

**Travis Mgt. Collateral Solutions, Inc. v Balbec
Capital LP**

2020 NY Slip Op 33980(U)

December 4, 2020

Supreme Court, New York County

Docket Number: 153304/2020

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: <u>HON. ARLENE P. BLUTH</u> <i>Justice</i> -----X TRAVIS MANAGEMENT COLLATERAL SOLUTIONS, INC., Plaintiff, - v - BALBEC CAPITAL LP, PRESTON RIDGE PARTNERS LLC, Defendants. -----X	PART <u>IAS MOTION 14</u> INDEX NO. <u>153304/2020</u> MOTION DATE <u>10/23/2020</u> MOTION SEQ. NO. <u>001</u>
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**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 3, 4, 5, 6, 7, 8, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 24, 25
were read on this motion to/for DISMISS.

The motion by defendants to dismiss the complaint is granted.

Background

Defendants move to dismiss the complaint for failure to state a cause of action for breach of contract. Defendants also argue that this Court lacks personal jurisdiction over them because they were not properly served and, further, that Balbec Capital LP (“Balbec”) is an out of state corporation and does not have sufficient ties with New York State to satisfy CPLR § 302(a).

Plaintiff opposes and argues that Balbec owns defendant Preston Ridge Management LLC (“Preston”), explains that plaintiff conducted file review for Preston pursuant to a contract and is now owed monies for services rendered (NYSCEF Doc. No. 15). In his opposition, plaintiff’s counsel “wanted to interpose papers based on the conversation [counsel] had with the plaintiff’s principal, Teri Augustine, who is the president/owner of the plaintiff...” (*Id.* at ¶ 9).

Defendants' reply argues that plaintiff has again failed to identify the contract allegedly breached and did not cross-move to amend complaint to address the insufficiencies (NYSCEF Doc. No. 24).

Discussion

Failure to State a Cause of Action

“The elements of such a [breach of contract] claim are ‘the existence of a contract, the plaintiff’s performance thereunder, the defendant’s breach thereof, and resulting damages’.” (*Markov v Katt*, 176 AD3d 401, 402-403 [1st Dept 1995]).

“[O]n a motion addressed to the sufficiency of a complaint pursuant to CPLR 3211 (a) (7), the facts pleaded are presumed to be true and accorded every favorable inference, nevertheless, allegations consisting of bare legal conclusions, as well as factual claims either inherently incredible or flatly contradicted by documentary evidence, are not entitled to such consideration.” (*Matter of Sud v Sud*, 211 AD2d 423, 424 [1st Dept 1995]).

In *Matter of Sud v Sud*, the First Department affirmed the dismissal of a complaint for failure to state a cause of action for breach of contract because it “failed to allege, in nonconclusory language, as required, the essential terms of the parties’ purported contract, including the specific provisions of the contract upon which liability is predicated... whether the alleged agreement was, in fact, written or oral . . . and the amount of financial support which defendant[s] . . . were required to provide or the length of time during which that support had to be provided before their contractual obligations concluded” (*Id.*)

Here, the complaint is just too bereft of any substance to survive the instant motion to dismiss. And the opposition, which contains no affidavit from the client, fails to save the

complaint. The skimpy complaint only alleges that “plaintiff and defendant(s) entered into an agreement for work, labor, services, goods, and [sic] lease,” “Plaintiff duly performed all conditions on its part to be performed,” and “Defendant(s) has not performed leaving a balance due in the agreement in the specific sum of \$198621.79” (NYSCEF Doc. No. 4). Even assuming these purported facts to be true, the complaint is insufficient because it lacks any information about the alleged contract. The complaint is not only devoid of the essential terms of the contract, it does not reference any terms of the contract.

Plaintiff has claims that the contract exists, that plaintiff performed all conditions of the contract and that it is owed money. Only in plaintiff’s affirmation in opposition to the instant motion does plaintiff indicate that the contract had something to do with reviewing files. But these assertions cannot save the complaint because they are contained in an attorney’s affirmation rather than an affidavit from the client. Therefore, the complaint is dismissed for failure to state a cause of action against the defendants.

Personal Jurisdiction

“Plaintiff’s affidavit of service constitute[s] prima facie evidence of proper service, and defendant’s conclusory denial of service [is] insufficient to rebut the prima facie showing.”

(*Wells Fargo Bank, N.A. v Javier*, 179 AD3d 482 [1st Dept 2020]).

Plaintiff provided an affidavit of service indicating that the summons and complaint were served upon Preston via the Secretary of State on June 11, 2020 (NYSCEF Doc No. 18). As such, Preston’s conclusory denial of service is insufficient. However, plaintiff has not provided this Court with any proof of service with respect to Balbec. This Court notes that plaintiff did not move for an extension of time to serve Balbec or move to serve Balbec by alternative means.

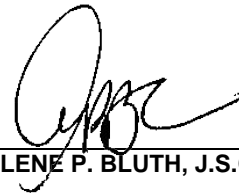
Service on one corporation does not magically constitute service on another. And so even though the complaint is dismissed for failure to state a cause of action, the Court also finds it has no jurisdiction against defendant Balbec.

Accordingly, it is hereby

ORDERED that the motion to dismiss the complaint is granted.

12/4/2020

DATE



ARLENE P. BLUTH, J.S.C.

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