

Lisa Marie Fernandez LLC v Sanders

2020 NY Slip Op 30253(U)

January 10, 2020

Supreme Court, New York County

Docket Number: 651168/2019

Judge: Nancy M. Bannon

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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. NANCY M. BANNON

PART

IAS MOTION 42EFM

Justice

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INDEX NO. 651168/2019

LISA MARIE FERNANDEZ LLC

MOTION DATE 10/2/2019

Plaintiff,

MOTION SEQ. NO. 002

- v -

DAMAN SANDERS,

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 14, 15, 16, 17, 18, 19, 20, 21, 22, 25, 26, 28

were read on this motion to/for

DISMISS

In this action seeking monetary and declaratory relief upon theories of breach of fiduciary duty, fraudulent inducement and unjust enrichment, the defendant moves, pre-answer, to dismiss the amended complaint on the ground that he has a defense founded in documentary evidence (CPLR 3211[a][1]) and the complaint fails to state a cause of action (CPLR 3211[a][7]). The plaintiff opposes the motion. The motion is denied.

The plaintiff LLC operates a fashion company that designs and manufactures luxury swimwear designed by Lisa Marie Fernandez. The LLC was formed and an Operating Agreement signed in 2009. That agreement gave Lisa Fernandez a 60% ownership interest and named her as the managing member, and gave the defendant, who provided the majority of the seed capital, a 40% ownership interest in the company, with certain management rights through the right to approve or disapprove "major decisions.". The business was not profitable until 2016. The parties allege that in September or October of 2017, they entered a Repurchase Agreement and Promissory Note whereby the plaintiff repurchased 39.9% of the defendant's ownership interest, and terminated the defendant's rights as a member, with exceptions. The parties agree that the defendant never turned over his share and the plaintiff has not paid \$550,000 to the defendant as agreed.

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. Dismissal under CPLR 3211(a)(1) is warranted only when the documentary evidence submitted “resolves all factual issues as a matter of law, and conclusively disposes of the plaintiff’s claim.” Fortis Financial Services, LLC v Fimat Futures USA, 290 AD2d 383, 383 (1st Dept. 2002); see Amsterdam Hospitality Group, LLC v Marshall-Alan Assoc., Inc., 120 AD3d 431 (1st Dept. 2014).

Applying these rules, and reviewing the parties’ submission, the motion must be denied. While the plaintiff may not ultimately success on all claims, for the purposes of this motion, the complaint sufficiently states causes of action for breach of fiduciary duty, fraudulent inducement and unjust enrichment. Nor does the defendant submit any documentary evidence that conclusively disposes of those claims. Notably, the copies of the operating agreement and repurchase agreement submitted are unsigned and undated.

In particular, the complaint sufficiently alleges a prima facie case of unjust enrichment as against the defendant. To establish this claim, a plaintiff must show that (1) the other party was enriched, (2) at that party’s expense, and (3) that ‘it is against equity and good conscience to permit [the other party] to retain what is sought to be recovered.’ (Citibank, N.A. v Walker, 12 AD3d 480, 481 [2nd Dept. 2004]; Baron v Pfizer, Inc., 42 AD3d 627, 629-630 [3rd Dept. 2007]).” Mandarin Trading Ltd. v Wildenstein, 16 NY3d 173, 182 (2011); see Paramount Film Distrib. Corp. v. State of New York, 30 NY2d 415 (1972). The plaintiff has met that burden in that it alleges that, by not paying his proportionate share of the LLC’s taxes, the defendant was enriched at the expense of the LLC and that it would be against equity and good conscience to allow the defendant to retain that benefit. Indeed, he provides no cogent reason why he would not pay his proportionate share of the taxes in 2017. That the parties’ agreements were silent on the issue is attributable to the defendant as much as it is to the plaintiff.

Nor is there any merit to the defendant’s contention that he is not a fiduciary and thus cannot be liable under the breach of fiduciary duty claim. As one of the two members of the plaintiff LLC for several years, who had some management authority, the defendant owed a fiduciary duty to the plaintiff. See Limited Liability Company Law 401(b); Pokoik v Pokoik, 115 AD3d 428 (1st Dept. 2014); DeBenedictis v Malta, 140 AD3d 438 (1st Dept. 2016); Salm v Feldstein, 20 AD3d 469 (2nd Dept. 2005).

To sustain a claim for fraudulent inducement, the plaintiff must show "misrepresentation or a material omission of fact which was false and know to be false by the defendant, made for the purpose of inducing the other party to rely upon it, justifiable reliance of the other party on the misrepresentation or material omission, and injury." Lama Holding Co. v Smith Barney, Inc., 88 NY2d 413, 421 (1996). The plaintiff's allegations that it paid the defendant's share of the 2016 taxes in reliance upon his promise to pay his 2017 taxes are sufficient to sustain this cause of action against dismissal.

Finally, the court does not reach the issue of setoff on this motion, and notes that the plaintiff's demand for punitive damages is without merit since the action is grounded upon private transactions between the parties and "does not seek to vindicate a public right or morally culpable conduct." Halpin v Prudential Ins. Co. of America, 48 NY2d 906, 907 (1979); see Ahsanuddin v Addo, 175 AD3d 1213 (1st Dept. 2019).

Accordingly, and upon the foregoing papers, it is

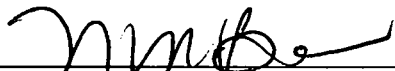
ORDERED that the defendant's pre-answer motion to dismiss the amended complaint is denied, and it is further

ORDERED that the defendant shall serve and file an answer to the amended complaint within 30 days, and it is further

ORDERED that the parties shall appear for a preliminary/settlement conference on April 23, 2020 at 2:30 p.m.

This constitutes the Decision and Order of the court.

1/10/2020
DATE


NANCY M. BANNON, J.S.C.
HON. NANCY M. BANNON

CHECK ONE:

CASE DISPOSED
GRANTED

DENIED

NON-FINAL DISPOSITION
GRANTED IN PART

OTHER