

Hylan Energy LLC v Bamara Resources LLC

2021 NY Slip Op 33608(U)

July 15, 2021

Supreme Court, New York County

Docket Number: Index No. 653122/2020

Judge: Barry R. Ostrager

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. BARRY R. OSTRAGER PART IAS 61EF

Justice

HYLAN ENERGY LLC,

Plaintiff,

- v -

BAMARA RESOURCES LLC, BAMARA PERMIAN LLC, GATIEN LANGUE, and YVELISE LANGUE aka JENNIFER LANGUE aka YVELISE JENNFIER COSNAVE LANGUE,

Defendants.

Table with 2 columns: INDEX NO. (653122/2020), MOTION DATE, MOTION SEQ. NO.

DECISION AND ORDER AFTER TRIAL

HON. BARRY R. OSTRAGER

This Court conducted an in-person bench trial on June 10, 2022, on the claims asserted in the Amended Complaint filed on February 26, 2021 by plaintiff Hylan Energy LLC ("Hylan") for a money judgment against defendant Gatien Languue for breach of contract and against Mr. Languue's spouse Jennifer Languue for unjust enrichment. (NYSCEF Doc. No. 52). Defendant Gatien Languue appeared at the trial pro se, as his counsel had been granted leave to withdraw by Decision and Order dated May 3, 2021 (NYSCEF Doc. No. 71). Defendant Jennifer Languue failed to appear at the trial or at any earlier point in the proceedings, and never was represented by counsel, despite service of the pleadings (see NYSCEF Doc. No. 114). A default judgment was previously entered against the two corporate defendants Bamara Resources LLC and Bamara Permian LLC in response to Hylan's motion after counsel for the corporate defendants was granted leave to withdraw (NYSCEF Doc. No. 115), and the Clerk entered a money judgment in favor of Hylan against the two corporate defendants in the sum of \$4,535,290.33, including interests and costs, on August 17, 2021 (NYSCEF Doc. No. 151). At the conclusion of

the trial proceedings on June 10, 2022, following testimony, the Court reserved decision. This decision determines all outstanding issues between the parties.

As memorialized in the Limited Liability Company Agreement of defendant Bamara Resources LLC (“BRLLC”) (Ex P-1),¹ BRLLC was formed in July 2018 to close on a specific transaction for the purchase of certain oil and gas assets in the Permian Basin through Bamara Permian LLC (“BPLLC”). The initial members of BRLLC were defendant Gatien Langué (80%), Adam Giordano (10%), and Matthew Giordano (10%) (P-1). The Giordano Brothers and Mr. Langué had worked together on several prior deals in the energy sector, all of which had apparently failed (TR² 5, lines 23–24). The BRLLC Operating Agreement (the “Operating Agreement”) was drafted in connection with the Linn Transaction (TR 6-7).

As acknowledged in §III(C) of the Operating Agreement, the Giordano Brothers made Capital Contributions to BRLLC. No specific amount is mentioned in the Operating Agreement, which defines the Capital Contributions in §III(B) as the amounts “memorialized in the Company’s books and records.” §III(C) of the Operating Agreement provided for the return of those Capital Contributions to the Giordano Brothers in the event the Linn Transaction should fail to close by a date certain. According to the Giordano Brothers, they made a Capital Contribution in the amount of \$3,746,942.00, as reflected in a Resolution Adopted By Members of Bamara Resources LLC (the “Resolution”) in September 2018 (P-2). BRLLC sought other investors for the Linn Transaction, but ultimately the company was unsuccessful, and it is undisputed that the Linn Transaction failed to close.

¹ The Exhibits admitted into evidence at the trial were all offered by Hylan and are referenced as “P” followed by the Exhibit number. Counsel has efiled all the Exhibits at NYSCEF No. 238.

² “TR” refers to the Transcript of proceedings of June 10, 2022 (NYSCEF Doc. No. 245).

In July 2018, the Giordano Brothers assigned all of their claims against defendants to plaintiff Hylan, who brought the instant action (TR 12, line 8). As indicated above, Hylan asserted at trial that Gatien Langué had breached the Operating Agreement by having failed to return the Giordano Brothers' Capital Contributions and that Jennifer Langué had been unjustly enriched at plaintiff's expense by having received and retained certain funds she had received from Hylan and/or the Giordano Brothers in connection with the Transaction in the amount of \$1,000,000.00 (TR at 24, lines 9–20).

In response to Hylan's motion before trial for a default judgment against Ms. Langué, the Court found that Hylan had established its claim against Ms. Langué based on bank records provided only in the sum of \$50,000.00 (NYSCEF Doc. No. 213, Decision dated December 14, 2021), and the Clerk then entered a judgment in the total sum of \$57,576.99, including interest and costs, on February 22, 2022. (NYSCEF Doc. No. 216). The judgment was based on a single wire transfer from Adam Giordano to Jennifer Langué in the amount of \$50,000.00, the only admissible proof of any payments to Jennifer Langué that was provided in the motion for a default judgment, and the issue of whether the remaining \$950,000.00 was actually paid to Ms. Langué was reserved for trial.

On March 15, 2022, defendant Gatien Langué's answer was stricken due to his failure to appear on various occasions when his deposition was scheduled to proceed. (NYSCEF Doc. No. 217). The order striking Mr. Langué's answer was preceded by multiple motions by plaintiff to compel discovery and multiple Court conferences at which the Court directed Mr. Langué to discharge his discovery obligations. During those proceedings, Mr. Langué repeatedly offered excuses for having failed to timely provide discovery, and he also repeatedly disputed plaintiff's claims. Consequently, the trial was scheduled with the express direction that Hylan authenticate

the documents upon which plaintiff was relying as to liability and damages for the breach of contract claim against Gatien Langué and the unjust enrichment claim against Jennifer Langué.

Breach of Contract Claim

Plaintiff's claim for breach of contract is predicated on defendant Gatien Langué's breach of the BRLLC Operating Agreement §III(C), which governs the return of Capital Contributions made by Adam Giordano and Matthew Giordano. Section III(B) of the Operating Agreement provides that: "Each Member has made capital contributions as memorialized in the Company's books and records (the "Capital Contributions")." As indicated earlier, Hylan asserted at trial that Langué had signed on September 10, 2018, a Resolution acknowledging Capital Contributions made by Adam Giordano and Matthew Giordano in the aggregate sum of \$3,746,942.00.

During the trial, defendant Gatien Langué disputed the authenticity of the Operating Agreement, claiming that he did not sign the Operating Agreement and that the signature affixed to the contract was a photocopy of his signature (TR 73, lines 23–25). However, both Adam Giordano and Matthew Giordano testified to having witnessed defendant Gatien Langué sign the Operating Agreement on July 23, 2018 (TR 9, lines 22–25; TR 10; TR 47, lines 14–20). The Court credits the testimony of the Giordano Brothers that they saw Langué sign the LLC Agreement on July 23, 2018. The Court rejects Langué's testimony that his signature on the LLC Agreement is a forgery.

Adam Giordano also testified that he and Mr. Langué signed the Resolution on September 10, 2018 (TR 17, lines 9–12). Langué's testimony regarding the Resolution is not credible. Langué claimed at one point that there was no such Resolution because none was referenced in the Operating Agreement (TR 61, lines 11–12). On the other hand, Langué also appeared to acknowledge the existence of a Resolution in his testimony (TR 38, lines 2–8).

Langué also did not dispute during trial that the signature on the Resolution was his. Thus, the Court finds that Hylan adequately authenticated at trial both the Operating Agreement and the Resolution, and Mr. Langué failed to come forward with persuasive evidence to discredit the documents.

Having found the existence of a valid contract and performance by Hylan, the Court now turns to the issues of breach by Mr. Langué and resulting damages. Section III(C) of the Operating Agreement (Ex P-1) provides as follows:

In the event that the BPLLC does not close on the Transaction such that title to the Assets have been transferred to BPLLC by December 31, 2018 or any other date to which the Members unanimously agree (the “Unwind Date”), the Company and or BPLLC shall return to Adam Giordano and Matthew Giordano, within ten (10) days of the Unwind Date, the full amount of their Capital Contribution less a combined 20% of all expenses paid or incurred by or on behalf of the Company in connection with the Transaction up through the Unwind Date (the “Capital Return”). In the event BPLLC and the Company do not have sufficient funds to pay the Capital Return to Adam Giordano and Matthew Giordano in accordance with this Section, BPLLC and/or the Company shall pay to Adam Giordano and Matthew Giordano, within ten (10) days of the Unwind Date, all of the funds held by or on account for BPLLC and the Company, in full, and the difference between the Capital Return and the funds paid by BPLLC and the Company to Adam Giordano and Matthew Giordano (the “Capital Return Shortfall”), shall be paid to Adam Giordano and Matthew Giordano, in full, by Gatién Langué, within twenty (20) days of the Unwind Date. Gatién Langué’s obligation in this regard shall survive his withdrawal from the Company, BPLLC’s dissolution or termination, and Gatién Langué's assignment of his Membership Interest

As noted earlier, the “Transaction” referred to in §III(C) of the Operating Agreement is the Linn Transaction, which was scheduled to close on December 31, 2018 (the “Unwind Date”) (TR 6, lines 19–25; TR 7, line 1–15; TR 18, lines 11–15). It is undisputed that the Linn Transaction did not close. Accordingly, the return of capital provision found in §III(C) of the Operating Agreement was triggered on December 31, 2018, with payment due ten days thereafter.

Section III(C) of the Operating Agreement provided that the Capital Contribution (the specific amount of \$3,746,942.00, having been memorialized in the aforementioned Resolution) was to be returned by either BRLLC or BPLLC to the Giordano Brothers, less 20% of all expenses paid by or incurred on behalf of BRLLC in connection with the Transaction. In the event BRLLC or BPLLC failed to return the money, the ultimate responsibility for repayment was the responsibility of Gatien Langué.

It is undisputed that neither BRLLC or BPLLC returned any money to the Giordano Brothers (TR 16, lines 6–8), either before or after the entry of the default judgment against those entities. Nor did Gatien Langué return any money to the Giordano Brothers (TR 16, lines 12–15). Mr. Langué does not dispute that he paid no money to the Giordano Brothers. Nor did Mr. Langué directly dispute that Adam and Matthew Giordano made Capital Contributions in the amount of \$3,746,942.00, as reflected in the Resolution that defendant Langué signed, despite his objection to the absence of the original document at trial. The Resolution is therefore dispositive. *See Neo Universe, Inc. v. Takanobu Ito*, 147 A.D.3d 682, 683 (1st Dept. 2017) (finding that the acknowledgement on the face of the agreement that money was “owed” in the amount stated in the agreement was sufficient proof of the preexisting debt).

Further, Mr. Langué had the opportunity to oppose the motion for a default judgment against the corporate defendants and did not do so at that time, thus failing to dispute money paid at that juncture in the case as well. In addition, the circumstance that Mr. Langué testified at great length that he had incurred millions of dollars of expenses related to the Linn Transaction further supports the conclusion that the Giordano Brothers did in fact make the Capital Contributions recited in the Resolution. Langué offered no explanation for the source of the

funds used to pay the expenses that he claimed to have incurred other than the Capital Contribution from the Giordano Brothers.

The final issue related to damages for the breach of contract claim is the amount of expenses, if any, that were paid by or incurred on behalf of BRLLC in connection with the Linn Transaction. Adam Giordano testified that the expenses incurred in connection with the Linn Transaction amounted to \$290,000.00 for engineering and legal expenses (TR 20, lines 3–10). Gatien Langué testified that expenses for the company were upwards of \$2 million and actually amounted to almost \$3 million dollars (TR 64). Mr. Langué's testimony can only logically be understood to include expenses incurred in connection with matters in addition to the Linn transaction. For example, Mr. Langué referred to rent for a \$45,000.00 Park Avenue office for a lease lasting four and a half years (TR 72, lines 5–8), a period of time far exceeding the duration of time spent on the Linn Transaction, which began in July 2018 upon the execution of the Operating Agreement and which ended in late December 2018 when the transaction failed to close.³

Even if the Court were to find Mr. Langué's testimony about the amount he spent credible, the Court cannot, per the terms of the Operating Agreement, credit the full amount of expenses claimed as expenses related to the Linn Transaction. While the Court accepts that Bamara/Langué incurred more than the \$290,000 in expenses that Adam Giordano testified BRLLC incurred, given the nature of the operation Langué was conducting and the lack of credibility of Mr. Langué's testimony, the Court finds that a reasonable amount spent by Mr. Langué in connection with the Linn Transaction up until the Unwind Date to be \$500,000.00.

³ In his testimony, Mr. Langué claimed the average rent for the Park Avenue office during the 4.5 year lease was \$45,000, amounting to roughly \$2,430,000.00 spent on rent (TR64, lines 15 – 18). This was the only specific sum of money spent attributable to a particular expense to which Mr. Langué testified.

Accordingly, plaintiff sufficiently established Mr. Langué's liability under §III(C) of the Operating Agreement to be \$3,646,942.00, which amounts to the full amount of the Capital Contribution under the Resolution, less twenty percent of the \$500,000.00 in expenses incurred by BRLLC and/or Mr. Langué in connection with the Linn Transaction, which is \$100,000.00. Therefore, Hylan has established its right to a judgment against Mr. Langué for breach of contract in the sum of \$3,646,942.00 plus interest at the statutory rate of 9% per annum from January 10, 2019, the date Mr. Langué breached the Operating Agreement.

Unjust Enrichment Claim

As noted above, Jennifer Langué did not appear in this case. At trial, the plaintiff established that the total amount of \$1,000,000.00 was paid to Ms. Langué. The testimony established that BRLLC had no bank accounts (TR 51, line 10; TR 62, lines 9–10). Mr. Langué's testimony also confirmed that the money was paid to Jennifer Langué because BRLLC had no bank account (TR 66, lines 18–22; TR 67, lines 2–13, 23). Hylan introduced a series of bank records into evidence establishing the payments totaling \$950,000.00, in addition to the \$50,000.00 established in the earlier motion via a wire transfer . [P-4(A)- P-4(J)].The Giordano Brothers identified each check they personally paid to Jennifer Langué during the period between June 4, 2015 and April 21, 2016 for deals predating the Linn Transaction (TR 24, lines 6–15; TR 25–28), and testified that unused funds from previous deals would be rolled into future deals, which was memorialized in connection with the Linn transaction in the BRLLC Operating Agreement (TR 7, lines 8–15) . The Giordano Brothers also testified that they were never paid back the million dollars they paid to Ms. Langué (TR 24, lines 16–20).

The Court finds the testimony of the Giordano Brothers and the checks paid to Ms. Langué admitted into evidence to be dispositive. And absent testimony by the plaintiff to the

contrary, the Court can only conclude that the million dollars paid to Ms. Langue was part of the Capital Contributions that the Giordano Brothers made to BRLLC. But since Ms. Langue received the money directly, she was unjustly enriched by \$1,000,000.00, \$50,000.00 of which was previously awarded against her in a prior judgment. Therefore, Hylan has established its right to a judgment against Ms. Langue for unjust enrichment in the amount of an additional \$950,000.00 plus interest from January 10, 2019.

Attorney's fees

On March 15, 2022, this Court granted plaintiff's motion for sanctions pursuant to CPLR § 3126 against Mr. Langue based on Mr. Langue's repeated failures to appear at scheduled depositions and then his failure to answer questions when he did appear, with the amount of sanctions to be determined at trial. (NYSCEF Doc. No. 217). Counsel for plaintiff submitted an affirmation indicating that Mr. Langue failed to appear for three duly noticed depositions, scheduled for November 30, 2021, December 6, 2021, and December 9, 2021. Counsel for plaintiff also referred to a fourth deposition, scheduled for December 13, 2021, at which defendant appeared but refused to answer questions. (NYSCEF Doc. No. 239). Plaintiff's counsel additionally submitted copies of the invoices for the court reporters and videographers in connection with these depositions, totaling \$3917.42, which was billed to plaintiff and which plaintiff apparently paid. (NYSCEF Doc. Nos. 240–43). And plaintiff submitted invoices for legal services in the amount of \$14,165.50 in connection with the work associated with the depositions and the work associated with the motion to strike and for sanctions. (NYSCEF Doc. No. 244). Counsel for plaintiff indicated the hourly rates were reduced and the legal fees incurred were reasonable and necessary. The total amount of sanctions sought by plaintiff is

\$18,082.92. The Court finds that \$15,000.00 is a reasonable amount of sanctions to award against Mr. Langué, and that amount will be included in Hylan's judgment against Mr. Langué.

Accordingly, it is hereby

ORDERED that plaintiff Hylan Energy, LLC has established its First Cause of Action for breach of contract against defendant Gatien Langué in the principal sum of \$3,646,942.00, in addition to establishing plaintiff's right to recover \$15,000.00 in sanctions pursuant to CPLR 3126. The Clerk is directed to enter judgment in favor of plaintiff Hylan Energy, LLC against defendant Gatien Langué in the principal amount of \$3,646,942.00 plus interest at the statutory rate of 9% per annum from January 10, 2019 through the date of entry of judgment, in an amount calculated by the Clerk of the Court, plus \$15,000.00 in sanctions, upon plaintiff's e-filing of a Proposed Judgment directed to the County Clerk; and it is further

ORDERED that plaintiff Hylan Energy, LLC has established its Second Cause of Action for unjust enrichment against defendant Jennifer Langué in the sum of \$950,000.00, and the Clerk is directed to enter judgment in favor of plaintiff Hylan Energy, LLC against defendant Jennifer Langué in the principal amount of \$950,000.00 plus interest at the statutory rate of 9% per annum from January 10, 2019, through the date of entry of judgment, in an amount calculated by the Clerk of the Court, upon plaintiff's e-filing of a Proposed Judgment directed to the County Clerk. Liability between defendants Gatien Langué and Jennifer Langué shall be joint and several to the extent of the amount of the judgment entered against defendant Jennifer Langué.

Dated: July 15, 2021



BARRY R. OSTRAGER, J.S.C.