

Itsavvy LLC v Jagtiani
2020 NY Slip Op 30940(U)
April 13, 2020
Supreme Court, New York County
Docket Number: 653523/2019
Judge: Barry Ostrager
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. BARRY R. OSTRAGER PART IAS MOTION 61EFM

Justice

Table with 2 columns: Case details (ITSAVVY LLC, Plaintiff, - v -, ANIL JAGTIANI AND NAKA TECHNOLOGIES, LLC, ERICA COLORIO, and JOSEPH DiMARTINO, Defendants) and Motion details (INDEX NO. 653523/2019, MOTION DATE, MOTION SEQ. NO. 003, DECISION + ORDER ON MOTION)

HON. BARRY R. OSTRAGER

Before the Court is the motion by plaintiff ITsavvy LLC (“ITsavvy” or “plaintiff”) for an order pursuant to CPLR 3211(a)(7) dismissing the revised counterclaim asserted by defendant Anil Jagtiani (“Jagtiani”) in his Amended Answer (NYSCEF Doc. No. 82) for failure to state a cause of action. For the reasons stated below, the motion is denied.

Background Facts

According to plaintiff’s Complaint filed on June 17, 2019 (NYSCEF Doc. No. 1), ITsavvy provides technology solutions and services such as infrastructure monitoring, cloud solutions, unified communication management, and IT and business assessment and management and also sells related products and software. Plaintiff specifically alleges that “Jagtiani was employed with ITsavvy from approximately May 1, 2016 until January 25, 2019 as the Vice President of Professional Services, Advanced Solutions Group” (¶ 15, emphasis added). Defendant Erica Colorio “was employed with ITsavvy from approximately June 1, 2016 until March 8, 2019 as a software/hardware maintenance specialist in Jagtiani’s department, which he managed” (¶ 16, emphasis added). Defendant Joseph DiMartino “was employed with ITsavvy from approximately June 6, 2016 until January 31, 2019 as a systems engineer in Jagtiani’s department, which he managed” (¶ 17, emphasis added). “As a Vice President of Professional

Services, Jagtiani reported to the CEO of ITsavvy and played an integral role in marketing, selling and providing ITsavvy's solutions and services, developing and expanding ITsavvy's solutions and services and making strategic decisions regarding same and developing and maintaining relationships with ITsavvy clients and vendors. Jagtiani also was responsible for hiring the employees in his department, which included five (5) employees" (§ 18).

Plaintiff further alleges that, on or about October 23, 2017 while still employed by ITsavvy, Jagtiani organized co-defendant Naka Technologies, LLC, a company "directly competitive" with ITsavvy (§22). Jagtiani set up an office for Naka and acted on behalf of Naka to solicit clients from ITsavvy, sell those clients competing products, and encourage employees of ITsavvy to resign and begin employment at Naka, bringing confidential information with them. On January 15, 2019, Jagtiani allegedly notified plaintiff for the first time that he was forming a "block chain" company that would not compete with ITsavvy (§ 41). On January 25, 2019 Jagtiani resigned from ITsavvy to work full time for Naka, and co-defendants Colorio and DiMartino also left ITsavvy and joined Naka around that same time (§ § 41-44).

ITsavvy commended this action in June 2019, demanding an unspecified amount of compensatory and punitive damages based on seven causes of action: (1) breach of fiduciary duty against Jagtiani for forming a competing business while employed at ITsavvy; (2) misappropriation of confidential information jointly against Jagtiani and Naka; (3) tortious interference with prospective economic relations jointly against Jagtiani and Naka; (4) unfair competition jointly against Jagtiani and Naka; (5) unjust enrichment jointly against Jagtiani and Naka; (6) breach of fiduciary duty against DiMartino; and (7) breach of fiduciary duty against Colorio. The four defendants jointly filed an Answer with five counterclaims: (1) breach of an employment contract on behalf of Colorio; (2) breach of an employment contract on behalf of Jagtiani; (3) trade libel on behalf of all defendants; (4) defamation on behalf of the individual

defendants; and (5) tortious interference with business on behalf of Naka (NYSCEF Doc. No. 51). ITsavvy then moved to dismiss those counterclaims (mot. seq. 002). At the conclusion of oral argument on the record on December 9, 2019, defendants agreed to withdraw the first and second counterclaims with leave to replead and to withdraw the remaining three counterclaims entirely, and the Court issued an order determining the motion along those lines and giving defendants ten days to replead (NYSCEF Doc. Nos. 80 and 90).

Defendants timely filed an Amended Answer with Revised Counterclaim on December 19, 2019, in which the only Counterclaim asserted is the breach of contract claim on behalf of Jagtiani (NYSCEF Doc. No. 82). There Jagtiani alleges, similar to plaintiff's Complaint quoted above, that he was employed by ITsavvy beginning on or about May 1, 2016.¹ He then details the methodology for calculating the bonus structure allegedly included as part of his employment compensation agreement, and he calculates that ITsavvy owes him \$26,500 for bonuses through the end of 2017, plus \$35,000 in bonuses through 2018, plus \$10,000 for 80 hours of unused leave time through 2018. ITsavvy made the instant motion to dismiss that counterclaim for failure to state a cause of action.

Discussion

ITsavvy asserts that Jagtiani's Revised Counterclaim is "defective as a matter of law as it fails to allege in a non-conclusory manner the specific facts or elements required to state a claim, including without limitation, whether the purported agreement is oral or written, who on behalf of ITsavvy allegedly entered such agreement, the definite and essential terms of the agreement allegedly breached, and ITsavvy's breach of any such agreement." (Plaintiff's Memorandum of Law in Support, p. 1, NYSCEF Doc. No. 85). Regarding the particulars of the allegedly unpaid

¹ The Complaint alleges the employment began on or about June 1, 2016.

bonus at the heart of the Counterclaim, ITsavvy complains of a lack of specificity regarding the terms of bonus eligibility and how any such bonus was purportedly earned, calculated and paid.

In opposition, Jagtiani correctly asserts that the existence of an employment agreement is not only undisputed, but ITsavvy in its Complaint repeatedly acknowledged the employment relationship (Memorandum of Law in Opposition, p. 6, NYSCEF Doc. No. 95; see also citations to Complaint at pp. 1-2 above). Indeed, ITsavvy's first cause of action claims Jagtiani breached his fiduciary duty by forming a competing business while "employed" at ITsavvy.

In further support of his opposition, Jagtiani submits a detailed affidavit describing the parties' employment agreement and how it came about (NYSCEF Doc. No. 98). He identifies by name the specific individuals with whom he spoke in April 2016 about his potential employment and the details they discussed about his position and bonus eligibility. The employment relationship and the bonus compensation package were confirmed in a written offer letter dated April 21, 2016 from John Skeffington, Director of Talent Management and Development at ITsavvy (NYSCEF Doc. No. 99). The offer letter set forth the following material terms of the bonus agreement: "You will be eligible for a monthly bonus, which will be calculated at the rate of 5% of the monthly Hauppauge commissionable gross profits. Commissionable gross profit is the total sales, less costs of goods sold (product cost and engineering salaries), less the baseline gross profit, and less sales commissions. You are also eligible for an annual bonus which will be calculated at 5% of the Hauppauge Branch contribution." Jagtiani adds that his conservative calculations regarding unused leave time were based on custom and practice at ITsavvy.

In reply, ITsavvy argues that the details in the Jagtiani Affidavit were not set forth in the pleadings, and he notes minor inconsistencies between the two documents. Counsel also correctly notes that the Offer Letter submitted by Jagtiani is unsigned, but he does not dispute that ITsavvy sent the letter, nor does plaintiff provide an affidavit disputing Jagtiani's claims.

After considering all the submissions, the Court finds that the Revised Counterclaim states a claim and that plaintiff's motion to dismiss must be denied. The Court's analysis is guided by the standard of review applicable to motions to dismiss as articulated by the Court of Appeals in the case of *Leon v Martinez*, 84 NY2d 83, 87-88 (1994) (citations omitted): "On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction ... We accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine [under CPLR 3211(a)(7)] only whether the facts as alleged fit within any cognizable legal theory"

To state a breach of contract claim, Jagtiani was required to allege "the existence of a contract, [Jagtiani's] performance thereunder, [ITsavvy's] breach thereof, and resulting damages." *Belle Light. LLC v Artisan Constr. Partners LLC*, 178 AD3d 605, 606 (1st Dep't 2019), citing *Harris v Seward Park Hous. Corp.*, 79 AD3d 425, 426 (1st Dep't 2010); see also *Nevco Contr. Inc. v R.P. Brennan Gen. Contrs. & Bldrs., Inc.*, 139 AD3d 515 (1st Dep't 2016). Jagtiani has amply stated a claim, explaining in his affidavit the details of the parties' oral employment agreement, later confirmed in a written offer letter, his performance of his employment responsibilities thereafter for a period of years, that plaintiff/counterclaim defendant ITsavvy breached the employment agreement by failing to pay Jagtiani the amounts due him, and that the breach caused Jagtiani to suffer damages in the form of unpaid bonus and leave compensation.

While ITsavvy argues in reply that the Court should disregard Jagtiani's affidavit and decide the motion solely on the allegations in the Counterclaim, "it is well settled that affidavits may be used to remedy defects in the [pleadings] and supplement its allegations upon a motion to dismiss" *Mulder v Donaldson, Lufkin & Jenrette*, 208 AD2d 301, 303 (1st Dep't 1995), citing *Arrington v New York Times Co.*, 55 NY2d 433, 442 (1982); *Rovello v Orofino Realty*

Co., 40 NY2d 633 (1976). But even if the Court were to disregard the affidavit, the motion would be denied, as the Counterclaim alleges in sufficient detail the undisputed existence of an employment agreement, Jagtiani’s performance, and ITsavvy’s breach by its failure to pay employment compensation allegedly due, causing Jagtiani to suffer damages. Sufficient detail about the methodology for calculating the bonus was also set forth in the Counterclaim.

Accordingly, it is hereby

ORDERED that plaintiff’s motion to dismiss the Revised Counterclaim asserted by Jagtiani is denied, and plaintiff shall serve a Reply to Revised Counterclaim by May 13, 2020. Counsel shall thereafter confer and agree upon a schedule for discovery to continue as expeditiously as possible and appear for a status conference on June 30, 2020 at 9:30 a.m. in Room 232 with full settlement authority. Counsel shall discuss settlement in the interim.

Dated: April 13, 2020


BARRY R. OSTRAGER, 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