

Pavich v Pavich

2019 NY Slip Op 33865(U)

December 30, 2019

Supreme Court, New York County

Docket Number: 655799/2018

Judge: Nancy M. Bannon

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. NANCY M. BANNON PART IAS MOTION 42EFM

Justice

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JOSEPH PAVICH, TERESA PAVICH, M.A.T.V. SPECIALISTS

Plaintiff,

- v -

RAYMOND PAVICH, SUPERIOR SATELLITE SPECIALISTS, WORLD CINEMA, INC.,

Defendant.

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INDEX NO. 655799/2018
MOTION DATE 07/17/2019
MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74

were read on this motion to/for

DISMISS

In this action seeking damages, inter alia, for breach of contract, unjust enrichment and fraud, defendant World Cinema, Inc. (WCI) moves pursuant to CPLR 3211(a)(7) to dismiss the two causes of action alleged against it, breach of contract and breach of the duty of good faith and fair dealing, on the ground that the complaint fails to state either cause of action or, in the alternative pursuant to CPLR 3211(a)(5) to dismiss those claims as being barred by the Statute of Frauds. The plaintiff opposes the motion. The motion is granted.

Plaintiff M.A.T.V. Specialists (MATV), a television and internet services provider, has supplied technicians to WCI, a company that provides television and interactive hospitality services in hotels, to service WCI equipment. MATV is owned by plaintiff Teresa Pavich and employs plaintiff Joseph Pavich. Defendant Raymond Pavich (Raymond), Joseph's son, operates defendant Superior Satellite Specialists (SSS), a company which performs similar services to MATV. The plaintiffs allege that they had a working relationship with WCI since 2008 but that, after illness rendered plaintiff Joseph Pavich unable to work for a time in 2012, defendant Raymond Pavich took over the business and also formed his own company. According to the plaintiff, Raymond, through SSS, has diverted prospective business and unspecified payments from MATV and that WCI and SSS have conspired to cut the plaintiffs

out of their ongoing business relationship. WCI denies any conspiracy and contends that it has no contractual relationship with MATV, but merely hires their technicians as necessary, along with various other technicians and companies, and therefore the plaintiffs' claims for breach of contract and breach of duty of good faith and fair dealing are unfounded.

When assessing the adequacy of a pleading in the context of a motion to dismiss under CPLR 3211(a)(7), the court's role is "to determine whether [the] pleadings state a cause of action." 511 W. 232nd Owners Corp. v Jennifer Realty Co., 98 NY2d 144 (2002). To determine whether a claim adequately states a cause of action, the court must "liberally construe" it, accept the facts alleged in it as true, accord it "the benefit of every possible favorable inference" (*id.* at 152; see Romanello v Intesa Sanpaolo, S.p.A., 22 NY3d 881 [2013]; Simkin v Blank, 19 NY3d 46 [2012]), and determine only whether the facts, as alleged, fit within any cognizable legal theory. See Hurrell-Harring v State of New York, 15 NY3d 8 (2010); Leon v Martinez, 84 NY2d 83 (1994); Weil, Gotshal & Manges, LLP v Fashion Boutique of Short Hills, Inc., 10 AD3d 267 (1st Dept. 2004); CPLR 3026. On the other hand, factual allegations that are vague or consist of bare legal conclusions are not entitled to the benefit of favorable inferences. See Mamoon v Dot Net, Inc., 135 AD3d 650 (1st Dept. 2016); Delran v Prada USA Corp., 23 AD3d 308 (1st Dept. 2005). Indeed, CPLR 3213 requires that "[s]tatements in a pleading shall be sufficiently particular to give the court and parties notice of the transactions, occurrences or series of transactions or occurrences, intended to be proved and the material elements of each cause of action."

The complaint fails to sufficiently allege a cause of action for breach of contract, *i.e.* (1) the existence of a contract, (2) the plaintiff's performance under the contract, (3) the defendant's breach of that contract, and (4) resulting damages. See Harris v Seward Park Housing Corp., 79 AD3d 425 (1st Dept. 2010). First, the plaintiffs failed to properly allege any contract, or even contract terms, with WCI, much less produce such a document. The allegations in the complaint fail to sufficiently "set forth the nature of the contractual obligation alleged to have been violated, the approximate date of the contract, or the nature of the claimed breach." See Serbo Packaging Corp. v S.T.S. Indust., Inc., 93 AD2d 785 (1st Dept. 1983). In an apparent attempt to cure deficiencies in the complaint, without properly amending the complaint, the plaintiffs submit e-mails and invoices, which they claim to constitute an agreement between the parties. However, the several submitted e-mails are merely previous correspondence negotiating unit pricing and discussing practical details of several past projects between WCI

and MATV that do not demonstrate any particular obligations between the parties, and the three 2018 invoices reference only a limited amount of work, approximately \$31,000, which all parties agree was completed and paid in full.

Furthermore, they allegations fail to sufficiently state how the plaintiffs performed under the alleged contract, the manner in which defendant WCI may have breached such contract and any resulting damages. Indeed, the plaintiffs allege in the complaint, without explanation, that they suffered \$250,000 in damages, while the invoices submitted in opposition to the motion amount to only \$31,000. Finally, there is no basis for the plaintiffs' demand for \$500,000 in punitive damages. Even if the complaint were properly pleaded, it is well settled that punitive damages are not recoverable for ordinary breach of contract. See Rocanova v Equitable Life Assur. Soc. of U.S., 83 NY2d 603 (1994); Ahsanuddin v Addo, 175 AD3d 1213 (1st Dept. 2013). Therefore, dismissal pursuant to CPLR 3211(a)(7) is warranted.

As for the second cause of action against WCI, for breach of duty of good faith and fair dealing, it is well settled that such a cause of action cannot be maintained absent a contractual obligation between the parties. See Duration Municipal Fund L.P. v J.P. Morgan Securities, Inc., 77 AD3d 474 (1st Dept. 2010); Phoenix Capital Invs. LLC v Ellington Mgt. Group, LLC, 51 AD3d 549 (1st Dept. 2008); Triton Partners v Prudential Sec., 301 AD2d 411 (1st Dept. 2003). As discussed above, the plaintiffs fail to properly allege any contract with WCI. Consequently, the second cause of action alleged against WCI must be dismissed as well.

As dismissal pursuant to CPLR 3211(a)(7) is warranted, the court does not reach WCI's motion for dismissal on the alternative ground of CPLR 3211(a)(5).

Accordingly, and upon the foregoing papers, it is,

ORDERED that motion of defendant World Cinema, Inc. to dismiss the complaint as against it pursuant to CPLR 3211(a)(7) is granted, and it is further,

ORDERED that the parties shall appear for a status/settlement conference on March 5, 2020, at 10:00 a.m, as previously scheduled, and it is further

ORDERED that the Clerk shall enter judgment accordingly.

This constitutes the Decision and Order of the court.

12/30/2019
DATE


NANCY M. BANNON, J.S.C.

HON. NANCY M. BANNON

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION
 GRANTED GRANTED IN PART OTHER