

Baker v Waller Capital Corp.
2021 NY Slip Op 32837(U)
December 20, 2021
Supreme Court, New York County
Docket Number: Index No. 655859/2017
Judge: Joel M. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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GARRETT BAKER,	INDEX NO. <u>655859/2017</u>
Plaintiff,	MOTION DATE <u>N/A, N/A</u>
- v -	MOTION SEQ. NO. <u>001 003</u>
WALLER CAPITAL CORP., WALLER CAPITAL PARTNERS, LLC, JOHN WALLER	
Defendants.	DECISION + ORDER ON MOTION
-----X	

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 22, 23, 24, 25, 26, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 47, 48, 49, 50, 77, 81
were read on this motion for SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 69, 70, 71, 72, 73, 75, 78
were read on this motion for PARTIAL SUMMARY JUDGMENT.

Based on the foregoing, and for the reasons set forth on the record after oral argument on December 13, 2019, it is hereby

ORDERED that Plaintiff's motion for summary judgment (Motion Sequence No. 001) is **granted in part and denied in part** as follows:

1. Plaintiff's motion for summary judgment for compensatory damages related to seven (7) months of unpaid Guaranteed Payments in the amount of \$437,500.00 is **GRANTED**, with pre-judgment interest to be calculated at the statutory rate of nine percent (9%) per annum commencing as follows: \$62,500 from December 15, 2015; \$62,500 from January 15, 2016; \$62,500 from February 15, 2016; \$62,500 from

- March 15, 2016; \$62,500 from April 15, 2016; \$62,500 from May 15, 2016; and \$62,500 from June 15, 2016.
2. Plaintiff's motion for summary judgment for compensatory damages related to the unpaid second installment of Plaintiff's Additional Guaranteed Payment for Fiscal Year 2015 in the amount of \$625,000.00 is **GRANTED**, with pre-judgment interest to be calculated at the statutory rate of nine percent (9%) per annum commencing January 15, 2016.
 3. The Court having found that there are triable issues of fact as to whether Plaintiff was terminated without cause, Plaintiff's motion for summary judgment for compensatory damages related to the unpaid first installment of Plaintiff's Additional Guaranteed Payment for Fiscal Year 2016 in the amount of \$375,000.00 is **DENIED** without prejudice and the determination of this issue shall be reserved for trial.
 4. Plaintiff's motion for summary judgment with respect to the obligations of John W. Waller III under Paragraph 8 of the First Amendment of the parties' agreement, which provides that in the event that the Company does not have sufficient funds to pay the Guaranteed Payment, the Additional Guaranteed Payment or the Special Sale Bonus, Waller Capital and Manager agree to loan or otherwise provide the capital to the Company required to make any such payments, is **GRANTED**.
 5. Plaintiff's motion for summary judgment with respect to the obligations of Waller Capital Corp. under Paragraph 8 of the First Amendment of the parties' agreement, which provides that in the event that the Company does not have sufficient funds to pay the Guaranteed Payment, the Additional Guaranteed Payment or the Special Sale

Bonus, Waller Capital and Manager agree to loan or otherwise provide the capital to the Company required to make any such payments, is **GRANTED**.

IT IS FURTHER ORDERED that Defendants' motion for partial summary judgment (Motion Sequence No. 003) is **granted in part and denied in part** as follows:

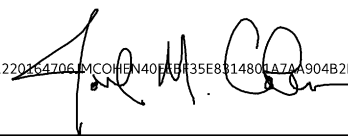
1. Defendants' motion for summary judgment to dismiss Plaintiff's claims for damages pursuant to Section 3.3 of the parties' agreement is **GRANTED**.
2. The Court having found that there are triable issues of fact, Plaintiff's motion for summary judgment for a determination that Plaintiff was terminated without cause as a matter of law, as set forth in Counts Two and Three, is **DENIED** without prejudice and the determination of this issue shall be reserved for trial.
3. The Court having found there are triable issues of fact, Defendants' motion for summary judgment to dismiss Plaintiff's claims related to the "Retention Agreement," as set forth in Counts Four and Five, is **DENIED** without prejudice and the determination of this claim shall be reserved for trial.
4. The Court having found there are triable issues of fact, Defendants' motion for summary judgment to dismiss Plaintiff's claims related to his post-termination deal work, as set forth in Counts Six and Seven, is **DENIED** without prejudice and the determination of this claim shall be reserved for trial.

IT IS FURTHER ORDERED that the decision on the award of attorneys' fees pursuant to Section 8.6 of the parties' agreement shall be reserved until after the trial or other resolution of this matter; and

IT IS FURTHER ORDERED that the parties file the oral argument transcript on NYSCEF if they have not already done so.

This constitutes the Decision and Order of the Court.

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12/20/2021

DATE

JOEL M. COHEN, J.S.C.

CHECK ONE:

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CASE DISPOSED

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NON-FINAL DISPOSITION

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GRANTED

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DENIED

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GRANTED IN PART

☐

OTHER

APPLICATION:

☐

SETTLE ORDER

☐

SUBMIT ORDER

CHECK IF APPROPRIATE:

☐

INCLUDES TRANSFER/REASSIGN

☐

FIDUCIARY APPOINTMENT

☐

REFERENCE