

Hall v RPRT AG

2020 NY Slip Op 31294(U)

April 23, 2020

Supreme Court, New York County

Docket Number: Index No. 651323/2018

Judge: Joel M. Cohen

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART IAS MOTION 3EFM

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MARY STOCKTON HALL, MATTHEW MONZON, JULIE RAGOLIA, HEIDI BIVENS, MOLLY FINDLAY, ERNESTO URDANETA, SKYNRAGS, LLC, DANIEL RIERA

Plaintiffs,

- v -

RPRT AG, D/B/A RPRT, D/B/A RPRT GROUP, JED ROOT LTD., JED ROOT, JED ROOT, INC., OLIVER FEICHTER,

Defendants.

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INDEX NO. 651323/2018

MOTION DATE 08/26/2019

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 33, 34, 35, 36, 37, 38, 39, 40, 41, 43, 44, 45, 46, 47, 50

were read on this motion to DISMISS.

This case is about a talent agency that allegedly stole money from, among others, the talent it represented. Plaintiffs are the aggrieved artists who either were represented by the agency (the Agency Plaintiffs) or provided services to the agency (the Contract Plaintiffs) (collectively, Plaintiffs), and say they are owed hundreds of thousands of dollars in missing payments by the agency. That agency is Defendant Jed Root, Inc. (JRI or the Agency), which was founded by Defendant Jed Root and eventually sold to Defendant RPRT Group (RPRT) and Defendant Oliver Feichter (collectively, Defendants).

The motion before the Court concerns only the claims against Mr. Root. Previously, the Court granted Root’s motion to dismiss Plaintiff’s initial Complaint (*see* NYSCEF 2 [Initial Complaint]) as against him, but granted Plaintiffs leave to file an amended complaint (*see*

NYSCEF 40 [May 8, 2019 Oral Arg. Tr.].¹ Plaintiffs did so, and Root now moves to dismiss the Amended Complaint (*see* NYSCEF 35). For the reasons set forth below, Root's motion is granted in part and denied in part.

BACKGROUND

A. The Scheme

The facts of the case, as alleged, remain largely unchanged from the Initial Complaint. Root founded JRI, the eponymous talent agency, in 1989 and continued as the sole owner until 2015. In its heyday, JRI was one of the most prestigious talent agencies in the country, providing full-service talent representation to set designers, photographers, fashion stylists, make-up artists, hair stylists, producers and other artists (Am. Compl. ¶¶14-15, 19). JRI represented Agency Plaintiffs under representation agreements with each individual artist, while JRI contracted with vendors, like Contract Plaintiffs, to provide services for the Agency's clients pursuant to written and oral agreements (*id.* ¶¶18, 21). The Amended Complaint does not mention when individual Plaintiffs began working with JRI (*see id.* ¶¶2-7), nor does it recount any personal interactions Plaintiffs had with Root personally (as opposed to JRI generally).

In late 2015, Root sold his ownership interest in JRI to RPRT, a privately held Swiss corporation (the "RPRT Transaction") (*id.* ¶22). RPRT was not a talent agency. It was not, allegedly, much of any kind of business: its existence in the United States consisted of a rented mailbox in Brooklyn, with no bank account in the U.S., no working website in the U.S., and no experience "operat[ing] any business whatsoever, either in the United States or abroad" (*id.* ¶¶29-30). To top it off, the CEO of RPRT, Mr. Feichter, was installed as CEO of JRI. Feichter

¹ The Court granted Root's motion on the record following oral argument. *Id.* However, no written order accompanied that decision. Therefore, the Court will issue such order with this decision.

was “a Swiss economic philosopher and author,” who “had no experience representing talent in an agency setting,” was unauthorized to work in the United States, and never set foot in the JRI offices (*id.* ¶¶31-32, 44). Root himself stayed on as President of JRI, as a Director on the agency’s two-member Board, and continued his duties relevant to representing Artists (*id.* ¶24).

So far, the Amended Complaint essentially retraces facts from the Initial Complaint. One notable exception, however, is the addition of an email from Root to JRI’s artists, including “all Plaintiffs,” on June 9, 2016 heralding the RPRT Transaction:

Jed Root has now become part of the RPRT Group.

RPRT is a full-spectrum Financial and Creative Services Group headquartered in Switzerland. With their unique network of agencies and financial expertise, they are the perfect partner to ensure Jed Root stays a premier international artists’ agency in the 21st century as well.

On a daily basis, our business operations remain unchanged. Your agent is still your agent and we will continue to operate under the Jed Root brand. I’m still here, fully involved and have no plans of leaving. The new setting will allow us to offer you a host of optional services and promote you to a much wider audience. . . .

(*id.* ¶36). According to Plaintiffs, “[n]early every factual assertion made by Jed Root in this email was a knowing falsehood,” masking a scheme to use the “sham” transaction to “abscond with Plaintiffs’ money” (*id.* ¶¶27, 37).

Defendants allegedly accomplished that theft as follows. Normally, JRI would collect all of the fees earned by Agency Plaintiffs directly from clients, take a 15% cut, and then remit the rest to the artists (*id.* ¶20). Following the RPRT Transaction, JRI began directing clients to wire payment to a Swiss bank account but hid those payment details from Plaintiffs on their copies of the invoices (*id.* ¶¶41-42). Then Defendants kept the money. At some point – the Amended Complaint does not specify when – “money was not paid to the Plaintiffs” as required under the relevant contracts (*id.* ¶47). Moreover, Plaintiffs each “contacted JRI between June 2016 and

March 2017 on multiple occasions to inquire about their money,” but “at Root’s instruction, [they] were consistently lied to, avoided and provided misinformation” (*id.* ¶50). The Amended Complaint does not specify the contents of these “multiple” communications, nor does it specify the people at JRI whom Plaintiffs contacted.

JRI abruptly shut its doors in March 2017, leaving hundreds of thousands of dollars in receivables unpaid and unaccounted for (*id.* ¶55). Root started a new agency under a different name (*id.* ¶56). None of the Defendants responded to Plaintiffs’ inquiries about their money (*id.* ¶57). At the same time, “[d]espite being closed and no longer representing its agency clients, Root and Defendants keep writing to vendors who used the Plaintiffs’ services, demanding that money belonging to the Plaintiffs be sent either by wire to a Swiss JRI account, or to a rented mailbox” (*id.* ¶58).

B. The Instant Action

Plaintiffs brought this action by filing a Summons and the Initial Complaint on March 3, 2019 (*see* NYSCEF 1-2). Root moved to dismiss the claims asserted against him in the Initial Complaint. And as noted above, the Court granted Root’s motion on May 8, 2019, on the record following oral argument (*see* NYSCEF 40). At that hearing, the Court identified several broad pleading deficiencies in the Initial Complaint, including pervasive “group pleading,” a lack of specificity in the claims against Root personally, and the comingling of tort, contract, and quasi-contract claims all based on essentially the same conduct (*id.* at 2-4). The Court dismissed the Initial Complaint without prejudice.

The Amended Complaint, filed on June 20, 2019, asserts the same fifteen causes of action. The first ten claims sound in tort: (1) breach of trust; (2) aiding and abetting breach of trust; (3) conversion; (4) aiding and abetting conversion; (5) breach of fiduciary duty; (6) aiding and abetting breach of fiduciary duty; (7) fraud; (8) aiding and abetting fraud; (9) negligence;

and (10) negligent misrepresentation. In addition, the Amended Complaint asserts five other contract and quasi-contract claims: (11) unjust enrichment; (12) constructive trust; (13) declaratory judgment; (14) breach of contract; and (15) piercing the corporate veil. All of these claims are asserted against all of the Defendants.

DISCUSSION

“On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction. [The court] accept[s] the facts as alleged in the complaint as true, [and] accord[s] plaintiff[] the benefit of every possible favorable inference” (*Leon v Martinez*, 84 NY2d 83, 87–88 [1994] [internal citation omitted]). However, bare legal conclusions and “factual claims which are either inherently incredible or flatly contradicted by documentary evidence” are not “accorded their most favorable intendment” (*Summit Solomon & Feldman v Lacher*, 212 AD2d 487, 487 [1st Dept 1995]).

The 15 claims in the Amended Complaint boil down to a basic premise: the Agency was supposed to compensate Plaintiffs for services they performed, and it failed to do so. The starting point for analyzing these claims is the undisputed fact that the Agency’s payment obligations were governed by valid, enforceable contractual agreements between JRI and the individual Plaintiffs (*see* Am. Compl. ¶168 [“Each Plaintiff had oral and/or written contracts with Defendants wherein Defendants served as an agent for some Plaintiffs”]; *id.* ¶21 [“JRI contracted with [the Contract Plaintiffs] to provide services for Root clients . . . and was supposed to compensate the Contract Plaintiffs.”]). Root himself was not a party to those contractual agreements, although he may have signed some of them as a JRI executive (*see* Gold Aff. Ex. C-D [“This Agreement . . . by and between Matthew Monzon . . . and Jed Root, Inc.”]). Nor was Root a JRI shareholder during the relevant times, having divested his ownership interest in JRI as part of the RPRT Transaction (Am. Compl. ¶22). The existence of the contracts with

JRI undercuts, or completely forecloses, most of Plaintiffs' various tort, contract, and quasi-contract claims against Root. But not all of them.

A. The Tort Claims

1. Fraud (Seventh Cause of Action) and Aiding and Abetting Fraud (Eighth Cause of Action)

“To state a cause of action for fraud, a plaintiff must allege a material misrepresentation of a fact, knowledge of its falsity, an intent to induce reliance, justifiable reliance by the plaintiff and damages” (*Cohen Bros. Realty Corp. v Mapes*, 181 AD3d 401 [1st Dept March 3, 2020] [“find[ing] that plaintiffs sufficiently pleaded fraud causes of action with the information available to them in a pre-discovery posture”]). Such claims must be pleaded with particularity under CPLR 3016[b], but this statute “merely requires that a claim of fraud be pleaded in sufficient detail to give adequate notice” (*Knight Sec. L.P. v Fiduciary Tr. Co.*, 5 AD3d 172, 173 [1st Dept 2004]; *see* CPLR 3016[b] [“[T]he circumstances constituting the wrong shall be stated in detail”]). At the motion to dismiss stage, moreover, actual knowledge of falsity “need only be pleaded generally” because “a plaintiff lacks access to the very discovery materials which would illuminate a defendant’s state of mind” (*Cohen Bros. Realty Corp.*, 181 AD3d at 401, citing *Oster v Kirschner*, 77 A.D.3d 51, 55-56 [1st Dept 2010] [“Participants in a fraud do not affirmatively declare to the world that they are engaged in the perpetration of a fraud”; rather, “intent to commit fraud is to be divined from surrounding circumstances.”]). Similarly, “the question of what constitutes reasonable reliance is not generally a question to be resolved as a matter of law on a motion to dismiss” *ACA Fin. Guar. Corp. v Goldman, Sachs & Co.*, 25 NY3d 1043, 1045 [2015]; *see Knight*, 5 AD3d at 173 [same]).

Affording the Amended Complaint its most liberal construction, the fraud allegations state just enough to survive Root's motion to dismiss.² Mainly, the new allegations stemming from Root's June 2016 email to Plaintiffs (and others), in which Root lauded the RPRT Transaction, arguably misrepresented the state of the agency following that Transaction (*see* Am. Compl. ¶¶36-40). For example, Root told the email recipients that JRI's new owner, RPRT, "[was] a full-spectrum Financial and Creative Services Group headquartered in Switzerland" with a "unique network of agencies and financial expertise" (*id.* ¶36). But Plaintiffs allege, to the contrary, that RPRT "ha[d] never operated any business whatsoever, either in the United States or abroad" (*id.* ¶30). In addition, while Root assured in the email that, "[o]n a daily basis, our business operations remain unchanged," Plaintiffs allege that JRI began changing the way it collected payments from clients and hiding those changes from the artists (*id.* ¶¶41-42). The Amended Complaint suggests that Plaintiffs continued to do business with JRI following the RPRT Transaction – and, consequently, continued to generate the flow of money to JRI that perpetuated the fraud – because, among other things, Plaintiffs relied on the representations in the email (*id.* ¶¶128-129).

Unlike the fraud allegations in the Initial Complaint, these allegations tie Root himself to a specific alleged misrepresentation and provide notice of his alleged role in the wider fraudulent scheme (*compare with, e.g., Manda Intern. Corp. v Yager*, 139 AD3d 594 [1st Dept 2016] [dismissing fraud claim premised on another person's recollection of an overheard conversation discussing fraud]); *Zanett Lombardier, Ltd. v Maslow*, 29 AD3d 495 [1st Dept 2006] [finding

² The Court's analysis is unaided by Plaintiffs' own briefing, which inexplicably fails to discuss the allegations surrounding the email, the only new factual allegations asserted in the Amended Complaint (*see* NYSCEF 43 [Pls. Opp.]). In any event, these allegations figure prominently in the Amended Complaint and Defendants' Motion to Dismiss (*see* NYSCEF 41), and must be reckoned with.

“no actionable misrepresentations or concealments as to the marketability [of product] or the profitability of [company]”). Under Plaintiffs’ theory, Root’s email and other subsequent conduct was designed to lull Plaintiffs into believing that JRI was operating normally, when in reality Root and the other Defendants were using JRI “to abscond with Plaintiffs’ money” (*id.* ¶27).

In the same vein, Plaintiffs’ aiding and abetting claim, which is based on similar conduct, is also sufficiently pleaded at this pre-discovery stage.

Therefore, the branch of Root’s motion directed to Plaintiffs’ seventh and eighth causes of action is **DENIED**.

2. Other Tort Claims (Claims 1-6 and 9-10)

Plaintiffs’ other tort claims, however, are dismissed. The same pleading issues that plagued the Initial Complaint resurface in the Amended Complaint. Many of the allegations group together the various Plaintiffs and Defendants indiscriminately, which does not provide Root adequate notice of the allegations against him personally (*see, e.g.*, Am. Compl. ¶¶80-82). Next, “[i]t is a well-established principle that a simple breach of contract is not to be considered a tort unless a legal duty independent of the contract itself has been violated,” and “[t]his legal duty must spring from circumstances extraneous to, and not constituting elements of, the contract” (*Clark-Fitzpatrick, Inc. v Long Is. R. Co.*, 70 NY2d 382, 389 [1987]). A number of Plaintiffs’ tort claims rely on the existence of a fiduciary (or fiduciary-like) relationship with Root, yet the Amended Complaint offers no details about that purported relationship (*see id.* ¶9 [describing Root only as “an agent to Plaintiffs”]). Indeed, other than the email discussed above, the Amended Complaint describes *no* specific interactions between individual Plaintiffs and Root himself. As a result, even if Plaintiffs could adequately allege “fiduciary obligations

undertaken by *the Agency*” (Pl. Opp. at 6) (emphasis added), there is no allegation of similar obligations undertaken by Root.

Therefore, the branch of Root’s motion directed to Plaintiffs’ claims 1-6 and 9-10 is **GRANTED**.

B. The Contract and Quasi-Contract Claims

As with the Initial Complaint, the Amended Complaint fails to allege facts sufficient to state a claim tying Root, personally, to the Agency’s contractual obligations. For the contract and quasi-contract claims, this is a fatal flaw (*see* Tr. at 3-4). A contract claim against Root cannot survive in the absence of a contract with Root. And “[t]he existence of a valid and enforceable written contract governing a particular subject matter ordinarily precludes recovery in quasi contract for events arising out of the same subject matter” (*Clark-Fitzpatrick, Inc. v Long Is. R. Co.*, 70 NY2d 382, 388 [1987]); *Paragon Leasing, Inc. v. Mezei*, 8 AD3d 54, 54-55 [1st Dept 2004] [“Plaintiff’s unjust enrichment claim is precluded by its written contract with a nonparty governing its right to compensation. . . .”]). The branch of Root’s motion directed to Plaintiffs’ eleventh cause of action (unjust enrichment) and fourteenth cause of action (breach of contract) is therefore **GRANTED**.

Similarly, the Amended Complaint fails to correct the pleading defects previously identified by the Court with respect to the constructive trust and declaratory judgment claims. The allegations indicate that any unpaid money owed to Plaintiffs was transmitted to JRI, not Root (*see* Tr. at 7). The branch of Root’s motion directed to Plaintiffs’ twelfth cause of action (constructive trust) and thirteenth cause of action (declaratory judgment) is therefore also **GRANTED**.

Plaintiffs’ claim for piercing the corporate veil fails too. As the Court previously explained, New York does not recognize a separate cause of action to pierce the corporate veil (9

East 38th Street Assocs. v. George Feher Assocs., Inc., 226 AD2d 167 [1st Dept 1996]). And the Court also explained that, in order to tie Root personally to the alleged breach of JRI's contractual obligations, the Amended Complaint would "have to have a lot more specificity," "to get more detailed on it" (Tr. at 3, 7). While Plaintiffs "mouth the elements of the piercing the corporate veil doctrine" in paragraphs 173-174 of the Amended Complaint, (*see* NYSCEF 47 at 3 [Def. Reply Br.]), they still fail to allege specific facts showing why the Court should reach past JRI's corporate form to impose liability on Root (*see, e.g., Albstein v. Elany Contracting Corp.*, 30 AD3d 210, 210 [1st Dept 2006] ["Plaintiff's conclusory allegations regarding piercing the corporate veil were also properly rejected" because "[s]he failed to plead any facts to substantiate such conclusory claims"]; *Saivest Empreendimentos Imobiliarios E. Participacoes, LTDA v. Elman Investors, Inc.*, 117 AD3d 447 [1st Dept 2014] [holding that "[c]onclusory allegations of . . . undercapitalization and intermingling of assets . . . without additional facts, are insufficient to pierce the corporate veil"]). The branch of Root's motion directed to Plaintiffs' fifteenth cause of action is therefore **GRANTED**.

* * * *

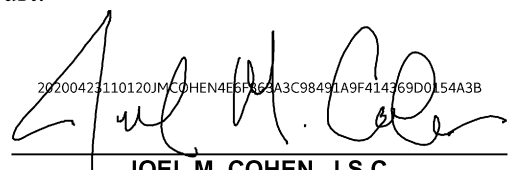
Accordingly, it is

ORDERED that Defendant Jed Root's motion to dismiss the Amended Complaint is **Denied** with respect to Plaintiffs' seventh cause of action (fraud) and eighth cause of action (aiding and abetting fraud), and is otherwise **Granted**; it is further

ORDERED that Root shall answer or otherwise respond to the Amended Complaint within 20 days of the Court's filing of this decision & order on NYSCEF; and it is further

ORDERED that the parties will appear for a preliminary conference on June 9, 2020 at 11 AM.

This constitutes the Decision and Order of the Court.


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JOEL M. COHEN, J.S.C.

4/23/2020

DATE

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE