Quality Facility Solutions Corp. v Times Sq. Attractions Live, LLC
2021 NY Slip Op 30778(U)
March 12, 2021
Supreme Court, Kings County
Docket Number: 525103/19
Judge: Leon Ruchelsman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL PART 8
--x
QUALITY FACILITY SOLUTIONS CORP.,
Plaintiff, Decision and order

- against - Index No. 525103/19

TIMES SQUARE ATTRACTIONS LIVE, LLC, and
SPE PARTNERS LLC,
Defendant, March 12, 2021
--x
PRESENT: HON. LEON RUCHELSMAN

The plaintiff has moved pursuant to CPLR §3212 seeking summary judgement that they are entitled to the sum of $155,117.53 for services rendered. The defendant opposes the motion. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

The plaintiff and defendant SPE Partners LLC, entered into a contract whereby the plaintiff agreed to provide cleaning services for defendant's entertainment facility. The plaintiff asserts the defendant owes substantial sums pursuant to the contract and seeks summary judgement on those claims arguing there are no questions of fact. The defendant opposes the motion arguing that in fact two contracts have been presented thus there are surely questions of fact which foreclose summary judgement at this time. Further, concerning a signed addendum, the defendant argues the individual who executed that addendum had no authority to do so.

Conclusions of Law

Where the material facts at issue in a case are in dispute summary judgment cannot be granted (Zuckerman v. City of New York, 49 NYS2d 557, 427 NYS2d 595 [1980]). Generally, it is for the jury, the trier of fact to determine the legal cause of any injury (Aronson v. Horace Mann-Barnard School, 224 AD2d 249, 637 NYS2d 410 [1st Dept., 1996]). However, where only one conclusion may be drawn from the facts then the question of legal cause may be decided by the trial court as a matter of law (Derdiarian v.Felix Contracting Inc., 51 NY2d 308, 434 NYS2d 166 [1980]).

Thus, to succeed on a motion for summary judgement it is necessary for the movant to make a prima facie showing of an entitlement as a matter of law by offering evidence demonstrating the absence of any material issue of fact (Winegrad v. New York University Medical Center, 64 NY2d 851, 487 NYS2d 316 [1985]). Moreover, a movant cannot succeed upon a motion for summary judgement by pointing to gaps in the opponents case because the moving party must affirmatively present evidence demonstrating the lack of any questions of fact (Velasquez v. Gomez, 44 AD3d 649, 843 NYS2d 368 [2d Dept., 2007]).

Concerning whether Joseph Rose had authority to execute the contract on behalf of the defendant, the defendant asserts he had no such authority and that at least questions of fact have been raised. The plaintiff asserts that "Mr. Rose worked for

Defendant TSAL as the Head of Operations but had no authority to enter into contracts on behalf of the company" (see, Affidavit of Alexander Svezia, ¶4). However, as the court noted in Zigabbara v. Falk, 143 AD2d 901, 533 NYS2d 536 [2d Dept., 1988], "a third party with whom the agent deals may rely on an appearance of authority only to the extent that such reliance is reasonable" (id). Thus, the issue is not whether Mr. Rose had the authority to execute the agreement. Rather, the issue is whether it was reasonable for the plaintiff to rely upon Rose's representations concerning the agreement. Further, in the context of apparent authority the duty of inquiry on the part of the plaintiff whether such authority in fact existed only arises when the transaction is extraordinary or "the 'novelty' of the transaction alerts the third party to the danger of fraud" (Herbert Construction Company v. Continental Insurance Company, 931 F.2d 989 [2d Cir. 1991]). In Marathon Enterprises Inc., v. Schroter GmbH & Co., KG, 95 Fed.Appx. 364 [2d Cir. 2004] the court, citing earlier authority, explained that novel or extraordinary transactions are defined by "whether the particular transaction falls within the *range* of transactions in which [the principal] or similarly situated institutions normally engage" (id). Thus, the plaintiff bears the burden demonstrating the transaction in this case was neither extraordinary or novel (Muscletech Research and Development, Inc., v. East Coast Ingredients, LLC, 2004 WL

941815 [W.D.N.Y. 2004]).

First, the plaintiff has demonstrated that Mr. Rose had the apparent authority to negotiate and execute the contract. Indeed, Mr. Rose sent an email to a representative of the plaintiff which stated "here is the updated agreement with the changes we discussed. Please sign and return to me" and the email included a copy of a proposed contract (see, Email from Joseph Rose to Yitzchok Weiss dated June 22, 2018 at 11:11 AM). Moreover, the transaction, the entire contract between the parties was not novel or extraordinary thus no duty of inquiry ever arose. Consequently, there are no questions of fact Mr. Rose had apparent authority to execute the contract on behalf of the defendant.

The addendum to the contract which is signed by both parties states that "this Agreement shall be subject to the terms and conditions contained in the Service Contract entered into by and between the parties having an effective year of 2019 (the "Original Agreement"). To the extent of any conflict between the terms and conditions contained herein, and those contained in the Original Agreement, the terms of the Original Agreement shall control" (see, Addendum to Original Contract, page 2). As already explained the addendum was validly executed and since the addendum references an original contract there had to have been a validly executed contract the parties agreed upon. The addendum

could not have been the only agreement executed since it clearly references an earlier contract and in fact requires adherence to the original contract in case a conflict arises. These clauses make no sense if an original contract was never executed. Even if no other contract exists the addendum itself contains all the necessary terms for the creation of a valid contract. It requires the plaintiff to provide cleaning services for payment. In any event, the plaintiff and the defendant have each presented a contract. The plaintiff claims the contract they presented is binding whereas the defendant asserts the contract they present was negotiated but never executed. The defendant thus argues there are questions of fact which foreclose a summary determination. However, as noted, the addendum was clearly signed by the parties and there is no dispute that bills for services were presented to the defendant and no payments have been made. There are no questions of fact regarding this key and paramount issue.

Further, there are no other questions of fact which foreclose any summary determination. The mere fact some of the bills contain the name Times Square Attractions Live Events LLC instead of Times Square Attractions Live LLC does not mean another entity exists and there are questions of fact about that entity. Clearly, only one entity received the cleaning services and the mere addition of the word 'Events' in the name of the

recipient of the bills does not create any questions of fact. Indeed, Mr. Rose acknowledged as much when he sent an email on April 4, 2019 conceding payments were owed. Further, there are no questions of fact whether the plaintiff failed to mitigate damages. Plaintiff performed work in expectation of payment. It is irrelevant which party actually terminated the contract since the bills all precede any termination in any event.

Therefore, based on the foregoing the motion seeking summary judgement that the defendants owe $155,117.53 in unpaid bills for cleaning services is granted.

So ordered.

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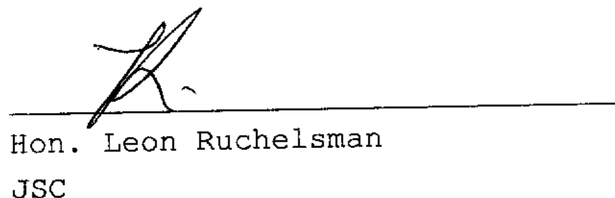

DATED: March 12, 2021
Brooklyn N.Y.

Hon. Leon Ruchelsman
JSC