

Skylink Travel, Inc. v Jain Holdings, LLC

2019 NY Slip Op 32385(U)

August 6, 2019

Supreme Court, New York County

Docket Number: 651528/2017

Judge: Robert R. Reed

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. ROBERT R. REED PART 43

Justice

-----X

SKYLINK TRAVEL, INC.,

Plaintiff,

- v -

JAIN HOLDINGS, LLC, SHENIL JAIN, AMIT JAIN

Defendant.

-----X

INDEX NO. 651528/2017

MOTION DATE 05/07/2018

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44

were read on this motion for JUDGMENT - DEFAULT

Upon the foregoing documents, it is ordered that this motion is granted in part and denied in part.

This action is based upon the assertion that corporate defendant Jain Holdings, LLC (Jain Holdings) and individual defendants Shenil Jain and Amit Jain failed to pay for airline tickets that plaintiff procured for defendants' clients in accordance with defendants' instructions.

Plaintiff now moves, pursuant to CPLR 3212, for an order (1) to strike corporate defendant's answer and enter judgment, or, in the alternative, for partial summary judgment against Jain Holdings on plaintiff's first and fifth causes of action, and (2) for partial summary judgment against defendant Shenil Jain. Defendants oppose the motion, and cross-move (1) to dismiss all claims against the individual defendants, (2) to dismiss plaintiff's third and fourth causes of action, (3) to grant Jain Holdings leave to amend its answer, and (4) to dismiss plaintiff's motion in its entirety.

Plaintiff seeks to strike corporate defendants' answer for failure to appear by an attorney. "A corporation or voluntary association shall appear by attorney" (CPLR 321[a]). Inasmuch as Jain Holdings, as evidenced by the record, is now represented by an attorney, the motion to strike its answer for the failure to appear by counsel is now moot.

Plaintiff, alternatively, seeks partial summary judgment on its first cause of action: breach of contract. The proponent of a motion for summary judgment carries the initial burden of production of evidence as well as the burden of persuasion (*Alvarez v Hospital*, 68 NY2d 320). Thus, the moving party must tender sufficient evidence to demonstrate as a matter of law the absence of a material issue of fact. Once that initial burden has been satisfied, the "burden of production" (not the burden of persuasion) shifts to the opponent, who must now go forward and produce sufficient evidence in admissible form to establish the existence of a triable issue of fact (*id.*). An action for breach of contract requires proof of (1) a contract, (2) performance of the contract by one party, (3) breach by the other party, and (4) damages (*Blue Water Envtl., Inc. v. Incorporated Vil. Of Bayville*, 824 NY2d 752). In the matter at bar, there is no dispute that a valid contract exists between plaintiff and corporate defendant Jain Holdings, and defendants do not dispute that service was provided to corporate defendants for at least some period of time. Nor do defendants contend that they made payments that plaintiff claims they did not. Thus, while the quantum of damages may be in dispute, the liability of corporate defendant Jain Holdings for at least some damages is not -- based upon (a) plaintiff's performance under the contract and (b) Jain Holdings' failure to pay for the particular amounts owed under the contract that are not in dispute.

Plaintiff also seeks to recover under an account stated theory. The key element of a prima facie account stated claim is transmission of an invoice to the defendant, forming the predicate

for the defendant's failure to object to the invoice within a reasonable time (*Risk Mgt. Planning group v. Cabrini Med. Ctr.*, 62 AD3d 421). When a defendant receives and retains invoices without objection for a reasonable time, defendant's silence gives rise to an actionable account stated warranting summary judgment for plaintiff (*Rosenberg Selsman Rosenzweig & Co., LLP v. Slutsker*, 278 AD2d 145; *see also Rockefeller Group v. Edwards & Hjorth*, 164 AD2d 830). Plaintiff submits proof that bills were tendered to defendants and that no objections to such bills were made before the commencement of this action. In response, defendants do not deny receiving the bills and do not demonstrate that they made timely objections to same. Thus, on the account stated claim, there exists no genuine issue of material fact either as to liability or to damages -- as defendants failed to act in a timely manner to dispute the account statements they received on the matters here in issue.

Plaintiff seeks partial summary judgment against individual defendant Shenil Jain, owner of Jain Holdings. Plaintiff alleges that Jain assumed personal liability for the debts of Jain Holdings when he signed the agency application form. However, in reviewing said form, it is clear that the form refers to an LLC as the applicant and that Shenil Jain signed as owner of that LLC, and not in his personal capacity. Moreover, nothing about the verbiage referenced by plaintiff specifically states that the individual signing the document is guaranteeing payments for the LLC. In such circumstances, this court is loathe to ignore the protections afforded to Shenil Jain by using the corporate form.

Defendants cross-move to dismiss all claims against individual defendants. Plaintiff argues that there are viable claims against both Shenil Jain (owner of Jain Holdings, LLC) and Amit Jain (officer of Jain Holdings, LLC) because both individual defendants signed the agency application form, assuming personally responsibility thereby. As discussed above, however,

nothing about the verbiage referenced by plaintiff specifically states that either of the individuals signing the document is guaranteeing payments for the LLC. Shenil Jain signed as owner or the corporation, and Amit Jain as an officer. Nor has plaintiff proffered sufficient facts for this court to pierce the corporate veil and hold either Shenail Jain or Amit Jain liable for the debts of Jain Holdings. There is, therefore, no basis to uphold the claims against individual defendants Shenil Jain and Amit Jain.

In light of the court's determination above on plaintiff's account stated claim, defendants' request to dismiss plaintiff's third and fourth causes of action is denied as academic.

Regarding defendants Jain Holdings' cross-motion for leave to amend its answer, the court recognizes that, generally speaking, leave should be freely given upon such term as may be just (CPLR 3025[b]). Here, however, the proposed amended answer does not by its expanded or altered language set forth any meritorious defense that would defeat plaintiff's entitlement to summary judgment as against defendant Jain Holdings on plaintiff's account stated claim. Thus, such amendment would be futile -- and, for that reason, will not be entertained by this court.

Defendants' cross-motion to dismiss plaintiff's motion in its entirety is without support, based upon all of the foregoing:

Accordingly, it is

ORDERED that plaintiff's motion for partial summary judgment on its breach of contract action is granted as against defendant Jain Holdings, LLC as to liability only; and it is further

ORDERED that plaintiff's motion for partial summary judgment on its account stated cause of action is granted as against defendant Jain Holdings, LLC as to both liability and damages; and it is further

ORDERED that defendants' cross-motion to dismiss all claims against individual defendants Shenil Jain and Amit Jain is granted; and it is further

ORDERED that plaintiff's motion to strike the answer of corporate defendant Jain Holdings, LLC is denied; and it is further

ORDERED that plaintiff's motion for partial summary judgment against individual defendant Shenil Jain is denied; and it is further

ORDERED that defendants' cross-motion to dismiss the complaint's third and fourth causes of action is denied as academic; and it is further

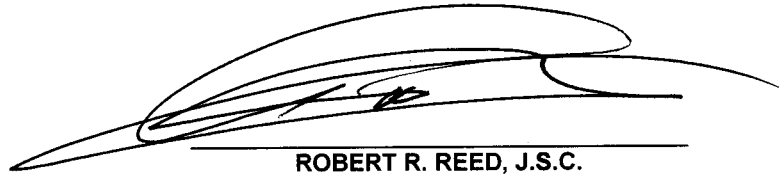
ORDERED that defendants' motion to dismiss plaintiff's motion in its entirety is denied as baseless; and it is further

ORDERED that the cross-motion of defendants Jain Holdings, LLC for leave to amend its answer is denied as futile; and it is further

ORDERED that, based upon the foregoing, the Clerk is respectfully directed to enter judgment in favor of plaintiff Skylink Travel, Inc. and against defendant Jain Holdings, LLC in the amount of \$132, 498.25, with interest from February 8, 2017, together with the costs and disbursements of this action, as taxed by said Clerk; and it is further

ORDERED that, based upon the foregoing, the Clerk is respectfully directed to enter judgment dismissing the complaint herein in its entirety with prejudice as against defendants Shenil Jain and Amit Jain.

This constitutes the decision and order of this court.



ROBERT R. REED, J.S.C.

8/6/2019
DATE

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