

Jimenez v Morales

2021 NY Slip Op 32819(U)

December 29, 2021

Supreme Court, New York County

Docket Number: Index No. 151847/2012

Judge: Louis L. Nock

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

PRESENT: HON. LOUIS L. NOCK PART 38M

Justice

-----X

NELSON JIMENEZ,

Plaintiff,

- v -

RUD MORALES, NEGRO CLARO CORP. D/B/A NEGRO
CLARO LOUNGE and NEGRO CLARO LOUNGE,

Defendants.

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INDEX NO. 151847/2012

MOTION DATE 09/24/2021

MOTION SEQ. NO. 015

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 015) 296, 297, 298, 299, 300, 301, 302, and 303

were read on this motion to PRECLUDE – IN LIMINE.

LOUIS L. NOCK, J.

Upon the foregoing documents, it is ordered that the motion by plaintiff, *in limine*, to preclude certain matters at trial, and for related relief, is determined as follows.

Brief Background:

This is a commercial case seeking monetary damages for alleged breach of contract, fraudulent misrepresentation, unjust enrichment, and breach of the implied covenant of good faith and fair dealing brought by plaintiff Nelson Jimenez against answering defendant Rud Morales and the defaulting corporate defendant(s), Negro Claro Corp. d/b/a Negro Claro Lounge and, as separately named, “Negro Claro Lounge.” Plaintiff claims that defendant Morales took his business equity investment money for purposes of enabling the lounge enterprise and then excluded him from operating Negro Claro Lounge or receiving any shares or profits from the business.

Specifically, plaintiff claims that defendant Morales and he had a verbal agreement that he would receive 35% of the business in return for his investment of \$105,000. Plaintiff claims that defendant Morales, despite not signing a formal contract, acted in accordance with the deal and acknowledged plaintiff's investment until 2011, when she denied any business contact with plaintiff, banned him from coming to the lounge, would not provide him any statements of profits, and would not let him have any say in how the business operated. Plaintiff also claims that defendant Morales engaged in fraudulent misrepresentation by inducing him to invest in the business when she planned all along to take his investment money and exclude him from the business, which she accomplished through a series of fraudulent and deceptive acts.

Procedural Posture:

By order dated May 4, 2021 (NYSCEF Doc. No. 293), this court ordered that: “this case shall proceed to a combined, non-bifurcated, jury trial on the issues of liability and damages as to individual defendant Rud Morales, and as to the issue of damages as to the remaining (defaulting) defendants.” Trial is presently calendared for April 2022.

Plaintiff's Instant Motion *in Limine*:

Plaintiff now moves, *in limine*, for the following order: (1) an order precluding defendant Rud Morales from claiming or presenting any evidence that plaintiff did not enter into a contract with the defaulting corporate Defendant(s), Negro Claro Corp. d/b/a Negro Claro Lounge and, as separately named, “Negro Claro Lounge”; (2) an order precluding defendant Rud Morales from specifically mentioning the death of her father and brother in the Dominican Republic, and/or the trial and/or appeal of the alleged murderer; (3) an order precluding defendant Rud Morales from claiming that she fears for her daughter's safety and has or will make a complaint about plaintiff to law enforcement; (4) an order precluding defendant Rud Morales from claiming that the firm

representing plaintiff in this action, Maduegbuna Cooper LLP, is being paid by some unknown third-party to harass her; and (5) an order directing defendant Rud Morales to bring any eyeglasses she needs in order to read documents during the trial.

Evidence Concerning an Alleged Contract Between Plaintiff and the Defaulting Defendant(s), or the Lack Thereof:

Plaintiff's motion for an order precluding answering defendant Rud Morales from claiming or presenting any evidence that plaintiff did not enter into a contract with the defaulting corporate Defendant(s) is denied. It is elementary that a default liability finding against a defaulting defendant has absolutely no binding effect on a non-defaulting co-defendant:

CPLR 3215 (a) requires that when a default judgment is taken against fewer than all of the defendants, the action is severed as against the remaining defendants (*see, Frolish v. Ryder Truck Rental*, 63 A.D.2d 799, 404 N.Y.S.2d 929). The judgment obtained by the plaintiff as against the defaulting defendant is not entitled to collateral estoppel effect against the nondefaulting defendants who would otherwise be denied a full and fair opportunity to litigate issues of liability (*see, Woodson v. Mendon Leasing Corp.*, 259 A.D.2d 304, 686 N.Y.S.2d 411; *Frolish v. Ryder Truck Rental, supra*).

(*Holt v Holt*, 262 AD2d 530, 530-31 [2d Dept 1999].)

Accordingly, plaintiff's application to essentially estop answering defendant Rud Morales from presenting certain evidence or making certain arguments on the force of default liability findings issued against the defaulting defendant(s) is contrary to law and is, therefore, denied.

Matters Lacking Any Relevance to the Merits of this Case:

The anticipated topics at trial which plaintiff is concerned about, and wishes precluded, relate to things having absolutely no bearing on the merits of this commercial case and, as far as this court can tell – and absent any argument to the contrary from defendants – would serve no purpose other than to inflame the emotions and fears of the jury, leading to undue prejudice to the plaintiff. As plaintiff describes them, those topics relate to Ms. Morales' father's and brother's deaths (or murders) and related criminal proceedings; Ms. Morales' concerns for her

daughter's safety and related possible law enforcement intervention; and Ms. Morales' speculation about how plaintiff's counsel is being compensated or why said counsel has been retained. At a bare minimum, evidence must first be considered technically relevant before a court even needs to decide whether it is unduly prejudicial (*see*, Jerome Prince, Richardson on Evidence § 4-101 [11th ed 2008]). Once evidence is found to be technically relevant, it may still be excluded by the trial court in the exercise of discretion if its probative value is substantially outweighed by the danger that it will unfairly prejudice the other side or mislead the jury (*id.*).

In this instance before the Bar, this court cannot fathom how such topics could remotely be relevant to the civil claims in this action involving alleged breach of a commercial contract involving an alleged shared equity interest in a commercial enterprise, whether cast as such – breach of contract – or as other theories of at-law or equitable recovery found in the complaint: fraud; money had and received; unjust enrichment; breach of good faith; a declaration of ownership interests; and an injunction (*see*, Complaint [NYSCEF Doc. No. 1]). Thus, on relevance analysis alone, this court finds it appropriate to grant the motion to preclude such topics at trial. It is hereby found that the subject topics are without any probative value in this commercial case and, if admitted at trial, would serve no purpose other than to inflame the jury and unduly prejudice the plaintiff. Therefore, the motion is granted as to the subject topics.

Encouraging Witness Ability to Read Documents at Trial:

Plaintiff asks the court to direct Ms. Morales “to bring any eyeglasses she needs in order to read documents during the trial” (Notice of Motion [NYSCEF Doc. No. 296 at 2]). The request is reasonable and narrowly tailored to Ms. Morales' needs. The motion is granted.

Conclusion:

Accordingly, it is

ORDERED that the motion (seq. no. 015) by plaintiff, *in limine*, is denied to the extent of its desire to preclude evidence concerning an alleged contract between plaintiff and the defaulting defendant(s), or the lack thereof; and is otherwise granted; and it is, accordingly,

ORDERED that defendant Rud Morales is directed to bring with her to trial any eyeglasses or other form of corrective vision item she possesses sufficient to enable her to comfortably read any documents shown to her at trial in the same manner as she would ordinarily resort to such eyeglasses or items in her ordinary reading activities.

This will constitute the decision and order of the court.

ENTER:



<u>12/29/2021</u>			<u>LOUIS L. NOCK, J.S.C.</u>	
DATE				
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
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"/>	OTHER
			<input type="checkbox"/>	REFERENCE