Burton v Adams
2021 NY Slip Op 32745(U)
December 17, 2021
Supreme Court, Kings County
Docket Number: Index No. 506967/2021
Judge: Larry D. Martin
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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RICHARD BURTON,

Plaintiff,

Index No. 506967/2021

v.

DECISION & ORDER
Hon. Larry D. Martin

HAYDEN ADAMS,

Defendant.
--X

Plaintiff RICHARD BURTON commenced this action against Defendant HAYDEN ADAMS, founder and chief executive officer of Universal Navigation, Inc. ("Universal"), seeking $100 million in damages for breach of contract, and, in the alternative, restitution for unjust enrichment sounding in quantum meruit in connection with Plaintiff's role in developing "'Uniswap,' a multi-billion-dollar . . . software and cryptocurrency enterprise used to trade cryptocurrency and digital assets." Defendant moves to dismiss the complaint (Seq. No. 1) pursuant to CPLR § 3211.

Background

A. Cryptocurrency

Each unit of cryptocurrency, "virtual or digital money," is either called a "coin" or a "token." Coins—the most notable of which is Bitcoin—have a stated or discernible monetary value.[1] The terms coins (or "convertible coins") and "tokens" are often used interchangeably, however, tokens are better thought of as "digital assets" that may "fluctuate in value as any commodity would." *Sec. and Exch. Commn. v Telegram Grp Inc.*, 448 F Supp 3d 352, 358 (SDNY

[1] § 9:14. Cryptocurrencies/Coins and SAFT's, Limited Offering Exemptions Reg. D § 9:14

2020). As a practical matter, both coins and tokens are cryptocurrency that "may be used to pay for goods or services[] or held for investment."[2]

Cryptocurrencies operate via a record-keeping technology called "blockchain," which conspicuously (*i.e.*, viewable by anyone) and permanently stores every transaction. Bitcoin is just one of several cryptocurrencies. Another cryptocurrency, "Ether," operates on the "Ethereum" blockchain.

Cryptocurrency transactions may occur directly between parties via "decentralized cryptocurrency exchanges" (DEX), which allow users to trade one cryptocurrency for another, or for traditional currencies such as U.S. dollars.[3]

B. Factual Background

Since the Court is bound to accept the facts alleged in the complaint as true (*Leon v Martinez*, 84 NYS2d 83, 87, 614 NYS2d 972 [1994]), Plaintiff Burton is a software developer, designer and entrepreneur, and the founder of "Balance," an Ethereum blockchain wallet startup. Defendant Adams is founder and CEO of "Uniswap," a DEX software that improves the functionality of trading on the Ethereum platform. While Uniswap bills itself as the largest DEX on Ethereum, when the parties met in 2018, Uniswap was "little more than an idea."

Burton allowed Adams to work on Uniswap daily in Balance's offices, spending "countless hours in front of a whiteboard," helping Adams think through the project and pitch the project to prospective investors, all in the hopes of financially benefitting. In addition to technical and design advice, Burton, knowing Adams was running low on funds, also supplied him $25,000 for software development, rent, and other costs.

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2 Internal Revenue Service, *Virtual Currency Guidance*, 2014-16 IRB 938, 2014 WL 1224474 (2014)
3 Internal Revenue Service, *Chief Counsel Advisory*, IRS CCA 202124008, 2021 WL 2483863 (2021).

Burton alleges that, "[a]s consideration for [Burton's] assistance," they agreed he would have the ability to be an early investor in Uniswap, and that, "[b]ut for" such agreement, Burton would not have provided the support that he offered to, and that was accepted by, Adams. It is undisputed that, at some point thereafter, Adams offered Burton a deal "a term sheet," and that Burton confirmed his continued interest in investing, indicating he would only do so after Adams had found a "lead investor to set the terms and price the deal." Burton thereafter financed Adams's flight to San Francisco to "pitch Uniswap to Paradigm, a well-known blockchain focused venture capital firm." Paradigm went on to seed $1 million into Adams's then still-unincorporated enterprise, now Universal, at a $10 million valuation.

The Complaint alleges that, since then, and as a product of Burton's assistance, Uniswap has seen a major increase in trading, processing over $110 billion in volume, and "increasing to the tune of more than $1 billion daily."

C. Arguments

Burton argues the foregoing facts set forth a *prima facie* case that the parties entered an oral "contract," whereby he would be given the opportunity to invest in Uniswap once it took a "concrete" form into which an investment could be made, and that this contract is supported by Adams's assurances provided "in writing, in person and on voice-calls." Burton commenced the instant action after Adams rejected his post-Paradigm $100,000 investment proffer, alleging breach of contract, or alternatively, unjust enrichment. Burton argues that $100 million is the reasonable value of his $25,000 cash and critical developmental support, enabling Adams to be enriched by hundreds of millions of dollars.

Adams disputes Burton's characterizations and seeks to limit Burtons claim sounding in quantum meruit to $25,000 in addition to something akin to an hourly breakdown of the "reasonable value" of Burton's services.

Discussion

A. Contract Claim

The elements of a cause of action for breach of contract are (1) formation of a contract between plaintiff and defendant, (2) performance by plaintiff, (3) defendant's failure to perform, (4) resulting damage (*Riccio v Genworth Fin.*, 184 AD3d 590, 124 NYS3d 370 [2d Dept 2020]). The requirements for the formation of a contract are (1) at least two parties with legal capacity to contract, (2) mutual assent to the terms of the contract, and (3) consideration (Restatement [Second] of Contracts §§ 9, 12, 23). The first step in considering whether a contract was formed is to determine if there was a sufficiently definite offer such that its unequivocal acceptance would have given rise to an enforceable contract (*Kolchins v Evolution Mkts., Inc.*, 31 NY3d 100, 73 NYS3d 519 [2018]). This determination must be made looking to the objective manifestations of the parties' intents (*Utica Builders, LLC v Collins*, 176 AD3d 897, 899, 110 NYS3d 49, 51-52 [2d Dept 2019]), bearing in mind that assent may take the form of written or spoken words (express contract) or conduct manifesting agreement (contract implied-in-fact) (*Miller v Schloss*, 218 NY 400, 113 NE 337 [1916]).[4]

As a general rule, if an acceptance is qualified with conditions, it is treated as a rejection and counteroffer (*Roer v Cross Cnty. Med. Ctr. Corp.*, 83 AD2d 861, 441 NYS2d 844 [2d Dept 1981]). Specifically, where material terms are left for future negotiations, courts consider it merely

[4] A binding contract may also be formed by the oral acceptance of a written contract (*Mor v Fastow*, 32 AD3d 419, 819 NYS2d 560 [2d Dept 2006]; *Morton's of Chicago/Great Neck LLC v Crab House, Inc.*, 297 AD2d 335, 746 NYS2d 317 [2d Dept 2002]).

an agreement to agree and, therefore, unenforceable (*410 BPR Corp. v Chmelecki Asset Mgmt., Inc.*, 51 AD3d 715, 859 NYS2d 209 [2d Dept 2008]). This is true when an agreement contains open terms, calls for future approval, and expressly anticipates future preparation and execution of contract documents (*Carmon v Soleh Boneh Ltd.*, 206 AD2d 450, 450, 614 NYS2d 555, 556 [2d Dept 1994]). There, courts operate with a strong presumption against finding a binding and enforceable obligation (*id*).

Here, Plaintiff alleges that the parties agreed that he would be given the opportunity to invest in Uniswap, if, when, or once Uniswap "took a concrete form into which investment could be made." Accordingly, any purported "agreement" was unenforceable because it was qualified with conditions, devoid of material terms, expressly anticipating future approval, preparation, and execution of contract documents. The Court, therefore, finds that the parties do not have a binding and enforceable contract.

To the extent that Plaintiff maintains that agreement was supported by Defendant's assurances provided "in writing, in person and on voice-calls," New York's "Statute of Frauds, codified in General Obligations Law Sections 5-701 and 5-703, provides, with many exceptions, that certain agreements, promises, or undertakings are void unless in writing. Most relevant here, section 5-701(a) applies the Statute of Frauds to "a contract to pay compensation for services rendered in negotiating a . . . business opportunity, business, . . . or an interest therein . . . ."[5] Accordingly, such writings are material. Here, however, the only writings referenced are the

[5] In a commercial context, courts sometime look at partial performance as an indicia of an agreement even without writing, and indeed, New York's Commercial Code, dealing with transactions between merchants, has a specific section addressing the practical business reality of transactions between a buyer and a seller (*see* § 2-201). Plaintiff has not suggested, however, that the underlying transaction was between commercial entities.

foregoing term sheet and emails which, for the reasons previously stated, do not suggest the existence of a contract.

B. Duplicative Claim

Contrary to Defendant's allegations, it is well established that quasi contract and breach of contract claims may be pleaded jointly and that a party is not precluded from proceeding on both breach of contract and quasi-contractual theories where there is a bona fide dispute as to the existence of a contract (*see Polley v Plainshun Corp.*, 8 AD2d 638, 186 NYS2d 295 [2d Dept 1959]; *Krigsfeld v Feldman*, 115 AD3d 712, 982 NYS2d 487 [2d Dept 2014]; *AHA Sales, Inc. v Creative Bath Products, Inc.*, 58 AD3d 6, 867 NYS2d 169 [2d Dept 2008]). The action is predicated on an obligation the law creates precisely in the absence of an agreement (*Pappas v Tzolis*, 20 NY3d 228, 958 NYS2d 656 [2012]; *Goldman v Metro. Life Ins. Co.*, 5 NY3d 561, 807 NYS2d 583 [2005]; *Georgia Malone & Co., Inc. v Rieder*, 19 NY3d 511, 950 NYS2d 333 [2012]).

C. Quantum Meruit

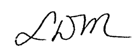
In order to make out a claim in quantum meruit, a plaintiff must establish (1) the performance of the services in good faith, (2) the acceptance of the services by the person to whom they are rendered, (3) an expectation of compensation, and (4) the reasonable value of the services (*Miranco Contracting, Inc. v Perel*, 57 AD3d 956, 871 NYS2d 310 [2d Dept 2008]; *Tesser v Allboro Equip. Co.*, 302 AD2d 589, 590, 756 NYS2d 253, 254 [2d Dept 2003]; *Geraldi v Melamid*, 212 AD2d 575, 622 NYS2d 742 [2d Dept 1995]).

Here, the pleadings are clearly sufficient to establish three of the four foregoing elements of quantum meruit for purposes of defeating the motion, *i.e.*, (1) the performance of the services in good faith, (2) the acceptance of the services by the person to whom they are rendered, and (3) an expectation of compensation. What remains less clear is the proper standard for calculating the

"reasonable value of the services" within the context of a quantum meruit claim, and, specifically, when and whether "other factors," such as the amount of a defendant's enrichment should be considered where, as here, there is no claim of misconduct, malfeasance, or statutory violation. In the interest of justice, both sides should be afforded an opportunity to brief this Court on that issue.

Accordingly, Defendant's motion to dismiss (Seq. No. 1) is granted solely to the extent of granting both sides until January 16, 2022 to submit one further affirmation or memorandum of law, narrowly focusing on arguments as to the proper standard of calculating the "reasonable value of the services" with respect to a quantum meruit claim where no claim of misconduct, malfeasance, or violation of a statue has been made.

Dated: December 17, 2021



Hon. Larry D. Martin, J.S.C.

HON. LARRY MARTIN
JUSTICE OF THE SUPREME COURT