

Ron v Sanchez

2020 NY Slip Op 34301(U)

June 10, 2020

Supreme Court, Queens County

Docket Number: 709345/2019

Judge: Janice A. Taylor

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This opinion is uncorrected and not selected for official publication.

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Honorable, JANICE A. TAYLOR IAS PART 15
Justice

-----	:	
JUANITO D. RON JR.,	:	Index No: 709345/2019
Plaintiff	:	
-against-	:	Motion Date: 03/10/20
	:	
SANDRA HERRERA SANCHEZ,	:	Motion Seq. No: 2
HERRERA CENTER LLC d/b/a	:	
MARTIAL ARTS FAMILY STUDIO,	:	
Defendants	:	
_____	:	
-----x	:	

FILED

**6/11/2020
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**COUNTY CLERK
QUEENS COUNTY**

The following numbered papers 1-10 read on this motion by defendants to dismiss the complaint; and cross-motion by plaintiff for leave to amend the complaint.

PAPERS
NUMBERED

Notice of Motion-Affirmation-Exhibits-Service.....	1 - 4
Memorandum of Law.....	5
Notice of Cross-Motion-Affirmation-Exhibits-Service..	6 - 9
Reply Memorandum of Law.....	10

Upon the foregoing papers, it is ordered that the above referenced motion and cross-motion are considered together and decided as follows:

In this action plaintiff alleges that defendants breached the terms of an employment contract by terminating his employment and failing to provide an equity position in Martial Arts Family Studio, a martial arts training and fitness studio. Plaintiff also brings causes of action for unjust enrichment and *quantum meruit*.

Defendants move to dismiss the complaint, pursuant to CPLR 3211(a)(1) and (7), alleging that the September 2018 employment agreement that is the basis for the parties relationship establishes that (1) the offer was for "at will" employment, subject to lawful dismissal at any time, (2) defendant Sandra Herrera Sanchez acted only in her position as President and CEO of Martial Arts Family studio, (3) plaintiff was fully compensated for time worked, and (4) that no offers of any kind were made outside the four corners of the written document.

The movants assert that the complaint should be dismissed, pursuant to CPLR §3211(a)(1), as documentary evidence proves that plaintiff cannot maintain this action. In order to prevail on a motion made pursuant to CPLR §3211(a)(1), a movant must demonstrate that there exists documentary evidence which resolves all of the factual issues alleged in the complaint and conclusively disposes of the plaintiff's claim (see, *Kopelwitz and Co. v. Mann, et al.*, n83 AD3d 793 [2d Dept. 2011]; *Fontanetta v. John Doe 1, et al.*, 73 AD3d 78 [2d Dept. 2010]).

The movants also assert that the complaint should be dismissed pursuant to CPLR §3211(a)(7) for the plaintiff's failure to state a cause of action. It is well-settled that a motion made pursuant to CPLR §3211(a)(7) can only be granted if, from the pleadings' four corners, factual allegations are not discerned which manifest any cause of action cognizable at law. In furtherance of this task, the court liberally construes the complaint, accepts as true the facts alleged in the complaint and any submissions in opposition to the dismissal motion, and accords the plaintiff the benefit of every possible favorable inference (See, *511 W. 232nd Owners Corp. v. Jennifer Realty Co.*, 98 N.Y.2d 144 [2002]). New York courts have ruled that, in deciding a motion made pursuant to CPLR §3211(a)(7), a court will decide whether a complaint makes out any cognizable cause of action, not whether a plaintiff will ultimately win on the merits of the allegations contained therein (see, *Stukuls v. State of New York*, 42 NY2d 272 [1977]; *Jacobs v. Macy's East*, 262 AD2d 607 [2d Dept. 1999]).

Defendant Sandra Herrera Sanchez

With respect to defendant Sandra Herrera Sanchez, neither the complaint nor the papers submitted in opposition to this application allege, much less establish, that Ms. Herrera Sanchez entered into an agreement with plaintiff. A review of the contract between the parties reveals that defendant Herrera Sanchez executed the agreement in her capacity as a representative of Herrera Center LLC d/b/a Marital Arts Family Studio, not in her individual capacity. Thus, the documentary evidence proves that plaintiff cannot maintain an action against her. Accordingly, pursuant to CPLR §3211(a)(1), the complaint is dismissed as against defendant Sandra Herrera Sanchez.

Defendant Herrera Center LLC d/b/a Martial Arts Family Studio

Plaintiff's claim for breach of contract in wrongful termination is belied by the simple text of the written contract executed by the parties in September 2018. Specifically stated

therein is the understanding of the parties that the **"employment will be 'at-will' meaning that you and [Marital Arts Family Studio] both have the right to terminate your employment at any time for any lawful reason."** (emphasis added by the court).

Plaintiff's claim that this contract was "materially breached ... by amongst other things, reducing Plaintiffs [sic] hours, denying equity ownership interest in the business and inextricably [sic] terminating Plaintiff's employment" is unsupported to any degree by plaintiff's submissions. Plaintiff's Verified Complaint further alleges that defendants "represented" to plaintiff that he would have "an opportunity to own an equity interest" as an inducement to his hiring. No corroborating evidence is presented, either as part of the Verified Complaint or in opposition to this motion to dismiss, supporting the allegation that there was ever any offer of an ownership interest in the studio.

Plaintiff's cause of action for unjust enrichment is similarly inapplicable here. As best stated in *Gibraltar Mgmt. Co., Inc. v. Grand Entrance Gates, Ltd.*, (46 AD3d 747, 848 N.Y.S.2d 684 [2d Dept. 2007]) "The defendants established their entitlement to judgment as a matter of law with respect to this cause of action by demonstrating that such a recovery is precluded by the existence of the parties' valid and enforceable written contract covering the same subject matter." *Id.* at 748.

The Verified Complaint further alleges that as a result of the foregoing referenced inducement, "Plaintiff forgoed [sic] other potential business opportunities as well as potential earnings and income." However, where the foundational element of plaintiff's action is premised on a written contract, as it is here, the quasi-contractual theory of unjust enrichment is unavailable. "The 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. A "quasi contract" only applies in the absence of an express agreement, and is not really a contract at all, but rather a legal obligation imposed in order to prevent a party's unjust enrichment." *Clark-Fitzpatrick, Inc. v. Long Island R. Co.*, 70 NY2d 382, 388, 521 NYS2d 653, (1987) (internal citations omitted).

In addition to opposing the motion to dismiss, plaintiff cross-moves to amend his complaint pursuant to CPLR 3025(b), essentially to add a cause of action sounding in promissory estoppel. The cross-motion is denied. This amendment lacks merit and does not cure any of the deficiencies of plaintiff's initial pleading, as follows:

Promissory estoppel is inapplicable here, within the context

of an action for wrongful termination of an "at will" employee, as the critical element of reasonable reliance of continued employment is unavailable in at will employment situations. "[A] claim of promissory estoppel [is not] available to avoid the at will doctrine. This is particularly true where, as here, the express, written acknowledgment by plaintiff that [he] was an at will employee precluded any reasonable reliance on alleged oral assurances ..." *Presler v. Domestic & Foreign Missionary Soc'y of the Prot. Episcopal Church in the United States of Am.*, 113 AD3d 409, 409, 980 NYS2d 2, [1st Dept. 2014]) (citations omitted).

In light of all the foregoing, the motion is granted and the complaint is dismissed as against all defendants. The cross-motion is hereby denied.

Dated: June 10, 2020



JANICE A. TAYLOR, J.S.C.

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 QUEENS COUNTY**