

Baiul v NBC Univ. Media, LLC
2014 NY Slip Op 32557(U)
September 30, 2014
Supreme Court, New York County
Docket Number: 654420/13
Judge: Charles E. Ramos
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION

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OKSANA BAIUL and OKSANA LTD,

Plaintiffs,

Index No. 654420/13

-against-

NBC UNIVERSAL MEDIA, LLC and SONAR
ENTERTAINMENT, INC.,

Defendants.

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Hon. Charles E. Ramos, J.S.C.:

Defendant Sonar Entertainment, Inc. (Sonar) moves to dismiss the seventh through ninth claims asserted against it in the first amended complaint (complaint) pursuant to CPLR 203 (g), 213 (1) and 1001 (1).

Background

The facts set forth herein are taken from the complaint and assumed to be true for purposes of disposition.

Plaintiff Oksana Baiul, originally from the Ukraine, is a world famous figure skater and actress who won the 1993 Ladies Figure Skating World Championship and was the 1994 Olympic Gold Medalist.

Defendant Sonar is a Delaware corporation and is the successor-in-interest to RHI Entertainment, Inc. (hereinafter Sonar), a non-party to this action.

On May 11, 1994, Olympic Champions, Ltd. (OCL) and Sonar entered into an agreement (PK agreement) for the production and distribution of a motion picture entitled "A Promise Kept: The

Oksana Baiul Story" (PK film) based upon the life story of Oksana Baiul for the price of \$500,000. The PK agreement obligated Sonar to pay OCL "30% of 100% of first dollar" of gross revenue to OCL. The PK Agreement also states that in the event Baiul performs in the motion picture, Sonar will not be required to pay any additional fees other than SAG minimums for pension and welfare.

The PK agreement lists William Morris Agency, Inc. (WMA) as OCL's exclusive agent and dictates that all payments due OCL will be payable to and in the name of WMA.

Baiul, who was a minor and did not speak, read or understand English at the time of execution, signed the PK agreement on behalf of OCL. Baiul's coach, Galina Zmievskaya, purportedly told Baiul that she needed to sign contracts in the name of OCL because she is an Olympic Champion. Zmievskaya was not Baiul's legal guardian. No legal guardian of Baiul ever approved the PK agreement.

At the time that Baiul executed the PK agreement, Baiul reasonably believed that she was signing on her own behalf and not for a company called OCL. Baiul represents that she did not, and does not, own any interest in OCL, and did not discover the existence of OCL as a separate corporate entity until October 2011. In November 2010, OCL was struck off the registry of companies of the British Virgin Islands, where it had been

incorporated. Baiul maintains that she is the rightful successor in interest to OCL as concerns any and all payments due by Sonar under the PK agreement. Ultimately, the PK film was created based upon Baiul's life story in the form of a documentary, and is still being aired on television.

Due to the fraudulent concealment by WME, successor in interest to one or more William Morris entities including WMA, Baiul's fiduciaries and talent agents from 1994 to 2000, and Wallin, Simon & Black, Baiul's fiduciaries, business managers, financial advisors and accountants from 1997 to 2012, Baiul only recently discovered that Sonar owed her monies under the PK agreement (in October 2011).

Sonar has provided proof in July 2013 of a \$500,000 payment in fixed compensation paid to OCL but has to date purportedly refused to provide accounting or documentation so that Baiul can discover the exact amount of moneys due in SAG residuals and royalties.

Baiul alleges that she was never paid under the PK agreement, and is still owed SAG royalties and residuals for the continued use of the PK film because she has reason to believe that the PK film continues to be sold, licensed, and broadcast to Sonar's enrichment.

Plaintiffs originally commenced this action on December 23, 2013. They assert causes of action against Sonar for breach of

contract, unjust enrichment and quantum meruit and seek damages, in addition to other claims against NBC Universal Media, LLC which is not a party to this motion.

Discussion

I. Breach of Contract Claim

Plaintiffs' seventh cause of action against Sonar for breach of contract alleges that Baiul is the rightful successor in interest to OCL with respect to all payments made by Sonar to OCL for her performance in the PK film and grant of rights to Sonar under the PK agreement. It is alleged that Sonar breached the PK agreement by failing to pay SAG pension and welfare contributions for Baiul's benefit for the PK film.

In the first instance, Sonar asserts that as non-parties to the PK agreement, plaintiffs, Baiul and Oksana Ltd., do not have standing to enforce it unless they adequately plead that the PK agreement was intended for their benefit (*Mendel v Henry Phipps Plaza West, Inc.*, 6 NY3d 783 [2006]). In order to recover as a third party beneficiary, it must appear that no one other than the third party can recover if the promisor breaches the contract, and that the language of the contract clearly evinces an intent to permit enforcement by that third party (*Fourth Ocean Putnam Corp. v Interstate Wrecking Co.*, 66 NY2d 38, 45 [1985]). In addition, courts consider whether performance is rendered

directly to a third party (*Alicea v City of New York*, 145 AD2d 315, 316 [1st Dept 1988]).

Plaintiffs have pled these elements sufficiently. OCL, or WME on its behalf, explicitly have the right to recover of Sonar if the latter breaches the PK agreement for plaintiffs' benefit.

In addition, plaintiffs also argue that Baiul is an intended beneficiary of the PK agreement to the extent that there is a provision obligating Sonar to pay SAG residuals and royalties for Baiul's performance in the PK film. Notwithstanding that plaintiffs concede that Sonar paid SAG \$65,000 in residuals for the film (Complaint, ¶ 44), this concession is not dispositive.

Plaintiffs also assert in the alternative that there was a mutual mistake of fact that mandates reformation of the PK agreement to insert Baiul in the place of OCL. Plaintiffs contend that Sonar was under the mistaken belief that it was contracting with Baiul through Baiul's wholly-owned loan-out company Oksana LTD., while Baiul mistakenly believed that she had been contracting personally with Sonar as an Olympic Champion.

"Generally, a contract entered into under a mutual mistake of fact is voidable and subject to rescission. The mutual mistake must exist at the time the contract is entered into and must be substantial. The idea is that the agreement, as expressed, in some material respect, does not represent the 'meeting of the minds' of the parties'" (*Matter of Gould v Board*

of *Educ. of Sewanhaka Cent. High School Dist.*, 81 NY2d 446, 453 [1993] [internal citations omitted]).

The determination of a claimed mutual mistake of fact, or a mistake so material that it goes to the foundation of the agreement, on Sonar's part will require further inquiry. The PK agreement merely establishes that Sonar knew the identity of OCL, but gives no guidance otherwise. Indeed, what did Sonar believe were the facts when a minor executed the PK agreement?

Where a mistake is in fact unilateral, as the defendants contend, a court acting in equity may nevertheless rescind the contract if failing to do so would result in the unjust enrichment of the defendant at the expense of the contracting party (*Matter of Gould*, 81 NY2d at 453).

Sonar's motion to dismiss the claim for breach of contract is otherwise premised on the ground that the claim is untimely under CPLR 213 (2), which sets forth the applicable six-year statute of limitations.

CPLR 203 (g) sets forth the method of computing periods of limitations generally, and provides:

Time computed from actual or imputed discovery of facts...[W]here the time within which an action must be commenced is computed from the time when facts were discovered or from the time when facts could with reasonable diligence have been discovered, or from either of such times, the action must be commenced within two years after such actual or imputed discovery within the period otherwise provided, computed from the time the cause of action accrued, whichever is longer.

Baiul executed the PK agreement in May 1994, although plaintiffs allegedly learned about the existence of OCL as a separate corporate entity only in October 2011. Sonar asserts that, as Baiul obtained the age of majority in or around 1999, she effectively ratified any contracts she entered into on behalf of OCL at that time, as she failed to disaffirm the PK agreement within a reasonable time after achieving majority age.

Alternatively, Sonar asserts that, if plaintiffs were not aware until October 2011 of the PK agreement, the claim is still barred under the discovery rule, which tolls the statute of limitations for two years from the discovery where the purported facts could not have been discovered at an earlier time (CPLR 203 [g]).

Plaintiffs counter that the discovery rule governing fraud claims, rather than the discovery rule governing contract claims, applies because the contract claim asserted against Sonar is premised upon the fraud committed by OCL, Zmievsckaya, and WME. According to plaintiffs, the breach of contract claim is timely because it was brought within six months of plaintiffs' discovery in December 2013 that Sonar paid \$65,000 in residuals to SAG for the PK film.

However, plaintiffs do not assert that Sonar committed a fraud against them with respect to the PK agreement (4/16/14 Tr 23:24-26). Rather, the fraudulent conduct committed in the

negotiation, execution and receipt of monies under the PK agreement was allegedly committed by OCL, Zmievskaia, and WME (Complaint, ¶¶ 40-41).

Even if Sonar was guilty of fraud, the plaintiffs allege that they learned of the PK agreement in October 2011 (Complaint, ¶ 37). In that case the two-year limitations period following discovery began to run at that time and expired two years later, in October 2013. Thus, when asserted in December 2013, the claim was untimely and is time-barred.

II. Unjust Enrichment

Plaintiffs' eighth claim for unjust enrichment is premised on allegations that Sonar was enriched by Baiul's performance in the PK film and the grant of certain rights to the PK film at Baiul's expense, and has been unjustly enriched in the amount of \$9 million.

"A person may be deemed to be unjustly enriched if she has received a benefit, the retention of which would be unjust. A conclusion that one has been unjustly enriched is a legal inference drawn from the circumstances surrounding the transfer of property and the relationship of the parties" (*Plotnikoff v Finkelstein*, 105 AD2d 10, 13 [1st Dept 1984]). Unjust enrichment does not require the performance of any wrongful act by the one enriched and, thus, even an innocent party may be unjustly enriched (*Id.*). Nonetheless, although privity is not a

requirement to sustain an unjust enrichment claim, a plaintiff must plead a connection or relationship between the parties that could have caused reliance or inducement on the plaintiff's part (*Georgia Malone & Co. v Rieder*, 19 NY3d 511, 517-18 [2012]; *Mandarin Trading Ltd. v Wildenstein*, 16 NY3d 173, 182 [2011]).

Baiul alleges that her former coach, Zmievskaya, directed her to sign all contracts, including the PK agreement, in the name of OCL because she was an Olympic champion, and that Sonar mistakenly believed that it was contracting with Baiul through Oksana LTD. Plaintiffs allege that Sonar should have known that something was wrong with respect to its dealings with Baiul. The fact that she was under-age at the time and unable to understand English will suffice at this juncture.

However, the claim is duplicative of the breach of contract claim (*Corsello v Verizon New York, Inc.*, 18 NY3d 777, 790, *rearg denied* 19 NY3d 937 [2012]), and untimely under the applicable six-year statute of limitations (*Maya NY, LLC v Hagler*, 106 AD3d 583, 585 [1st Dept 2013]).

For identical reasons, the claim for quantum meruit fails (see *Stephen Pevner, Inc. v Ensler*, 309 AD2d 722, 723 [1st Dept 2003]; *R.B. Ventures, Ltd. v Shane*, 2000 WL 12118, *9 [SD NY 2000]).

Accordingly, it is

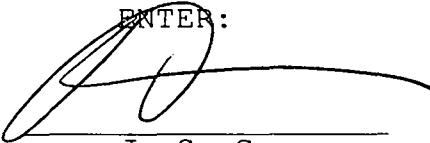
ORDERED that the motion by Sonar Entertainment Inc. to dismiss is granted and the complaint is dismissed in its entirety as against said defendant, with costs and disbursements to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

ORDERED that the action is severed and continued against the remaining defendant; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the County Clerk and the Clerk of the Trial Support Office (Room 158), who are directed to mark the court's records to reflect the change in the caption herein.

Dated: September 30, 2014

ENTER:

J. S. C.

CHARLES E. RAMOS