

Benzie v Take-Two Interactive Software, Inc.

2017 NY Slip Op 31295(U)

June 14, 2017

Supreme Court, New York County

Docket Number: 651920/2016

Judge: Barry Ostrager

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 61

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LESLIE BENZIES,

Plaintiff,

- v -

TAKE-TWO INTERACTIVE SOFTWARE, INC., ROCKSTAR
GAMES, INC., ROCKSTAR NORTH LTD., DAN HOUSER, SAM
HOUSER,

Defendants.

INDEX NO. 651920/2016

MOTION DATE 3/6/2017

MOTION SEQ. NO. 004

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 118

were read on this application to/for _____ Dismiss _____

HON. BARRY R. OSTRAGER:

Presently before the Court is defendants' motion to dismiss plaintiff's amended complaint. The motion is the culmination of six months of seemingly time-wasting, unproductive proceedings. Defendants previously moved to dismiss plaintiff's original complaint. Following nearly two hours of oral argument and extensive briefing, the Court granted defendants' motion to dismiss in part and denied the motion in part in a reasoned opinion dated December 19, 2016. It is undisputed that plaintiff entered into multiple agreements with the defendants, including a 2006 Employment Agreement that was amended in 2008 and again in 2012, a 2009 Royalty Agreement that was amended in 2011 and again in 2012, and a 2014 Sabbatical Agreement that granted plaintiff the right to return to his employment on terms consistent with his operative Employment Agreement. Plaintiff essentially claims that

defendants breached all agreements that were operative before, during, and after the time he sought unsuccessfully to return to work from his sabbatical.

The Court dismissed nine of the fifteen claims asserted in plaintiff's original complaint, including all the breach of fiduciary duty, fraud, quasi-contract claims because those claims are duplicative of his contract-related claims. The Court preserved the six contract-related claims on the grounds that there is ambiguity among terms in the multiple contracts among the parties that were drafted on behalf of all the principals of defendant Rock Star Games by a law firm that perceived no conflict among the principals. The Court dismissed without prejudice plaintiff's other claims based on the following colloquy at oral argument:

THE COURT: Okay, so you say that the amended Employment Agreement unequivocally entitled Mr. Benzies to *certain* royalties. You say that because these documents were prepared by the same counsel for all of the principals that the only way to read the documents is that there were no conflicts between the parties and no ability on the part of the Housers to, in essence, cut Mr. Benzies out of royalty payments that would be true irrespective of whether or not there were any claims for breach of fiduciary duty or claims for unjust enrichment. Your claims are all contractual in nature. (Emphasis added.)

MR. BAKES: That's correct, Your Honor, unless they become non-contractual and we have to pursue equitable claims, which is what we provide an avenue for in our Complaint as well, the constructive trust, the unjust enrichment and quasi contract claims which would exist, for example, in this case.

* * *

THE COURT: Well, couldn't I conclude that at a minimum, the 2012 Employment Agreement created an ambiguity and that ambiguity gets resolved by parol evidence and there is no need to deal with any of the equitable or quasi contract claims because we would deal with everything in the context of interpreting what the parties intended by the ambiguity that was created by the 2012 Employment Agreement?

MR BAKES: Your Honor, you can certainly take that position, yes. I mean, that's a route certainly open to the Court to take that position.

Transcript of Proceedings, December 14, 2016 at pp. 41-42.

Defendants appealed the Court's decision not to dismiss the breach of contract and contract-related claims and perfected that appeal on January 3, 2017. Plaintiff filed a separate notice of appeal on January 11, 2017 appealing the order with respect to the claims that were dismissed without prejudice. The parties stipulated to designate plaintiff's appeal as a cross-appeal and to adjourn the appeal to the May 2017 Term.

On February 13, 2017, plaintiff filed his amended complaint. The amended complaint re-plead all six of the breach of contract and contract-related claims that were the subject of defendants' appeal, re-plead five of the seven claims that were dismissed without prejudice and were the subject of plaintiff's then pending cross-appeal, abandoned the claims for constructive trust and declaratory judgment that were dismissed without prejudice and added six new claims: for breach of an alleged oral joint venture agreement, breach of the 2012 Employment agreement, violation of New York Labor Law for failure to pay bonuses under the Royalty Plan, negligent misrepresentation, fraudulent inducement to enter the Sabbatical Agreement, and fraudulent inducement to enter the 2012 Employment Agreement.

The Appellate Division rendered a decision on May 25, 2017 holding that the amended complaint mooted the appeal and cross-appeal. However, nothing in the amended complaint or the defendants' motion to dismiss alters this Court's view of the legal sufficiency of the plaintiff's contract claim and the appropriateness of dismissing at this time and without prejudice the remaining claims. Plaintiff is asserting breaches of three separate contracts drafted and executed over a period of many years and containing scores of pages of single spaced provisions. The same ambiguity that was found in the Decision and Order dated December 19, 2016 exists in June of 2017. As respects the claims that were previously dismissed, nothing has changed about the appropriateness of dismissing those claims at this time and those claims are dismissed

without prejudice pending the results of discovery which the Court has not stayed. With respect to the newly asserted claims, the Court finds all of the claims other than the violation of the New York Labor Law suffer from the same defects that led the court to dismiss without prejudice plaintiff's non-contract claims. With respect to the alleged violation of New York Labor Law the court finds that the New York Labor Law is inapplicable to a principal of defendant Rockstar Games, Inc., a Scottish national whose base compensation was \$2 million a year and whose historic royalty payments exceeded \$100 million.

The parties are directed to submit an order reflecting this decision. Defendants shall answer what remains of the amended complaint in twenty (20) days.

6/14/2017

DATE

Barry R. Ostrager

BARRY R. OSTRAGER, J.S.C.

**BARRY R. OSTRAGER
JSC**

CHECK ONE:

- CASE DISPOSED
- GRANTED
- SETTLE ORDER
- DO NOT POST

DENIED

- NON-FINAL DISPOSITION
- GRANTED IN PART
- SUBMIT ORDER
- FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: