Rose & Rose v Croman
2015 NY Slip Op 30704(U)
April 28, 2015
Supreme Court, New York County
Docket Number: 159165/2014
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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ROSE AND ROSE,

Plaintiff,

Index No. 159165/2014

-against-

DECISION/ORDER

STEVEN CROMAN, et al.,

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.....	1
Answering Affidavits.....	2
Cross-Motion and Affidavits Annexed.....	
Answering Affidavits to Cross-Motion.....	
Replying Affidavits.....	3
Exhibits.....	4

This is an action to recover for allegedly unpaid legal fees. Defendants now move pursuant to CPLR §§ 3211(a)(7), 3013 and 3016 for an order dismissing plaintiff's first, fourth and fifth causes of action with prejudice and the second and third causes of action without prejudice. For the reasons set forth below, defendants' motion is denied except for the portion seeking to dismiss plaintiff's fourth cause of action.

The relevant facts are as follows. The 103 defendants named herein are New York landlord Steven Croman ("Croman") and 102 business entities that plaintiff Rose and Rose alleges were owned by Croman at one point or another. Plaintiff alleges that it performed legal

services for defendants over the past seventeen years and that in the past two and a half years defendants have stopped paying their bills on a regular basis. Specifically, the complaint alleges that there was an agreement entered into between plaintiff and three of the defendants "approximately seventeen years ago" where plaintiff was retained "to perform services as attorneys, pursuant to an agreed-upon fee schedule." The complaint also alleges that "[a]pproximately two and one-half years ago, defendants ceased paying for legal services rendered by plaintiff on a regular and timely basis." Thus, plaintiff has commenced the instant action seeking over $700,000 in unpaid legal fees. In its complaint, plaintiff asserts the following five causes of action: (1) account stated; (2) breach of contract; (3) quantum meruit; (4) alter ego and instrumentality; and (5) promissory estoppel. Defendants now move to dismiss the complaint in its entirety.

On a motion addressed to the sufficiency of the complaint, the facts pleaded are assumed to be true and accorded every favorable inference. *Morone v. Morone*, 50 N.Y.2d 481 (1980). "[A] complaint should not be dismissed on a pleading motion so long as, when plaintiff's allegations are given the benefit of every possible inference, a cause of action exists." *Rosen v. Raum*, 164 A.D.2d 809 (1st Dept 1990). However, "conclusory allegations–claims consisting of bare legal conclusions with no factual specificity–are insufficient to survive a motion to dismiss." *Godfrey v. Spano*, 13 N.Y.3d 358, 373 (2009).

In the present case, as an initial matter, defendants' motion to dismiss plaintiff's first cause of action for account stated on the ground that it fails to state a cause of action is denied. A client's receipt and retention of a law firm's invoices seeking payment for professional services rendered, without objection within a reasonable time, gives rise to an actionable account stated.

See Ruskin, Moscou, Evans & Faltischek v. FGH Realty Credit Corp., 228 A.D.2d 294 (1st Dept 1996). Thus, a complaint will adequately state a cause of action for account stated sufficient to survive dismissal under CPLR § 3211(a)(7) if the plaintiff alleges a relationship in which services were rendered and that the parties assented to the amounts due for such services. *See White Plains Cleaning Services, Inc. v. 901 Properties, LLC*, 94 A.D.3d 1108, 1109 (2nd Dept 2012).

Here, the complaint sufficiently states a cause of action for account stated to survive a motion to dismiss. The complaint alleges that plaintiff rendered bills on a monthly basis for the work it performed for defendants during the preceding month, that defendants "[m]ade no objection to the bills and invoices" and that these invoices remain outstanding. These allegations, at least at the pleading stage, are sufficient to make out an account stated claim. To the extent defendants contend that plaintiff fails to sufficiently plead the claim as it fails to specifically identify the invoices at issue or annex the invoices to its complaint, such argument is without merit. Defendants present absolutely no authority that such action is required.

Additionally, defendants' motion to dismiss plaintiff's second cause of action for breach of contract on the ground that it fails to state a cause of action is denied. A complaint adequately states a cause of action for breach of contract when it alleges: (1) the existence of a contract; (2) the plaintiff's performance under the contract; (3) the defendant's breach of the contract; and (4) damages as a result of the breach. *See JP Morgan Chase v. J.H. Electric of NY, Inc.*, 69 A.D.3d 802 (2nd Dept 2010). Here, the complaint alleges the existence of a contract between plaintiff and defendants as it alleges that "[d]efendants retained Rose and Rose to perform services as attorneys, pursuant to an agreed-upon fee schedule." Further, the complaint alleges that plaintiff

fully performed under the agreement, that defendants "have failed to pay plaintiffs [sic] for their legal services rendered pursuant to the agreement" and that defendants are currently indebted to plaintiff for their breach, jointly and severally, in the amount of $724,157.25. Thus, plaintiff's complaint states a claim for breach of contract.

Further, defendants' motion to dismiss plaintiff's third cause of action for quantum meruit on the ground that it fails to state a cause of action is denied. To state a cause of action for quantum meruit, plaintiff must allege "(1) the performance of services in good faith, (2) the acceptance of the services by the person to whom they are rendered, (3) an expectation of compensation therefor, and (4) the reasonable value of the services." *Soumayah v. Minnelli*, 41 A.D.3d 390, 391 (1st Dept 2007). Here, the complaint alleges that plaintiff performed legal services for defendants in good faith; defendants accepted plaintiff's legal services knowing that plaintiff expected to be paid for its work; that plaintiff expected to be paid for the work performed; and that plaintiff has been damaged in the amount of the fair value of the services rendered in an amount not less than $724,157.25. Thus, plaintiff has sufficiently stated a claim for quantum meruit. To the extent defendants contend that plaintiff's claim for quantum meruit should be dismissed as plaintiff failed to differentiate among the defendants, such contention is without merit. Such particularity is simply not necessary at the pleading stage. Indeed, this court finds that plaintiff's complaint sufficiently gives defendants "notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved" to survive a motion to dismiss. CPLR § 3013.

Additionally, defendants' motion to dismiss plaintiff's fifth cause of action for promissory estoppel on the ground that it fails to state a cause of action is also denied. "The

elements of a claim for promissory estoppel are: (1) a promise that is sufficiently clear and unambiguous; (2) reasonable reliance on the promise by a party; and (3) injury caused by the reliance." *MatlinPatterson ATA Holdings LLC v. Federal Express Corporation*, 87 A.D.3d 836, 842 (1st Dept 2011). Here, the complaint alleges that defendants made repeated promises to plaintiff that they would pay plaintiff's outstanding legal bills; that plaintiff relied on defendants' promises, to its detriment, as it continued to perform work for which it was not being paid; that plaintiff's reliance was reasonable in light of the parties' previous relationship for fifteen years in which defendants paid plaintiff's legal bills; and that as a result of such reliance it has been injured in the amount of $724,157.25. Thus, plaintiff has sufficiently stated a claim for promissory estoppel. To the extent defendants contend that the claim should be dismissed as there was no "clear and unambiguous" promise and no reasonable reliance upon a promise, such argument is unavailing on a motion to dismiss as it goes to the merits of plaintiff's claim, which is inappropriate for a motion to dismiss. Indeed, the only question for the court on a motion to dismiss is whether plaintiff has stated a claim.

Further, the court finds that the complaint sufficiently alleges that defendants are liable under the above claims on an alter-ego theory. "In order to state a claim for alter-ego liability plaintiff is generally required to allege 'complete domination of the corporation in respect to the transaction attached' and 'that such domination was used to commit a fraud or wrong against plaintiff which resulted in plaintiff's injury.'" *Baby Phat Holding Co., LLC v. Kellwood Co.*, 123 A.D.3d 405, 407 (1st Dept 2014) (quoting *Morris*, 82 N.Y.2d at 141). Here, the complaint alleges that

Steven Croman has not observed corporate formalities, has intermingled and commingled

> personal finances and finances in and among the corporate and limited liability defendants as if the corporate and limited liability defendants were his own personal piggy bank, and has dominated the administration of the corporate and limited liability defendants despite the nominal corporate or limited liability forms of said defendants. Steven Croman has used such domination to commit a wrong against the Plaintiff and to cheat the Plaintiff, resulting in damages suffered by Plaintiff.

At this early pre-answer stage, these allegations are sufficient to withstand a motion to dismiss. Indeed, "[v]eil piercing is a fact-laden claim" that is not well suited for resolution upon a motion to dismiss. *Damianos Realty Group, LLC v. Fracchia*, 35 A.D.3d 344, 344 (2nd Dept 2006). Moreover, a party should be entitled to obtain discovery to ascertain whether there are grounds to pierce the corporate veil. *First Bank of Ams. v. Motor Car Funding*, 257 A.D.2d 287, 294 (1st Dept 1999).

However, plaintiff's fourth cause of action for alter ego and instrumentality should be dismissed as it is not a separate cause of action. "[A]n attempt of a third party to pierce the corporate veil does not constitute a cause of action independent of that against the corporation; rather, it is an assertion of facts and circumstances which will persuade the court to impose the corporate obligation on its owners." *Morris v. New York State Dep't. of Taxation & Fin.*, 82 N.Y.2d 135 (1993); *see also Fiber Consultants, Inc. V. Fiber Optek Interconnect Corp.*, 15 A.D.3d 528 (2d Dept 2005) ("New York does not recognize a separate cause of action to pierce the corporate veil."). Thus, as plaintiff pleads a claim to pierce the corporate veil as a separate cause of action, such cause of action must be dismissed.

Based on the foregoing, defendants' motion to dismiss is granted only to the extent that plaintiff's fourth cause of action is hereby dismissed. The motion is otherwise denied. This constitutes the decision and order of the court.

Dated: 4/28/15

Enter: _____ J.S.C.

CYNTHIA S. KERN J.S.C.