ARG Renovation Contr. Corp. & Gustavo Rudas v Robert Quaco & Tula Constr. Mgrs., Inc.
2014 NY Slip Op 31616(U)
June 20, 2014
Supreme Court, New York County
Docket Number: 652439/13
Judge: Joan A. Madden
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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ARG RENOVATION CONTRACTING CORP.
& GUSTAVO RUDAS,

Plaintiffs, Index No. 652439/13

-against-

ROBERT QUACO & TULA CONSTRUCTION
MANAGERS, INC.,

Defendants.

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JOAN A. MADDEN, J.:

Defendant Robert Quaco ("Quaco") moves, pursuant to CPLR 3211 (a) (7), to dismiss the complaint against him for failure to state a cause of action.[1] Plaintiffs oppose the motion, which is granted for the reasons set forth below.

Background

The following facts are based on the allegations in the complaint which, for the purpose of this motion, will be accepted as true.

Plaintiff ARG Renovation Contracting Corp. ("ARG Corp.") is in the business of renovating apartments and real estate. Plaintiff Gustavo Rudas ("G. Rudas") is an officer of the corporation. ARG Corp. entered into a contract with Tula Construction Managers, Inc., ("Tula, Inc.") whereby ARG Corp. would perform renovation services for Tula, Inc. totaling $74,796.00. According to the complaint, Quaco, on or about April 15, 2013,without plaintiffs' permission, received a check in the amount of $74,796.00, issued by Tula, Inc. to ARG Corp., endorsed it, and deposited it in an unauthorized bank account. Quaco, who is not an officer or agent of ARG Corp., did not have "any implied or actual authority to conduct business on [ARG Corp's] behalf." (Complaint ¶ 7). When plaintiffs demanded he return the check to ARG Corp., Quaco refused to do so.

[1] While this motion was pending, plaintiff agreed to discontinue the action against defendant Tula Construction Managers, Inc. which submitted papers in support of Quaco's motion.

The complaint further alleges that pursuant to a contract with Quaco, ARG Corp. performed certain renovation services totaling $50,000, on properties owned by Quaco and despite plaintiff's demand for payment, Quaco has refused to pay.

The complaint contains causes of action for fraud, breach of contract, and intentional infliction of emotional distress. Quaco now moves to dismiss all three claims for failure to state a cause of action.

Discussion

On a motion pursuant to CPLR 3211 (a) (7), the court is limited to ascertaining whether the pleading states any cause of action and not whether there is evidentiary support for the complaint. Guggenheim v. Ginzburg, 43 NY2d 268 (1977). The complaint must be liberally construed in the light most favorable to the plaintiff, and all factual allegations must be accepted as true. Id.; Monroe v. Monroe, 50 NY2d 481 (1980). At the same time, however, a motion to dismiss is properly granted when either "a plaintiff has not stated a cognizable cause of action at law [or]...a plaintiff identified a cognizable cause of action but failed to assert a material allegation necessary to support a cause of action." Basis Yield Alpha Fund (Master) v. Goldman Sachs Group, Inc., 115 AD3d 128 (1st Dep't 2014).

Fraud

Plaintiffs' first cause of action is for fraud. The complaint alleges that Quaco "falsely misrepresented that he was authorized to receive the check issued by [Tula, Inc.] to [ARG Corp.]" and that plaintiffs have demanded that Tula, Inc. pay for the renovation services but that Tula has refused to pay the amount due and owing to plaintiffs (Complaint, ¶'s 17-19).

A "claim rooted in fraud must be pleaded with the requisite particularity under CPLR 3016 (b)." Eurycleı Partners, L.P. v. Seward & Kissel, L.P., 12 NY3d 553, 559 (2009) (holding CPLR 3016(b) is satisfied "when the facts suffice to permit a 'reasonable inference' of the alleged misconduct). The statute requires that a claim for fraud must set forth "the

circumstances constituting the wrong...in detail." Id. Thus, "[a]lthough there is certainly no requirement of unassailable proof at the pleading stage, the complaint must allege basic facts to establish the elements of the cause of action." Id.

To plead a viable cause of action for fraud, it must be alleged that the defendant made a misrepresentation of a material existing fact or a material omission of fact, which was false and known to be false by the defendant when made, for the purpose of inducing reliance, justifiable reliance on the alleged misrepresentation or omission by the victim of the fraud, and injury. Lama Holding Company v. Smith Barney Inc., 88 NY2d 413, 421 (1996).

Here, plaintiffs do not plead – with particularity or otherwise - all the elements necessary to sustain a viable fraud claim. Specifically, the complaint does not allege that defendant made any material misrepresentation of fact to the plaintiffs upon which they relied. In fact, the complaint does not specify the entity or person to whom the alleged misrepresentation was made. In addition, the complaint is devoid of allegations that Quaco knew that the statement was false or that such statement induced detrimental reliance. Accordingly, the cause of action for fraud must be dismissed.

Breach of Contract

The next cause of action seeks to recover for breach of contract. The complaint alleges that Quaco contracted the ARG Corp. "to perform renovation services to certain properties for [Quaco and that] Quaco agreed to compensate the [ARG Corp.] for the services rendered." (Complaint ¶ 14). The plaintiffs further allege that once they completed the renovation services, totaling $50,000, Quaco "breached the agreement by refusing to pay for these services performed" (Id. ¶ 21).

To state a claim for breach of contract, a complaint must set forth the essential terms of the parties' purported contract, or attach the relevant contract. Sud v Sud, 211 AD2d 423, 424 (1st Dep't 1995)(trial court properly dismissed breach of contract claim "for plaintiff's failure to

allege, in nonconclusory language, as required, the essential terms of the parties' purported contract, including the specific provisions of the contract upon which liability is predicated ...[and] whether the alleged agreement was, in fact, written or oral.."); Chrysler Capital Corp. v. Hilltop Egg Farms Inc., 129 AD2d 927 (3rd Dep't 1987) (holding complaint "must set forth the terms of the agreement upon which liability is predicated, either by express reference or by attaching a copy of the contract.").

Here, the complaint alleges only that there is a contract for ARG Corp. to perform unspecified renovation services to "certain properties" for "defendant" and Quaco agreed to compensate plaintiffs for the services rendered, the services were performed, and that the total amount the services performed was $50,000. However, plaintiffs fails to identify the parties to the contract, the date of the contract, whether the contract is written or oral, or to specify the services performed. See ACE Fire Underwriters Ins. Co. v. ITT Industries, Inc., 84 AD3d 688, 688 (1st Dep't 2011) (holding "court properly dismissed breach of contract claim since it lacked a description of the essential terms of the agreement – namely parties, duration, date, and consideration."). Plaintiffs also fail to attach a copy of the alleged contract.

Under these circumstances, the breach of contract claim must be dismissed as insufficient to state a claim. See Caniglia v. Chicago Tribune-New York News Syndicate Inc., 204 AD2d 233, 234 (1st Dep't 1994) (dismissing breach of contract claim based on failure to plead essential terms of parties' contract).

Intentional Infliction of Emotional Distress

The third cause of action, for intentional infliction of emotional distress ("IIED"), must also be dismissed. With respect to this claim, the complaint alleges that Quaco, "for the soul [sic] purpose of depriving the plaintiff of the payment for services performed, fraudulently claimed the check issued to the plaintiffs, and endorsed the check and deposited the check without the permission or knowledge of the plaintiff." (Complaint ¶ 24).

A cause of action for intentional infliction of emotional distress includes four elements: (1) extreme and outrageous conduct, (2) intent to cause, or disregard of a substantial probability of causing, severe emotional distress, (3) a causal connection between the conduct and the injury, and (4) severe emotional distress. Howell v. New York Post Co., 81 NY2d 115, 120 (1993).

To support an IIED claim, the conduct alleged must be "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." Dillon v. City of New York, 261 AD2d 34, 39 (1st Dep't 1999); Herlihy v. Metropolitan Museum of Art, 214 AD2d 250, 262 (1st Dep't 1995) (holding that while the use of racial and ethnic epithets is deplorable, and allegations of sexual harassment and discrimination are wholly inappropriate, courts have been reluctant to allow recovery absent a "deliberate and malicious campaign of harassment or intimidation."). Further, "such extreme and outrageous conduct must be clearly alleged for the pleadings to survive dismissal." Dillon, 261 AD2d at 41.

Here, Quaco's alleged conduct, which consists of taking money belonging to plaintiffs and failing to pay plaintiffs for work performed, does not rise to the level of outrageousness required to sustain an IIED claim. The complaint also falls short of alleging facts sufficient to show that plaintiffs suffered severe emotional distress.

In view of the above, it is

ORDERED that the complaint is dismissed without prejudice to renewal, and the Clerk is directed to enter judgment accordingly.

DATED: June 20, 2014

J.S.C.

HON. JOAN A. MADDEN
J.S.C.