Morgan v Worldview Entertainment Holdings, Inc.
2017 NY Slip Op 31730(U)
August 16, 2017
Supreme Court, New York County
Docket Number: 652323/2014
Judge: Eileen A. Rakower
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 15

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HOYT DAVID MORGAN,

Plaintiff,

- against -

WORLDVIEW ENTERTAINMENT HOLDINGS, INC., WORLDVIEW ENTERTAINMENT HOLDINGS, LLC, WORLDVIEW ENTERTAINMENT PARTNERS VII, LLC, MOLLY CONNERS, MARIA CESTONE, and SARAH JOHNSON,

Defendants.

Index No. 652323/2014

DECISION and ORDER

Mot. Seq. 12

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WORLDVIEW ENTERTAINMENT HOLDINGS, INC.; WORLDVIEW ENTERTAINMENT HOLDINGS, LLC; WORLDVIEW ENTERTAINMENT PARTNERS VII, LLC; and MOLLY CONNERS,

Third-Party Plaintiffs,

-against-

GOETZ FITZPATRICK LLP, AARON BOYAJIAN, ESQ., and CHRISTOPHER WOODROW,

Third-Party Defendants.

Index No. 595472/2016

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MARIA CESTONE,

Second Third-Party Plaintiff,

-against-

GOETZ FITZPATRICK LLP, AARON BOYAJIAN, ESQ., and CHRISTOPHER WOODROW,

Second Third-Party Defendants.

Index No. 595475/2016

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HON. EILEEN A. RAKOWER, J.S.C.

Defendant, Christopher Woodrow ("Woodrow"), moves pursuant to CPLR §3211(a)(7) to dismiss all claims asserted against him in the Third-Party Complaint. Woodrow submits the attorney affirmation of Michael D. Pinnisi; the Operating Agreement of Worldview Entertainment Partners VII ("Partners VII"); the Bylaws of Worldview Entertainment Holdings, Inc. ("Worldview Inc."); and a Management and Administrative Services Agreement effective January 5, 2011 between Worldview Inc., and Worldview Entertainment Holdings LLC ("Holdings LLC"). Third Party Plaintiffs Worldview Inc., Holdings LLC, Partners VII, and Molly Conners ("Conners") (collectively, "Third-Party Plaintiffs") oppose.

CPLR § 3211 provides, in relevant part, that "[a] party may move for judgment dismissing one or more causes of action asserted against him on the ground that . . . (7) the pleading fails to state a cause of action[.]" CPLR § 3211(a)(7).

On a CPLR § 3211 motion to dismiss, the complaint is given a liberal construction; the court will accept the allegations as true and provide plaintiffs with the benefit of every favorable inference. (*Roni LLC v. Arfa*, 18 N.Y.3d 846, 848 [2011]; *People ex rel. Spitzer v. Sturm, Ruger & Co., Inc.*, 309 A.D.2d 91 [1st Dept. 2003] ["The court must accept the facts alleged as true . . . and determine simply whether the facts alleged fit within any cognizable legal theory."]). The question of "[w]hether a plaintiff can ultimately establish its allegations is not part of the calculus in determining a motion to dismiss." (*EBC I, Inc. v. Goldman, Sachs & Co.*, 5 N.Y.3d 11, 19 [2005]).

The Third-Party Complaint includes five Claims, three of which name Woodrow as a defendant in his individual capacity.

Third Party Claims III and IV are brought by Partners VII. Partners VII alleges negligence and breach of fiduciary duty by Woodrow in his role as CEO of Worldview Inc., the Manager of Partners VII. Partners VII alleges that Woodrow acted negligently and breached the fiduciary duties that he owed to Partners VII when he made Partners VII a potential obligor under a separation agreement dated June 19, 2013 with Hoyt David Morgan ("Morgan"). Claim V asserts a common law indemnity cause of action against Woodrow.

More specifically, Third Party Claim III alleges that "Woodrow, as CEO of Worldview Inc., the entity identified as the 'Manager' of Partners VII in its operating agreement, owed a duty to Partners VII to appropriately manage, or oversee the

management, of the business of Partners VII." It alleges, "Woodrow breached his duty to Partners VII to appropriately manage, or oversee the management of, the business of Partners VII" by "allegedly making Partners VII an obligor under the Agreement, despite the fact that: (i) Woodrow did not have the authority to bind Partners VII as an obligor under the Agreement; (ii) Partners VII was not otherwise required to undertake any of the obligations allegedly made to Morgan pursuant to the Agreement; and (iii) undertaking such obligations served no rational purpose in connection with the business of Partners VII, and in fact was adverse to the interests thereof." It further alleges, "As a direct and proximate result of the foregoing, Partners VII has suffered, and continues to suffer, damages in an amount to be proven at trial."

Third Party Claim IV alleges that "Woodrow, as CEO of Worldview Inc., the manager of Partners VII, owed express and implied fiduciary duties to Partners VII, including the duty of loyalty and care." It alleges, "Woodrow breached his fiduciary duties to Partners VII by allegedly making Partners VII an obligor under the Agreement, despite the fact that: (i) Woodrow did not have the authority to bind Partners VII as an obligor under the Agreement; (ii) Partners VII was not otherwise required to undertake any of the obligations allegedly made to Morgan pursuant to the Agreement; and (iii) undertaking such obligations served no rational purpose in connection with the business of Partners VII, and in fact was adverse to the interests thereof." It further alleges, "As a direct and proximate result of the foregoing, Partners VII has suffered, and continues to suffer, damages in an amount to be proven at trial."

The elements of a cause of action for negligence are: (1) a duty owed by defendant to plaintiff; (2) breach of the duty; and (3) injury proximately resulting from the breach. (*Jiminez v. Shahid*, 83 A.D. 3d 900, 901 [2d Dept 2011]). Under Delaware law, "To state a claim for negligence one must allege that defendant owed plaintiff a duty of care; defendant breached that duty; and defendant's breach was the proximate cause of plaintiff's injury." (*New Haverford P'ship v. Stroot*, 772 A.2d 792, 798 [Del. 2001]).

Under New York law, the elements of a breach of fiduciary duty are (1) the existence of a fiduciary relationship; (2) misconduct; and (3) damages caused by the misconduct. (*Armentano v. Paraco Gas Corp.*, 935 NYS2d 304 [2nd Dep't 2011]). A cause of action sounding in breach of fiduciary duty must be pleaded with particularity. (CPLR 3016[b]). A fiduciary relationship "exists between two persons when one of them is under a duty to act for or to give advice for the benefit of another

upon matters within the scope of the relation." (*EBC I, Inc. v. Goldman Sachs & Co.*, 5 N.Y.3d 11, 19 [2005] *quoting* Restatement [Second] of Torts § 874, Comment a). "Such a relationship, necessarily fact-specific, is grounded in a higher level of trust than normally present in the marketplace between those involved in arm's length business transactions." (*Id.*). Under Delaware law, the elements of a cause of action for breach of fiduciary duty "requires proof of two elements: (1) that a fiduciary duty existed and (2) that the defendant breached that duty." (*Beard Research, Inc. v. Kates*, 8 A.3d 573, 601 [Del. Ch. 2010]).

Under New York law, a cause of action "for indemnification [does] not accrue until payment [is] made to the [claimant]." (*Mars Assoc., Inc. v New York City Educ. Const. Fund*, 126 A.D.2d 178, 191 [1st Dep't 1987]). "An exception to this rule, that until payment is made to the claimant there is no cause of action for indemnification, arises where indemnification is asserted in a third-party action." (*Mars*, 126 A.D. 2d at 191). (*See also Burgundy Basin Inn, Ltd. v Watkins Glen Grand Prix Corp.*, 51 A.D.2d 140, 146 [4th Dept 1976] ("Technically a claim for indemnity does not arise until the prime obligation to pay has been established ... Nevertheless, for the sake of fairness and judicial economy, the CPLR allows third-party actions to be commenced in certain circumstances before they are technically ripe, so that all parties may establish their rights and liabilities in one action[.]").

"Under Delaware law claims for common law indemnity do not accrue until the indemnitee can be confident that any claim against him has been resolved with certainty." (*Quereguan v. New Castle County*, 2006 WL 2522214, at *5 [Del. Ch. Aug. 18, 2006]; *see also Chesapeake Utilities Corp. v. Chesapeake and Potomac Tel. Co. of Maryland*, 401 A.2d 101, 102 [Del. Super. 1979] ["[T]he [indemnity] claim accrues and the statute begins to run only when the cause of action for indemnity arises, or the indemnitee's liability is fixed and discharged. The determining factor is the point at which the indemnitee suffers loss or damage through payment of a claim after judgment or settlement."]).

"A party's right to indemnification may arise from a contract or may be implied 'based upon the law's notion of what is fair and proper as between the parties." (*McCarthy v. Turner Const., Inc.*, 17 N.Y.3d 369, 374-75 [2011]). "Implied [or common-law] indemnity is a restitution concept which permits shifting the loss because to fail to do so would result in the unjust enrichment of one party at the expense of the other." (*Id.*). "Common-law indemnification is generally available 'in favor of one who is held responsible solely by operation of law because of his relation to the actual wrongdoer." (*Id.*). "Consistent with the equitable underpinnings

of common-law indemnification, our case law imposes indemnification obligations upon those actively at fault in bringing about the injury, and thus reflects an inherent fairness as to which party should be held liable for indemnity." (*Id.*).

Here, Partner VII's claims arise from Woodrow's negotiation and execution of an agreement finalizing the separation of Morgan from his position of CEO of Worldview Inc. There are no allegations in the Third-Party Complaint that Woodrow had a relationship with Partners VII independent from his role as CEO of Worldview that would make Woodrow individually liable to Partners VII under a negligence or breach of fiduciary theory of liability. There are no allegations that Woodrow was an employee of Partners VII, had a contract with Partners VII, was an officer of director of Partners VII, or held any other position that would create a duty of care on Woodrow's part to Partners VII or a fiduciary relationship between the two parties. Rather, Woodrow was an employee of Worldview Inc., an entity that contracted with Partners VII to provide management services. Any duties and responsibilities that Woodrow owed to Worldview Inc., as its officer and director, regarding the performance of tasks including Woodrow's management of Partners VII as a Worldview employee do not impute to Partners VII, a distinct entity.[1]

Lastly, since Third Party Plaintiffs fail to plead any theory of liability or culpable fault against Woodrow that would a warrant a shift of loss to him, the cause of action for indemnification asserted by Third Party Plaintiffs against him fails to state a claim.

Wherefore, it is hereby

ORDERED that third party defendant Christopher Woodrow's motion to dismiss all claims asserted against him in the Third-Party Complaint filed by third-party plaintiffs Worldview Entertainment Holdings, Inc., Worldview Entertainment Holdings, LLC, Worldview Entertainment Partners VII, LLC, and Molly Conners is granted; and it is further

ORDERED all claims asserted in the Third-Party Complaint against third defendant Christopher Woodrow are dismissed, and the Clerk is directed to enter

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[1] While Worldview Defendants' attorneys loosely suggest at oral argument that Woodrow sweetened the pot in the separation agreement out of his friendship with Morgan to the detriment to Worldview Inc., and its affiliates including Partners VII, no such allegations are made in the four corners of this Third Party Complaint.

judgment accordingly.

This constitutes the Decision and Order of the Court. All other requested relief is denied.

DATED: AUGUST 16, 2017

EILEEN A. RAKOWER, J.S.C.