

Gorlick, Kravitz & Listhaus, P.C. v Reches
2015 NY Slip Op 31204(U)
July 8, 2015
Supreme Court, New York County
Docket Number: 162842/14
Judge: Cynthia S. Kern
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

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

-----X
GORLICK, KRAVITZ & LISTHAUS, PC,

Plaintiff,

Index No. 162842/14

-against-

DECISION/ORDER

BENJAMIN RECHES and SACK & SACK,
ATTORNEYS AT LAW

Defendants.

-----X
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
Affidavits in Opposition.....	2
Replying Affidavits.....	3
Exhibits.....	4

Plaintiff Gorlick, Kravitz & Listhaus, PC (“GKL”) commenced the instant action against defendants Benjamin Reches (“Reches”) and Sack & Sack, Attorneys at Law (the “Sack Firm”) alleging causes of action for breach of contract, unjust enrichment and *quantum meruit*. The Sack Firm now moves for an Order pursuant to CPLR § 3211(a)(7) dismissing the complaint. For the reasons set forth below, the Sack Firm’s motion is granted.

The relevant facts according to the complaint are as follows. On or about June 28, 2013, GKL and Reches entered into an agreement pursuant to which GKL agreed to provide representation to Reches regarding his employment relationship with his then-employer Morgan Stanley (the “Agreement”). The Agreement set forth GKL’s hourly rates and that GKL agreed

to provide Reches with legal services on a contingency basis and that GKL would be entitled to retain from any net proceeds recovered the greater of 33 1/3 percent of those proceeds or the amount of attorney's fees awarded by a court or arrived at via settlement.

GKL provided legal services to Reches for nearly a year, including, *inter alia*, in-person meetings, extensive telephone conferences and advising him on how to ameliorate his situation at Morgan Stanley. Additionally, GKL drafted and filed an extensive Equal Employment Opportunity Commission ("EEOC") charge of discrimination and a supplemental charge of retaliation. When the EEOC referred Reches' charges to mediation, GKL secured for Reches a private mediation to be paid for entirely by Morgan Stanley and advised Reches in preparation for the mediation, which was scheduled for June 18, 2014.

On or about June 2, 2014, Reches informed GKL that he had decided to obtain new counsel to represent him regarding his claims against Morgan Stanley. The next day, GKL e-mailed Reches to inform him of his deadlines for the impending mediation and to put him on notice that GKL was asserting a lien against any proceeds of mediation, settlement or litigation. GKL was never contacted by Reches' new counsel and GKL was not provided with any information for the new counsel. On or about June 10, 2014, GKL again contacted Reches to remind him of his deadlines and the approaching mediation date and urged him to have his new counsel contact GKL for transition of the matter. Reches responded that he would communicate with his new counsel about contacting GKL but GKL was never contacted. Additionally, Reches refused to name or provide any contact information for his new counsel despite GKL's request.

On or about July 29, 2014, GKL learned that Reches had engaged the Sack Firm and that he had settled his claims against Morgan Stanley in the mediation for \$250,000.00, in

consideration for voluntarily leaving his employment at Morgan Stanley. GKL asserts that out of the proceeds, the Sack Firm recovered \$50,000.00 in attorney's fees, although pursuant to the Sack Firm's retainer agreement with Reches, it was entitled to \$83,333.00. On or about August 6, 2014, GKL informed the Sack Firm that it was entitled to one third of the proceeds of Reches' settlement, in the amount of \$83,333.00.

Thereafter, GKL commenced the instant lawsuit alleging causes of action against Reches for breach of the Agreement, unjust enrichment, fraud and *quantum meruit* and against the Sack Firm for unjust enrichment and *quantum meruit*. The Sack Firm now moves for an Order pursuant to CPLR § 3211(a)(7) dismissing the complaint.

On a motion to dismiss pursuant to CPLR § 3211(a)(7), the complaint is to be afforded a liberal construction and the court must "accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory." *Leon v. Martinez*, 84 N.Y.2d 83, 87-88 (1994). However, "bare legal conclusions and factual claims, which are either inherently incredible or flatly contradicted by documentary evidence...are not presumed to be true on a motion to dismiss for legal insufficiency." *O'Donnell, Fox & Gartner, P.C. v. R-2000 Corp.*, 198 A.D.2d 154 (1st Dept 1993).

In the instant action, the Sack Firm's motion to dismiss the complaint's causes of action for unjust enrichment and *quantum meruit* on the ground that they fail to state a claim is granted. Unjust enrichment and *quantum meruit* are "quasi contract theor[ies] of recovery, and '[are] obligation[s] imposed by equity to prevent injustice, in the absence of an actual agreement between the parties concerned.'" *Georgia Malone & Co, Inc. v. Rieder*, 86 A.D.3d 406, 408 (1st Dept 2011)(citing *IDT Corp. v. Morgan Stanley Dean Witter & Co.*, 12 N.Y.3d 132, 142 (2009)).

“The plaintiff must show that the other party was enriched, at plaintiff’s expense, and that ‘it is against equity and good conscience to permit [the other party] to retain what is sought to be recovered.’” *Georgia Malone & Co, Inc.*, 86 A.D.3d at 508 (citing *Mandarin Trading Ltd. V. Wildenstein*, 16 N.Y.3d 173, 182 (2011)). “[A]lthough privity is not required for an unjust enrichment claim, a claim will not be supported unless there is a connection or relationship between the parties that could have caused reliance or inducement on the plaintiff’s part.” *Georgia Malone & Co, Inc.*, 86 A.D.3d at 408 (internal citations omitted). Indeed, it is well-settled that a “mere awareness” by the defendant of the plaintiff is insufficient under this standard. *Id.* At 409. Thus, to sufficiently plead an unjust enrichment or *quantum meruit* claim, a plaintiff must plead that there was direct contact or a relationship with the defendant that could have caused reliance or inducement. *See id.* At 409.

Here, plaintiff’s complaint as against the Sack Firm must be dismissed as it fails to sufficiently allege an unjust enrichment or a *quantum meruit* claim. The complaint alleges that the Sack Firm is liable to GKL for GKL’s attorney’s fees on the ground that the Sack Firm was aware at all times that it was the legal work of GKL that had positioned Reches to go to mediation and that it was the legal work of GKL that positioned Reches to obtain a significant recovery from Morgan Stanley. Additionally, the complaint alleges that the Sack Firm did not notify GKL of its identity prior to the mediation and that it was aware that Reches had not informed GKL that the mediation was going forward. However, said allegations are insufficient to allege an unjust enrichment or a *quantum meruit* claim as the complaint fails to allege any relationship or direct contact between plaintiff and the Sack Firm that could have caused reliance or inducement on plaintiff’s part. Indeed, the complaint alleges that GKL did not even know of

the Sack Firm's representation of Reches until the end of July 2014, after the mediation had already occurred. Further, it is undisputed that GKL did not perform any legal work in reliance on or due to the inducement of the Sack Firm as any legal work performed by GKL was for Reches while it was his counsel and before Reches obtained new counsel.

Plaintiff's assertion that it has sufficiently alleged a claim for unjust enrichment and *quantum meruit* based on its allegation that the Sack Firm profited solely from the legal work performed by plaintiff as the Sack Firm "performed no more than a few hours of legal work" is without merit. It is well-settled that an unjust enrichment or *quantum meruit* claim may not exist solely because defendant may have profited, in one form or another, from plaintiff's work "absent any contention that defendant[] induced plaintiff to do the work." *Georgia Malone & Co., Inc.*, 86 A.D.3d at 409.

Accordingly, the Sack Firm's motion for an Order pursuant to CPLR § 3211(a)(7) dismissing the complaint is granted. It is hereby

ORDERED that the complaint is dismissed as against the Sack Firm only. This constitutes the decision and order of the court.

Dated:

7/8/15

Enter: _____

PK
J.S.C.

CYNTHIA S. KERN
J.S.C.