

<b>Drone USA, Inc. v Antonelos</b>
2020 NY Slip Op 30907(U)
April 5, 2020
Supreme Court, New York County
Docket Number: 650863/2019
Judge: Melissa A. Crane
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MELISSA A. CRANE  
Justice

PART 15

DRONE USA, INC., and MICHAEL BANNON

INDEX NO. 650863/2019

v.

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 002

DENNIS ANTONELLOS

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered \_ to \_ were read on this motion to/for \_\_\_\_\_.

Notice of Motion/Order to Show Cause — Affidavits — Exhibits ...

PAPERS NUMBERED

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

CROSS-MOTION:  YES  NO

Plaintiff, Drone USA, Inc. (“Drone”), manufactures, markets, and sells military grade drones to law enforcement, government agencies, and other international institutions. Plaintiff, Michael Bannon (“Bannon”) is the President and Chief Executive Officer of Drone. Defendant, Dennis Antonelos (“Antonelos”), is the former Chief Financial Officer and director of Drone.

On July 10, 2016, Drone and Paulo Ferro (“Ferro”) entered into an Employment Agreement (the “Agreement”). Drone hired Ferro as its Chief Strategy Officer. Ferro would serve on Drone’s Company Board and receive an annual base salary of \$400,000, in addition to a \$100,000 signing bonus, and stocks. The Agreement provided for a three-year term of employment.

Prior to the execution of the Agreement, but around the same time, Antonelos received the option to purchase 10 million additional shares of Drone stock (First Amended Complaint [“FAC”] ¶12). After exercising that option, Antonelos contacted Bannon and told him to hire Ferro because it would enhance the value of the stock (FAC ¶ 12). Then, Antonelos and Bannon

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

personally guaranteed to pay and perform Drone's obligations to Ferro for two years in order to induce Drone to hire Ferro for the benefit of the officers, directors, and shareholders (FAC ¶ 12, 13).

The Agreement's "Corporate Guarantee" states:

The undersigned Michael Bannon and Dennis Antonelos hereby personally and unconditionally guarantee and promise to pay or perform any and all obligations listed above for two full years. **Mike and Dennis will share the personal guarantee 50-50.** Drone USA Inc. hereby unconditionally guarantees and promises to pay or perform any and all obligation listed above for the remaining 3rd year. When Paulo cashes in his stock, Mike and Dennis' guarantee obligation will reduce dollar for dollar.

(Lebersfeld Aff, dated April 29, 2019, Ex A, Employment Agreement, Section 12. Emphasis supplied.)

Bannon and Antonelos each signed the Guarantee and executed the Agreement.

On July 7, 2017, Drone terminated Ferro's employment "for cause." Drone claimed that Ferro refused to disclose the identities of the customers he had worked with during his employment. Ferro said that the identities and details of those customers belonged to him, and not to Drone (Lebersfeld Aff, dated April 29, 2019, Ex D, ¶ 7). That breached the Agreement and Ferro's duty of loyalty to the Company (*id.*). On July 10, 2017, Antonelos resigned from the Board of Directors.

On July 12, 2017, Drone, Bannon, and TCA Global Credit Master Fund, LP ("TCA") sued Ferro in California District Court (the "California Action") (FAC ¶ 16). TCA is a hedge fund that provided Drone with financing (Lebersfeld Aff, dated April 29, 2019, Ex E). On July 31, 2017, Ferro filed an Answer and counterclaims (FAC ¶ 17). Ferro denied ever working against Drone's interests. He said that the Company did not terminate him "for cause." Instead, Ferro argued that Drone terminated him because he had refused to take a pay cut on Bannon's insistence after Bannon failed to obtain outside investments, and, alternatively, had to take out

interest loans from TCA (Ferro Counterclaims ¶¶ 14-18). Ferro brought counterclaims for breach of contract and intentional interference of the Agreement (Ferro Counterclaims ¶¶ 22-60).

On September 24, 2018, counsel for Drone and Bannon sent a letter to Antonelos informing him of the California Action, and of Antonelos's liability under the Personal Guarantee (FAC ¶ 18). On November 27, 2018, Drone, Bannon, and Ferro settled the California Action for a sum of \$600,000.00 (FAC ¶ 19). To date, Bannon has paid Ferro \$299,999.99 (FAC ¶ 20). The balance of the sum is owed in monthly installments, through December 2019. Despite demands to Antonelos, he has refused to pay any portion of the Settlement Sum under the personal guarantee.

On February 11, 2019, plaintiffs Drone and Bannon brought this breach of contract claim against Antonelos for \$300,000 - the remaining portion of the California Action Settlement sum. On March 28, 2019, Antonelos filed a motion to dismiss the complaint. On April 10, 2019, plaintiffs filed an amended complaint, rendering that motion moot. On April 29, 2019, Antonelos filed a motion to dismiss the first amended complaint. He argues that the "Corporate Guarantee" fails to specify consideration, or the nature of Antonelos's obligations in writing, and is, therefore, unenforceable.

Defendant's argument misses the mark. The language the guarantee contains, and that plaintiff and defendant both signed: "Mike and Dennis will share the personal guarantee 50-50," creates a contract in which defendant must split the costs paid under the guarantee. The consideration lies in many things, including the benefits of Ferro's work or avoiding a lawsuit.

Accordingly, it is

**ORDERED** that the court denies defendant's motion to dismiss; and it is further

**ORDERED** that the parties shall appear for a preliminary conference on July 16, 2020 at 9:30 a.m. at 71 Thomas Street in New York County, Courtroom 304.

Dated: April 5, 2020

ENTER:

  
HON. MELISSA A. CRANE, J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION  
Check if appropriate: MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER  
Check if appropriate:  DO NOT POST  REFERENCE  SETTLE ORDER  SUBMIT ORDER  
 FIDUCIARY APPOINTMENT