect to posting or removal, as opposed to statements that are contained in articles posted by independent news organizations over which the party would not have any control. This interpretation is also supported by the fact that paragraph 9 does not make any references to removing statements issued by independent news organizations even though both parties were aware at the time that the Settlement Agreement was entered into that articles by independent news organizations had been posted on the internet.

Plaintiffs also cannot establish a likelihood of success on their claim that MFY breached the fourth sentence of paragraph 9(A) of the Settlement Agreement and the court further finds that such claim should be dismissed. With respect to MFY, paragraph 9 of the Settlement

Agreement provides that it will remove plaintiff's name from its website and "explore in good faith whether/how it might redact" defendants' names from the version of the underlying complaint to which its website links. There is no dispute that MFY has removed plaintiffs' names from its website. The dispute is whether the Agreement required MFY to explore in good faith whether and how the defendants' names can be redacted mechanically or technically or whether the Agreement simply required MFY to explore in good faith whether it wished to remove plaintiffs' names. Plaintiffs do not allege in their complaint that MFY failed to explore in good faith whether it wished to remove plaintiff's names. Rather, they allege that MFY has failed to comply with its obligations in the stipulation by failing to remove their names from the complaint which is linked to its website.

This court finds, based on the unambiguous language contained in the Settlement Agreement, that MFY never agreed to remove plaintiffs' names from the complaint to which its website links or to even attempt to remove the names from the complaint. All that MFY obligated itself to do with respect to the complaint was explore in good faith whether it wished to remove plaintiffs' names from the complaint. Since there is no allegation by plaintiffs that MFY did not fulfill its obligation to explore in good faith whether it might redact plaintiffs' names from the complaint, it has failed to state any viable claim with respect to MFY's actions in this matter.

Based on this court's finding that plaintiffs have failed to establish a likelihood of success on their claim that defendants breached paragraph 9 of the Settlement Agreement, their request for preliminary injunctive relief is denied. Moreover, their claim that MFY breached the Settlement Agreement is dismissed. This constitutes the decision and order of the court.

Dated: 6/16/14

Enter: OK

J.S.C.

CYNTHIA S. KERN
J.S.C.