

David L. Moss & Assoc. LLC v Bruni

2021 NY Slip Op 31066(U)

April 5, 2021

Supreme Court, New York County

Docket Number: 160122/2020

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: HON. ARLENE P. BLUTH PART IAS MOTION 14

Justice

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DAVID L. MOSS & ASSOCIATES LLC,

Plaintiff,

- v -

SANDRA BRUNI, FREDERICO BRUNI, ROSA BRUNI,
SONIA CORTES, SANDRA CORTES, CRISARI REALTY
INC., 528 EAST 13TH STREET CORP., 240 EAST 2ND
STREET CORP., 205 AVENUE B CORP., 246 EAST 10TH
STREET LLC

Defendant.

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INDEX NO. 160122/2020

MOTION DATE 03/29/2021

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 25, 26

were read on this motion to/for DISMISSAL.

The motion to dismiss by defendants is granted in part and denied in part.

Background

Plaintiff brings this case for legal fees stemming from its representation of defendants in connection with various real estate matters. Plaintiff claims that defendants owe over \$55,000 in legal fees.

Defendants move to dismiss and claim that the properties were wholly owned by the corporate defendants and, therefore, the individual defendants should not be parties to this case. Defendants point to the deeds for the properties (NYSCEF Doc. No. 14) which show that the corporate entities are the owners. They also point out that one of the defendants named, Sandra Cortes, does not exist and that Sonia Cortes is a super in one of the buildings.

Defendants contend that there is no basis to pierce the corporate veil to hold the individuals liable for the unpaid legal fees. They also argue that the complaint is not sufficiently particular, pursuant to CPLR 3013, to give notice to the defendants about what plaintiff is seeking. Defendants insists that plaintiff never had a valid retainer agreement which would permit plaintiff to recover legal fees.

In opposition, plaintiff points to emails that it claims demonstrates defendants' acknowledgement of their obligation to pay plaintiff for legal services. It stresses that this is not a case that requires the Court to consider piercing the corporate veil because plaintiff provided legal services on behalf of the individual defendants. Plaintiff argues that the individual defendants were personally named in various actions and proceedings that plaintiff worked on and that corporate funds were used to retain plaintiff.

In reply, defendants stress that there was no retainer agreement between plaintiff and defendants and reiterates their point that the individual defendants cannot be held liable.

Discussion

“On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction. We accept the facts as alleged in the [pleading] as true, accord [the proponent of the pleading] the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory” (*Leon v Martinez*, 84 NY2d 83, 87-88, 614 NYS2d 972 [1994] [citations omitted]). “At the same time, however, allegations consisting of bare legal conclusions . . . are not entitled to any such consideration” (*Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 141, 75 NE3d 1159 [2017] [citation and internal quotations omitted]).

As an initial matter the Court will consider defendants' memo of law in support, which was filed *after* plaintiff filed its opposition. The parties reached an agreement to allow plaintiff to file supplemental papers to address this untimely document. The Court prefers to decide motions on the merits.

The Court grants the motion only to the extent that defendants Sandra Cortes and Sonia Cortes are severed and dismissed. In support of the motion, defendant Sandra Bruni submitted an affidavit stating that Sandra Cortes is a fictitious name and that Sonia Cortes is a super in one of the buildings at issue (NYSCEF Doc. No. 12, ¶ 3).

Plaintiff does not dispute these assertions and simply claims in opposition that counsel for defendants does not represent these two named defendants. That does not constitute sufficient opposition to this branch of the motion. Plaintiff had a chance to explain in opposition why it named these individuals and it did not. Defendant Bruni was entitled to assert that these two individuals (one of whom may not exist) have nothing to do with this case. Plaintiff obviously named these defendants for a particular reason but, curiously, did not provide any detail about why they should remain in the case. The Court also observes that there are no affidavits of service for these defendants uploaded to the docket.

However, the Court denies the remaining portions of the motion. Plaintiff contends that it represented each of the remaining individuals and corporate entities. While defendants deny that assertion, the Court cannot make such a factual determination on a motion to dismiss. Discovery is necessary to determine the extent of the attorney client relationship among the remaining defendants, including whether a relationship was formed with each defendant. Of course, plaintiff will have the burden to show that it formed an attorney-client relationship with each of the defendants in order to recover against them.

That there was no retainer agreement does not bar plaintiff from recovering based on the invoices it claims it sent to defendants (*Jaffe Ross & Light, LLP v Mann*, 121 AD3d 480, 481, 994 NYS2d 587 [1st Dept 2014]). And plaintiff's complaint satisfies CPLR 3013. The complaint asserts that plaintiff did legal work for defendants and that defendants failed to pay outstanding legal fees. That is sufficient to put defendants on notice about the facts surrounding this case. If defendants want more detail, then they can utilize various discovery devices, such as a demand for a bill of particulars. But the fact that defendants want more information about the case is not a basis to dismiss the entire action. For the same reason, defendants' assertion that the case should be dismissed pursuant to CPLR 3016(f) is also without merit. A complaint need not contain every conceivable detail.

The Court also rejects defendants' claim that plaintiff cannot pierce the corporate veil and, therefore, cannot recover against the remaining individual defendants. Plaintiff claims that its clients included the individual defendants. Therefore, the Court need not consider whether plaintiff is permitted to pierce the corporate veil. Discovery may reveal that the scope of the legal representation was limited to the corporate entities and that recovery is not permitted against the individuals. But nothing on these papers compels the Court to reach that conclusion.

Accordingly, it is hereby

ORDERED that the motion to dismiss is granted only to the extent that all claims against defendants Sonia Cortes and Sandra Cortes are severed and dismissed, and denied as to the remaining relief requested and the remaining defendants shall answer pursuant to the CPLR.

Remote Conference: June 17, 2021.



4/5/2021
DATE

AYLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: