

**Pinnacle Sports Media & Entertainment, Inc. v
Greene**

2020 NY Slip Op 31278(U)

April 28, 2020

Supreme Court, New York County

Docket Number: 650046/2015

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

-----X

PINNACLE SPORTS MEDIA & ENTERTAINMENT, INC.,

Plaintiff,

- v -

LESLIE GREENE, ADAM PAZ,

Defendant.

-----X

LESLIE GREENE

Plaintiff,

-against-

PETER ANSKE, VICTOR MURO, FINANCIAL INTEGRITY STRATEGIES, INC.

Defendant.

-----X

INDEX NO. 650046/2015
MOTION DATE 09/15/2019
MOTION SEQ. NO. 014

DECISION + ORDER ON MOTION

Third-Party
Index No. 595165/2015

The following e-filed documents, listed by NYSCEF document number (Motion 014) 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374

were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER).

In this third-party action alleging, *inter alia*, a fraudulent scheme to sell life insurance policies under the guise of marketing sports, media, and entertainment management services, third-party defendants Financial Integrity Strategies Inc. (FIS) and its sole owner and principal, Victor Muro (Muro) move for summary judgment dismissing third-party plaintiff Kai L. Greene's (Greene) third-party complaint as against them. Greene opposes the motion. The motion is granted in part.

Greene is a professional body-builder who was managed by plaintiff Pinnacle Sports Media & Entertainment Inc. (Pinnacle) from January 10, 2014 to December 8, 2014, when Greene terminated their business management agreement (the agreement). Pinnacle commenced this action against Greene on January 7, 2015 alleging that Greene's termination

breached the agreement. On March 6, 2015, Greene filed a third-party complaint against Pinnacle's owner and founder, Peter Anske (Anske), Muro, FIS, and the former third-party defendant National Life Insurance Company (National life). The third-party complaint alleges sixteen causes of action, of which five are asserted against FIS and Muro. Those five causes of action are for: fraud (10th cause of action), fraud in the inducement (11th cause of action), unjust enrichment (12th cause of action), civil conspiracy (13th cause of action), and deceptive business practices under General Business Law (GBL) § 349 (14th cause of action). Specifically, Greene alleges that to defraud him into entering the agreement, Muro and FIS falsely represented Pinnacle's expertise, years of experience and existence, and capabilities in the sports and entertainment management industry. Greene further alleges that Muro and FIS fraudulently induced him into entering into a life insurance policy issued by National Life, under policy number NL2462014, effective December 28, 2013, whereby he paid a monthly premium of \$2,000.00, by misrepresenting to him that Pinnacle could only provide him with business management services if he purchased the life insurance policy.

By a stipulation of settlement in this action, dated September 28, 2015, National Life rescinded the life insurance policy issued to Greene and returned all premiums made under the policy, along with five percent interest on those premiums, totaling \$33,600.00. Greene thereafter discontinued this action as against National Life.

Muro and FIS now move for summary judgment on the complaint, arguing, *inter alia*, that their involvement with Pinnacle was limited to discussing and procuring life insurance policies for Pinnacle's clients, and that Greene's settlement with National Life means that Greene cannot establish any injury caused to him by Muro or FIS.

On a motion for summary judgment, the moving party must make a *prima facie* showing of its entitlement to judgment as a matter of law by submitting evidentiary proof in admissible form sufficient to establish the absence of any material, triable issues of fact. See CPLR 3212(b); Jacobsen v New York City Health & Hosps. Corp., 22 NY3d 824 (2014); Alvarez v Prospect Hosp., 68 NY2d 320 (1986); Zuckerman v City of New York, 49 NY2d 557 (1980). Once such a showing is made, the opposing party, to defeat summary judgment, must raise a triable issue of fact by submitting evidentiary proof in admissible form. See Alvarez, supra; Zuckerman, supra. However, if the movant fails to meet this burden and establish its claim or defense sufficiently to warrant a court's directing judgment in its favor as a matter of law (see

Alvarez v Prospect Hospital, *supra*; Zuckerman v City of New York, *supra*; O'Halloran v City of New York, 78 AD3d 536 [1st Dept. 2010]), the motion must be denied regardless of the sufficiency of the opposing papers. See Winegrad v New York University Medical Center, *supra*; O'Halloran v City of New York, *supra*; Giaquinto v Town of Hempstead, 106 AD3d 1049 (2nd Dept. 2013). This is because “summary judgment is a drastic remedy, the procedural equivalent of a trial. It should not be granted if there is any doubt about the issue.” Bronx-Lebanon Hosp. Ctr. v Mount Eden Ctr., 161 AD2d 480, 480 (1st Dept. 1990) *quoting* Nesbitt v Nimmich, 34 AD2d 958, 959 (2nd Dept. 1970).

Greene’s 10th cause of action for fraud alleges that FIS and Muro defrauded him into entering into the agreement by misrepresenting Pinnacle’s expertise, years of experience and existence, and capabilities in the sports and entertainment management industry. Muro and FIS move for summary judgment on the grounds that (i) Greene’s claim is better characterized as a breach of contract claim under the management agreement, which Muro and FIS were not parties to, and (ii) that Muro never made any misrepresentations to Greene regarding Pinnacle. In support of their motion Muro and FIS submit, *inter alia*, the pleadings and Muro’s deposition transcript wherein he denies being involved with Pinnacle after its formation, and further states that he did not do any work on behalf of Pinnacle, and only met with Greene to discuss the National Life policy as an investment opportunity. FIS and Muro further submit Greene’s deposition transcript stating that Muro was not involved with any of the day-to-day business between Greene, Anske, and Pinnacle, including work related trips, public relations contracts, obtaining endorsement deals, and product sales.

Muro and FIS’ arguments and submissions fail to establish the absence of a triable issue of fact. Specifically, Muro and FIS fail to address the fact that Greene’s deposition testimony also details how Muro hosted meetings at his FIS office, represented FIS’ office as Pinnacle’s, presented himself together with Anske as the face of Pinnacle, intimated on at least one occasion that Anske was his subordinate, explicitly endorsed Anske’s alleged misrepresentations that Pinnacle was an industry leading sports management company that had been in business for over ten years, had partnered with and sponsored numerous high profile Fortune 500 companies, and had closed over \$100 million dollars in personal and business contracts for its high profile sports and entertainment clients such as Justin Bieber, Serena Williams, and Magic Johnson, and went through Pinnacle’s management agreement with him, page-by-page, prior to Greene signing it.

It is well settled that a cause of action for fraud may be maintained when there is a misrepresentation of present facts collateral to the contract. See First Bank of Americas v. Motor Car Funding, Inc., 257 AD2d 287, 287 (1st Dept. 1999). All of the alleged misrepresentations in Greene's deposition testimony are collateral to Pinnacle's obligations under the agreement and Pinnacle's intent to comply with those terms. Thus, the argument that Greene's claim is a breach of contract claim is meritless. See Id.

Moreover, for a defendant to prevail on a motion for summary judgment on a claim of fraud, it must establish it did not 1) make a material representation that was false; 2) make the misrepresentation with knowledge of the falsity and intent to deceive the plaintiff; 3) cause the plaintiff's justifiable reliance on the representation; or, 4) cause damages to be suffered by the plaintiff as a result of the representation. See New York Univ. v Continental Ins., 87 NY2d 308 (1995); J.A.O. Acquisition Corp. v Stavisky, 18 AD3d 389 (1st Dept. 2005); Cohen v Houseconnect Realty, 289 AD2d 277 (2nd Dept. 2001). Muro and FIS submissions fail to establish that Muro never made any misrepresentations to Greene regarding Pinnacle. Instead, the conflicting deposition testimony submitted by Muro and FIS demonstrates a triable issue of fact as to what was actually represented to Greene by Muro, and "any determination would be based upon the credibility of the parties, which is to be resolved at trial, not on a motion for summary judgment." DeSario v SL Green Mgmt. LLC, 105 AD3d 421, 422 (1st Dept. 2013). Therefore, the motion for summary judgment on Greene's 10th cause of action is denied.

Greene's 11th cause of action for fraud in the inducement alleges that FIS and Muro misrepresented to him that he could only enter into a management agreement with Pinnacle if he entered into a life insurance policy. Muro and FIS move for summary judgment arguing that, as National Life rescinded the policy and returned all premiums paid to Greene, with 5% interest, Greene cannot establish damages. Muro and FIS are incorrect, and have not submitted any evidence to eliminate a triable issue of fact as to whether Greene has suffered any pecuniary damage, for example incurring professional fees, in his efforts to rescind an insurance policy alleged to have been purchased through Muro and FIS' fraudulent inducement. Therefore, Muro and FIS' motion summary judgment on the 11th cause of action is denied.

Greene's 12th cause of action for unjust enrichment is premised on the theory that Muro and FIS were unjustly enriched by receiving commissions on the National Life insurance policy. Muro and FIS move for summary judgement arguing that, because Greene was returned all of

his premium payments, with 5% interest, as part of his settlement with National Life, and there is no evidence that Muro or FIS retained any commissions from the sale of the insurance policy, Greene cannot establish that he conferred a benefit on either Muro or FIS. For a claim of unjust enrichment to survive a motion for summary judgment, a triable issue of fact must exist regarding whether a plaintiff conferred a benefit on a defendant, and whether the defendant retains such benefit without adequately compensating the plaintiff. See Nakamura v Fujii, 253 AD2d 387 (1st Dept. 1998). Here, even if National Life paid Muro and FIS commissions, it would have done so from the premiums that Greene paid. As those premiums were already refunded with interest, Greene cannot establish that he conferred a benefit upon either Muro or FIS. As such, Greene's 12th cause of action against Muro and FIS is dismissed.

Seeking to dismiss the 13th cause of action, which alleges a civil conspiracy between Anske, Muro, and FIS to commit fraud, Muro and FIS move for summary judgment on the basis that the underlying fraud claims should be dismissed. For a claim of civil conspiracy to survive a motion for summary judgment, there must exist a triable issue of fact as to whether, 1) an underlying tort, such as fraud, was committed, 2) there was an agreement between the parties, 3) an intentional act in furtherance of the agreement was committed, and 4) there was an injury to the plaintiff. See Abacus Fed. Sav. Bank v Lim, 75 AD3d 472 (1st Dept. 2010). For the reasons discussed herein, Greene's causes of action for fraud and fraud in the inducement remain, and therefore summary judgment on the grounds that Greene cannot establish an underlying tort is unwarranted.

Muro and FIS move for summary judgment on Greene's 14th cause of action for a violation of GBL § 349 on the grounds that the deceptive practices alleged by Greene in this lawsuit relate only to a private contract dispute, and are not directed at the public at large. A GBL § 349 claim requires proof that 1) the practice was deceptive or misleading in a material respect and 2) that plaintiff was injured. To prevail, a plaintiff must also demonstrate that the defendant has engaged in an act or practice that is consumer-oriented and deceptive or misleading in a material way causing damage to the plaintiff because GBL § 349 applies to "practices which affect the public at large" and has "no application when there is merely a private contractual dispute between parties." Yellow Book Sales and Distribution Co., Inc. v Hillside Van Lines, Inc., 98 AD3d 663, 664 (2nd Dept. 2012); Wilner v Allstate Ins. Co., 71 AD3d 155 (1st Dept. 2010) Canario v Gunn, 300 AD2d 332 (2nd Dept. 2002); see also Oswego Laborers' Local 214 Pension Fund v. Marine Midland Bank, N.A., 85 NY2d 20 (1995).


Muro and FIS' argument is misplaced, as Greene has adduced admissible evidence that Anske, Muro, and Pinnacle's orchestrated a scheme to engage multiple clients under the guise of Pinnacle's management services in order to sell them life insurance policies under false pretenses. Specifically, Greene submits the affidavit of Robert M. Reilly, an owner and partner in several fitness clubs in New Jersey, and the affidavit of Lenny Jones, the managing partner of Courtside Consulting Inc., a music, sports, and entertainment consulting company. Reilly avers that after meeting with Anske and Muro regarding a potential partnership with Pinnacle, they solicited him for a life insurance policy, and after meeting with Anske and Muro, his signature was forged on a National Life insurance policy with a monthly premium of \$5,000.00, which was later cancelled after he complained to Anske. Jones avers states that after meeting Anske and Muro regarding a potential project that later failed, they solicited him for high net worth individuals and investors to purchase insurance policies, and that as far as he was aware, Pinnacle's entire business model involved the sale of insurance policies. Thus, there is a triable issue of fact regarding Muro and FIS were engaged in deceptive business practices which affect the public at large. See Wilner v Allstate Ins. Co., supra.

Accordingly, it is hereby,

ORDERED that the motion for summary judgment pursuant to CPLR 3212 by third-party defendants Victor Muro and Financial Integrity Strategies Inc. seeking to dismiss defendant/third-party plaintiff Kai L. Greene's complaint as against them is granted to the extent that the twelfth cause of action is dismissed as against them, and the motion is otherwise denied; and it is further,

ORDERED that the parties are to appear for a status/settlement conference on August 20, 2020 at 3:00 p.m.

4/28/2020
DATE


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

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