

Studios Design, LLC v Friedland
2021 NY Slip Op 31834(U)
May 27, 2021
Supreme Court, New York County
Docket Number: 657134/2020
Judge: Laurence L. Love
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

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

PRESENT:	<u>HON. LAURENCE L. LOVE</u>	PART	IAS MOTION 63M
	<i>Justice</i>		
-----X		INDEX NO.	<u>657134/2020</u>
STUDIOUS DESIGN, LLC		MOTION DATE	<u>05/04/2021</u>
Plaintiff,		MOTION SEQ. NO.	<u>001</u>
- v -			
LINDSAY FRIEDLAND,		DECISION + ORDER ON	
		MOTION	
Defendant.			
-----X			

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 were read on this motion to/for DISMISSAL.

The following read on defendant’s motion to dismiss the complaint – CPLR 3211(a)(3); sanctions – 22 NYCRR 130; and in the alternative, if the complaint is not dismissed then to dismiss the first cause of action for an account stated – CPLR 3211(a)(1) and/or 3211(a)(7); to dismiss the second cause of action for quantum meruit – CPLR 3211(a)(1) and 3211(a)(7); to dismiss the third cause of action for breach of contract - CPLR 3211(a)(1) and 3211(a)(7); to dismiss the fourth cause of action for defamation - CPLR 3211(a)(7); and to dismiss the fifth cause for attorney’s fees - CPLR 3211(a)(1) and 3211(a)(7).

A summons and complaint were filed on December 18, 2020 and defendant makes a pre-answer motion to dismiss.

The complaint alleges in pertinent part that plaintiff was engaged, retained, hired and directed by Lindsay Friedland to perform interior design and related decorating services, to inventory and photograph Lindsay Friedland’s personal property which she attempted to sell; to procure home design elements, art, décor and/or furniture for the redesign. The parties entered into a contract on January 28, 2020 to perform the above duties for \$25,000 plus a twenty (20) percent surcharge on all purchases and labor costs for the job. Plaintiff alleges the required work

has been completed and that defendant Lindsay Friedland has not paid the invoices totaling \$54,473.61. Plaintiff also alleges that defendant Lindsay Friedland made disparaging remarks in front of employees, third party vendors, and on communications with third parties.

Plaintiff's causes of action include i) account stated for \$54,473.61; ii) quantum meruit for \$54,473.61; iii) breach of contract for \$304,473.61, which is \$54,473.61 plus disparaging remarks in the sum of \$250,000; iv) defamation for \$250,000; and v) attorney's fees for not less than \$50,000.

On a pre-answer motion to dismiss, the court must "accept the facts alleged as true, accord plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (see *Leon v Martinez*, 84 NY2d 83, 88 [1994]).

Defendant points to New York Limited Liability Company Law § 808(a), "[a] foreign limited liability company doing business in this state without having received a certificate of authority to do business in this state may not maintain any action." Although plaintiff is a foreign entity formed in Delaware, plaintiff has not received a certificate of authority to do business and the complaint must be dismissed (see *Intelligent Tech & Design, Doo v. NY Renaissance Corp.*, 2019 NY Slip Op 32256 [NY Sup Ct, NY Cty 2019]) (see also NYSCEF Doc. No. 9).

Plaintiff cites New York Limited Liability Company Law § 808(b), "[t]he failure of a foreign limited liability company that is doing business in this state to comply with the provisions of this chapter does not impair the validity of any contract or act of the foreign limited liability company." In any event, the failure of plaintiff to obtain a certificate may be cured prior to the resolution of the action (see *Credit Suisse Int'l v. URBI, Desarrollos Urbanos, SAB de CV*,

41 Misc. 3d 601, 604 [NY Sup Ct, NY Cty 2013]). Plaintiff provides a certificate of authority dated March 8, 2021 (see NYSCEF Doc. No. 22).

The essential elements of a cause of action for breach of contract are the existence of a contract, the plaintiff's performance under the contract, the defendant's breach of the contract, and resulting damages (see *Morpheus Capital Advisors LLC v UBS AG*, 105 AD3d 145, 150 [1st Dept 2013]).

Plaintiff submits the affidavit in opposition of Haley Lankau, owner and principal designer of plaintiff Studios Design LLC (see NYSCEF Doc. No. 20). Haley Lankau affirms, “[t]he plaintiff performed interior design services, procured purchases needed for the renovation as outlined in the parties’ contract, arranged movers for her personal items, arranged for storage her furniture and personal property, and is owed commissions for procuring the necessary contractors needed for the renovation.”

Plaintiff further submits the affidavit in opposition of James Chiusano, comptroller of plaintiff Studios Design LLC (see NYSCEF Doc. No. 21). “As the records reflect, \$54,473.61 is owed by FRIEDLAND and no payment has been received as to any of the items that remain open in the annexed invoices.”

Plaintiff submits the signed contract (see NYSCEF Doc. No. 23), unpaid invoices (see NYSCEF Doc. No. 24), the invoice summary (see NYSCEF Doc. No. 25), written demand for payment (see NYSCEF Doc. No. 25), and alleged defamatory emails (see NYSCEF Doc. No. 27).

On a motion to dismiss based upon documentary evidence, defendant must present evidence which “utterly refutes” plaintiff's allegations and establishes a defense as a matter of law (see *Goshen v. Mut. Life Ins. Co.*, 98 N.Y.2d 314 [2002]).

Defendant does not submit an affidavit from defendant Lindsay Friedland.

ORDERED that defendant’s motion to dismiss the complaint – CPLR 3211(a)(3) is DENIED; and it is further

ORDERED that defendant’s motion for sanctions – 22 NYCRR 130 is DENIED; and it is further

ORDERED that defendant’s motion to dismiss the first cause of action for an account stated – CPLR 3211(a)(1) and/or 3211(a)(7) is DENIED; and it is further

ORDERED that defendant’s motion to dismiss the second cause of action for quantum meruit – CPLR 3211(a)(1) and 3211(a)(7) is DENIED; and it is further

ORDERED that defendant’s motion to dismiss the third cause of action for breach of contract - CPLR 3211(a)(1) and 3211(a)(7) is DENIED; and it is further

ORDERED that defendant’s motion to dismiss the fourth cause of action for defamation - CPLR 3211(a)(7) is DENIED; and it is further

ORDERED that defendant’s motion to dismiss the fifth cause for attorney’s fees - CPLR 3211(a)(1) and 3211(a)(7) is DENIED, and it is further

ORDERED that defendants shall serve an answer to the complaint within twenty (20) days from the date of this Order.

5/27/2021
DATE


LAURENCE L. LOVE, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE