

Chadha v PB 50 Lispenard Group, LLC
2015 NY Slip Op 32408(U)
December 8, 2015
Supreme Court, New York County
Docket Number: 652872/2014
Judge: Jeffrey K. Oing
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL PART 48

-----x
JASMIT CHADHA,

Plaintiff,

-against-

PB 50 LISPENARD GROUP, LLC and
PHILIP BALDEO,

Defendants.
-----x

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DECISION AND ORDER

JEFFREY K. OING, J.:

Relief Sought

Plaintiff, Jasmit Chadha ("plaintiff" or "Chadha"), moves, pursuant to CPLR 3215(a) and CPLR 3212, for an order granting plaintiff summary judgment on default against defendants, PB 50 Lispenard Group, LLC ("Lispenard LLC") and Philip Baldeo ("Baldeo") ("Lispenard LLC" and "Baldeo" collectively referred to as "defendants"), on the issue of liability and awarding plaintiff damages in the amount of \$1,959,445.80.

Allegations and Procedural Background

In 2007, Lispenard LLC purchased the Manhattan property known as 50 Lispenard Street (the "property") for \$7 million (Compl., ¶ 5). Plaintiff alleges that in or about August 2007 he entered into a contract with defendants to manage the development and renovation of the property (the "renovation project") into a six unit luxury condominium complex (Id., ¶ 7). Under the

parties' agreement, upon completion of the renovation project, plaintiff was to market the newly built luxury condominium units for sale on behalf of defendants (Id., ¶ 8). He claims that in exchange for managing every aspect of the renovation project and the marketing and sale of the units, defendants promised to pay him a monthly salary of \$15,000, plus expenses, and an additional 25% share of all profits earned on the sale of the renovated units (Id., ¶ 9).

Chadha claims he managed the entire renovation project from beginning to end, that the renovation project lasted over five and a half years, and he invested approximately \$213,000 of his own money in the form of out-of-pocket expenses for which he was not compensated (Id., ¶ 10). The finished renovation project resulted in six luxury condominium units and a ground floor commercial rental unit. Plaintiff claims he sold five of the six units for a total amount of approximately \$15.7 million (Id., ¶ 12). He asserts that while defendants earned huge profits they failed to pay him his monthly salary and out-of-pocket expenses and the agreed upon 25% share of the profits earned following the sale of the property (Id., ¶ 13).

Plaintiff commenced this action in September 2014 by service of a summons with notice asserting causes of action for breach of contract, breach of implied contract, quantum meruit, and unjust

enrichment. On October 27, 2014, plaintiff filed a complaint in response to defendants' demand. On November 17, 2014, defendants, by their attorneys Goldberg & Rimberg PLLC, filed an answer with counterclaims. A preliminary conference was held on February 3, 2015 and all parties were ordered to serve discovery demands on or before March 5, 2015. On March 3, 2015, counsel for defendants filed an order to show cause to be relieved as counsel. By a decision and order dated March 24, 2015, this Court granted the motion to be relieved as counsel for defendants (Moving Papers, Ex. 25). The action, however, was not stayed and defendants were ordered to appear either by counsel or, if counsel was not retained, in person, on April 28, 2015 at 10 a.m. (Moving Papers, Ex. 25). Plaintiff served his first demand for discovery and inspection and first set of interrogatories on defendants on April 6, 2015. On April 28, 2015, defendants failed to appear either in person or by counsel at the Court ordered conference.

Discussion

Default Judgment

Plaintiff asserts that he is entitled to a default judgment against defendants in the amount of \$1,959,445.80 for defendants' failure to appear, or appoint counsel to appear, at the April 28, 2015 conference. In order to prevent a default judgment from

being entered against them, defendants must provide both a reasonable excuse for failing to appear at the court conference on April 28, 2015, and a meritorious defense to the action (DaimlerChrysler Insurance Company v Seck, 82 AD3d 581 [1st Dept 2011]).

In his affidavit, defendant Baldeo, a member of defendant Lispenard LLC, claims he has "an extremely busy schedule as a doctor in an emergency room at the hospital and [he is] also often out of town in [his] family's country in Guyana to provide free medical services for the local population every few months, for extended trips" (Baldeo Aff., ¶ 18). He further states that he "was away recently and did not realize there was a court date and need for substitution of counsel" (Id.). He retained new counsel after the April 28 conference date (Id.).

As for a meritorious defense, defendants point out that plaintiff is seeking almost \$2 million in profits and an ownership interest based on an alleged oral agreement. In that regard, Baldeo asserts:

My only oral agreement was for Plaintiff's employment as an independent contractor to assist in the Owner's construction of a complex, multi-year, long-term project involving the demolition of an old building, dealing with the Landmarks Preservation Commission, in the development and construction of new residential condominiums for the property There was never any agreement of any kind, written or oral, granting Plaintiff an interest in the profits of the project or an interest in the real property.

(Baldeo Aff., ¶ 5 [emphasis in original]).

Defendants sufficiently demonstrate that their failure to appear at the April 28 court conference was not willful or part of a pattern of dilatory conduct (DaimlerChrysler Insurance Company v Seck, 82 AD3d 581, supra). Indeed, defendants' nonappearance was the first and only default by defendants, and it was after their counsel had withdrawn from representing them. In addition, plaintiff has failed to demonstrate that the brief delay between the April 28 court conference to the time when defendants' new counsel filed opposition to plaintiff's motion on August 18, 2015 caused him to change his position or any other discernible prejudice (Id.).

In addition, defendants set forth a meritorious defense to this action with their claim that the parties did not have an agreement whereby plaintiff would be paid \$15,000 per month and receive 25% of the profits from the sale of the units at the property. Thus, "[i]n light of the strong public policy of this State to dispose of cases on their merits" (Id.), plaintiff's motion for a default judgment is denied.

Summary Judgment

Plaintiff claims that he is entitled to summary judgment on the breach of contract and breach of implied contract claims, as well as the quasi-contract claims for quantum meruit and unjust

enrichment. Specifically, plaintiff claims that he had an agreement with defendants that he would receive a monthly salary of \$15,000, plus expenses, for managing the renovation project, as well as a 25% share of the net profits earned on the sale of the completed units (Chadha Aff., ¶¶ 14 and 15). Plaintiff contends that he fully performed under the agreement and worked on the project for six years through to its completion (Chadha Aff., ¶ 4). He claims he is owed \$1,028,866.62 in salary and expenses. In addition, plaintiff claims that he successfully coordinated and facilitated the sale of five residential units at the property. He claims he is owed \$933,307 for the agreed upon 25% share of the net profits earned on the sale of the units, including the commercial unit.

Baldeo asserts that while he does "not dispute that Plaintiff did perform certain work for [defendants] ... in connection with the development of the Property ... all work was provided in his role as an independent contractor working for ... the owner of the premises" (Baldeo Aff., ¶ 7). Baldeo maintains that plaintiff was compensated for his work as an independent contractor (Baldeo Aff., ¶ 8). In addition, defendants argue that there is no basis for the quantum meruit claim because plaintiff performed work as an independent contractor under an arrangement with defendants and at an agreed remuneration.

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Defendants also argue that any oral contract would be barred by the Statute of Frauds, General Obligations Law ("GOL") §§ 5-701 and 5-703. GOL § 5-701(a)[1] provides that an agreement that by its terms cannot be performed within one year from the making thereof is void unless it is writing and subscribed by the party to be charge therewith. Defendants argue that the project could not have possibly been performed in one year, and, therefore, any alleged oral agreement is unenforceable under GOL § 701(a)[1]. GOL § 5-703 provides that an interest in real property cannot be created, assigned, or declared unless the conveyance is in writing. Thus, any claim plaintiff makes to being a part owner in the property is barred by GOL § 5-703 because it is not in writing.

As an initial matter, defendants' arguments regarding the statute of frauds are unavailing. GOL § 5-703 does not apply to this action because plaintiff is not claiming an ownership interest in the property. As for GOL § 5-701(a)[1], this provision is "limited to contracts that have absolutely no possibility in fact and law of full performance within one year" (Gural v Drasner, 114 AD3d 25 [1st Dept 2013] [internal quotation marks omitted]). It is not enough that the agreement is not likely to be performed or not expected to be performed in one year (Id.).

Here, under the terms of the agreement alleged in the complaint, i.e., managing the renovation project and marketing the sale of the units, the agreement could be performed within one year's time. Thus, plaintiff's claims are not barred by the statute of frauds.

Plaintiff concedes that the parties did not have a written agreement. The documents plaintiff proffers, however, fail to resolve the factual issues as to whether the parties had an oral agreement that plaintiff would receive \$15,000 per month for his services as well as 25% of the profits from the sale of the units. The documentary evidence merely lends further support to the undisputed fact that plaintiff was working as defendants' representative and manager for the property. Nothing relied upon, however, is dispositive of plaintiff's claims. Given that defendants deny that the parties agreed to anything beyond that plaintiff would serve as defendants' project manager on the renovation project of the property, the branch of plaintiff's motion for summary judgment is denied.

Accordingly, it is hereby

ORDERED that plaintiff's motion for a default judgment and for summary judgment is denied, and it is further

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ORDERED that the parties are directed to appear for a status conference in Part 48, Room 242, 60 Centre Street, on January 19, 2016 at 11 a.m.

This memorandum opinion constitutes the decision and order of the Court.

Dated:

12/8/15



HON. JEFFREY K. OING, J.S.C.

JEFFREY K. OING
J.S.C.