

Crespo v Biyombo

2019 NY Slip Op 30109(U)

January 14, 2019

Supreme Court, New York County

Docket Number: 651616/2014

Judge: Saliann Scarpulla

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. SALIANN SCARPULLA PART IAS MOTION 39EFM

Justice

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INDEX NO. 651616/2014

IGOR CRESPO, IGOR CRESPO D/B/A PROTALENT SPORTS
MANAGEMENT,

MOTION DATE 09/17/2018

Plaintiffs,

MOTION SEQ. NO. 003

- v -

BISMACK BIYOMBO, WASSERMAN MEDIA GROUP, LLC,

DECISION AND ORDER

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 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, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123

were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER) .

In this action for breach of contract and unjust enrichment, defendant Bismack Biyombo (“Biyombo”) moves for summary judgment dismissing the complaint of plaintiffs Igor Crespo and Igor Crespo d/b/a Protalent Sports Management (together “Crespo”).

Biyombo is a professional basketball player, currently playing for the Charlotte Hornets. In the complaint, Crespo alleged that he was introduced to Biyombo in 2009. At the time, Biyombo was a seventeen-year-old living in Yemen and pursuing a professional basketball career. Crespo, doing business as Protalent Sports Management, and Biyombo entered into an agreement dated June 12, 2009 (the “Biyombo/Protalent Agreement”). Pursuant to the Biyombo/Protalent Agreement, Crespo agreed to use his talent and expertise in developing and representing Biyombo, and Biyombo agreed to pay

Crespo 10% of his earnings, and 20% of amounts Biyombo derived from publicity or sponsorship contracts.

Crespo alleged that he successfully assisted Biyombo in executing contracts to play basketball in Spain. Crespo then allegedly caused Biyombo to participate in a Nike Hoops Summit, thereby introducing Biyombo to the National Basketball League (“NBA”). In 2011, Biyombo was accepted into the NBA draft, and ultimately contracted to play for the Charlotte Hornets.

Crespo alleged that Biyombo breached the Biyombo/Protalent Agreement by retaining a different agent to negotiate his NBA contract, and by improperly terminating the Biyombo/Protalent Agreement. In the complaint Crespo pled claims against Biyombo for breach of contract (first cause of action) and unjust enrichment (second cause of action).¹

By decision and order dated September 4, 2015, I dismissed Crespo’s breach of contract cause of action to the extent that Crespo sought to recover any amounts related to Biyombo’s NBA contract, and dismissed the unjust enrichment cause of action to the extent Crespo sought recovery for negotiating or assisting with the NBA contract. Thus, the only remaining claims are: (1) a claim for breach of contract to recover 20% of Biyombo’s earnings for endorsements covered by the Biyombo/Protalent Agreement, and (2) a claim for unjust enrichment for otherwise uncompensated amounts Crespo

¹ Crespo also pled a third cause of action for tortious interference with contract against defendant Wasserman Media Group, Inc. By stipulation dated 11/29/16 Crespo discontinued the action as against Wasserman.

expended to develop Biyombo as a professional basketball player prior to his entry into the NBA.

Biyombo now moves for summary judgment dismissing these remaining claims. On the breach of contract cause of action, Biyombo argues that Crespo cannot show that Biyombo had earnings for endorsements covered by the Biyombo/Protalent Agreement. As to the unjust enrichment cause of action, Biyombo contends that any out of pocket expenses that Crespo incurred in developing Biyombo's career prior to Biyombo's entry into the NBA were covered by the player agreement that Biyombo signed with his Spanish team, Fuenlabrada (the FB Contract"), and a second contract between Crespo, USLAN S.L. ("USLAN"),² and Fuenlabrada (the "USLAN Contract").

Pursuant to the FB Contract, Crespo was entitled to receive commissions from Fuenlabrada for each year that Biyombo played for Fuenlabrada, and Crespo received those commissions. The USLAN Contract has never been produced, but it is undisputed that USLAN sued Fuenlabrada for breach of the USLAN Contract, and eventually won a monetary judgment against Fuenlabrada for 58,200 euros.

Biyombo argues that under these agreements, Crespo was appropriately compensated for all amounts he expended for Biyombo's development as a basketball player between 2009 and 2011. According to Biyombo, Crespo may not recover for amounts spent to develop Biyombo as a basketball player under the theory of unjust

² USLAN is a Spanish sports agency owned by Crespo.

enrichment when Crespo was being compensated for those efforts under the FB Contract and the USLAN Contract.

In opposition, Crespo argues that there are issues of fact as to amounts he expended to develop Biyombo's career that are not related to the NBA contract or to the amounts he received as Biyombo's agent prior to Biyombo's entry into the NBA. Crespo submits a detailed list of out of pocket expenses, including hotel bills, meals, payments to trainers, that Crespo allegedly spent on Biyombo between 2009-2011, before Biyombo executed the NBA contract.³ Crespo also seeks the commissions he was allegedly denied when Biyombo bought out the FB Contract.

Finally, Crespo argues, for the first time, that I "nullified" the Biyombo/Protalent Agreement in my 2015 decision, making the Biyombo/Protalent Agreement "void" due to a "mistake of fact." (Crespo Mem. In Opp. at 5). Crespo thus claims that he is entitled to recover all amounts (including NBA-related expenses) he expended on Biyombo's behalf or was entitled to receive under the Biyombo/Protalent Agreement.

Discussion

In his interrogatory response to Biyombo's question on damages, Crespo responded that he is seeking 131,000 euros in out of pocket costs, together with "additional damages based on a percentage of agent fees paid to the NBA players' agent engaged by [Biyombo] during the duration of the [Biyombo/Protalent Agreement]."

³ In addition, Crespo seeks to recover, once again, for breach of contract in connection with Biyombo's retention of an NBA sanctioned agent, and execution of an NBA contract. I dismissed those claims long ago, so I will not discuss them in this decision on Biyombo's motion for summary judgment.

In my 2015 decision dismissing part of Crespo's breach of contract claim, I specifically dismissed any claim for damages in connection with Biyombo's NBA contract, including expenses relating to negotiations leading up to execution of the NBA contract. Crespo did not appeal the 2015 decision, and it is now law of the case. Accordingly, I grant Biyombo judgment dismissing the breach of contract cause of action and the unjust enrichment cause of action to the extent that Crespo is seeking a percentage of the agent fee for the agent engaged by Biyombo to negotiate his NBA contract, or any other fees connected to Biyombo's entry into the NBA.

Remaining Breach of Contract Cause of Action

Biyombo admits that he received 27,500 euros in payment for a sponsorship deal he made with Nike in May 2011. Pursuant to the Biyombo/Protalent Agreement Crespo was entitled to 20% of amounts Biyombo derived from publicity or sponsorship contracts. Accordingly, Crespo raises an issue of fact as to whether he is entitled to 20% of the 27,500 euros paid for the Nike sponsorship deal.

Remaining Unjust Enrichment Cause of Action

I agree with Biyombo that Crespo may not recover, under an unjust enrichment theory, for expenses he paid to develop Biyombo during the period when Crespo was being paid commissions for Biyombo's performance under the FB Contract and/or the USLAN Contract. However, I cannot tell, from the evidence submitted, whether the amounts set forth on Crespo's spread sheet of damages for 2009 were expended at a time

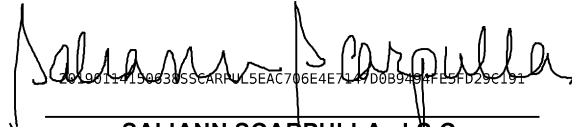
when Crespo was getting paid to develop Biyombo under either the FB Contract or the USLAN Contract.⁴

As Biyombo has failed to show as a matter of law that Crespo is not entitled to any damages for 2009 under a theory of unjust enrichment, I deny Biyombo summary judgment on the unjust enrichment cause of action.

In accordance with the foregoing, it is

ORDERED that the motion of defendant Bismack Biyombo for summary judgment dismissing the complaint is denied. The parties are directed to appear for a pretrial conference on February 13, 2019 at 2:15 p.m.

1/14/2019
DATE


SALIANN SCARPULLA, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE

⁴ It is undisputed that by 2010 Crespo was being paid to develop Biyombo under the FB Contract (and possibly the USLAN Contract), so the amounts Crespo seeks during those two years are not recoverable under an unjust enrichment theory.