

**Bullock v 4PM Events Inc.**

2015 NY Slip Op 30541(U)

April 7, 2015

Supreme Court, New York County

Docket Number: 653886/12

Judge: Joan A. Madden

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 11

----- X INDEX NO. 653886/12  
JANNA BULLOCK,

Plaintiff,  
-- against --

4PM EVENTS INC., and TATIANA BYRON,  
Defendants.

----- X  
**JOAN A. MADDEN, J.:**

In this action seeking damages in connection with an event services contract, defendant Tatiana Byron (“Byron”) moves for summary judgment dismissing the complaint against her. Plaintiff Janna Bullock (“Bullock”) opposes the motion and cross moves for summary judgment as to liability on her breach contract claims against defendants. Defendants oppose the cross motion.

Background

4PM Events Inc. (“4PM Events”) is an event planning company, incorporated in New York. Byron is the chief executive officer and sole shareholder of 4PM Events. Bullock retained 4PM Events to provide services for her daughter’s wedding. Pursuant to an event services contract dated May 12, 2008, between Bullock and 4PM Events (“the Contract”), which is written on 4PM Events’ letterhead, 4PM Events agreed to provide wedding planning services for Bullock’s daughter’s wedding, to be held June 28-30, 2008, in Moscow, Russia with approximately 250 guests.

Under the Contract, 4PM Events agreed to coordinate the following services prior to and on the multi-day wedding: (1) invitations & accessories, (2) caterer & menu, (3) ceremony & cocktail hour, (4) reception, (5) music & entertainment, (6) RSVP’s &

guests, (7) design, (8) sound & lighting, (9) photographer & videographer, (10) gift favors, (11) guests accommodations, (12) website coordination, (13) transportation & accommodation, (14) welcome basket coordination, and (15) on-site staff. In consideration for these services, Bullock agreed to pay 4PM Events a flat fee of \$50,000 (“Fee”) and to reimburse Byron and her associates for travel and other expenses they incurred in connection with providing the services under the Contract. It further states that “a 50% deposit is due upon approval, [and that] the balance is due two weeks before the wedding [and that .... all checks should be payable to 4PM Events.”

The Contract contains two signature lines, one for Bullock, as the client, and the other for “Tatiana Byron, President of 4PM Events.” The Contract submitted on the motion is signed only by Bullock.

At her deposition, Bullock testified that her bookkeeper remitted the entire Fee payment by wire transfer to 4PM Events. Bullock Dep. at 29. She also testified that Byron traveled to Moscow on two separate occasions to assist with the wedding planning. Id. at 3. However, Bullock testified that on Byron’s second trip to Moscow, approximately 20 days before the wedding, Byron abruptly quit, and at the time promised to return the Fee to Bullock. Id. at 88. Subsequent, according to Bullock, she hired three different event planning companies in Moscow, and paid these companies. Id. at 92-96.

There is no dispute that Bullock paid the Fee. However, Byron denies that she quit and testified that while she was in Moscow working on the wedding, Bullock told her to stop working, and that same day she returned from Moscow to New York. Byron Dep. at 89. Byron testified that after she returned to New York, she spoke to one of

Bullock's employees, Couri Hay, about what happened and told him that Bullock asked her to stop working on the wedding. *Id.* at 93. According to Byron, in a later conversation, Mr. Hay told her that Bullock would like her "to continue working on the wedding and to be the U.S. contact and do everything U.S.- related and not actually go to the wedding." *Id.* Byron agreed and started coming up with things to do then but that she stopped working when some of the U.S. vendors she was working with had their orders stopped by Bullock. *Id.* at 94.

Byron also testified that she discussed with Mr. Hay pro-rating her fee as she was not finished with the project and "it worked out to be about \$35,000 plus expenses." *Id.* In response to a question as to whether she ever offered to pay Bullock a refund, Byron testified that "[o]nly of \$15,000 with expenses [deducted]," and that she never provided the amount "which ended up being three something" because she was waiting for the bills and confirmation of her understanding. *Id.* at 95. While Byron admitted she was not "physically present" at the multi-day wedding she testified that she provided "multiple services for the wedding." *Id.* at 126.

The record includes invoice #1378 from 4PM Events to Bullock dated June 11, 2008, detailing unpaid expenses incurred for 10 days of per diem work in Moscow, travel and transportation, postage, wedding website, and telephone calls totaling a sum of \$11,277.73. Byron also sent Bullock a "credit memo" #1380 dated June 12, 2008, which shows 4PM Events owes Bullock a credit of \$3,722.27, determined by subtracting from the \$50,000 Fee paid by Bullock, a \$35,000 for event planning, less expenses of \$11,277.73. There is no dispute that Byron has not paid the \$3,722.27 credit reflecting on the credit memo. *Id.* at 115.

Bullock filed a verified complaint asserting causes of action against both 4PM Events and Byron for (1) rescission/restitution for repudiation of the parties' agreement, (2) breach of contract, and (3) unjust enrichment. Defendants filed their answer, denying Bullock's claims in their entirety, and asserting a counterclaim for damages of \$15,390.22, plus interest for expenses due and owing to 4PM Events, and attorney's fees.

Byron's Motion for Summary Judgment

Byron moves for summary judgment dismissing the claims against her, arguing that she is not a party to the Contract, which was between Bullock and 4PM Events and therefore cannot be held individually liable for any breach, and that the claim for unjust enrichment must also be dismissed since any moneys paid were to 4PM Events and not to her. In support of her motion, in addition to the Contract and invoices, Byron submits her affidavit in which she states that she is the 4PM Event's chief executive officer and sole shareholder, and that 4PM Events is an active New York corporation in good standing that has been in existence since March 24, 2000, as supported by its certificate of incorporation submitted with the motion. She points out that the Contract is between Bullock and 4PM Events and not with her personally. According to Byron, she informed Bullock that 4PM Events would be providing the agreed upon wedding services and that she, along with several other employees of 4PM Events, would be working on the wedding.

Byron states that all invoices sent to Bullock were on 4PM Events letterhead as evidenced by copies of the invoices. She also states that "[a]ll monies paid to 4PM Events were deposited into the 4PM Events corporate bank account [and that] [a]ll clients, including Janna Bullock, were instructed to make checks payable to 4PM

Events.” Byron Aff. ¶ 9. She also states that “[a]ll services performed by me in connection with the wedding were done in my capacity as an employee of 4PM Events.” Id. ¶ 10.

Bullock opposes the motion, asserting that Byron admitted in her verified answer that she entered into a service agreement with Bullock. Bullock also points out that the Contract is not fully executed and argues that it does not reflect the parties’ actual agreement, noting that the Contract required only a 50% deposit of \$25,000 but Bullock paid the entire \$50,000 fee up front. In addition, Bullock argues that there is a separate claim related to Byron’s alleged breach of her agreement to provide a refund.

In reply, defendants assert that while in their verified answer defendants admitted the allegations in paragraph 24 of the complaint that “[t]he parties entered into a valid and binding agreement whereby Plaintiff secured Byron’s personal wedding planning and event services in connection with the wedding of her daughter,” the admission does not impute individual liability to Byron, nor does the fact that Byron took an active role in managing 4PM Events. Defendants also argue that there is no evidence of a refund agreement imposing individual liability on Byron.

On a motion for summary judgment, the proponent “must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case.” Winegrad v. New York Univ. Med. Center, 64 NY2d 851, 852 (1985). Once the proponent has made this showing, the burden of proof shifts to the party opposing the motion to produce evidentiary proof in admissible form to establish that material issues of fact exist which require a trial. Alvarez v. Prospect Hospital, 68 NY2d 320, 324 (1986).

It is well settled that “an agent for a disclosed principal will not be personally bound unless there is clear and explicit evidence of the agent’s intention to substitute or superadd his personal liability for, or to, that of his principal.” Salzman Sign Co. v. Beck, 10 NY2d 63, 67 (1961), quoting Mencher v. Weiss, 306 NY2d 1, 4 (1953); see also, Rene Boas and Associates v. Vernier, 22 AD2d 561 (1<sup>st</sup> Dept 1965); Ievremov v. Crisci, 129 AD2d 174 (1<sup>st</sup> Dept 1987). Under this rule, “corporate officers ... may not be held personally liable on contracts of their corporations, provided they did not purport to bind themselves individually under such contracts.” Westminster Const. Co., Inc. v. Sherman, 160 AD2d 867, 868 (2d Dept 1990); See also, Lichtman v. Mount Judah Cemetary, 269 AD2d 319, 320 (1<sup>st</sup> Dept) lv dismissed, 95 NY2d 860 (2000).

Here, defendants have met their burden of tendering sufficient evidence to demonstrate that Byron did not intend to be personally liable under the Contract. This evidence includes the terms of the Contract which set forth the “list services 4PM Events can provide” and states that “all checks are to be made payable to 4PM Event” and includes two signature lines one for Bullock and one for Byron as “President of 4PM Events.” Defendants also submit invoices from 4PM Events to Bullock, and Byron’s affidavit in which Byron states that she is an employee of 4PM Events and that she informed Bullock that 4PM Events would be providing the agreed upon wedding services.

Furthermore, that the Contract was not signed by Byron is insufficient to raise a triable issue of fact as to Byron’s personal liability in the absence of evidence of Byron’s intention to assume such liability. Likewise, even assuming *arguendo* that the Contract is not completely consistent with the parties’ final agreement, any such inconsistency does

not raise factual issues as to Byron's personal liability under the Contract, as there is no evidence that the parties changed the Contract to impose such liability on Byron. Moreover, the admissions in the verified answer noted by Bullock regarding Byron's role in providing wedding services does not provide a basis for imposing personal liability on Byron since her actions on behalf of 4PM Events was done in her capacity as principal of 4PM Events. Likewise, the alleged refund agreement made by Byron would have been in connection with her role as principal of 4PM Events and is insufficient to raise a triable issue of fact with respect to the claims against Byron. See Worthy v. New York City Housing Authority, 21 AD3d 284, 285 (1<sup>st</sup> Dept 2005)(Tom, J. concurring)(noting that to impose individual liability "based entirely on [the principal's] control over the management of [company] business ... would obviate the legal distinction between a [company] and its officers, share owners and employees").

The claim for unjust enrichment against Byron is also without merit. "[T]he essential inquiry in any action for unjust enrichment or restitution is whether it is against equity and good conscience to permit the defendant to retain what was recovered." Mandarin, 65 AD3d 448, 453 (1<sup>st</sup> Dept 2009), aff'd, 16 NY3d 173 (2011), quoting Paramount Film Distrib. Corp. v. State of New York, 30 NY2d 415, 421, rearg denied 31 NY2d 709 (1972), cert denied 414 US 829 (1973). Here, as there is no evidence that Byron was personally enriched as a result of payment of the Fee to 4PM Events, the unjust enrichment claim against Byron must be dismissed.

Accordingly, defendants' motion for summary judgment dismissing the complaint as against Byron is granted.

### Bullock's Cross Motion for Summary Judgment

The remaining issues concern whether Bullock is entitled to summary judgment on her two breach of contract claims against the remaining defendant 4PM Events, and dismissing the counterclaim. The contract claims are for (1) rescission/restitution based on allegations that defendants repudiated the Contract in advance of the wedding and failed and refused to provide reimbursement and restitution; (2) breach of contract based on allegations that defendants quit in advance of the wedding thus forcing Bullock to obtain alternate wedding services.

Bullock argues that she is entitled to judgment as a matter of law on these claims as the existence of the Contract was admitted in the defendants' verified answer, and that it is undisputed that Bullock paid the \$50,000 fee due under the Contract, and that 4PM Events did not provide the full wedding services contemplated under the Contract. Bullock also argues that the counterclaim for expenses should be dismissed as a matter of law since the documentary evidence shows and Byron admitted during deposition that 4PM Events owes money to Bullock.

In opposition defendants argue that, at the very least, there are issues of fact as to which party breached the Contract based on evidence that Byron did not quit but was asked her to resign.

In reply, Bullock points to defendants' answer in which it is admitted that a legally binding contract was created and defendants received the Fee. Bullock further argues that the invoice #1380 that Byron sent her after 4PM Events stopped providing services is sufficient evidence that Byron acknowledges her liability and owes Bullock damages, and the only issue is the amount of such damages.

The elements of a cause of action for breach of contract are (i) formation of a contract between plaintiff and defendant, (ii) performance by plaintiff, (iii) defendant's failure to perform, and (iv) resulting damages. Harris v. Seward Park Hous. Corp., 79 AD3d 425, 426 (1<sup>st</sup> Dept 2010); see also, Clearmont Prop., LLC v. Eisner, 58 AD3d 1052, 1055 (1<sup>st</sup> Dept 2009).

“As a general rule, rescission of a contract is permitted ‘for such a breach as substantially defeats its purpose. It is not permitted for a slight, casual, or technical breach, but ... only for such as are material and willful, or, it not willful, so substantial and fundamental as to strongly tend to defeat the object of the parties in making the contract’ RR Chester, LLC v. Arlington Bldg. Corp., 22 AD3d 652, 654 (2d Dept 2005), quoting Callanan v. Powers., 199 NY 268, 284 (1910); see also, Donovan v. Ficus Investments, Inc., 20 Misc3d 1139(a) (Sup Ct. NY Co. 2008).

Here, the uncontroverted evidence establishes that the Contract was valid and binding, that Bullock paid the agreed upon \$50,000 Fee to 4PM Events, and that defendants did not perform all the services under the Contract and that Bullock retained the services of alternate event planning companies to replace 4PM Events. However, summary judgment is not warranted as the record raises triable issues of fact as to whether the Contract was breached by 4PM Events and whether Bullock, without justification, terminated the Contract. For example, while Bullock testified that Byron abruptly quit 20 days before the wedding, Byron testified that Bullock asked her to stop working on the wedding. As issues of credibility cannot be resolved by summary judgment. Psihogios v. Stavropoulos, 269 AD2d 295, 296 (1<sup>st</sup> Dept 2000)), the resolution of these conflicting versions of events must be resolved at trial.

On the other hand, Bullock is entitled to summary judgment dismissing 4PM Events' counterclaim against Bullock for unpaid expenses in connection with the Contract. While the reason for the termination of the Contract is disputed, the record contains uncontroverted evidence, including Byron's deposition testimony and Invoice #1380 sent by 4PM Events to Bullock, showing that 4PM Events is not owed any moneys for expenses. Moreover, to the extent the counterclaim seeks attorneys' fees, defendants point to no agreement or other basis for awarding such fees. Therefore, the counterclaim is dismissed.

Finally, upon searching the record, the court also dismisses the unjust enrichment claim against 4PM Events. "Unjust enrichment is a quasi-contract theory of recovery and "is an obligation imposed by equity to prevent injustice" Georgia Malone & Co., Inc. v. Reider, 86 A.D.3d 406, 408 (1<sup>st</sup> Dept 2011), aff'd, 19 NY3d 511, 517 (2012). Recovery for unjust enrichment applies only in the absence of an express agreement. Brintec Corp. v. Akzo, N.V., 171 AD2d 440 (1st Dept 1991). Here, the court finds that this claim should be dismissed, as the Contract constitutes an express agreement between the parties.

### Conclusion

In view of the above, it is

ORDERED that defendants' motion for summary judgment is granted, and the complaint against defendant Tatiana Byron are dismissed; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of defendant Tatiana Byron, dismissing the complaint as against her; and it is further

ORDERED that the action is severed and continued against defendant 4PM Events, Inc.; 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 defendants shall serve a copy of this order with notice of entry upon the County Clerk (room 141B) and the Clerk of Trial Support (room 158), who are directed to mark the court's records to reflect the change in caption herein; and it is further

ORDERED that plaintiff Janna Bullock's cross motion for summary judgment is granted only to the extent of dismissing the defendants' counterclaim and it is otherwise denied; and it is further


ORDERED that the counterclaim is dismissed; and it is further

ORDERED that the third cause of action for unjust enrichment is dismissed; and it is further

ORDERED that the remainder of the action shall continue; and it is further

ORDERED that the remaining parties shall appear for a <sup>pre</sup>trial ~~status~~ conference on April 16, 2015 at 9:30 a.m. in Part 11, room 351, 60 Centre Street, New York, New York.

Dated: April 7, 2015

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