Rivera-Mejia v Schwartz
2017 NY Slip Op 33170(U)
September 27, 2017
Supreme Court, Westchester County
Docket Number: 51908/2017
Judge: Terry Jane Ruderman
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To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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MARIA-TERESA RIVERA-MEJIA,

Plaintiff,

-against-

DR. ERIKA T. SCHWARTZ, et al.,

Defendants.

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DECISION AND ORDER
Sequence No. 1
Index No. 51908/2017

RUDERMAN, J.

The following papers were considered in connection with plaintiff's motion for an order dismissing defendants' affirmative defenses:

Papers	Numbered
Order to Show Cause, Affirmation in Support, Affidavit in Support	1
Memorandum of Law in Support and Exhibits 1 – 3	2
Affirmation in Opposition	3
Affirmation in Further Support and Exhibit 4	4

Plaintiff Maria-Teresa Rivera-Mejia commenced this action on February 12, 2017 to recover unpaid wages from defendants Dr. Erika T. Schwartz and Gina Calderon for work plaintiff performed as a domestic housekeeper in Dr. Schwartz's home. Defendants filed an answer to the complaint on April 3, 2017 asserting that plaintiff's claims are barred by the doctrines of general release and accord and satisfaction (first defense), failure to state a claim for relief (second defense) and unclean hands (third defense). The plaintiff now moves for an order, pursuant to CPLR 3211(b), dismissing defendants' affirmative defenses.

In support of her motion, plaintiff states that she began working for Dr. Schwartz on January 5, 2009. During that time, Dr. Schwartz allegedly provided plaintiff with money, in addition to her salary, to be used for plaintiff's dental work. Upon learning that plaintiff's son had come into "legal troubles," (Memorandum of Law in Support, p. 3), Dr. Schwartz also allegedly provided plaintiff with the "final payment" for a painting job her son had performed on Dr. Schwartz's house. On September 11, 2016, plaintiff received a text message from Dr. Schwartz

stating that plaintiff should not come to work the following day because her services were no longer needed. Dr. Schwartz also stated that plaintiff "can keep the monies you owe me for your teeth and Byron's bail as severance." (Notice of Motion, Exhibit to Plaintiff's Affidavit.)

Plaintiff argues that the text messages from Dr. Schwartz do not constitute a general release of plaintiff's labor law claims, since the messages do not specifically identify the claims intended to be released. In addition, plaintiff contends that the text messages did not establish an accord and satisfaction because she was not clearly informed that Dr. Schwartz was waiving repayment of the alleged loans in satisfaction of plaintiff's labor law claims, which plaintiff had not yet brought against the defendants. Lastly, plaintiff avers that failure to state a cause of action is not an affirmative defense and therefore, it must be dismissed, and, defendants' unclean hands defense must also be dismissed since, defendants fail to identify the underlying transaction that would support an argument that plaintiff acted with unclean hands.

Analysis

"A party may move for judgment dismissing one or more defenses, on the ground that a defense is not stated or has no merit" (CPLR 3211 [b]). "Upon a motion to dismiss a defense, the defendant is entitled to the benefit of every reasonable intendment of its pleading, which is to be liberally construed" (*Butler v Catinella*, 58 AD3d 145, 147–48 [2d Dept 2008]). The movant on such a motion bears "the burden of demonstrating that those defenses [a]re without merit as a matter of law" (*Vita v New York Waste Servs., LLC*, 34 AD3d 559, 559 [2d Dept 2006]). If there is any doubt as to the availability of a defense, it should not be dismissed" (*Butler*, 58 AD3d at 147–48). Nor should a defense be stricken "where there are questions of fact requiring trial" (*534 E. 11th St. Hous. Dev. Fund Corp. v Hendrick*, 90 AD3d 541, 542 [1st Dept 2011]).

"Generally, acceptance of a check in full settlement of a disputed or unliquidated claim operates as an accord and satisfaction. Thus, a party seeking to establish an accord and satisfaction must demonstrate that there was a disputed or unliquidated claim between the parties which they mutually resolved through a new contract discharging all or part of their obligations under the original contract" (*Pothos v Arverne Houses, Inc.*, 269 AD2d 377, 378 [2d Dept 2000]).

"[A] valid release constitutes a complete bar to an action on a claim which is the subject of the release" (*Centro Empresarial Cempresa S.A. v Am. Movil, S.A.B. de C.V.*, 17 NY3d 269, 276 [2011], quoting *Global Mins. & Metals Corp. v Holme*, 35 AD3d 93, 98 [1st Dept 2006]). If "the language of a release is clear and unambiguous, the signing of a release is a 'jural act' binding on

the parties" (*Booth v. 3669 Delaware,* 92 NY2d 934, 935 [1998], quoting *Mangini v McClurg,* 24 NY2d 556, 563 [1969]) and it "must be enforced according to the plain meaning of its terms" (*Inter-Reco, Inc. v Lake Park 175 Froehlich Farm, LLC*, 106 AD3d 955, 955 [2d Dept 2013]).

With respect to the defense of unclean hands, the doctrine "applies when the complaining party shows that the offending party is guilty of immoral, unconscionable conduct and even then only when the conduct relied on is directly related to the subject matter in litigation and the party seeking to invoke the doctrine was injured by such conduct" (*Columbo v Columbo*, 50 AD3d 617, 619 [2d Dept 2008], quoting *Kopsidas v. Krokos,* 294 AD2d 406, 407 [2d Dept 2002] [internal quotation marks and citations omitted]).

As an initial matter, the Court notes that a party cannot move to dismiss the defense of failure to state a cause of action, and therefore, that branch of plaintiff's motion is denied (*see Butler*, 58 AD3d at 150 ["no motion by the plaintiff lies under CPLR 3211(b) to strike the defense [of failure to state a cause of action], as this amounts to an endeavor by the plaintiff to test the sufficiency of his or her own claim"]).

Further, in viewing the evidence in the light most favorable to the defendants and giving them the benefit of every reasonable inference, as required on a motion to dismiss, the Court finds that the text messages fail to establish, as a matter of law, that the general release and accord and satisfaction defenses have no merit. Accordingly, that branch of plaintiff's motion is also denied.

Nevertheless, that branch of plaintiff's motion seeking dismissal of the affirmative defense of unclean hands is granted. The doctrine of unclean hands is an equitable defense that is unavailable in this action, which was brought solely for damages under New York's Labor Laws (*see Greco v Christoffersen*, 70 AD3d 769, 771 [2d Dept 2010], citing *Manshion Joho Ctr. Co., Ltd. v. Manshion Joho Ctr., Inc.,* 24 AD3d 189 [1st Dept 2005] [plaintiff's cross-motion to dismiss the affirmative defense of unclean hands should have been dismissed since the doctrine is an equitable defense that is unavailable where the action is exclusively for damages]).

Based upon the foregoing, it is hereby,

ORDERED that plaintiff's motion is granted to the extent of dismissing the defense of unclean hands (third defense), and is otherwise denied; and it is further

ORDERED that the parties are directed to appear in the Compliance Conference Part of the Westchester County Courthouse, 111 Dr. Martin Luther King Jr. Boulevard, White Plains, New York, as previously directed.

This constitutes the Decision and Order of the Court.

Dated: White Plains, New York
September 27, 2017

HON. TERRY JANE RUDERMAN, J.S.C.