

Gyorio v Minnesota United FC
2016 NY Slip Op 31299(U)
July 11, 2016
Supreme Court, New York County
Docket Number: 652281/2015
Judge: Ellen M. Coin
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 63

-----X

MOZZI GYORIO,

Plaintiff,

--against--

Index No.: 652281/2015
Motion Seqs.: 001 and 002
Subm. Date: March 30, 2016

DECISION AND ORDER

MINNESOTA UNITED FC, and NATIONAL
AMERICAN SOCCER LEAGUE LLC, and NORTH
AMERICAN SOCCER LEAGUE LLC,

Defendants.

-----X

Appearances

For Plaintiff:

JS Barkats PLLC
By Samuel Watkins, Esq.
18 East 41st Street
New York, New York 10017
(646) 502-7001

For Defendant Minnesota United:

The Boutique Firm PLC
By Matthew D. Melewski, Esq.
2929 Chicago Avenue, Suite 1500
Minneapolis, Minnesota 55407
(612) 999-8600

For Defendant North American Soccer League:

Dorsey & Whitney LLP
By William G. Primps, Esq.
Vikram Kumar, Esq.
51 West 52nd Street
New York, New York 10019
(212) 415-9200

For Defendant National Am. Soccer League:

no appearance

Papers Submitted on Motion Seq. 001 and 002 to Dismiss:

Motion Seq. 001

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ELLEN M. COIN, J.

In this breach of contract action, defendant Minnesota United FC (MU) moves pursuant to CPLR 3211 (a) (1) and (8) to dismiss this action as against it for lack of personal jurisdiction and on the basis of a defense founded upon documentary evidence (motion sequence 001).

In motion sequence 002, defendant North American Soccer League LLC (NASL) moves pursuant to CPLR 3211 (a) (1) and (7) to dismiss this action as against it for failure to state a cause of action and on the basis of a defense founded upon documentary evidence.¹ Motion sequence numbers 001 and 002 are consolidated for disposition.

BACKGROUND

According to the amended complaint, Mozzi Gyorio (Gyorio) was a professional soccer player who played for MU, a professional soccer team in the NASL, in the 2014 season. On January 7, 2014, Gyorio signed a stock NASL form contract (contract) that identifies MU and Gyorio as the parties to the contract (Exhibit E to the Affirmation of Matthew D. Melewski, dated October 9, 2015, [amended complaint], ¶¶ 7-8).

In May 2014, MU asked Gyorio to sign a loan agreement (the agreement), which would have loaned Gyorio and his professional soccer services to the Minnesota United Reserves, LLC (Reserves), a team affiliated with MU.² According to Gyorio, the Reserves play in the National Premier Soccer League – an amateur league – not a sanctioned professional league (amended complaint, ¶¶ 12, 13, 14).

¹ The parties do not dispute that Minnesota substantive law applies.

² Section 10 of the contract permits MU to assign Gyorio's contract to any other outdoor soccer club in the NASL, or to any other soccer club in a FIFA-member nation. Gyorio's consent to the assignment is only required for an international transfer (Melewski Aff., Ex. A, ¶10 at 2).

Gyorio refused to sign the agreement. The following month, MU distributed to its team players a new Player Compliance Policy (the Policy) issued by NASL and made effective June 20, 2014, requiring all players to comply with the team's reasonable operational requests, or face sanctions, including sanctions for breach of contract (*id.*, ¶¶15, 16; Exhibit C to Affirmation of Marc Jonas Block, dated November 25, 2015). In relevant part, the Policy states that "a non-compliant player will be considered to have materially breached their contract pursuant to section 12a of the NASL contract" (Block Aff., Ex. C).

In early July, Gyorio sent a letter to the NASL commissioner alleging that MU breached certain of its obligations under the contract (amended complaint, ¶ 19). Later that month, MU notified Gyorio that it had the option to suspend him with no pay for 30 days for his refusal to sign the loan agreement (*id.*, ¶ 20).

Gyorio alleges that after he was notified of the possible sanction, he tried to amicably resolve his dispute with MU, but the team was not amenable to compromise, and in early August, MU provided NASL with a response to Gyorio's July letter (*id.*, ¶¶ 21, 22, 23).

Thereafter, events developed quickly. On August 22, 2014, MU notified Gyorio that it had elected to terminate his contract based on Gyorio's alleged breach of contract (*id.*, ¶ 24). On September 24, 2014, NASL issued a ruling with respect to Gyorio's July letter, finding that Gyorio was not entitled to the relief he sought (*id.*, ¶ 25). One week later, Gyorio submitted a second letter to the commissioner alleging that MU's termination of his contract was improper. MU filed a response to that letter (*id.*, ¶¶ 26-27).

In November 2014, NASL ruled that Gyorio had materially breached his contract when he refused to sign the loan agreement, which justified his termination under the contract (*id.*, ¶

28). In response, Gyorio commenced this action, asserting two causes of action: the first, as against MU, a claim for breach of contract on the ground that the loan agreement was not contemplated under the terms of the contract and that the fines that MU levied against him and his resulting termination for refusal to sign the loan agreement constitute a breach of contract; and the second, as against NASL, a claim for a tortious interference with contract, alleging that after Gyorio signed his contract, NASL implemented the Policy, which provided the legal basis for his termination.

THE CONTRACT

Paragraph 4 of the contract requires Gyorio to “comply with all rules and regulations previously or hereinafter established by [MU], [NASL] Failure by [Gyorio] to comply with any such rules or regulations shall be grounds for [MU] to terminate this Contract in its sole discretion in accordance with Section 12 (a).”

Subparagraph 12 (a) states that the club may terminate the contract “by reason of [Gyorio’s] material breach [sic] the terms hereof. Player shall have the right of appeal to the commissioner of the [NASL] as to whether a material breach occurred” (Melewski Aff., Ex. A).

According to subparagraph 13 (a) of the contract,

[] all disputes relating to or arising out of this Contract or Player’s relationship with [MU] or the [NASL] including, but not limited [sic] disputes related to compensation, benefits, discipline, or the termination of this Contract shall be presented to the commissioner of the [NASL] for final resolution by the [NASL]

(*id.*).

Subparagraph (b) of paragraph 13 provides that if either of the parties is dissatisfied with the commissioner’s ruling, they may proceed to binding arbitration. Subparagraph 13 (c) states:

Player and Club hereby agree that if either of them brings an action in any court of law or other forum to enforce rights hereunder without first exhausting their remedies under subparagraphs (a) and (b) above, such action shall be barred as a result of the remedy provided in subparagraphs (a) and (b). . . . Under no circumstances shall the [NASL] be considered liable for any action taken by either party as a result of this dispute or the [NASL's] ruling contemplated in subparagraphs (a) and (b) above”

(*id.*).

ARGUMENTS

Motion Sequence 001

In support of the motion to dismiss the amended complaint, MU argues that the Court does not have either general or specific personal jurisdiction over it. The team is not essentially at home in New York and is not doing business in New York (CPLR 302 [a]). Nor has MU purposefully conducted business in this state, and there is no substantial relationship between MU's alleged nominal contacts with New York and the breach of contract cause of action. In addition, MU argues that even if the Court did have personal jurisdiction over MU, this action would be barred by the arbitration clause in subparagraph 13(b).

In opposition, Gyorio contends that documentary evidence establishes that MU is interconnected, interchangeable and interdependent with the NASL based in New York and that because MU is an owner and member of the NASL, MU should reasonably expect to be sued in this forum. Alternatively, Gyorio seeks limited jurisdictional discovery before determination of this motion.

In addition, Gyorio takes the position that the arbitration clause is unenforceable because it does not cover the breach of contract alleged in the complaint, to wit, enforcement of a

nonexistent contract clause and enforcement of a Policy that was not in effect when Gyorio executed the contract.

Motion Sequence 002

In support of its motion to dismiss the amended complaint, the NASL argues that paragraph 13 (c) of the contract specifically bars suits against it for actions taken by MU as a result of this dispute. It contends that the claim against the NASL for tortious interference with contract, stemming from MU's allegedly improper termination of Gyorio, is exactly the type of dispute the parties contemplated under subparagraph 13 (c).

In addition, the NASL claims that Gyorio has failed to properly plead a tortious interference claim because he did not allege that the NASL intentionally procured the breach of his contract.

In opposition, Gyorio argues that the contract does not preclude the tortious interference claim against the NASL, because subparagraph 13 (c) only precludes suits against the NASL based on actions taken by the parties to the contract. The claim against the NASL, on the other hand, grows out of NASL's own action, the adoption of the Policy. Moreover, Gyorio argues that he sufficiently pleaded all the material elements of a tortious interference claim, including intentional procurement of the breach by issuing the Policy.

DISCUSSION

On a motion to dismiss for failure to state a cause of action (CPLR 3211 [a] [7]), the court must accept each and every allegation as true and liberally construe the allegations in the light most favorable to the pleading party (*Guggenheimer v Ginzburg*, 43 NY2d 268, 275

[1977]); *see* CPLR 3211 [a] [7]). We “determine only whether the facts as alleged fit within any cognizable legal theory” (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). A motion to dismiss must be denied “if from the pleadings’ four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law” (*511 W. 232nd Owners Corp. v Jennifer Realty Co.*, 98 NY2d 144, 152 [2002] [internal quotation marks and citations omitted]).

On the other hand, while factual allegations contained in a complaint should be accorded a “favorable inference,” bare legal conclusions and inherently incredible facts are not entitled to preferential consideration (*Matter of Sud v Sud*, 211 AD2d 423, 424 [1st Dept 1995]).

Moreover, where the motion to dismiss is based on documentary evidence (CPLR 3211 [a] [1]), the claim will be dismissed “only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law” (*Leon v Martinez*, 84 NY2d at 88; *see also 150 Broadway N.Y. Assocs., L.P. v Bodner*, 14 AD3d 1, 5 [1st Dept 2004]). Where, as here, the defendants have presented documentary evidence, the court is required to determine “whether the proponent of the pleading has a cause of action, not whether he has stated one” (*Ark Bryant Park Corp. v Bryant Park Restoration Corp.*, 285 AD2d 143, 150 [1st Dept 2001] [internal quotation marks and citations omitted]).

In addition, when a defendant moves to dismiss for lack of personal jurisdiction, pursuant to CPLR 3211 (a) (8), a plaintiff “need only make a prima facie showing” that such jurisdiction exists (*Cornely v Dynamic HVAC Supply, LLC*, 44 AD3d 986, 986 [2d Dept 2007]; *Alden Personnel, Inc. v David*, 38 AD3d 697, 698 [2d Dept 2007]). Where a plaintiff asserts that discovery on the issue of personal jurisdiction is necessary, plaintiff need not make a prima facie showing of jurisdiction, but instead, “need only demonstrate that facts ‘may exist’ to exercise

personal jurisdiction over the defendant” (*Ying Jun Chen v Lei Shi*, 19 AD3d 407, 408 [2d Dept 2005] [citation omitted]; see *Peterson v Spartan Indus., Inc.*, 33 NY2d 463, 467 [1974]; *Dino & Artie’s Automatic Transmission Co. v Foundation Life Ins. Co. of Am.*, 111 AD2d 60, 61 [1st Dept 1985]). If “it appear[s] from affidavits submitted in opposition to a motion . . . that facts essential to justify opposition may exist but cannot then be stated, the court may . . . order a continuance to permit further . . . disclosure to be had . . .” (CPLR 3211 [d]; see *Peterson v Spartan Indus.*, 33 NY2d at 467; *Ying Ju Chen v Lei Shi*, 19 AD3d at 407-408]).

Motion Sequence 001

A. Lack of Personal Jurisdiction

The branch of MU’s motion that seeks to dismiss the complaint as against it, based on lack of personal jurisdiction is granted.

Here, the amended complaint alleges, in the most conclusory terms, that “upon information and belief” defendants conduct business in New York; that contact between plaintiff and defendants occurred in New York and that the action is directly related to a contract to be performed in New York, as well as other states and provinces in North America (amended complaint, ¶¶ 4, 5, 6).

However, Nicholas Rogers (Rogers), MU’s president, avers that his team has only one office, located in Minnesota, that it does not conduct any business in New York and that its only contacts with New York were one soccer game it played in New York in 2013, two soccer games it played in New York in 2014 and one soccer game it played in New York in 2015 (Rogers aff, ¶¶ 6, 9, 11).

In addition, Rogers states that the contract was negotiated via telephone and email with Gyorio, a Canadian citizen, and his agent, John Horvath, who is based in Ontario, Canada. Rogers states that MU's representative was in Minnesota during the negotiations and that the contract bears a notation that it was signed in Minnesota. Further, he alleges that no MU representative has ever traveled to New York to negotiate or sign a contract with a player (*id.*, ¶¶ 13, 14, 15).

Gyorio has failed to submit any evidence to show that MU's contacts with New York are so "continuous and systematic as to render them essentially at home in" New York (*Daimler AG v Bauman*, 134 S Ct 746, 760 (2014) or that MU does business in the state "not occasionally and casually, but with a fair measure of permanence and continuity" (*Tauza v Susquehanna Coal Co.*, 220 NY 259, 267 [1917]; *Landoil Resources Corp. v Alexander & Alexander Servs.*, 77 NY2d 28, 33-34 [1990]) for the purpose of general personal jurisdiction. The mere fact that MU, along with 12 other soccer teams, is a member of the NASL (Block affirmation, exhibit A), which is a Delaware corporation with its principal office in New York, fails to demonstrate that MU's contacts with New York are continuous and systematic such that it is essentially at home in New York.

Moreover, Gyorio has not submitted a scintilla of evidence to show that MU engaged in purposeful activity within the state and that the alleged activity in New York gave rise to, or had a substantial relationship with, the breach of contract claim (*McGowan v Smith*, 52 NY2d 268, 271-272 [1981]; *Farahmand v Dalhousie Univ.*, 30 Misc 3d 1210[A], 2011 NY Slip Op 50021[U] *3-4 [Sup Ct, NY County 2011], *affd* 96 AD3d 618 [1st Dept 2012]). Indeed, Gyorio concedes that the contract was signed in Minnesota, and he does not allege that MU engaged in

any purposeful activity in New York or that the contract was performed or breached in New York. Gyorio merely alleges that there could conceivably be an undefined nexus between some amorphous business MU conducted in New York and his cause of action (*Johnson v Ward*, 4 NY3d 516, 519 [2005]). Such conclusory and vague allegations are insufficient to establish a prima facie case that the New York courts can exercise personal jurisdiction over MU.

In addition, Gyorio's request for jurisdictional discovery is denied because "plaintiff failed to offer some tangible evidence which would constitute a sufficient start in showing that jurisdiction could exist, thereby demonstrating that its assertion that a jurisdictional predicate exists is not frivolous" (*SNS Bank v Citibank*, 7 AD3d 352, 354 [1st Dept 2004] [internal quotation marks and citation omitted]).

B. Documentary Evidence – Contractual Bar

However, assuming, arguendo, that this Court did have personal jurisdiction over MU, the clear, unequivocal language of paragraph 13 of the contract bars Gyorski's cause of action against MU³ because the contract states, "that all disputes relating to or arising out of this Contract or Player's relationship with Club or the League including, but not limited, [sic] disputes related to . . . discipline, or the termination of this Contract . . . shall be presented first to the commissioner of the League" (Melewski Aff., Ex. A, ¶ 13 [a]). If either party is dissatisfied, such party may next demand binding arbitration (*id.*, ¶ 13 [b]), and the parties agree

³ "[W]hether there is a clear, unequivocal and extant agreement to arbitrate the claims, is for the court . . . to determine" (*Matter of Primex Intl. Corp. v Wal-Mart Stores, Inc.*, 89 NY2d 594, 598 [1997]). Plaintiff's arguments that the subject arbitration clause is too vague to be enforceable and that NASL's arbitration process is too unfair to give it legal force are unsupported by legal authority.

that “if either of them brings an action in any court of law . . . to enforce rights hereunder” without first submitting to arbitration, such action shall be barred . . .” (*id.*, ¶ 13 [c]).

Plaintiff pleads a breach of contract claim, alleging that MU breached its contract with him by disciplining him for his failure to sign a loan agreement to play with an affiliate team. This cause of action clearly arises out of the contract, and discipline and termination thereunder. Accordingly, Gyorio’s failure to pursue arbitration under the contract’s broad arbitration clause bars this lawsuit against MU because there is a reasonable relationship between the subject matter of the dispute and the underlying contract (*see Matter of Poly-Pak Indus. v Collegiate Stores Corp.*, 269 AD2d 130, 130-131 [1st Dept 2000]).

Motion Sequence 002

Under Minnesota law⁴, the elements of a claim for tortious interference with contract are: (1) the existence of a contract; (2) the alleged wrongdoer’s knowledge of that contract; (3) the intentional procurement of its breach; (4) without justification, and (5) damages (*Sysdyne Corp. v Rousslang*, 860 NW2d 347, 351 [Minn Sup Ct 2015]).

The amended complaint does not plead that NASL either improperly, without justification, or intentionally procured a breach of the contract between Gyorio and MU. Although in the amended complaint, Gyorio alludes to the Policy and alleges that MU distributed the Policy (amended complaint, ¶ 15; Block Aff., Ex. 3) and that NASL issued the Policy (*id.*, ¶

⁴ There is no significant difference between New York and Minnesota law regarding the elements of a cause of action for tortious interference with contract. Under New York law, plaintiff must plead that: (a) a valid contract exists; (b) a third party had knowledge of the contract; (c) the third party intentionally and improperly procured the breach and actual breach; and (d) the breach resulted in damage to plaintiff (*Lama Holding Co. v Smith Barney, Inc.*, 88 NY2d 413, 424 [1996]; *see also Israel v Wood Dolson Co., Inc.*, 1 NY2d 116, 120 [1956]).

44), he does not allege that NASL intentionally used the policy to procure the breach of Gyorio's contract with MU. Gyorio merely pleads that "[t]he League's decision to implement the Policy, and to find that the actions of [MU] are reasonable, was arbitrary, capricious, and without any standing in the law" (*id.*, ¶ 45).

Moreover, to the extent that Gyorio bases his claim on MU's declaring him in breach of contract and terminating him and on the rulings that NASL issued, the claim is barred by subparagraph 13 (c) of the contract, which states, "[u]nder no circumstances shall the League be considered liable for any action taken by either party as a result of this dispute or the League's ruling contemplated in subparagraphs (a) and (b) above" (Melewski Aff., Ex. A).

The clear language of subparagraph 13 (c) demonstrates that this clause was intended for NASL's benefit, and as such, NASL, as a third-party beneficiary, can enforce it against Gyorio, the promisor (*see Alicea v City of New York*, 145 AD2d 315, 317-318 [1st Dept 1988]; *see also Hickman v Safeco Ins. Co. of Am.*, 695 NW2d 365, 369-370 [Minn Sup Ct 2005]).

Gyorio's tortious interference cause of action appears to claim that MU terminated his contract based on the Policy. This claim is specifically barred because it is an action taken by MU in response to Gyorio's refusal to sign the loan agreement. Moreover, in paragraphs 46 and 47 of the amended complaint, Gyorio alleges that "[NASL's] finding that there was 'no harm in assignment of the Contract to [Reserve] by [MU]'" and that NASL's finding that the assignment to a reserve team is a common practice used by professional soccer clubs have harmed Gyorio due to this tortious interference with contract. These allegations also spring from NASL's rulings, as arbitrator, in response to Gyorio's letters to the commissioner pursuant to

subparagraph 13 (a) of the contract. As such, the claims are specifically barred by subparagraph 13 (c).

Accordingly, it is

ORDERED that the motion of Minnesota United FC to dismiss the complaint pursuant to CPLR 3211(a)(1) and (8) (motion sequence 001) is granted; and it is further

ORDERED that the motion of North American Soccer League LLC to dismiss the complaint pursuant to CPLR 3211(a)(1) and (7) (motion sequence 002) is granted; and it is further

ORDERED that the Clerk of Court shall sever and dismiss the complaint as against defendants Minnesota United FC and North American Soccer League, LLC, with costs as taxed by the Clerk, and the remainder of the action shall continue; 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.

This constitutes the Decision and Order of the Court.

Dated: _____

July 11, 2016

ENTER:



Ellen M. Coin A.J.S.C.