

St. Clement v Fuchs

2020 NY Slip Op 31520(U)

May 16, 2020

Supreme Court, New York County

Docket Number: 651339/2019

Judge: Melissa A. Crane

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: I.A.S. PART 15**

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COURTNEY ST. CLEMENT,

Plaintiff,

-against-

INDEX NO.: 651339/2019

SEQ. NO.: 005, 006

DECISION AND ORDER

RAN FUCHS, and MALI FUKS,

Defendants.

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

The court consolidates motion sequence 005 and 006 for disposition.

Background

This is a dispute regarding payment of services and quality of work.¹ Plaintiff alleges that defendants, Mali Fuks and Ran Fuchs (hereinafter, “defendants” or the “Fuks/Fuchs Family”) owe plaintiff over \$44,000 in unpaid wages for services rendered. Mali Fuks is Ran Fuch’s mother. In 2002, plaintiff, Courtney St.Clement, met Mali Fuks and Ran Fuchs (Am Compl ¶ 10). She had worked as a paralegal for attorney David B. Cohen in exchange for his help in plaintiff’s ongoing custody and child support case (*id.*). Mr. Cohen represented the Fuks/Fuchs family in a civil lawsuit pending in New York County, Supreme Court that involved both defendants (the “underlying litigation”). Plaintiff worked as a paralegal on the underlying litigation.

¹ See this court’s decision dated 4/27/29 (NYSCEF doc no 353), denying plaintiff’s motion to amend her complaint to add a claim for “retaliation” pursuant to FIFA.

Through a review of documents, plaintiff learned that in May 2003, Ran Fuchs became Trustee of the Yoram Fuks Trust, the family trust (Courtney St.Clement Aff, dated March 6, 2020, ¶ 7). In September 2006, Ran Fuchs assumed a role as the Principal and sole authority of the corporation, Greenland Holding Co., Ltd - named in the caption of the underlying litigation. In November 2006, Yoram Fuks, Ran Fuch's father and Mali Fuk's husband, passed away. In 2008, defendants sold the sole asset at the crux of the underlying litigation, an apartment building on West 103rd Street. The court froze the proceeds from that sale.

Following the sale, in 2008, Mali recruited plaintiff to assist with basic office work related to the underlying litigation. In 2013, Mali Fuks again asked plaintiff to work as a paralegal because of plaintiff's familiarity with the underlying litigation (Am Compl ¶ 11). Plaintiff and Mali Fuks eventually agreed to an open-ended engagement. Plaintiff would have no regular hours, and had no obligation to work any particular schedule (Am Compl ¶ 13). Mali Fuks explained that all her money was frozen in court, but that her son, Ran Fuchs, pays all the bills. Mali Fuks told plaintiff that she and Ran Fuchs work together as a team, where she manages litigation of the lawsuit, and Ran Fuchs finances litigation costs through his "big job" (Am Compl ¶ 14).

Throughout plaintiff's employment, Mali Fuks managed her daily work. However, Ran Fuchs paid the bills and was involved in important decisions with respect to the underlying litigation. He attended meetings with attorneys, discussed strategy, negotiated retainers, and secured witness affidavits (Am Compl ¶ 31). Plaintiff, Mali Fuks, and Ran Fuks engaged in numerous conference calls regarding the underlying litigation (Am Compl ¶ 36). Ran Fuchs met

with plaintiff independently of his mother to discuss anticipated litigation costs (Am Compl ¶ 37, 38).

Mali Fuks began paying plaintiff for her work in November 2013. They originally agreed on \$60/hour, but, after working several weeks, plaintiff agreed to \$50/hour (Am Compl ¶ 16, 18). Plaintiff kept a running timesheet as an invoice and record of hours worked (Am Compl ¶ 20). Plaintiff and Mali Fuks never entered into a written agreement, but plaintiff continued working from Mali Fuks' home. Plaintiff's work included proofreading attorney-drafted documents, emailing attorneys with questions, listening to new theories of the underlying litigation, picking up court transcripts, gathering court exhibits, and delivering rent checks (Am Compl ¶ 24, 45, 46, 47).

Beginning in August 2014, defendants failed to pay plaintiff in full. In the fall of 2015, Mali Fuks asked plaintiff to revise the format of her timesheets to include more detail like services performed, amounts paid in check or cash, check number or direct deposit form Ran Fuchs' bank account, and the running balance due (Am Compl ¶ 26, 27). In November 2016, an attorney named Albert Lawler came to Mali Fuk's home and told plaintiff that, to avoid legal ramifications, all of defendants' freelancers must say that Mali Fuks is their client, and not Ran Fuchs (Am Compl ¶ 60). Apparently, a lender had sued Mali Fuks for nonpayment, and Albert Lawler was concerned that other lenders would go after Ran Fuchs if they thought he paid for his mother's expenses, including employee costs (Am Compl ¶ 60). Plaintiff agreed to this because of her loyalty to defendants, but reiterated her expectation that Ran Fuchs continue to pay her (Am Compl ¶ 64).

In 2016, defendants owed plaintiff \$12,280 in back pay. Plaintiff continued working for defendants so long as they paid her at least \$3000 a month (Courtney St.Clement Aff, dated March 6, 2020, ¶ 8). In January 2018, the underlying litigation concluded and payment from defendants dwindled. In February 2018, Fuchs stopped paying plaintiff (Am Compl ¶ 75). Defendants still asked plaintiff to come to work despite owing plaintiff \$51,512. Then defendants stopped paying plaintiff weekly \$251 auto-payments they had been making. Shortly thereafter, plaintiff stopped working for the Fuks/Fuchs family.

In May 2018, defendants asked plaintiff to come back to work. Plaintiff requested a written agreement and certain financial conditions. Defendants refused and rescinded their offer (Am Compl ¶ 79). Ran Fuchs subsequently continued paying plaintiff in small weekly amounts, totaling \$7,361.00. The payments stopped when plaintiff commenced this action. Plaintiff alleges defendants owe her for 883.00 hours of unpaid work from June 15, 2017 through February 8, 2018, plus \$260 for a court transcript (Courtney St.Clement Aff, dated March 6, 2020, ¶ 56).

Procedural History

On June 26, 2018, plaintiff filed a complaint against Mali Fuks and Ran Fuchs with the New York City Office of Labor Policy & Standards (“OLPS”). Plaintiff did not receive a determination from OLPS. On March 5, 2019, plaintiff filed a summons and complaint in this court. Defendants filed an answer with counterclaims on May 6, 2019, and then an amended answer with counterclaims on June 6, 2019. On June 26, 2019, plaintiff filed her first amended complaint. On July 31, 2019, defendants filed an answer with counterclaims to plaintiff’s first amended complaint. On January 6, 2020, plaintiff filed her Note of Issue. Then, on March 4,

2020, plaintiff moved to amend her complaint for the second time, to add a claim for a retaliatory charge under New York's Freelance Isn't Free Act ("FIFA"). On April 27, 2020, the court denied plaintiff's motion to amend.

Plaintiff, in motion sequence 005, now moves for summary judgment against defendants, Mali Fuks and Ran Fuchs. Defendants, in motion sequence 006, move for partial summary judgment to dismiss plaintiff's claims against Ran Fuchs, including, *inter alia*, for breach of contract, quantum merit, unjust enrichment, and under New York's Freelance Isn't Free Act ("FIFA").

Discussion

A party seeking summary judgment must make a prima facie case showing that it is entitled to judgment as a matter of law by proffering sufficient evidence to demonstrate the absence of any material issue of fact (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). If the movant fails to make this showing, the motion must be denied (*id.*). Once the movant meets its burden, then the opposing party must produce evidentiary proof in admissible form sufficient to raise a triable issue of material fact (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

In deciding the motion, the court must draw all reasonable inferences in favor of the nonmoving party and deny summary judgment if there is any doubt as to the existence of a material issue of fact (*Branham v Loews Orpheum Cinemas, Inc.*, 8 NY3d 931, 932 [2007]; *Dauman Displays v Masturzo*, 168 AD2d 204, 205 [1st Dept 1990], lv dismissed 77 NY2d 939 [1991]). "Where different conclusions can reasonably be drawn from the evidence, the motion should be denied" (*Sommer v Federal Signal Corp.*, 79 NY2d 540, 555 [1992]).

Motion Seq 005

Plaintiff fails to meet her burden that she is entitled to recover under FIFA. FIFA applies to contracts that are entered into on or after the effective date of May 15, 2017 (*see* Admin Code of City of NY § 20-927, Note 1; Local Law No. 140 [2016] of City of NY § 1, 2). Plaintiff alleges that Mali Fuks and Ran Fuchs recruited her to work on the underlying litigation first in 2008, and then in 2013. Plaintiff also alleges that she and Mali Fuks agreed that plaintiff would keep a running timesheet as an invoice and record of hours worked (Am Compl ¶ 20). In August of 2016, defendants owed plaintiff \$17,930 in arrears (Am Compl ¶ 94). Plaintiff and defendants never entered into a written agreement. However, they entered into an oral agreement beginning in 2013 (*see Sylvestre v Diversified Psychological Services PLLC*, 2019 WL 3202388 at *2 [NY Co, Sup Ct 2019] [plaintiff failed to establish its prima facie case for FIFA claims where plaintiff did not provide a written agreement to the court and complaint alleged plaintiff provided services to defendants starting in May 2016 prior to when FIFA took effect]; *cf. Sandles v Magna Legal Servs., LLC*, 62 Misc3d 761, 769 [NY Co, Sup Ct 2018]). That plaintiff alleges defendants owe her \$44,000 for unpaid wages after May 15, 2017 is irrelevant, because the parties entered into a contract prior to the effective date, in 2013. Therefore, plaintiff cannot recover under FIFA.

Plaintiff also moves for summary judgment on claims for unjust enrichment and quantum meruit. However, defendants claim that plaintiff overbilled, inflated hours worked, and failed to itemize invoices. Defendants argue that, in her deposition, plaintiff admitted that her invoices to Mali Fuks were rife with errors (Ran Fuchs Aff, dated March 12, 2020, ¶ 69). Further, Mali Fuks disputes the amounts on plaintiff's timesheet. Plaintiff also fails to set forth the particular tasks that she performed to correspond with the time entries (*see* NYSCEF doc no 69). Indeed,

in the fall of 2015, Mali Fuks asked plaintiff to revise the format of her timesheets to include more detail like services consumed, amounts paid in check or cash, check number or direct deposit form Ran Fuchs' bank account, and the running balance due (Am Compl ¶ 26, 27). Thus, the amount defendants owe plaintiff is a disputed material issue of fact, as is the reasonable value of the services. Only a trial, where a fact finder weighs credibility, can determine these issues.. The court therefore denies plaintiff's motion for summary judgment.

Motion Seq 006

Defendants move for partial summary judgment to dismiss plaintiff's amended complaint against Ran Fuchs. Defendants allege that Ran Fuchs never entered into a written or verbal agreement with plaintiff, never requested plaintiff to perform work for him or employed plaintiff, and did not hire plaintiff or agree to pay plaintiff for her services. Defendants point to an email that plaintiff wrote on November 18, 2016 where plaintiff said, "Hey Ran...I know I do not work for you. I know I work for Mali" (Ran Fuchs Aff, dated March 6, 2020, ex B). However, plaintiff alleges that she wrote that because a lawyer named Albert Lawler requested that plaintiff say that Mali Fuks is her client, and not Ran Fuchs, so that Ran Fuchs could avoid legal ramifications (Am Compl ¶ 58, 64). Further, from 2013 Mali Fuks and Ran Fuchs worked together as a team. Mali Fuks managed plaintiff's daily work on the underlying litigation, while Ran Fuchs paid the bills, and supervised big decisions and litigation strategy. Plaintiff alleges that Ran Fuchs met with plaintiff independently on several occasions. It is undisputed that, on three occasions, Ran Fuchs asked plaintiff to follow up on an item and look into a particular matter (Tambaro Memo of Law, dated March 6, 2020, p. 19). Ran Fuchs also paid plaintiff for

her services for at least five consecutive years. Thus, issues of fact exist as to whether plaintiff performed paralegal services and other basic office work for Ran Fuchs and whether he owes plaintiff payment for those services. In addition, it is an issue of fact whether Ran Fuchs benefited from plaintiff's services. Accordingly, the court denies defendants' partial motion for summary judgment.

Accordingly, it is hereby

ORDERED that the court denies plaintiff's motion for summary judgment (motion seq. no. 5) and it is further

ORDERED that the court denies defendant's motion for partial summary judgment (motion seq. no 6).

Dated: 5/16/2020

ENTER:


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